

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT GULU
CIVIL APPEAL NO. HCT – 02 – CV – CA – 0013 – 2008
(Arising from Apac District Land Tribunal Claim No. 011/2005)

ALFONSE ALELE :::APPELLANT

=VERSUS=

OPIO OTIM :::RESPONDENT

BEFORE: HON. JUSTICE REMMY K. KASULE

JUDGMENT

The appellant sued the respondent complaining that the respondent had taken over his piece of land by demarcating it by putting mark stones on the same and also collected there from building materials. He prayed for a declaration that he was the owner of the piece of land and a permanent injunction against the respondent from interfering with the said ownership.

The trial was both before the Apac District Land Tribunal, but later taken over by the Magistrate Grade I, Apac.

In a judgment dated 11th April, 2008, the appellant’s suit was dismissed as having showed no cause of action against the respondent.

The appellant appealed to this court on the grounds summarized, in the main, as follows:-

1. The trial court was not justified to hold that there was no cause of action,
2. There was failure on the part of court to properly evaluate the evidence.

The third ground was specifically abandoned at the hearing of the appeal. It is good that it was abandoned because its language is a classical example of the language that must not be used while drawing up a ground of appeal, or any court pleading for that matter. It was worded:-

“The trial Magistrate erred in law and fact when he relied on the misleading contradicting and uncorroborated and unsubstantiated bits and pieces of evidence adduced by the respondent and his bunch of hired witnesses, thereby acting in a biased manner to the detriment of the appellant.”

The summarized grounds will be considered together.

The evidence adduced at trial by appellant was that he had on 15.10.86 bought the disputed piece of land from Wacha Willy. After the purchase he, appellant, had stayed on the piece of land. He had a house and had planted plants thereon. The respondent had trespassed on the same by collecting therefrom or thereon building materials. The Apac Town council had in the course of planning pushed appellant’s house to be near the road.

The appellant’s evidence was supported by the evidence of PW2, Agona Moses, PW3 Angello Okello, both witnesses to the purchase agreement whereby appellant purchased the land in 1986. These two knew the boundaries of the land.

DW1 himself admitted that the appellant had bought land from Wacha Willy. There was no specific denial from the respondent of the appellant’s assertion that he, respondent, had planted mark stones and collected building materials on the disputed land. Respondent also produced no evidence of a decision of the L.C.1. Biasara, ruling against the appellant. The decision contained in a communication dated 21.12.204 by the Mayor/A. T. C.(i.e. Acting or Assistant Town Clerk) Ongom Eyu Patrick, to the chairperson L.C.I Biasara cell, Apac, was most arbitrary and was taken only on the basis that the appellant had failed to turn up for discussion when called upon to do so. The land was therefore declared to belong to the respondent on the basis **“that they have opened their file with us”**

What the mayor/A.T.C Ongom Eyu Patrick, should have done is to carry out an impartial investigation of the issue of ownership, giving an opportunity to both disputants to put their case, and then come out with findings based on that investigation. His communication of 12.12.2004 cannot be therefore a valid decision to rely on. At any rate, Mr. Ongom Eyu Patrick,

Mayor/A.T.C never testified in the case to explain his decision. The same is held by this court to be invalid and of no effect at all.

This court has reviewed the evidence produced at trial. Court finds that the appellant established on a balance of probabilities that he had acquired and was occupying the land in dispute and that the respondent had trespassed upon the same.

The respondent cannot hide behind the purported re-planning of the area by Apac Town Council, and there was no evidence of the same adduced at the trial, to take over what rightly belongs to the appellant. The re-planning by Apac Town Council cannot in law deprive the appellant of what belongs to him, and transfer the same to the ownership of the respondent. The trial court thus erred in holding that it is the Town Council who ought to have been made a culprit of the violation and that the respondent was not liable because his violation of the appellant's right to ownership of the disputed land was only

“secondary”, and therefore the respondent had been dragged to court innocently.

This appeal is allowed on both grounds as summarized. This court holds and declares that the appellant, Alfonse Alele is the owner of the land and house thereon he acquired in 1986 from Wacha Willy. The Chief Administrative Officer, Apac District, together with the leadership of the Local Governments of the area, where the disputed land is situate, under the protection of the police and relevant Local Government securities, are hereby directed to demarcate the boundaries of the disputed land with the assistance of PW2 Agona Moses and Angelo Okello, PW3; who know these boundaries; and once ascertained to put the appellant in possession of the suit land.

The appellant is awarded the costs of this appeal

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Remmy K. Kasule
Judge
30th January, 2009