

his current homestead. The L.C.I Committee, Hoe Chief Committee and the elders were to ensure that the division is equitably carried out and permanent boundaries along common borders established. Each party was ordered to bear its own costs.

There are four grounds of appeal.

The first one is that the trial Magistrate erred in law and fact in holding that the disputed land should be divided equally between the plaintiff and the defendant.

Court has reviewed the evidence adduced before the trial court. There is over whelming evidence on record that the fathers of appellant and respondent owned and used this land together: PW2 stated the land had been given to plaintiff's father by respondent defendant's grandfather PW4. L.C.I Chairman, stated respondent/defendant went to him wanting appellant/plaintiff vacate the land his i.e. respondent's parents gave to the appellant/plaintiff's parents. DW1 admitted that the land in dispute is also where appellant/plaintiff's father was buried. He explained:

“Your father was in good terms with my parents so they could not chase your father from the land”

PW2 and DW3 also testified that defendant's father gave some land to the plaintiff's father to settle on.

The court on visiting the locus in quo saw features that showed that appellant/plaintiff and respondent/defendant both staying on the land. These features were trees, graves and areas cultivated and the lack of boundaries, yet both appellant and respondent's fathers occupied and used the same land. An elder of the area Binansio, who was an independent witness also so stated to court.

On the basis of the above evidence the decision of the trial magistrate cannot be faulted. The first ground of appeal thus fails.

The second ground is that the learned trial magistrate failed to properly evaluate the evidence before him and hence he came to the wrong conclusion. This court has re-evaluated the evidence

on record, and as already held in respect of the first ground, the trial magistrate reached a correct conclusion. There is no merit in the second ground.

The third ground is that the learned trial magistrate erred when he used the wrong procedure while at the locus in quo by allowing non witnesses to testify.

From the record of proceedings the only person who testified to court at the locus in quo was an elder, Binansio. What he stated had already been stated by other witnesses. Even if his evidence were to be disregarded, there is other evidence on record for court to reach the same conclusion. The third ground of appeal also fails.

The fourth ground is that the trial magistrate erred in law when he failed to award costs of the suit to plaintiff.

The plaintiff was only partly successful in the suit. So too was the defendant. This is because court held that the land in dispute belonged to both in equal shares. Therefore in accordance and pursuant to section 27 of the Civil Procedure Act, the trial court exercised its discretion properly when it ordered each party to bear its own costs. The fourth ground of appeal also fails.

This appeal stands dismissed with costs to the respondent. It is ordered that the land in dispute be divided equally between the appellant and respondent as directed by the trial court.

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Remmy K. Kasule
Judge
30th January, 2009.