The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Civil Appeal No. 80 of 2023

(Arising from Civil Suit No. 021 of 2017 of the Chief Magistrate's Court of Kumi at Kumi)

Kumi Vocational Institute *(Suing through their lawful attorney Okalebo Deogratius)* :::::::::::::::::::::: Appellant

Versus

1. Okodel Emmanuel t/a Star Light Secondary School
2. Ekungu Simon Peter
3. Nyero Sub-county

:::::::::::::: Respondents

Before: Hon. Justice Dr Henry Peter Adonyo

Judgement

(An appeal against the judgment and orders in Civil Suit No. 021 of 2023 of the Chief Magistrate's Court of Kumi at Kumi of HW Maloba Ivan -Magistrate Grade - 1 dated 19th June 2023 and delivered on the 27th June 2023 by HW Hope Namisi A.g. Chief Magistrate-Kumi)

a) Introduction:

The Plaintiff (now appellant) through his lawful attorney, sued the Defendants jointly and severally for a declaration that the Plaintiff is the rightful owner of the suit land; a declaration that the Defendants are trespassers on the suit land; an order for a permanent injunction restraining the Defendants from further interfering with the suit land; an order for General Damages; mesne profits; an order for interest of 25% from the date of cause of action till payment in full and an order for costs of the suit.

b) The appellant/plaintiff's claim

The Plaintiff's claimed that it previously traded as Kumi Youth and Disabled Persons Vocational Training Institute duly registered under the laws of Uganda and commenced operation since 1999, conducting vocational training education, among other things. It has a board of Directors who, through their board meeting of 2013, changed the name of the above institution to Kumi Vocational Institute.

The Plaintiff averred that in 1998, the office of the LCIII Nyero Sub-County allocated it 19.7 acres in Nyero parish. The plaintiff averred that this was done through a council meeting that inspected the land and approved it for development, thus commencing construction and activities of the institution.

Around 2017, without the knowledge and authority of the Plaintiff, the 1st Defendant, in connivance with the 2nd and 3rd Defendants, maliciously altered the Plaintiff's signpost by painting the writings on it and instead input the name Star Light Secondary School with the intention of changing its ownership that was quickly erased upon service of intention to sue.

That the 1st Defendant, with the help of the 2nd and 3rd Defendants without any colour or right, further trespassed on the Plaintiff's land by slashing the compound, demolishing structures, and breaking the padlock of the main gate and input their padlocks. As a result of the Defendants' trespass to the suit-land, the Plaintiff has suffered inconveniences, mental anguish, and loss of would-be income from the said property.

c) <u>The defendants' / respondents' claim:</u>

In their joint written statement of defence, the Defendants denied the plaintiff's claim. They stated that the land belongs to the Kumi District Local Government, that the powers to hold and allocate the same are a reserve of the Kumi District Land Board, and that anyone or authority purporting to exercise those powers supplies air.

The 2nd and 3rd Defendants deny participating either directly or through anyone to deface the Plaintiff's signpost, and the Defendants deny any wrongdoing, deny ever trespassing onto the suit land and causing damage thereon. The Defendants contend that they cannot trespass on their own property, neither did the 1st Defendant commit any trespass and if at all any psychological torture or inconvenience has been suffered by the Plaintiff, the Defendants are not responsible for the same and that the Defendants are not liable in fraud. The Defendants, therefore, ask the court to dismiss this suit with costs.

In the plaintiff's reply to the written statement of defence, the plaintiff averred that the Kumi District Land Board could not have had the locus to allocate the land because it was not in place at the time of the transaction. The plaintiff contended

that even if the land was to belong to the 3rd defendant, the plaintiff should have been given first priority as sitting tenants. Still, the defendants ignored this and allocated the land to the 1st defendant in total violation of their rights to property. The defendants were supposed to have, upon reasonable notice, adequately compensated the plaintiff prior to taking over/re-allocation. The defendants would be defeated by the doctrine of limitation, and even if the defendants had any rights, which is not the case, the same have been defeated under the doctrine of laches, and the claims are a mere afterthought to defeat the interests of the plaintiffs.

The defendants are stopped from challenging the plaintiff's interest in the suit since the 2nd defendant's office is the same office that allocated and /or is allocating the same land to the plaintiff and the 1st defendant, respectively.

At the trial in the lower court, four issues formed the basis of the trial magistrate's determination of the dispute: who is the rightful owner of the suit land, whether the defendants are trespassers on the suit land, whether Nyero sub-county had powers to allocate land to the plaintiff and the remedies available to the parties.

The trial Magistrate received evidence from the parties and visited the locus in quo.

The trial court found that the process leading to the allocation of the suit land to the Plaintiff was tainted with irregularities that could not be cured by the trial court, and in those circumstances, the trial magistrate found that the plaintiff had failed to prove its case on a balance of probabilities and he terminated issues 1, 2 and 3 in the negative,

The lower court dismissed the plaintiff's suit with costs to the defendants, and the plaintiff (now appellant) has now appealed.

d) Grounds of Appeal:

According to the memorandum of appeal, the appellants raised six grounds of appeal as follows:

1) The learned trial Magistrate erred in law and fact when he held that Nyero Subcounty had no power to allocate the suit land to the plaintiff, thereby nullifying the appellant's rights over the suit land contrary to the applicable laws at the time of allocation.

2) The learned trial Magistrate erred in law and, in fact, when he held that the District Land Board was vested with the power to allocate the suit land when the said District Board did not exist at the time of allocation, the suit land belonged to Nyero sub-county, and could not be available for allocation by any alleged District Land Board.

3) The learned trial magistrate erred in law and fact when he failed to find that the 2nd and 3rd defendants' actions of allocating the suit land, which had already been allocated, developed and occupied by the appellant to the 1st respondent, was arbitrary and contravened the appellant's constitutional right to own property.

4) The learned trial Magistrate erred in law and fact when he failed to properly evaluate the evidence, thereby failing to find that the respondents trespassed on the suit land.

5) The learned trial Magistrate erred in law and fact when he considered and also based his findings on the defendant's submissions, which were never served on the appellant or counsel, thus violating the appellant's Constitutional right to a fair hearing.

6) The learned trial magistrate erred in law and fact when he awarded costs to the respondents, who arbitrarily and in violation of the Constitution, deprived the appellant of the use of the suit land.

The appellant prayed as follows:

1) The appeal be allowed and the declarations and orders of the lower court be set aside with this court finding in favour of the appellant.
2) The costs of this appeal and in the lower court be granted to the appellant.

e) Duty of the first appellate court

This is the first appeal from the learned magistrate's decision. The duty of the first appellate court is to scrutinise and re-evaluate all the evidence on record to arrive at a fair and just decision.

This duty was well laid down in the case of ***Kifamunte Henry vs Uganda SCCA No. 10/1997,*** where it was pointed out.

> ***"The first appellate court has a duty to review the evidence of the case and to reconsider the material before the trial judge. The appellate court must then make up its own mind, not disregarding the judgment appealed from but carefully weighing and considering it."***

In the case ***Father Nanensio Begumisa and three others vs Eric Tiberaga SCCA 17 of 2000; [2004] KALR 236***, the obligation of a first appellate court was pointed as being;

> ***"...under an obligation to re-hear the case by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion."***

See also: Baguma Fred vs Uganda SCCA No. 7 of 2004.

f) Power of the Appellate Court:

Section 80 of the Civil Procedure Act, Cap 71, grants the High Court appellate powers to determine a case to its finality.

Resolving this appeal involves considering the above legal position regarding the duty and legal obligation of the first appellate court.

g) Representation:

M/s Okalang Law Chambers represented the appellant, while M/s Isodo & Company Advocates represented the respondents. The parties filed their submissions, and the court is grateful. The submissions have been incorporated in the resolution of this appeal.

As this is a civil suit/appeal, the appellant has the burden of proof (**sections 101 and 102 of the Evidence Act, Cap 6)** to prove his case on a balance of probabilities. See: ***Nsubuga vs Kawuma [1978] HCB 307.***

Also, in the case of ***Erumiya Ebyetu v. Gusberito [1985] HCB 64,*** it was held that;

"where the plaintiff leaves his case in equilibrium, the court is not entitled to incline the balance in his favour. The plaintiff must prove his case against the defendant to the required standard."

h) Determination:

The appellant's counsel submitted on grounds 1 and 2 jointly, 3 and 4 jointly and 5 and 6 independently, the same order was followed by the respondents' counsel. I will follow the same order in determining this appeal.

1) *The learned trial Magistrate erred in law and fact when he held that Nyero Subcounty had no power to allocate the suit land to the plaintiff, thereby nullifying the appellant's rights over the suit land contrary to the applicable laws at the time of allocation.*
2) *The learned trial Magistrate erred in law and, in fact, when he held that the District Land Board was vested with the power to allocate the suit land when the said District Board did not exist at the time of allocation, the suit land belonged to Nyero sub-county, and could not be available for allocation by any alleged District Land Board.*

The appellant's counsel submitted that PW1 told the court that the suit land was allocated to them on 24 November 1998, as evidenced by the allocation letter exhibited through PW2 – Emudong William, who was the sub-county chief at the time the 3rd respondent allocated the suit land to the plaintiff. The appellant's counsel contends that the said evidence was corroborated by Pw3, Pw4 and even Dw1 who confirmed that indeed the suit land was allocated to the appellant by the 3rd respondent.

The appellant's counsel submitted that whereas the 3rd respondent acknowledged allocating the land to the appellant, it reneged, arguing that it had no powers to allocate but a reserve of the District Land Board. Yet, it is the same 3rd respondent who purportedly allocated to the 1st respondent who forcefully evicted the appellant and took over the suit land. Counsel for the appellant contends that justice demands that one should not be seen to benefit from its own wrong; the 3rd respondent made the appellant believe that it had powers to allocate the suit land, and based on the 3rd respondent's representation, the appellant spent money by developing the suit land; thus the 3rd respondent is estopped from raising what it views as its own wrong as a defence as was held in the case of ***Karabharato Advertising Vs Hemant Nanichania & Others S.C of India C.A No.250423-25045 of 2010***. *"Nobody can purport to enjoy fruits from his or her own wrongs."*

The appellant's counsel submitted that as of 24th November 1998, when the allocation was done to the plaintiff/appellant, under Section 2 of the Constitutional (Consequential Provisions) Act, which commenced on the 22nd September 1995, it was the sub-counties that had powers to allocate land; it thus stipulated that; "Subject to this Act, where the constitution provides for the establishment of any institution or body to perform any function under the constitution, then until the appointment and assumption of office of the governing body of that institution or body, the corresponding institution or body in existence immediately before the coming into force of that institution or body shall continue in existence and shall perform the functions of the first mentioned body."

The appellant's counsel contends that Nyero Sub-county had the authority to allocate land to the appellant as it still had powers vested in it by the Constitutional

(Consequential Provisions) Act before the enactment of the Land Regulations 2004. Counsel submitted that there was no Interim District Land Board at the time of allocation and no evidence was brought to prove the existence of one at the time, hence the learned trial Magistrate's conclusion was in error.

Counsel for the appellant submitted that though by virtue of the 1995 Constitution of Uganda and the 1998 Land Act, District Land Boards were established, these were not operational, for the regulations which were to operationalize them by virtue of Section 93 of the Land Act, which are the land regulations, 2004 came into force on the 16 December, 2004.

Counsel submitted that before the District Land Boards became operational, that is, on 16th December 2004, when the land regulations commenced, by virtue of section 2 of the Constitutional (Consequential Provisions) Act, Nyero Sub-county was the body in existence immediately before the coming into force of the Land Board and as such as of 24 November 1998 had the power to allocate land and as such lawfully allocated the suit land to the Appellant.

Counsel for the appellant submitted that the learned trial Magistrate did not evaluate the evidence to establish exactly to whom the suit land belonged before allocation and the powers of the sub-county to own and dispose of the property as an independent entity and that had the learned trial Magistrate properly evaluated the appellant's evidence, he would have realised that even after the coming into force of the 2004 Land Regulations, or even after the establishment of the District Land Board, Nyero sub-county would still have had powers to allocate the suit land since it had been owned by it.

Counsel asserted that the District Land Board had no business dealing with land already owned by an individual or authority as their duty is to deal with land not owned by anybody. Counsel submitted that Nyero Sub-county lawfully allocated the suit land to the appellant.

On the other hand, the respondent's counsel submitted that it is salient that the suit land was allocated to the appellant by Nyero LC III Council on the 30th November 1998, as per PEX2 but that another developer was drafted in to take over with the premises. The respondents' counsel contends that the purported allocation was made by the LCIII Council of Nyero sub-county and not the office of the sub-county chief Nyero; the allocation was indicated to be for the "Betterment of Nyero and Kumi as a whole" this is in the backdrop that the appellant wanted to put up a Youth and Disabled Vocational Training Institute. The appellant was clear during cross-examination that they were given to develop the land and that the institute was a community project.

Counsel argued that the allocating instrument PEX2 does not indicate that the land was donated to the appellant in perpetuity, nor does it suggest any period. Clearly, the allocation was like a joint venture in which the sub-county council contributed land; the appellant injected the resources to develop the place for the "Betterment of Nyero and Kumi as a whole."

Counsel for the respondents contends that by the time of the allocation, the land regime in place was the 1998 Land Act Cap. 227, which had operationalised land management institutions earlier created by the 1995 Constitution; in this case, it was District Land Boards.

Counsel for the respondents asserted that by the time the LCIII sub county council of Nyero purported to allocate the suit land to the plaintiff, the rights and powers to hold and allocate the suit land had been given to the District Land Boards; which particularly came into operation on 2nd July 1998 and whatever the LC III council did together with the plaintiff, was of no consequence as it is void ab initio.

Counsel for the respondents contends that whereas the appellant has tried to argue that by allocating the suit land to the plaintiff, the defendant is estopped from turning around to say that they did not have authority to do so, that argument is flawed.

Counsel for the respondent contends that firstly, while the plaintiff alleges that the suit land was allocated to them by Nyero sub-county [NSC], who later took it back, they decided not to sue [NSC], and instead sued Kumi District Local Government [KDLG]. Yet, NSC has legal status and can be sued in its own name. The denial that NSC couldn't allocate the suit land to anyone came from KDLG, who testified through their Senior Principal Assistant Secretary that KDLG owns the suit land and manages it through its District Land Board. It cannot be said that KDLG has turned around to deny what they did because they never transacted with the appellant.

Counsel for the respondent also contends that whereas counsel for the appellant has also attempted to allege that by 24th November 1998, Kumi District Land Board [KDLB] was non-existent, this is very surreal as it amounts to evidence from the bar as there is nowhere in the record of proceedings where the plaintiff adduced evidence in regard to the time at which KDLB was created. Counsel for the respondents invited the court to disregard such evidence from the bar and instead

rely on the evidence of DW1, who stated that by the time of the purported allocation, the suit land was under the KDLB.

Counsel for the respondents submitted that the appellant tried to rely on Section 2 of the Constitution (Consequential Provisions) Act 1995 to justify his allegation of the non-existent KDLB; however, the Act was enacted to give continuity of institutions created and changes made under the Constitution of Uganda 1995, awaiting operationalisation of those institutions by the respective legislations, subsequently, Section 2 supra was overtaken by the enactment of the 1998 Land Act that set up and operationalised the District Land Boards and that by the time of the purported allocation, KDLB was in place thus, it is not right for counsel for the appellant to allege that the district land boards came into force in 2004 by virtue of the Land Regulations, 2004.

Counsel for the respondent submitted that the powers of the sub-county chief and his land committees operating on behalf of the Uganda Land Commission were terminated by the enactment of the 1998 Land Act, effective 2 July 1998. Therefore, by the time the Nyero LC III council illegally purported to allocate the suit land to the appellant, even the rightful sub-county chief had ceased to have powers.

Determination:

What is pertinent to resolve is that prior to the allocation of the suit land on 30th November 1998 to the appellant, who owned the suit land, who had powers to allocate and under which legal regime was that allocation subject?

I carefully read the submissions of either counsel, and it is not disputed that the Nyero sub-county allocated the plaintiff the suit land. What is in contention is

whether they had the power to allocate it, and this is prominent in the trial magistrate's decision.

At the time of allocation, the Constitution of the Republic of Uganda, 1995 and the Land Act, which commenced on 2nd July 1998, created and established district land boards with attendant functions under Section 59(1)(a) of the Act to;

Hold and allocate land in the district which is not owned by any person or authority.

The long title of the Land Act, 1998, is;

An Act to provide for the tenure, ownership and management of land; to amend and consolidate the law relating to tenure, ownership and management of land; and to provide for other related or incidental matters.

It is not disputed that the allocation happened after the commencement of the Land Act of 1998, which vested allocation powers of land not owned by any person or authority in the district in the District Land Board. The pertinent question then is whether the suit land for Nyero sub-county fell outside the purview of the Land Act, 1998.

The appellant's witnesses argued that the parish chiefs had donated the land to the Nyero sub-county. Still, there was no cogent evidence adduced to back up that assertion to a balance of probabilities, and no documentation prior to the allocation was adduced to prove that the Nyero sub-county owned the land or the parish chiefs who purportedly donated it owned the suit land. The legal burden of proving beyond reasonable doubt does not shift to the defendants but remains on the plaintiff to prove their assertion on a balance of probabilities.

Having perused the entire proceedings, I did not find any evidence by the plaintiff's witnesses to the effect that Kumi District Land Board was not constituted at the time or even non-existent as postulated by the appellant's counsel but be that as it may, Section 95(1) of the Land Act, 1998 was instructive of the fill in the organ that would perform the allocation role in pendency of the establishment of the District Land Board. It stipulated that;

An interim district land board established under section 7 of the Constitution (Consequential Provisions) Statute shall continue in existence until the board established by the Constitution and referred to in this Act is appointed.

Section 2 of the Uganda Constitution (Consequential Provisions) Act Cap 1 stipulates that;

Existing institutions and bodies to continue Subject to this Act, where the Constitution provides for the establishment of any institution or body to perform any functions under the Constitution, then until the appointment and assumption of office of the governing body of that institution or body, the corresponding institution or body in existence immediately before the coming into force of that institution or body shall continue in existence and shall perform the functions of the first-mentioned institution or body.

The appellant submitted that there was no interim district land board at the time of allocation. In effect, the appellant submitted that the Nyero sub-county, which, by virtue of Section 3(1b) of the Local Government Act, was a local government, was the allocating authority because the Land Reform Decree, regulations 1 and 3 of the Land Reform Regulation, 1976 stipulated that;

Any person wishing to obtain permission to occupy public land by customary tenure shall apply to the Sub-county chief in charge of the area where the land is situated.

Regulation 3(1) of the Land Reform Decree stipulated that an applicant under Regulation 1 shall be registered as the customary occupant of land by the sub-county land committee if the land he has applied for was land which may be so occupied, and no objection has been lodged against his application.

The appellant also cited Regulation 14 which stipulated that;

In the performance of their functions under these regulations, the sub-county land committee and the county land committees shall be deemed to be acting on behalf of the commission.

Whereas the appellant's counsel contended that under the laws of the Land Reform Decree, any person who desired to occupy public land, the prescribed authority for purposes of sub-section (1) of Section 5 of the Land Reform Decree, 1975 was the sub-county which in this case was Nyero sub-county as the allocating authority of the suit land, it is my considered view that at the time of the allocation 30th November 1998 as per PEX2, the Land Act of 1998 under Section 95(1) was instructive of the interim district land board which would serve the functions of allocation and having found that the appellant did not adduce cogent evidence of the suit land belonging to the LCIII sub-county council of Nyero apart from un-substantiated references to the suit land having been given to Nyero sub-county by the parish chiefs, it is my view that the LCIII sub county council of Nyero which allocated the suit land to the plaintiff was not the authority responsible for allocating the suit land because it was not an interim district land board for such purposes nor

was evidence led by the plaintiff to show that it actually owned the land it purported to allocate.

Thus Section 95(3) of the Land Act terminated any activity and/ or operations of the former controlling authority as it provides that

On the coming into force of this Act, a former controlling authority shall cease to deal with any land matters, which were pending before it, and any such matter shall be transferred to the board."

Because the Land Act came into force on 2nd July 1998 before the allocation of the land to the appellant, any allocating institution under the Land Reform Decree was discontinued as a former controlling authority by virtue of Section 95(3) of the Land Act.

It is my view, by the coming into force of the constitution and within the ambit of Section 95(1) of the Land Act, the interim district land board possessed authority over the land because there is no evidence that the Nyero sub-county owned the land nor evidence to show that the parish chiefs donated it to Nyero sub-county.

The suit land was thus public land which was to be dealt with by the Kumi District Interim Land Board or the subsequent District Land Board. Nyero sub-county could only allocate the land if evidence was shown that it owned the land on its own.

The trial magistrate was, therefore, right in his judgement when he indicated that ***"At the time of allocation of the suit land to the Plaintiff by Nyero Sub-county, the legal regime had already changed, and it was the District Land Board with powers to allocate the /and..... hence the allocation, in my opinion, was irregular and fainted***

with illegalities since the allocating body had no powers to do so at that material time as the authority had been transferred to the District Land Board by the Land Act, 1998 which commenced on 2 July 1998." Grounds one and two, therefore, fail.

3) The learned trial magistrate erred in law and fact when he failed to find that the 2nd and 3rd defendants' actions of allocating the suit land, which had already been allocated, developed and occupied by the appellant to the 1st respondent, was arbitrary and contravened the appellant's constitutional right to own property.
4) The learned trial Magistrate erred in law and fact when he failed to properly evaluate the evidence, thereby failing to find that the respondents trespassed on the suit land.

As regards grounds 3 and 4, counsel for the appellant submitted that all the evidence that was presented by the appellant in as far as allocation of the suit land to it remained uncontradicted by the respondents and that the evidence that is particular for this court's evaluation was of PW1(Okallebo Deogratious) who told the court that in 1998, while trading as Kumi Youth and Disabled Vocational Training Institute, he was allocated the suit land on the 30th November 1998 -PEX2 and that the school's name was subsequently changed to Kumi Vocational Institute, to which the certificate of Kumi Youth and Disabled Vocational Institute, together with the minutes reflecting the change to Kumi Vocational Institute and certificate were exhibited as PEX1 and the said minutes dated 5 October 2013 indicated the board of directors to be Okalebo Charles, Rev Fr. Ochom Francis, Mr Okallebo Deogratious and Mr Okia Francis. Counsel for the appellant further submitted that PW1 informed the court that the suit land was inspected and mapped out, and it neighbored

Ochakara in the North, Road to Omagoro and Dr Achoriye Charles in the East, Joy Primary School in the West and in the South neighbored Ojanga John and Hon. Elyakorit, that mapping was done on 22nd September 1999 and the minutes for the said exercise were exhibited as PEX3. PW1 further told the Court that upon receiving the said allocation, they constructed class blocks and got a license exhibited as Pex4 to operate a school there in 2001. It was in the year 2017, when the 1st respondent defaced the school signpost and inscribed there a new name, "Star Light Secondary School", that the Defendants further broke the padlocks on the school doors, which matter was reported to police vide SD REF, NO. 27 /30/20/2017. PW1 told the Court that the board of directors financed the developments and that the land was owned by Nyero Sub-county, who allocated it to them. The appellant's counsel submitted that at the locus visit, Pw1 pointed out to the Court the boundaries, the visible metals used in mapping, and the buildings that were built and the witness for the Respondents conceded that it is indeed the Appellant that had constructed the said buildings. The appellant's counsel submitted that Pwl's evidence was corroborated with the evidence of PW2 (Emudong William), who was the LC111 Chairperson Nyero Sub-county at the time the suit land was allocated to the Appellant. He clearly told the Court that the suit land was initially for the Parish Chiefs, who gave it to Nyero Sub-county, and in the year 1998, the Council resolved to donate the land to Okallebo Deogratious, who was operating a school. The council minute is indicated as minute 9/98 in the allocation Pex2. He signed the allocation that they wrote to Kumi District to send a surveyor and indeed, the surveyor was sent, and the land was mapped. He further confirmed that it was Okallebo Deogratious who developed the land. The other witnesses, PW4, PW3, and PW5, all gave evidence which was undisputed that the suit land was donated to Nyero Sub-county by the Parish Chiefs

and in their council meeting, Nyero Sub-county resolved to allocate the same to the directors of Kumi Youth and Disabled Vocational Institute, which changed to Kumi Vocational Institute, and upon allocation, the Board Of Directors funded the construction of the school on the suit land, and they peacefully enjoyed possession of the same until in/or about the year, 2017 when the 1st respondent forcefully evicted them purporting to have entered a memorandum of understanding with the 3rd respondent signed by the 2nd Respondent. The appellant's counsel submitted that all the evidence goes to prove that the directors of Kumi Vocational Institute are the rightful owners of the suit property and that the Respondents forcefully and unlawfully evicted the Appellant in 2017.

The appellant's counsel submitted that the trial magistrate did not address himself to the circumstances under which the 1st Respondent came into possession, which, as indicated above, were illegal and unlawful and the very reason why the matter went to the police and Court. The learned Magistrate further asserts on page 7(paragraph 6) of his Judgment that the burden was on the Appellant to prove that the Respondents were not the rightful owners of the suit land and that they are trespassers, that had the trial magistrate properly evaluated the evidence as presented above and as presented under grounds 1 & 2 above, he would have realized that the Appellant properly proved their case. That the Respondents themselves don't dispute the evidence as presented above but were only ignorant about the powers of a Sub-county to allocate land at the time of allocation, which powers we have properly elaborated upon and demonstrated to this Honorable Court that Nyero Sub-county allocated the suit land to the Appellant, hence the purported re-allocation to the 1st Respondent/the decision to re-allocate ought to

have considered the rights of the Appellant and followed the principles of natural justice as enshrined under Articles 42, 26(1) and 26(2) (b) of the 1995 Constitution.

On the other hand, the respondents' counsel submitted that grounds 3 and 4 must fail because after discussing the veracity of the impugned allocation of the suit land to the appellant, grounds 3 and 4 of the memorandum of appeal became moot, in view of the fact that the impugned allocation is null and void ab initio. Therefore, the argument advanced by the appellant on these grounds would only hold water if the allocation was proved to be proper and effective, which is not the case.

It is my considered view that after having considered grounds 1 and 2 unmeritorious, grounds 3 and 4 follow the same, and they fail because I have already made a finding that Nyero sub-county did not have powers to allocate the suit land to the plaintiff.

5) The learned trial Magistrate erred in law and fact when he considered and also based his findings on the defendant's submissions, which were never served on the appellant or counsel, thus violating the appellant's Constitutional right to a fair hearing.

The appellant's counsel prayed that this Honorable Court finds that the trial Magistrate erred in law and fact when he considered and also based his findings on the defendant's submissions, which were never served on the appellant or his counsel, thus violating the appellant's constitutional right to a fair hearing. The appellant's counsel submitted that whereas on 15th February 2023, the trial court, in the presence of the parties and their advocates, directed the parties to file and serve submissions in the respective schedules, the defendants never filed and served the appellant their submissions yet to the utter shock of the appellant, the

trial magistrate on Page 5 of his judgment referred to the defendant's/respondent's submissions and relied upon them to conclude that the allocation of the suit land to the appellant was illegal and irregular. The appellant's counsel contended that since he had brought to the attention of the trial court that he had not been served, the fair thing for the trial magistrate to do was to summon the parties to iron out the said issue and direct service on the appellant who would then file a rejoinder but to rely on the respondents' submissions which were never served was a clear clog on the appellant's right to a fair hearing.

Conversely, the respondents' counsel submitted that ground 5 is moot and unnecessary because when a judicial officer is handling a matter, he bases his decision on the evidence of facts adduced by the parties and a legal evaluation of the same, and no-where is a judicial officer under obligation to base his decision on the submissions of counsel as the lawyer's submissions are simply advisory of which the judicial officer can either agree or disagree with. Regarding the right to a fair hearing, counsel contended that the same was fully complied with to perfection, as all parties were given the same level of ground and time to present their cases and that a court can make its judgment with or without submissions as long as it has evidence on record.

Determination

From my perusal of the record of proceedings, I noted that on 15th February 2023, the trial magistrate, in the presence of the parties and their counsel, directed that the parties file and serve submissions thus, the plaintiff/appellant was to file and serve by the 9th March 2023, and the defendants/respondents were to file and serve

their submissions upon the appellant by 23rd March 2023, and the appellant was meant to file a rejoinder if any by the 5th March 2023.

Counsel for the appellant asserted that they could not file the rejoinder because there was nothing to rejoin to, and this was brought to the attention of the Court by the appellant's letter filed in Court on 14 April 2023. The appellant's counsel contended that as the appellant, they filed and served her submissions upon the respondent/defendant's Counsel on 9 March 2023, and the same was received by James for Isodo & Co. Advocates Soroti at 3:12 pm, unlike the defendants who neither filed nor served their written submissions to the appellant nor her advocates.

The appellant's counsel contended that the trial magistrate's actions flouted Article 28 (1) of the Constitution, which enshrines the right to a fair hearing and stipulates that;

In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.

The appellant's counsel also cited Article 44(c) of the Constitution, which stipulates that;

Notwithstanding anything in this constitution, there shall be no derogation from the enjoyment of the following rights and freedoms .... (c), the right to a fair hearing.

It is my considered view that submissions are helpful to the court regarding the parties' understanding of evidence in their respective matters but it is trite that

submissions do not bind the trial court since a judgement is derived at from evaluation of evidence and the respective pleadings thereof. This in essence means that even if the parties do not file submissions, the court can still use the evidence adduced and the pleadings to resolve and determine the dispute in controversy. Be that as it may, I have looked at the submissions of the defendant and there is no evidence to show that they served the same unto the appellant's counsel or the appellant yet it is evident from the trial magistrate's ruling that they were incorporated. However, in the matter at hand, under Order 43 Rule 1(2) of the Civil Procedure Rules, the memorandum shall set forth, concisely and under distinct heads, **the grounds of objection to the decree appealed from without any argument or narrative, and the grounds shall be numbered consecutively**.

It is my view that the ground of appeal is narrative and general and fails to point out exactly which areas of the violation led to the detriment of the plaintiff's case/evidence from being considered. I am fortified by the Supreme court decision in ***Ranchobhai Shivbhai Patel Ltd and Another vs Henry Wambuga and Another Civil Appeal No. 06 of 2017 (unreported),*** where Mugamba, JSC who wrote the lead Judgment, with which other members of the Court concurred held as follows:

> ***"This ground is too general and does not specify in what way and in which specific areas the learned Justices of Appeal failed to evaluate the evidence. It does not set out the particular wrong decision arrived at by the learned Justices of Appeal."***

It is my considered view that ground five of this instant appeal which faults the magistrate's reliance on the defendant's submissions, fails to specifically point out which aspect of the appellant's failure to file a rejoinder which is optional would

have led to a miscarriage of justice, I therefore find it offensive to Order 43 Rule 1(2) of the CPR and as such strike it out. Therefore, this ground of appeal fails.

6) The learned trial magistrate erred in law and fact when he awarded costs to the respondents, who arbitrarily and in violation of the Constitution, deprived the appellant of the use of the suit land.

The appellant's counsel submitted that whereas Section 27 of the Civil Procedure Act provides that;

The costs of any action, cause or other matter shall follow the event unless the Court or the Judge shall for good reason otherwise order.

Because the appellant has proved that the suit land belongs to them as proprietors of Kumi Vocational Institute, that and that the respondents violated the appellant's constitutional rights when the 2nd and 3rd respondents re-allocated the suit land to the 1st respondent who forcefully without any compensation evicted the appellant, awarding the respondents with costs having committed such arbitrary actions would be permitting the respondents to enjoy fruits from their own wrongs and encouraging public officers to act arbitrarily which should not be condoned and that the respondents did not deserve any award of costs for which appellant's counsel invited the Court to find so.

Conversely, counsel for the respondents contended that aaccording to the judgment, the lower court dismissed the appellant's suit and couldn't find any reason to deny the respondent costs but the trial magistrate simply did the noble thing, by allowing the costs to follow the event.

It is my considered view that costs follow the event and the trial magistrate did not error in awarding costs to the respondents. This ground is unmeritorious and also fails.

Since all the grounds have failed, I find that this appeal is un-meritorious, and it is dismissed with costs in this court and below awarded to the respondents.

7) Conclusion:

By effect, the judgment and orders in Civil Suit No. 021 of 2023 of the Chief Magistrate's Court of Kumi at Kumi of HW Maloba Ivan -Magistrate Grade - 1 dated 19th June 2023 and delivered on the 27th June 2023 by HW Hope Namisi A.g. Chief Magistrate-Kumi are hereby upheld.

Orders;

- The Appeal is dismissed, with costs awarded to the respondents.

I so order.

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Hon. Justice Dr Henry Peter Adonyo

Judge

21st March 2024