

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT GULU
HCT – 02 – CV – CA – 0003 – 2000
(Original Lira Chief Magistrate’s Court Civil Appeal
No. ML 56 of 1998)

ODOO SIMON PETER :::::::::::::::::::::APPELLANT

=VERSUS=

WASHINGTON OMARA ARACHA :::::::::::::::::::::RESPONDENT

BEFORE: JUSTICE REMMY K. KASULE- JUDGE

JUDGMENT

This judgment is in respect of a second appeal in a suit involving ownership by customary tenure of a piece of land between the appellant and the respondent. The original appellant (Wilson Ogwal) died and was substituted by his son (Odoos Simon Peter) the administrator of his estate.

According to the available court records on 20.10.1995 the LC III court, Kangai Sub-county, Lira District, decided the case, after hearing the evidence of the parties and their respective witnesses, in favour of the respondent against the appellant.

The appellant appealed the LCIII court decision to the Chief Magistrate’s Court, Lira, and that court dismissed the appeal on merit, on 27.03.1996.

The appellant then appealed to this court.

There are seven grounds of appeal in the Memorandum of appeal. These can be summarized into four main grounds:

- i. That the LC III Court being an appellate court, had no jurisdiction to try the suit afresh.
- ii. That the suit was time barred under the Limitation Act.
- iii. That the Chief Magistrate’s Court erred in failing to properly appraise and evaluate the evidence on record and thus reached a wrong decision.

- iv. That the learned Chief Magistrate, in view of the promulgation of the 1995 Constitution erred when he did not hold that the appellant was a bonafide occupant of the suit land.

This being a second appeal the appellant has only to appeal on matters of law.

The case of the appellant is that he owned by Customary tenure the suit land situate at Ongei village, Kangai Sub-county, Lira District, since 1944.

It was empty land near the home of his parents. When the land of their home became used up i.e. old, he shifted to the suit land beginning with digging thereon a twelve foot pit latrine and later on shifting residence thereto. This was about 1952. He stayed there until 1972, when he went to Acholi leaving the land under the care of one Ojok who cultivated the same. In 1982 he returned and Ojok handed over the land to him. Appellant has been cultivating the same since then until when the respondent sued him.

For the respondent, his case is that in 1957, as a means of settling a quarrel between the appellant and one Oyado, brother of the appellant, appellant requested respondent to give him, appellant, on temporary basis, the suit land for purpose of cultivation. The respondent agreed to this request. By no means was the appellant to build on the land. The respondent then went away somewhere else. He returned in 1995 and then found the appellant's son, one Otia, had erected a house on the suit land without the knowledge and consent of the respondent. When respondent resisted Otia's building on the land, appellant told the respondent that the suit land was his, that is appellant.

Respondent lodged the case to the RCI of the area who summoned the appellant but did not show up to the RCI. Litigation continued up to the stage of this appeal.

The first ground of appeal is that the LC III Court, Kangai Sub-county, being an appellate court under the provisions of the Executive Committees (Judicial Powers) Act, Cap.8, had no powers in law to try the case as an original trial court and therefore the trial was a nullity.

It is a fact not disputed by the appellant that the respondent first lodged the dispute in the RCI of Ongei village. There is no record of the RCI or RCII courts as to what happened to the dispute; and how the same came to be in LCIII Court. The LC III Court record of proceedings also does not show how the dispute came to be before them.

The record of proceedings is however clear as to what the respondent did:-

“ I asked him and he replied that the land is his. He gathered people and the case was taken to the RCI. When the RC summoned him, he refused to attend

and said he did not want to hear anything from RCS upto now, that man has migrated to the land.”

From the above extract of court proceedings of the LC III, it is clear that the respondent took the dispute to the RC I for resolution. The appellant, on being summoned, refused to appear before the said RC I.

Therefore the appellant, having refused to appear, when summoned by the RCI Court, cannot now at this stage question what happened to the dispute before the RC I Court..

Since the respondent commenced the dispute by lodging the same in the right court of RCI, it is safe to infer that it is the lowest RCI and/or RCII courts that caused, for reasons that the available court proceedings do not show, the forwarding of the dispute to the LC III Court, Kangai – Sub-county. The appellant provided no proof that the dispute had reached LC III Court, through wrong means.

Once properly before the LC III Court, that court under section 30 of the Executive Committees (Judicial Powers) Act had powers, on its own, to hear the case de novo.

It is to be appreciated that the LC III Court, Kangai Sub-county conducted the trial of the dispute in October, 1995, at the time when the country had just adopted the 1995 Constitution. Article 269 (2) of that Constitution requires that, subject to the law, substantive Justice be administered without undue regard to technicalities.

The record of proceedings of the LC III Court, Kangai Sub-county show that both parties were properly heard, called their respective witnesses, proper cross examination of whoever testified was done, the members of the court considered and evaluated the evidence before them and then reached a decision. It was a proper trial of a dispute with no miscarriage of justice at all. Substantive justice was done.

Bearing the above considerations in mind this Court, agrees with the holding of learned Chief Magistrate, and rejects the first ground of appeal as being without merit.

As to the second ground of appeal, the evidence of the respondent was very clear. He testified that he returned to the said land in 1995. That is when he saw that the appellant's son Otia, had erected a house on the suit land without his (respondent) knowledge. He there and then lodged the dispute against the appellant to the RCI Court. The majority of the members of the LC III court accepted the respondent's case as truthful and held for him. Therefore the cause of action of the respondent's case against the appellant arose in 1995 when he saw the trespass.

Respondent's case therefore cannot be said to be barred by Limitation. This ground of appeal also fails.

The third ground of appeal is that the learned Chief Magistrate erred in failing to properly appraise and evaluate the evidence on record and thus reached a wrong decision.

In his judgment, the learned Chief Magistrate, stated that:

“I find that what the RC court did has therefore not led to a miscarriage of justice if the ultimate objective was to ensure justice to both parties,

And then later on:

“ I have carefully gone through the record of the lower court. That court heard evidence by both parties and their witnesses. I find that the said court was right in finding that the land belongs to the respondent since there was no concrete evidence to support this claim. Most the witnesses supported the respondent that the land was only lent to the appellant who now wants to lay a permanent claim to it”

The above clearly show that the learned Chief Magistrate appraised and evaluated the evidence on record before he came to the decision he arrived at. There is no merit in the third ground of appeal.

The fourth ground is that the learned Chief Magistrate, in view of the promulgation of the 1995 Constitution, erred when he did not hold that the appellant was a bonafide occupant of the suit land.

The case of the respondent, accepted by the majority LC III court, was that the appellant's occupation of the suit land was temporary and on condition that the appellant was only to cultivate and not to build on the suit land. The learned Chief Magistrate found that the LC III court was right to accept this version of the respondent's case.

It was therefore, given the accepted case of the respondent, not possible that the appellant could qualify to be a bonafide occupant on the suit land entitled to turn his occupation into a freehold tenure under Article 237 of the Constitution. This ground also fails.

This appeal stands dismissed. The respondent is awarded the costs of the appeal and those in the courts below.

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Remmy Kasule

Judge

27th March, 2008