

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT GULU**  
**HCT – 02 – CV – CA – 0024 – 2004**  
**( Arising from Chief Magistrate’s Court; Gulu Civil Suit No. 096/2003)**

**DR. MARTIN OKOT NWANG:..... APPELLANT**

**VERSUS**

1. **AUGUSTIN ODONG**
2. **LAMSON KILAMA RONALDO**
3. **FLORENCE LANYERO**
4. **EVALYN LANYERO**
5. **PAUL ODINGA**
6. **LAWERI ALERO**
7. **ROSE ARYEMO**
8. **RICHARD OMONA :.....RESPONDENTS**

**BEFORE: HON. JUSTICE REMMY KASULE**

**JUDGMENT**

The appellant being aggrieved with the judgment dated 26.08.2004 of the learned Chief Magistrate, Gulu, (His Worship Silver Cohens Okullo) in original Civil Suit Number 96/2003 appealed to this court.

The dispute in the suit was ownership of land as between the appellant (plaintiff) and respondents (defendants) of the suit land at industrial area Sub-ward, Library Parish, Layibi Division, Gulu District, measuring about 3 acres. The dispute involves about half the size of the land.

The appeal is on eight (8) grounds. Grounds one (1), two (2), three (3) and five (5) cover one issue; namely: whether or not the sale of the suit land by one Alensio Obina, brother of appellant, to the respondents was lawful. The fourth (4) and seventh (7) grounds deal with the issue of whether or not the trial Chief Magistrate erred in not awarding damages and

costs to the appellant against respondents generally, and in particular against the first respondent. Grounds six (6) and eight (8) are to the effect that the learned Chief Magistrate erred in failing to properly evaluate the evidence before him, thus coming to a wrong conclusion.

It follows therefore that in this judgment grounds one (1), two (2), three (3) and five (5) will be dealt with together and first, followed by grounds four (4) and seven (7) together and end with grounds six (6) and eight (8) also together.

With regard to the issue in the first set of grounds, namely whether or not the sale of the suit land by one Alensio Obina to the respondents was lawful, the evidence adduced before the trial court by PW2 (Alensio Obina) PW3 (Oloka Kikoya Naptali), DW2 (Kilama Ronaldo) DW3 (Lanyero Florence) DW4 (Evalyn Lanyero), DW6 (Lawino Alero), DW7 (Rose Aryemo), DW8 (Omona Richard), DW9 Karla Olana and DW10 (Otti Jino) was to the effect that the suit land was sold to the respondents by Alensio Obina, brother of the appellant but also with knowledge and consent of other beneficiaries of the said land.

The evidence also established that the suit land had been customarily owned by the grand father of both appellant and Alensio Obina one Severino Olum Nwang since 1936 up to 1965, when the said grand father died. The ownership of the suit land then passed over to one Paul Ongom, from 1965 up to when he too died in 1991.

The said Paul Ongom was the biological father of the appellant and appellant's brother, Alensio Obina, PW2, the appellant being older to Alensio Obina. The late Paul Ongom, apart from the appellant and Alensio Obina, was also survived by his wife, the widow and mother of appellant and Alensio Obina, one Lucy Lamaro, one Okello Martha daughter and sister to appellant, and Onyee Santo and Matia Okello, sons and brothers to appellant, all of mature age.

From the evidence on record, the appellant works in Kampala, and only comes to the land now and then in the course of the year. Appellant has some semi permanent structures on part of the suit land.

However, PW3, Alensio Obina, the widow: Lucy Lamaro, when still alive, and Okello Martha, more or less stay on the land on a day today basis.

The estate of Paul Ongom, remained without a formal administrator issued with Letters of Administration granted by court from 1991, when he died, up to 2003, when the appellant, was issued by court with a grant of Letters of Administration.

From 1991 up to 2003, PW2, Alensio Obina, sold and allowed the respondents to settle on the suit land. There is no evidence that the widow, while still alive, and the sister of appellant, Martha Okello, ever objected to the sale or settlement of any of the respondents on the suit land. The evidence that was adduced is that in some instance they even participated in the actual sale and settlement of third parties to the suit land. For example, the widow, in respect of DW2: Kilama Ronald, widow and Martha Okello in respect of DW3: Lanyero Florence, also sister to appellant in respect of DW7: Rose Aryemo, and again the widow in respect of DW9: Karla Olana.

In his own evidence, Appellant admitted in the court below that he got Letters of Administration, twelve years after the death of his father. This was in 2003. He raised the matter of respondents being on the suit land with the L.C.s in August and October, 2002, yet he first discovered the trespass in 1998.

It is submitted for the appellant that the respondents' buying and settling on the suit land was illegal as whoever sold to them had no Letters of Administration to the estate of the late Paul Ongom. Therefore the respondents acquired their interests in the suit land in contravention of section 268 of the Succession Act, Cap.162, and section 11 of the Administrator General's Act, Cap 157.

The learned Chief Magistrate evaluated the evidence before him on this point and found that:-

**“ .....the defendants as purchasers had to inquire about the ownership of the land before buying the same. In the instant case, the transaction were by Alensio, In the presence of his mother and sister at most times all the defendants had not known the plaintiff by then. These three people are the beneficiaries of the estate of Paulo Ongom. I do not think any other conduct of enquiry could establish better who was/were the owners of the suit land”**

This court finds that the learned Chief Magistrate, on the evidence before him, was right to come to the above conclusion.

Being a first appellate court this court is entitled to review all the evidence adduced at trial and determine whether or not the conclusions reached by the trial court are supported by the evidence adduced and the law as applied to that evidence; of course, being

conscious, all along, that this court did not have the opportunity to see and assess the demeanour of the witnesses at trial: see **High Court, at Gulu Civil Appeal No. 11 of 2006 the Seventh Day Adventist Association of Uganda vs The Registered Trustees of Lira Diocese.**

On re-evaluating the whole evidence that was placed before the trial Chief Magistrate, this court finds that the respondents acquired interests in the suit land with the knowledge, consent and participation and /or acquiescence of the majority, if not all, the beneficiaries of the estate of the late Paul Ongom during the years 1993 to 1999. In the purchase transactions, one Alensio Obina (PW2), brother, as well as the mother and sisters of appellant participated in executing the same transactions. These were together with appellant the main beneficiaries of the estate of late Paul Ongom. The appellant must be taken to have had knowledge and acquiesced in these transactions because he did not do anything to protest against the same since the death of the late Paul Ongom. Yet those who bought put up structures by way of grass thatched houses on the suit land. Even in 1998, when the appellant admits he saw what was going on he did nothing about the matter. It is only in 2002/2003 when he took the matter to the local councils and then to court. This was more than ten (10) years ago since the death of late Paul Ongom, and when the respondents started settling on the suit land.

By so acting, the appellant must be taken to have made the public, including the respondents, believe that the beneficiaries of the estate of late Paul Ongom, namely Alensio Obina, (son) the widow and daughters had been authorized to sell and settle the respondents on the suit land. The appellant was thus estopped in 2002/2003 to deny the truth of this in terms of section 114 of the Evidence Act which provides that:-

**“ 114. Estoppel.**

**When one person has, by his or her declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he or she nor his or her representative shall be allowed, in any suit or proceeding between himself or herself and that person or his or her representative, to deny the truth of that thing.”**

It is the finding of this court, in agreement with the learned trial Chief Magistrate, that the appellant having conducted himself in such a way that amounted to acquiescence and/or approval and consent to the respondents acquisition by purchase or otherwise of the suit land from beneficiaries of the estate of late Paul Ongom, during a period of ten (10) or more years, the

appellant was estopped in 2002/2003 from disputing the respondents respective interests in the suit land.

Court therefore finds that the sale of the suit land by Alensio Obina, with the consent, knowledge approval and participation of the other beneficiaries of the estate, and with the acquiescence of the appellant, was lawful. Therefore the interests of the respondents in the suit land cannot now be denied and or defeated by the appellant. He is instead, as administrator of the estate of the late Paul Ongom, duty bound to give effect to the same, in the course of administering the said estate.

Grounds one (1), two (2), three (3) and five (5) of the Memorandum of appeal therefore fail.

As to the fourth (4) and seventh (7) grounds it is submitted that the trial court ought to have awarded damages and costs to the appellant against the respondents.

Specifically with regard to the first respondent, Augustine Odong, who told the trial court that he was prepared to vacate the land and court ordered that he vacates the land, the record of proceedings shows that he maintained throughout that he had been wrongly sued. He sated:-

**“What I know is that she plaintiff has no case against me. I can arrange to have the plaintiff’s land if he tells me to do so. I have never bought any land from any body. I only knew Lucy Lamaro. I paid her shs. 180,000/= but she refunded the money to me. She used the money for hospital treatment as she was sick and she refunded it to me. The land is for Lamaro. I have no objection to leave it.”**

Lucy Lamaro, as widow, was one of the beneficiaries of the estate of the late Paul Ongom. She therefore must have had her share in the suit land. Apparently she gave this land to the first respondent as security for repaying the shs 180,000/= she had borrowed from the first respondent when she was sick and needed money for medical treatment. She later repaid the money and first respondent no longer had interest in the land.

Though the learned Chief Magistrate, did not specifically state so, it can be inferred that, given the facts of the case, he came to the conclusion that this was a case where damages could not be awarded against the first respondent. He also used his discretion not to award costs against the first respondent.

On a review of the whole evidence, this court finds that the learned Chief Magistrate on the facts reached the proper conclusion both on the issue of general damages and costs as far as the first respondent is concerned.

As regards the rest of the respondents, the trial court found, and this court has upheld that finding, that each of these respondents had legitimately acquired interest in the suit land with knowledge, consent and/or acquiescence of the beneficiaries of the estate of late Paul ongom, appellant inclusive, and that none was a trespasser to the land. Having so found and held, there was no basis for awarding damages to the appellant against the respondents: Equally, the appellant's suit having been dismissed, the respondents were entitled to costs under section 27 of the Civil Procedure Act.

The fourth (4) and seventh (7) grounds of appeal also fail.

The sixth (6) and eight (8) grounds are to the effect that the learned Chief Magistrate erred in failing to properly evaluate the evidence before him, thus coming to the wrong conclusion.

It was submitted for the appellant that though the respondents did not specifically plead that they bought the land, they were allowed to give evidence to that effect and that this was wrong.

In their written statement of defence the respondents denied being trespassers on the suit land and that they lawfully settled on the suit land.

There was no demand by the appellant of further and better particulars from the respondents as to how they came to be lawfully on the suit land.

It is also significant that in the summary of evidence of the respondents, under "List of documents" it is stated as one of the documents to be relied upon"

**"sale Agreement and/or Letters of Authority or consent to settle on the land by the land owner, Obina Alensio and Lucy Lamaro"**

It is therefore not entirely correct to assert that the respondents' pleadings did not bring out the issue of their having come to the suit land through purchase.

Given the nature of pleadings, filed in the case, and the failure to demand for better particulars on the part of the appellant, at the trial stage, there is no basis to hold that the respondents ought not to have been allowed to give evidence showing that they acquired the suit land through purchase.

This court finds that the learned trial Chief Magistrate went to great lengths to analyse, consider and evaluate the evidence adduced before him, and that the conclusions he reached were as a result of careful evaluation and consideration of such evidence.

It is thus not correct to assert that the learned Chief Magistrate failed in evaluating and considering the evidence before him. This court also finds that there were no erroneous conclusions reached by the learned Chief Magistrate.

All the grounds of appeal having failed, this appeal also fails. The same stands dismissed with costs to the respondents.

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Remmy Kasule

Judge

5<sup>th</sup> September, 2008.