

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT GULU
HCT – 02 – CV – CA – 0045 – 2007
(Arising from Magistrate Grade I Apac Civil Appeal No. 12/2007)

OTILE CHARLES:..... APPELLANT

VERSUS

ONEDO BENEYOKASI:..... RESPONDENT

BEFORE: HONOURABLE JUSTICE REMMY K. KASULE

JUDGEMENT

The appellant appealed to this court against the decision of the Magistrate Grade I, Apac dated 12th December, 2007, in land claim No. 012 of 2006

The claim had originally been lodged in the Apac District Land Tribunal, but was later transferred to the Grade I Court, Apac, when as a matter of Government Policy decision, trial of land cases before Land Tribunals reverted to Magistrates Courts of the Uganda Judiciary.

In the court below, the respondent complained that the appellant had in 2002 trespassed on his land situate at Dwok can Ikweri village, Akere Parish, Apac Sub-county, Apac District, by building, farming and grazing his cattle thereon.

By reason of the trespass, the respondent sought from court a permanent injunction restraining the appellant from committing trespass, as well as general damages and costs of the suit.

The appellant, at trial, denied the respondent's claims and maintained that he had acquired the suit land in 1999 from the respondent through purchase of the same.

The trial Magistrate found and held in his judgment that the appellant was only entitled to stay on 30 acres of the land that the respondent had passed over to him. The court thus ordered that

any land in excess of the 30 acres curved out by appellant out of the respondent's land be returned to the respondent.

The appellant was ordered to vacate the respondent's land within 90 days from the date of the judgment.

A permanent injunction restraining the appellant and his agents from further trespass to respondent's land was also issued.

The appellant's appeal is on three grounds.

First ground is that the learned trial magistrate erred in law and facts when it entertained the case between the appellant and respondent when the same had been handled by the L.C.II. and L.C.III. Courts of the Akere Parish and Apac Sub-county respectively.

This court was not furnished with authentic records of a complete trial of the dispute between the appellant and respondent in the LC Courts. Counsel for the appellant produced to court a photocopy of a document titled "Ruling letter on land dispute between **Onedo vs Utile Charles**" dated 18.07.06, signed by Agum Charles, Chairman L.C.II., Akere Parish. The origin of this document was never furnished to court.

It is not clear, from the wording of the document whether it was a judgment or a communication of the author as to what might have taken place in the L.C. Court Paragraph 1 of the document states:-

"Following the court on land dispute between Mr. Benayokesi Onedo and Mr. Otile Charles, my court found out that the land on dispute belongs to Mr. Otile Charles due to the following reasons....."

.....

Therefore due to the above stated reason this court of the L.C. II. Akere gives back the land to Mr. Otile Charles and the court gives both parties 14 days to come and do an appeal if the above ruling is not correct"

There is no indication in the document as to the nature of evidence given, by whom and when that evidence was given, and before whom. This court, for all the above reasons, is thus unable to classify the document as a judgment of the L.C. II. Court.

On his part, counsel for the respondent produced to court a document dated 01.10.06 with a stamp stating it is that of Chairman L.C. III, APac Sub-county, worded as a Decree in case No. 04/06; between **ONEDO BEN VS OTILE CHARLES** in which judgment is said to have been given on 21.08.06.

In this document, the L.C.III. Court, is stated to have ordered that the land in dispute be reverted to the plaintiff in the suit.

No court record of proceedings relating to case No. 4/06 was availed to court. There was no evidence by affidavit, or otherwise, from the L.C. III. Court, Apac Sub-county, as to the authenticity of this document, availed to court from the Bar. None of those shown on the document as having been members of the court, verified by way of affidavit, or otherwise, the authenticity of the document.

It is not clear whether the said L.C. III. Court entertained the dispute by way of appeal or by way of a full hearing; and if so what evidence and by who, was adduced before that court. The reasons for the decision of the court are also not disclosed in the document.

The document therefore cannot be a basis for holding that that LC courts had conclusively resolved on the matter.

While the evidence before the trial magistrate is to the effect that the dispute between the appellant and respondent, had, over time, been handled by the L.C.s of the area, the burden was on the appellant to satisfy court, at trial stage, and also in this court on appeal, that the L.C. Courts had lawfully held a proper trial, and effectively resolved the dispute, the subject matter of the suit. This was not done before the trial court of the magistrate Grade I, Apac; and even before this court, no authentic records have been availed to this court to satisfy court that the

L.C.II. and L.C.III. Courts of Akere Parish and Apac Sub-county respectively had conclusively resolved the dispute and the same was thus res-judicata.

Court has seen the record of the court proceedings upon which the judgment of the Magistrate Grade I is based. The record clearly shows that witnesses of both parties testified in full and were cross examined. The court based its decision on the totality of the evidence before it. Court gave reasons for the conclusions reached. There is therefore no injustice caused by taking the trial, the subject of the Judgment of the Magistrate Grade I as the proper trial; and disregard the alleged trials before the LC Courts whose authentic records are absent, if at all they ever existed.

This court finds no merit in the first ground of appeal. The same fails.

The second ground of appeal is that the trial magistrate also erred in law and fact when he failed to evaluate the evidence on record and entered judgment and orders against the appellant which occasioned a miscarriage of justice.

In his judgment the trial magistrate identified the issues for determination. He considered the law, reviewed the evidence adduced before him and applied the law to the facts of the case. He then came to the conclusion that the respondent had a cause of action against the appellant. Court also found, on the evidence, the appellant had lawfully acquired 30 acres of land from the respondent, but that appellant had fraudulently altered some parts of the agreement of 08.09.99 whereby he paid cows to respondent for the land. The fraudulent alteration was intended to be used and was actually used by the appellant to claim to have bought more land from the respondent. Court could not give effect to this fraudulent transaction. Court therefore held, that the appellant was not entitled to have more land of the respondent, other than that of the subject of the genuine sale agreement as set out in Exhibit “D”, the genuine agreement of sale. The original copy of this genuine agreement was produced in court and had no changed figures of cows paid and acres bought unlike the photocopy produced by appellant, whose figures of cows paid and acres bought had been changed by being increased.

This court, has on its own, re-evaluated the evidence, and has also come to the same conclusion as the trial magistrate.

The second ground of appeal also fails.

The third ground of appeal is that the learned trial magistrate erred in law and fact when he ignored or failed to visit the locus in quo in order to ascertain the size of the land and area in dispute. He thus came to a wrong conclusion which occasioned a miscarriage of Justice.

The evidence adduced at trial was to the effect that the land in dispute was not the 30 acres that the respondent had allowed the appellant and his mother to occupy in 1998, when they returned from Buganda, where they had migrated. This land, according to the evidence of respondent, which was not rebutted by the defence, does not share any boundary with the rest of the land of the respondent, upon which the appellant is stated to have trespassed.

The respondent then proceeded to state the boundaries of his land, the subject of the dispute as being Alfred Okello and Odong Jusufu in South; Ongu Akona on Eastern, Opio Charles, Olila Patrick and Omara Anthony on Eastern, and on the other side, the respondent and his family members. As already stated, the respondent was emphatic that the appellant did not share a border with this land, as the appellant claimed.

At trial there was no evidence from the defence to rebut the respondent's evidence as to the borders of the suit land.

Further, the witnesses who testified in the case, PW2, PW3, PW4, PW5, PW6, DW1, DW2, DW3 and DW4 were familiar with which land was the subject of dispute. None expressed any confusion about this.

The trial magistrate had all this evidence before him, and he saw it as unnecessary to visit the locus in quo. None of the parties invited him to visit the locus in quo so as to clear up any thing that was not clear.

Learned counsel for the appellant has not satisfactorily shown to this court, in which way, the non visiting of the locus in quo caused a miscarriage of justice.

Court finds no merit in the third ground of appeal.

All grounds of the appeal having failed, the appeal stands dismissed.

The respondent is awarded the costs of the dismissed appeal.

Remmy K.Kasule

Judge

27th March, 2009