

**IN THE HIGH COURT OF UGANDA AT SOROTI**

**CIVIL APPEAL NO.15 OF 2012**

**ARISING FROM AMURIA CIVIL SUIT 1 OF 2011**

**OBOI MAX.....APPELLANT**

**V**

**OKIROR VALENTINE.....RESPONDENT**

**BEFORE: HON. LADY JUSTICE H. WOLAYO**

**JUDGMENT**

In this appeal, the appellant appeals the judgment of HW Baligeya Moses Mufumbira dated 29<sup>th</sup> March, 2012 sitting at Amuria, through his advocates , on the following grounds.

1. The trial magistrate erred in law and in fact when he disregarded the limitation period the defendant spent on the disputed land.
2. The trial magistrate erred in law and in fact when he failed to evaluate evidence on record.
3. The decision has occasioned a miscarriage of justice.

The appellant prayed that the land be decreed to him.

Both counsel for the appellant, Omoding, Ojakol & Okallany Advocates and the Legal Aid Project Kampala for the respondents filed written submissions that I have given due consideration.

The duty of an appellate court is to re-evaluate the evidence adduced in the trial court and arrive at its own conclusion bearing in mind that the trial court had an opportunity to observe the demeanor of the witnesses.

The respondent sued the appellant for a permanent injunction and general damages .

The respondent's claim in the plaint is that at a time unknown to the respondent, his father Eedu Andrew acquired land in Adodoi village by purchase and inheritance .Eedu passed on in 1989 and from that time until 2007, the respondent utilized the land undisturbed until 2007 when the appellant asked him for land which request the respondent denied.

In defence, the appellant denied the claims and averred that it is him who has utilized the land for 35 years.

Turning to the evidence, the respondent's claim is based on a decision by the clan dated 25.5.2008 , marked Pexh.1, in which the Iculura clan determined that the disputed land belonged to the family of late Eedu Andrew .

Another basis for the respondent's claim is that the appellant in 2007, approached him and his brother for more land but he declined and instead, the appellant constructed two houses on the disputed land, measuring 20 gardens. While in the plaint, the respondent mentions that he was in possession, the evidence is silent on when he entered possession and for what length of period.

According to PW2 Asenge Keletesia, a sister to Late Eedu and the appellant, her paternal uncle Yokoyasi Oluka invited Eedu, father of the respondent , to live with him.

What is crucial is that PW2 Asenge goes on to testify that when Oluka fell ill, Eedu was asked to care for Oluka in terms of 2 cows and 800/-. When Oluka died in 1968, Eedu was given Oluka's land and the iron sheet house in Adodoi in return for the expenses incurred.

A translated version of a document dated 7.7.1968 is reproduced below.

‘ a clan meeting was convened after the burial of the late Mzei Yokoyasi Oluka.

The clan of Atekok gave Andereya Eedu the land of the late Y.Oluka which was situated in Ajaki Parish, Asumuk sub-county, Amuria county for paying his debt for the expenses met during the burial of our brother. The property which Andereya Eedu gave were two cows and 800/-. That is why the clan gave him land and a house because there is no where we can get property for paying him.

1. Mzei S. Omuli
2. L.Okurut
3. K. Ocom
4. J. Erebu-secretary’

According to PW2 Asenge, the two Eedu and the appellant lived together after the death of Oluka and Eedu gave the appellant land to live on. All respondent's witnesses attest to the fact that it is the respondent's father Eedu who brought the appellant to Amuria.

The appellant relies on the fact that he contributed one cow for burial expenses of Oluka for which Emuron, the heir to Oluka assigned him Oluka's land in Amuria . According to the appellant, the house on the land was sold to Eedu who paid two cows and 80/=. Oluka died in 1968, and from that time he, the appellant lived on the land peacefully with Eedu who was a neighbor. According to the appellant, he lived on the land peacefully for 20 years until the respondent decided to encroach on twenty gardens.

The appellant is supported in his evidence by DW2 Emuron Vigiliyo . His evidence is that Oluka was his paternal uncle and he was appointed heir to Oluka as the latter dies childless. That he handed Oluka's land to the appellant in return for the cow the appellant had given for burial expenses. That Eedu took iron sheets of the house for which he paid two cows and 80/-.

The appellant concedes that the donation of land was not in writing.

It is apparent that both appellant and respondent base their claim on contributions towards burial expenses of Oluka, the original owner. PW1 in cross examination admitted that his late father Eedu paid two cows and 800/ for formerly Oluka's land.

While respondent's witness Aseke PW2 says Eedu was given land and iron sheet house belonging to Oluka in return for the two cows and 800/= he spent on burial expenses, the appellant suggests the land was given to him while Eedu took iron sheets only.

It doesn't make sense for the appellant to surrender one cow and get back land in return, yet Eedu who spent more in terms of two cows and cash 800/ gets only iron

sheets. The document attached to the plaint and dated 7.7.68 and reproduced above supports this conclusion.

Secondly, PW2 Aseke rejects the idea that Omuron DW2 was appointed heir to Oluka. She is a credible witness given that she is a sister to both the appellant and Eedu, the respondent's father.

Thirdly, both the appellant's and respondent's cases are sketchy on timeframes. While the appellant states he was in possession of the disputed land for twenty years, presumably since 1968 to about 1988 or 1989 when Eedu died, the respondent claims possession for an unstated length of time and claims the appellant began making claims in 2007.

Counsel for the appellant raises section 5 of the limitation period in favour of the appellant. However, the appellant seems to have given up possession, if any, in 1989 after death of Eedu therefore he cannot claim benefit of the limitation period because it was not continuous.

I am inclined to believe the respondent and PW2 Aseke that Eedu paid for Oluka's land after the latter's death therefore, the trial magistrate arrived at a correct decision when he entered judgment for the respondent.

Turning to the grounds of appeal, the first ground is that the trial magistrate erred in law and in fact when he disregarded the limitation period the appellant had spent on the land. I have found that the appellant lost possession sometime in 1989 according to his own evidence. He was also not clear on when he entered possession.

Under these circumstances, it is not possible to state with certainty the length of time the appellant was on the land. Ground one fails.

Ground two is that the trial magistrate erred in law and in fact when he failed to evaluate the evidence on record. I have found that the trial magistrate correctly evaluated the evidence and arrived at a correct conclusion. Ground two fails.

Ground three is that the decision of the trial magistrate occasioned a miscarriage of justice. I find no merit in this ground.

I accordingly dismiss the appeal, and confirm the decision and orders of the trial court.

Costs of this appeal and the trial court to the respondent.

**DATED AT SOROTI THIS 14<sup>TH</sup> DAY OF JULY 2014.**

**HON. LADY JUSTICE H. WOLAYO**