

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT GULU
HCT – 02 – CV - CA – 0006 – 2007

OCOGO ANGELLO :::::::::::::::::::::::::::::::::::APPELLANT

VERSUS

OTTO GEORGE::::::::::::::::::::::::::::::::::::RESPONDENT

BEFORE: HON. JUSTICE REMMY K. KASULE

JUDGMENT

This judgment is in respect of an appeal against the decision of the Gulu Land Tribunal dated 30th March 2007 in Civil Appeal Number 008 of 2005 dismissing the appellant’s appeal to the said land Tribunal

The appeal to the land Tribunal was against the decision of the LCIII Court, Layibi Division; dated 13th July 2004, in Civil Appeal Number 05/13/7/2004.

The dispute had gone to the LC III Court, Layibi, after being entertained at the lower LCI and LCII Courts.

The substance of the dispute is that Otto George, the respondent, complained against the appellant, Ocogo Angello, for the said Ocogo Angello resisting his (Otto George) occupying and using a piece of land in Layibi Division, Gulu Municipality, the said Otto George had bought from one Oryema, in 1979.

The case of the appellant was that the piece of land in dispute was family land, and since he was a brother to one Owica, Oryema’s late father, then Oryema had no powers to sell the suit land to the respondent, without first obtaining the consent of the family members including his (Ocogo Angello) before selling to the respondent. The sale was therefore null and void by reason of lack of the said consent and the LC Courts were prayed to make an order evicting the respondent from the suit land.

The case of the respondent was that he lawfully bought the suit land in 1979 from one Oryema, son of Owica, who was the owner of the land. The land was not family land, as its

ownership had been distributed amongst individuals and Owica, as a result of this distribution, owned the same as an individual.

Oryema who sold the land to the respondent had obtained letters of administration to Owica's estate (his father), and indeed had sold the land to the respondent after first obtaining the consent of her mother, wife to the late Owica.

The sale of the land to the respondent was therefore valid and proper and the appellant had no basis at all to interfere in the same.

Though the dispute went to the LC III Court of Layibi Central Division, as an appeal (No. 05/13/7/2004), the said LC III Court heard the parties to the dispute afresh and obtained the evidence of other witnesses, even as to the boundaries of the suit land, before arriving at a decision of holding in favour of the respondent - Ott0 George against the appellant – Ocogo Angello.

Being dissatisfied with the decision of the LCIII Court of Layibi Central Division, the appellant – Ocogo Angello appealed to the Gulu District Land Tribunal under Civil Appeal number 008 of 2005. The District Land Tribunal dismissed the appeal, prompting the appeal to this court i.e. Civil Appeal Number 6 of 2007.

Before this court, the appellant was represented by learned Counsel Moses Oyet of the Legal Aid Project, while the respondent was represented by learned counsel Kilama-Komakech.

There are three grounds of appeal; namely that the land Tribunal erred in law to hold that Civil Appeal Number 008 of 2005 was filed out of time, that the tribunal erred in law when it failed to address its mind and attention to the merits of the appeal, but rather paid regard to mere technicalities, and lastly that the tribunal erred in law when it proceeded to write and deliver a judgment procured without a quorum as is required of the land tribunals.

As to the first ground of appeal, the record of the Gulu District Land Tribunal show that the Notice of Appeal was filed on 01.03.2005 and an amended Memorandum of Appeal was filed in court on 13.07.2005. The judgment of the LCIII Court of Layibi Division being appealed against was delivered on 13.07.2004. According to Rule 56 (3) of the Land Tribunals (Procedure) Rules, 2002 the Memorandum of Appeal is supposed to be filed within sixty days from the day the decision appealed was made excluding the time taken to prepare the proceedings.

The appellant did not show to the appellate below what time it took to prepare the proceedings before he collected them. The burden was on him to do so.

On the basis of the available records it took the appellant a whole year to file the Memorandum of Appeal on 13.07.2005 in respect of a decision delivered on 13.07.2004. The appeal was therefore filed manifestly out of time in the Gulu District Land Tribunal.

Learned Counsel for the appellant has submitted from the Bar and produced to Court photocopies of the Notice of appeal and Memorandum of Appeal where by the appellant appealed against the decision of the LCIII Court, Layibi Central Division, dated 13.07.2004 to the Chief Magistrate's Court, Gulu on 29. 07.2004 and 30.08.2004 respectively. The copies are not certified by any Court. There is no explanation as to what happened to the appeal or why the appeal was filed in the Chief Magistrate's Court, instead of the District Land Tribunal.

On the basis of the submission by Counsel from the Bar and production of mere photocopies; and in absence of any plausible explanation as to what happened to the appeal, and why it was lodged in the Chief Magistrate's Court this Court cannot hold that the lower land tribunal was not justified in holding that the appeal to it had been filed out of time. At any rate the materials availed to this court ought to have been availed to the lower court, as it was incumbent upon the appellant, to ensure that, at all stages, his appeal was in compliance with the law.

It is also the view of this court, that though the decision of the land tribunal decided the appeal on the issue of its being time barred, this was not the only consideration that the tribunal relied upon. The Tribunal considered also the merits of the evidence adduced by the parties upon which the LCIII Court, Layibi Central Division, based its decision.

The judgment of the land tribunal states on page 3 (last page) paragraph 5 that:-

“Lack of diligence and prudence on the part of the parties in taking appropriate steps to abide by the prescribed time – frame prevents the Tribunal from considering the merits of this appeal. Even if it were to do so we are also inclined to agree with the learned counsel for the respondent that the appellant never challenged the documentary evidence, to wit, the sale agreement and the letters of administration. And since the LCIII Courts findings on the evidence were founded almost entirely on the credibility of witnesses they had seen and heard, an appellate court like this Tribunal would

not readily interfere with those findings and there were no grounds for any interference whatsoever.”

This court at this stage of appeal holds that the Land Tribunal was right in law to make the above conclusion which shows that, the issue of the appeal being filed out of time notwithstanding, on the merits of the evidence adduced before the LCIII Court, Layibi Central Division, the appellant’s case stood no chance of succeeding. This court finds that the said holding was proper and rightly made by the Land Tribunal in its consideration of the appeal before it.

It follows therefore that grounds one and two of the appeal fail

The last ground of appeal is that the first appellate court erred in law when it proceeded to write and deliver a judgment procured without any quorum as required of the Land Tribunals, thus the judgment delivered by the first appellate court was wrongful.

Counsel for the appellant did not make it clear which judgment of the first appellate court was the subject of this ground.

The first appellate court is the LCIII Court, Layibi Central division whose judgment is dated 13.07.2004.

A study of the proceedings of that court shows that there is a section of “ ***Committee member Ruling***”. In that section Committee Members: **HON. OCUTTI LANJINO, ALBERT LACEN, MANASI SUDI, HON. FLORENCE LULAME**, and the Chairman LCI, each one gave a decision holding in favour of the respondent against the appellant.

The chairman LCIII, then wrapped up the decision with advice to the parties, but upholding the decision of all the committee members.

The judgment of the LCIII Court, Layibi, was therefore with a quorum.

If the judgment complained of is that of the Gulu District Land Tribunal, the record of proceedings shows clearly that the hearing went on when the quorum of members was present. This was on 23.06.2005, 18.07.2005, 16.08.2005, 17.08.2005 and on 14.10.2005 delivery of judgment was adjourned because all members were not ready.

Though the delivered judgment has only the name of chairman, it is safe to infer that from the conduct of the proceedings, the judgment that was delivered was with the consent of all the members of the tribunal.

While Rule 36(5) of the Land Tribunals (Procedure) Rules, requires that the tribunal with the exception of the dissenting member, shall sign the decision prepared, the Rule is rather directory, as it does not go on to stipulate that a decision of the tribunal not so signed is null and void.

In this particular case, court sees no injustice having been caused by the non signing of the decision by all the members of the tribunal, and leaving the signing to their chairman. This ground of the appeal also fails.

All the grounds of the appeal having failed, the appeal stands dismissed.

The respondent is awarded the costs of this appeal and those in the proceedings below.

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Remy Kasule

Judge

11th July, 2008.