THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA
AT MBALE

HCT-04-CV-CA-0078-2009
(Arising from Tororo Civil Suit No. 109/2008)

1. **OLOKA PATRICK**
2. **YOGA MICHAEL…….……APPELLANTS**

VERSUS

1. **HENRY OYENDE YOGA**
2. **MIKE P. YOGA**
3. **AARON K. OWINO……..RESPONDENTS**

BEFORE: THE HON. MR. JUSTICE STEPHEN MUSOTA

JUDGMENT

The appellants **Oloka Patrick** and **Yoga Michael** filed this appeal through M/s Okwalanga and Co. Advocates against the judgment and orders of the Magistrate Grade I Tororo.

The respondents **Henry Oyende Yoga, Mike P. Yoga** and **Aaron K. Owino** are represented by M/s Kob Solicitors and Advocates.

The grounds of appeal are that:

1. The decision of the Magistrate was not based on the evidence on record and in the result substantial miscarriage of justice was occasioned.
2. That the evidence on record and the facts of the case are at variance, a fact the trial Magistrate did not take into account and in the result a substantial miscarriage of justice was occasioned.
3. That the proceedings were flawed *ab initio* as the court did not bother to address the issue as to who should have obtained letters of administration in respect of the estate of the late **Odero** the person from whom both parties claim to derive title from.

Both learned counsel were required to file written submissions in support of their respective cases but only learned counsel for the respondents complied. No extension of time for compliance was sought by the appellant. I will therefore go ahead and write the judgment.

As rightly submitted by learned counsel for the respondents it is the duty of the first appellate court to re evaluate the evidence on record and arrive at its own conclusion. This was decided in the case of ***Uganda Breweries Limited v. Uganda Railways Corporation SCCA 6 of 2001***.

It is equally trite that proof of civil claims is on a balance of probabilities and the burden lies on whoever alleges.

Having these pronouncements in mind, and after re evaluation of the lower court's evidence as well as the judgment by the learned trial magistrate and relating the same to the submissions by learned counsel for the respondent I have found that this appeal has no merit at all. The learned trial magistrate wrote a well reasoned judgment and considered the evidence as a whole and reached the correct judgment. In fact I have no reason whatsoever to add or subtract from the said well reasoned judgment. The judgment had no error to sustain any of the complaints by the appellants in their memorandum of appeal that any miscarriage of justice was occasioned to them.

The respondents bought the suit land from the father of the appellants one **Wilberforce Ochieng** in December 2007 at an agreed price of Ug. Shs.10,000,000/= only. A sale agreement was executed to that effect freely. The Appellants' father as vendor and his family were granted a six month's grace period within which to vacate the land. But when they were given notice to vacate the suit land, they refused claiming to be customary owners of the said land and argued that the respondents had transacted with a wrong party without any interest in the suit land.

The only two issues framed at the trial were;

1) Who is entitled to the suit land; and

2) What are the remedies available?

After evaluating the evidence the learned trial Magistrate correctly found that the late **Odero** could not have bequeathed the suit land to the appellants since the same had already been passed on to his son PW.4 who sold the same to the respondents.

There is no merit in the complaints by the appellants in the grounds of appeal.

The issue of who was entitled to letters of administration cannot be raised on appeal since that ought to have been challenged in different suit altogether. In any case as rightly pointed out by learned counsel for the respondents, obtaining letters of administration does not entitle one to own the estate or land. A person can be an administrator of an estate without necessarily having a share in the estate.

In some cases administrators only manage estates on behalf of the beneficiaries and for limited time, usually six months and not in perpetuity.

In this case however as testified by DW.4 there was no estate of the late **Wilson Odero** to manage because he had divided his land to his sons before his death.

Consequently I will dismiss this appeal with costs here and in the court below.

Stephen Musota

JUDGE

3.5.2012