



proved, that damage to property was not proved and ordered costs to the defendant (respondent herein).

The appellant being aggrieved filed this appeal. His three grounds of appeal are:

- i. The trial magistrate greatly erred in law and in fact when he held that the plaintiff had no right to object to defendants witness to act as a surveyor in opening boundaries and the decision constituted a miscarriage of justice.
- ii. The trial magistrate erred in law and in fact, when he ignored to evaluate the overwhelming evidence that the appellant has the title to the land in issue and respondent trespassed onto the appellants land.

When the matter came up for hearing in the High Court on 31<sup>st</sup> of March 2011, the trial Judge after listening to Counsel on both sides ordered that:

- a. The boundaries of the plots 57 and 67 of Kebisoni Block 22 in Rukungiri district be opened by the district surveyor, Rukungiri who would give a detailed report showing where the disputed strip of land falls or point out whether there are any intersections between the two plots.
- b. The parties would equally meet the costs of opening the boundary and preparation of the report.

The district surveyor filed the report on the 23 of June 2011. His findings *inter alia* were:

- The fence (planted by Mbaine) is in the wrong position. The entire fence is planted inside plot 67. However according to Mbaine, this was not intentional as its position was directed by the previous surveyor who had opened the boundaries.
- The size of the land marked by the fence is 371.84 sq meters which is equal to 0.037 hectares or 0.09 acres.

The recommendations of the survey were as follows:

1. All other boundaries should be maintained since they are clear cut.
2. The fence planted by Mbaine be shifted to its exact position as marked on the ground. However this should be done after the court has heard and determined the case.

3. Plot 67 should be transferred to the names of the administrator since the registered proprietor is not alive. This should be undertaken after the dispute.

This suit turned on the alleged trespass by the respondent on the land of the appellant. From the survey the respondent trespassed on the appellant's land but was probably misguided by the previous survey. The surveyor found mark stones demarcating the two pieces but they had been mislaid and did not correctly fix the boundary.

This court therefore orders that the fence planted by the respondent (Mbaine Stanley) be shifted and planted in its rightful position as indicated on the map attached to the survey report.

The standoff was caused by the wrongful survey carried out earlier. For that reason this Court orders that each party bear its own costs.

Dated at Kabale this..14<sup>th</sup>... of July 2015

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**MICHAEL ELUBU**

**JUDGE**