

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT GULU
HCT – 02 – CV – CA – 0007 – 2007

OKABO QUIRINO:::::::::::::::::::::::::::::::::APPELLANT

=VERSUS=

KOMAGUM CHRISTOPHER :::::::::::::::::::::::::::RESPONDENT

BEFORE: HON. JUSTICE REMMY K. KASULE

JUDGMENT

This judgment is in respect of an appeal against the judgment of Chief Magistrate, Lira, delivered on 05.04.2007. There are two grounds of appeal, the third ground having been abandoned. These are:

1. The trial Chief Magistrate erred in law and fact in awarding special damages with subject matter not connected to the suit.
2. The trial Chief Magistrate erred in law and facts in not allowing for compensation for the properties of the appellant.

The appellant was defendant and Respondent plaintiff in the suit. The subject matter was land comprised in leasehold property slot/00025 volume 2873 Folio 23 plot 36 and 37 Block 1 at Arak village, Akaka parish, Aber Sub-county, Pac district, measuring 90.6 hectares. The plaintiff alleged the defendant was unlawfully on that land and sought his eviction. The defendant sought compensation for vacating the land.

The trial court reviewed the evidence of both the witnesses who testified and from its visiting the locus in quo and concluded that the appellant had been allowed by the respondent and respondent's clan mates to temporarily stay on the land for purpose of his government work in connection with Tse-Tse control eradication; and later because he had claimed his area of stay was in secure due to cattle rustling. Judgment was entered for the respondent and appellant was ordered, amongst other orders, to lease the land, pay special and general damages.

As to the first ground of appeal, the respondent proved having incurred shs. 480, 900/= for fuel to travel from Kampala to the land in dispute in order to solve the dispute. This amount is thus recoverable as a direct consequence of the dispute.

As to the claim of shs 1,254,738, respondent claimed these to repair costs on his motor- vehicle as he had been involved in accident while driving in connection with the dispute. The circumstances of the accident under which the vehicle of the respondent became damaged were not explained to trial court and as such it cannot be said that the accident was a direct consequence and result of the dispute. It would be a remote claim, for example, if the respondent, even though driving to come to the area and to solve the dispute was negligently knocked by some other vehicle.

Court holds this part of the claim as not proved to be a direct consequence of the dispute. The same is disallowed.

The effect of the second ground of appeal is that the trial Chief Magistrate should have ordered that the appellant be paid compensation for his properties on the land.

In the considered view of this court, the burden was on the appellant to counterclaim for compensation and also to establish, on a balance of probabilities, how much that compensation was.

The appellant did not counter-claim for compensation in his written statement of defence. Though in his testimony he stated under cross examination that he would leave the land if compensated, he adduced no evidence at all as to what articles he had for compensation; and what were their respective values. The appellant, who was represented by counsel at trial has no excuse whatsoever for not having pleaded and /or proved the quantum of compensation. Indeed appellants' counsel never mentioned the issue of compensation in his written submissions before the trial court. the trial Chief Magistrate was thus justified to order the appellant to remove the buildings and tree appellant stated he had on the land in dispute.

The second ground of appeal thus fails.

This appeal is partly allowed only to the extent that the sum of shs. 1, 254,738/= for motor vehicle repairs is disallowed, otherwise the appeal stands dismissed. The decree in the suit shall be amended accordingly.

As to costs, the appellant has not been successful in the main grounds of appeal. He is thus condemned to pay to the respondent 2/3 of the costs of the appeal.

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Remmy K. Kasule

Judge

30th January, 2009