THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALE

HCT-11-CIVIL APPEAL No. 15/2015

(Arising from Kabale Civil Suit No.119 of 2012)

GAKYARO DAVID :::::::::::::::::::::::::::::: APPELLANTS

VERSUS

RWAMUCUCU SUB COUNTY
LOCAL GOVERNMENT :::::::::::::::::::::::::: RESPONDENT

BEFORE HON. MR. JUSTICE MICHAEL ELUBU

JUDGMENT

This Appeal is against the Judgment of **HW KIRYA MARTINS,** Magistrate Grade I, delivered in Kabale dated 2nd February 2015.

The background to this appeal is that on the 22nd of August 2007 the appellant sued the respondents in the Kabale Chief Magistrates Court over land which is situate in Butekumwa cell in Mparo parish in Rwamucucu sub county within Kabale district. He claimed that he had inherited the land from his father one Rukongi, who had, in turn, inherited from his father Rwamugurwa. It was stated that the claimant's father had allowed one Kabikeeka who headed the cattle keepers in this village to use the land by having a cattle dip constructed by the sub county on behalf of all cattle keepers. The dip is said to have been constructed in 1966 but was later abandoned in 1974 after it collapsed. The appellants re-entered the land, tilling it and growing trees up to 2007 when Gakyaro (the appellant) and a group which included his brother, were arrested

by the LC III chairman of Rwamucucu and detained for several hours before they were released without charge.

From the pleadings the defendants dispute the claim of the plaintiffs stating the land was community grazing land on which a cattle dip tank was constructed. They contest arresting the plaintiffs or that any crops have been grown on this land. The defendants allege that there are records that show that the land belongs to the defendant and is registered in her assets register as sub county property.

The learned trial magistrate disbelieved the plaintiff's case and entered judgment for the defendants hence this appeal.

Three grounds of appeal were filed namely,

1. The learned trial magistrate erred in law and fact when he failed to evaluate the evidence on record as a whole thereby arriving at a wrong decision
2. The leaned trial magistrate erred in law and in fact when he held that the respondent qualified as the successor of the suit land on behalf of the community.
3. The leaned trial magistrate erred in law and in fact when he misapplied the law to the facts and thereby came to a wrong conclusion.

The parties were granted leave to file written submissions which are on record and shall not be reproduced here. I shall refer to them as I go along in resolving the issues herein.

As this is a first appellate court I shall subject the entire body of evidence to a fresh scrutiny arriving at its own conclusions based on the law and the evidence.

I shall deal with the grounds of appeal jointly.

It was the finding of the trial magistrate that the suit land originally belonged to the appellants who gave it up to the respondents for the construction of a cattle dip. The lower court relied on a letter that was attached to the pleadings of the defendants stating that the land was in the possession of the respondents up until the 1980s. The trial court found that the father of the appellants, who gave this land to the defendant sub county, made no attempt to repossess it before 1974. The Court concluded that was not possible that the late Rwamugangura (father of the appellant) could have given away the land on a temporary basis.

With regard to this finding and to the evidence on record it is pertinent that the defendants did not adduce any evidence in the lower court. Therefore with the exception of the pleadings there is no other information this court can rely on.

The court requires evidence to investigate and make a finding on disputed facts

S. 2 of the **Evidence Act** defines evidence as,

> '... the means by which any alleged matter of fact, the truth of which is submitted to investigation, is proved or disproved and includes statements by accused persons, admissions, judicial notice, presumptions of law, and ocular observation by the court in its judicial capacity'

Without such evidence a party to a suit has no means by which it can persuade a court or tribunal that the position laid out in its pleading and which makes up its case is the truth.

A party must produce evidence which is then subjected to evaluation through investigation, testing and scrutiny following which the court will properly arrive at a reasoned conclusion on findings of fact.

In the instant case the appellants told the lower Court that their father gave the suit land to the defendants on a temporary basis to use for the purpose of dipping cattle. A cattle dip was built in 1966 but abandoned in 1974 when it collapsed. The appellant's then re took possession and utilised the land

undeterred up till 2007. It is their evidence, through PW 1 and PW 2, that there was never an intention to permanently cede ownership to the respondent sub county.

There was no evidence adduced to contradict this set of facts. The evidence of the appellants was not seriously challenged in cross-examination. The trial court disbelieved it however based on evidence that was not formerly presented for the defence but on annexures to the defendant's pleadings. This, in my view, was erroneous and was also the position taken by the East African Court of Appeal in **Bhandari V Gautama [1964] 1 EA 606** where is was observed that,

> **"Any party is entitled to cross-examine any other party who gives evidence or his witnesses; and no evidence affecting a party is admissible against that party unless the latter has had an opportunity of testing its truthfulness by cross-examination".** (Emphasis mine)

Where no evidence has been adduced, and properly tested in cross examination, then it cannot be admissible against any party. It was therefore wrong to rely on the letters purportedly written by sub county officials or use records allegedly giving the asset base of the sub county.

In **Nsubuga and another v Mutawe [1974] 1 EA 487** where an applicant had alleged that a company against which he sought to obtain a temporary injunction was owned by a non-citizen Asian the Court of Appeal for East Africa held,

> **As, however, no evidence was adduced, I think that the plaintiff's bare allegation that the second defendant was "owned by departed non-citizen Asians" might well be unfounded and could not be acted upon.**

A party who asserts certain facts has the burden to prove that those facts exist and must do so by adducing evidence. Therefore the respondents in the instant case who had called no evidence of ownership could not prove their case.

It is for the reason that the respondent's evidence was not properly before the Court that I have not considered the submissions of the respondent which base their contentions on that improper evidence.

The question then arises whether from these facts on record this was a case of a mere license?

The position was properly laid out in the case of **Musisi V Edco and Anor HCCA No 52/2010** where Bashaija J held,

> The cardinal principles are that a licensee is simply authorised to do a particular act or series of acts upon the other's land without possessing any estate therein. Secondly, it is founded on personal confidence and is generally not assignable or transferrable. Thirdly, no proprietary interest passes to the licensee, who is merely not a trespasser; and fourthly, it is revocable at will by the property owner. See: ***Walton Harvey Co. Ltd. v. Walker & Homfrays Ltd. [1931] 1Ch.274; Armstrong v. Sheppard& Short Ltd. [1915] 2 Q.B.384.***

The appellants stated that they only allowed the respondents to enter upon the land and use it as a cattle dip. When the dip collapsed in 1974 they retook possession. That evidence is uncontroverted. The implication is there was no intention to transfer title. The defendants would use the land principally as a site for a cattle dip as long as the dip existed. When the dip collapsed, the appellants re-entered the land thereby revoking the licence and reverting the land to themselves.

Next there is the claim for the false imprisonment of the appellants. It was stated that the appellants and several others including Bichulo, Bichurore,

Katahoire and Basoma were arrested and detained, without charge, for 12 hours, at the sub county headquarters on the orders of the LC III Chairman. This happened on the 8th of January 2007. The LC III Chairman effected the arrests using Local Administration Police officers who fired in the air as they took the appellants into custody.

In '**Street On Torts'** by John Murphy 11th Edition at pg 40 False Imprisonment is defined as,

> 'The act of the defendant which directly and intentionally causes the confinement of the claimant within an area delimited by the defendant.'

In **Sekaddu v Ssebadduka [1968] 1 EA 213** the Court held that once the detention or imprisonment is established the onus shifts to the defendant to show that it was reasonably justifiable.

In this case it is clear that the LC III chairman was acting as an agent of the sub county and in fact used Local Administration Police and to cause the arrest and used the Sub County Headquarters as place of detention. The defence had an onus to show that this detention was lawful or justifiable but have not.

In light of that I find and hold that indeed the respondents are liable for the false imprisonment of the appellants.

The appellants prayed for damages. General damages are such as the law will presume to be direct, natural or probable consequence of the act complained of (see **Tanzania Saruji Corporation v African Marble Co Ltd [2002] 2 EA 613**). I find that the appellants should be compensated in damages for the false imprisonment. In the result I award a sum of 1,000,000/- (One million shillings) in damages.

This appeal accordingly succeeds with costs to the appellants.

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Michael Elubu

Judge

4.5.16