

On return he found one Okema Charles had occupied the whole plot 124 Pece, sold part of it to various people who included the respondent.

Appellant successfully sued Charles Okema in a court of law in Gulu Grade II Court, Civil Suit No. MG. 82/94: Hassan Ojuku vs Okema Charles & Jokodino Okumu, and he was evicted from the suit land.

The respondent who had not been sued together with Charles Okema, refused to vacate contending he bought the land bonafide and for value without any notice of the fraud and/or the adverse interest of the appellant.

The learned Chief Magistrate, Gulu, held in his judgment that, though appellant had been the owner of the suit land, having acquired the same in 1975, the respondent was a bonafide purchaser for value and his right as a bonafide occupant was passed to him by Charles Okema. That the said Charles Okema qualified as a bonafide occupant of the suit land having used the land uninterrupted from 1979 to 1993 when he sold part of it to the respondent. The trial court thus dismissed the appellant's suit with costs. The appellant appealed to this court. The appeal is the subject of this judgment.

For the appellant, it has been submitted in respect of the first ground of appeal, that the respondent could not have been a bonafide purchaser for value since from 1994 the respondent was aware that the appellant was the owner of the suit land. Okema Charles never had legitimate ownership of the suit land and therefore could not pass any lawful title to the respondent. From 1993 to 2002, respondent did not live on the land and therefore he could not have been a lawful purchaser for value.

Counsel for respondent maintained in his submission as regards the first ground that the learned Chief Magistrate made the right decision and could not be faulted in any way.

As a first appellate court, it is the duty of this court to reconsider and evaluate the evidence adduced before the trial court, draw its own inferences and conclusions, and decide whether the trial court was justified to hold as it did, all along, bearing in mind that, unlike the trial court, this court has not had the opportunity of observing the demeanour of the witnesses: **See Pandya V Republic (1957) East Africa 336:**

This court will thus re-evaluate and reconsider the evidence adduced on the point.

The appellant admitted that when he was leaving Uganda to go into exile in 1979 due to the civil war, he did not leave any one behind staying and looking after the actual physical suit

land. He however went to Gulu Town Council and reported that he was leaving and he sought to be advised as to who would keep his land. The council assured him that everything would be alright.

This court therefore concludes from the above evidence that Gulu Municipal Council knew of the fact that the appellant had left his land and that the same needed to be looked after.

The respondent's evidence at trial was to the effect that he looked for land to occupy by way of residence in Gulu Municipality. He went to Gulu Town Council in 1993. The land that was identified for him by the council as available is the one that, one Charles Okema, claimed to be his and actually occupied. It was empty land that Charles Okema claimed to own. Respondent paid off Charles Okema, as a sitting tenant on the land, and proceeded to pay ground rent to the council and later apply for a lease. This was in 1994. The council gave him a lease offer and approved a site plan for him. At this material time the appellant or his representatives were not there and there was no structure(s) on the part of the land the respondent was acquiring whether put up by Okema or any other person. It is only in 1995, when the appellant went to him and demanded that he vacates the suit land.

On the basis of the above evidence adduced on the point, this court finds that it is the Gulu Municipal Council that availed the land to the respondent. The respondent just paid off Charles Okema as a sitting tenant who was on the land with no developments thereon, that the respondent was taking steps to lease.

At the same time, it is the same Gulu Municipal Council, then Gulu Town Council in 1979, that the appellant had reported to and requested that he was going into exile, but that he was leaving his land behind and that the same had to be taken care of.

No evidence was adduced, and indeed the matter was not canvassed at all, whether the Gulu Municipal Council ever brought it to the notice of the respondent that the appellant was the unregistered owner of the land that was being acquired by respondent. The evidence that was adduced is that it is the very Gulu Municipal Council that gave the land to the respondent to occupy on condition of first having paid off the sitting tenant, thereon, one Charles Okema.

The appellant never adduced evidence, and gave no explanation for the failure, of why there was no one at all material time at the actual suit land to warn off, people like the respondent, that this was land of the appellant and no one should purport to acquire the same.

Fraud or notice of adverse interest does not affect the one whose title to the land is being impeached unless knowledge of it is brought home to that person or the agents of that person: see **SEJJAKA NALIMA V. REBECA MUSOKE C.A. NO. 12 of 1985 (1992) V KALR 132**

and

KAMPALA BOTTLERS LIMITED V DAMANICO (U) LTD (1990 – 1994) EA 141

The respondent has put up a plea of a bonafide purchaser as regards his dealings with Charles Okema regarding the suit land.

The burden of establishing the plea of a bonafide purchaser lies on the person who sets it up. It is a single plea and is not sufficiently made out by proving purchase for value and leaving it to the plaintiff to prove notice if he/she can: see Odoki J.A., as he then was : in **SEJJAKA NALIMA V REBECCA MUSOKE** (supra).

Respondent proved that in 1993, 1994, no one brought it to his knowledge that the appellant was the owner of the suit land: certainly not the Gulu Municipal Council, who knew of it, if the appellant is to be believed, and there was no one physically on this piece of land to notify the respondent of the interests of the appellant in this land.

The respondent therefore discharged the burden of proving the plea of a bonafide purchaser and he is protected by the same.

The learned Chief Magistrate based his decision, to reach the same conclusion, as this court has reached, basing himself on the fact that Charles Okema had become a bonafide occupant of the suit land having used the land from 1979 to 1993 uninterrupted, and therefore by reason thereof, he passed good title to the respondent. With respect, it is doubtful, whether there was sufficient evidence before the learned Chief Magistrate on the issue of a bonafide occupant as far as the matter related to Charles Okema. The approach of the learned Chief Magistrate also overlooks the evidence of the respondent, which was unchallenged, that he sought land from Gulu Municipal Council, who then identified to him the suit land, upon which Charles Okema claimed to be owner and actual physical occupier. The respondent thus proceeded to pay him off as sitting tenant.

However, since the ultimate conclusion, of the learned trial Chief Magistrate is the same as the one of this court, the first ground of appeal therefore fails.

As to the second ground of appeal, all the matters, complained of in that ground have been dealt with while dealing with the first ground of appeal. The trial Chief Magistrate thoroughly evaluated the evidence adduced before him; and except, subject to the observations of this Court that

have already been stated above, he reached the right conclusions. The second ground of appeal also fails.

Since both grounds of appeal have failed, the appeal stands dismissed.

The respondent is awarded the costs of the dismissed appeal and those in the court below.

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Remmy Kasule

Judge

05th September, 2008.