



IN THE HIGH COURT OF UGANDA SITTING AT GULU

Reportable
Civil Appeal No. 022 of 2014

In the matter between

- 1. EVERINA ANEK ODOTA**
- 2. SUSAN ACEN**
- 3. OKOT BENSON**

APPELLANTS

And

PERECI ABUR ORYEMA

RESPONDENT

Heard: 20 March, 2020

Delivered: 22 May, 2020.

Civil Procedure — Limitation — Section 5 and 16 of The Limitation Act — No action may be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her. Time begins to run from the date of the adverse possession. Limitation begins to run from the date of the cause of action to the date of filing the suit. Time ceases to run against a claimant when he or she commences proceedings —Section 21 of The Limitation Act— provides for extension of time whereupon the suit may be brought at any time before the expiration of six years from the date when the person ceased to be under a disability. A litigant takes advantage of the provision when he or she puts himself or herself within the limitation period by showing the grounds upon which he or she could claim exemption, failure of which the suit is time-barred, the court cannot grant the remedy or relief sought and must reject the claim. — Disability — The disability must be pleaded as required by Order 7 rule 6 of The Civil Procedure Rules.

JUDGMENT

STEPHEN MUBIRU, J.

Introduction:

- [1] The respondent sued the appellants jointly and severally with four other persons for the recovery of approximately 12 acres of land situated at Lamit Kapim South village, Kitgum Town Council, in Kitgum District, a declaration that she is the rightful customary owner of the land, general damages for trespass to land, *mesne profits*, a permanent injunction and the costs of the suit. Her claim was that she inherited the land from her late husband Eronayo Wilson Oryem and enjoyed quiet possession thereof until around April, 2012 when the appellants without any claim of right nor her consent trespassed onto the land.
- [2] In their written joint statement of defence, the appellants refuted the respondent's claim and contended that the land in dispute belonged to their grandmother, Everina Odot. It is the respondent instead who on 12th May, 2012 trespassed onto the land by destroying crops and re-ploughing the land.

The appellants' evidence in the court below:

- [3] P.W.1 Abur Oryema Pereci, the respondent, testified that the land in dispute originally belonged to her father-in-law, Festo Oywak. Her late husband Eronayo Wilson Oryem was born on the land in dispute in 1936. She married him in 1967 and they lived together on the land in dispute. During the year 1967, Eronayo Wilson Oryem applied for a freehold title in respect of ten acres. During April, 2012 the appellants without any claim of right nor her consent trespassed onto the land.
- [4] P.W.2, Olweny Daniel David, a neighbour to the East of the land in dispute testified that it was during the year 1967 that the late Janayo Odot, husband of the 1st appellant trespassed onto husband Eronayo Wilson Oryem's land and occupied about six acres. The dispute was settled amicably with Janayo Odot being permitted to keep only one acre for construction of his house. In 1971,

following the death of Eronayo Wilson Oryem and the transfer of the widow P.W.1 Abur Oryema Pereci to Namokora where she worked as a midwife, Janayo Odota took advantage and encroached onto an additional 12 acres of Eronayo Wilson Oryem's land. When P.W.1 Abur Oryema Pereci returned to the land during the year 2000, she demanded that the family of Janayo Odota retains only two acres temporarily and vacates the rest of the land. The respondent from time to time hired out parts of the land to the appellants. It is in the year 2012 that P.W.1 Abur Oryema Pereci re-claimed the entire land and ploughed it. P.W.3 Olworo Titu, testified that the land in dispute is approximately one care and it belongs to P.W.1 Abur Oryema Pereci. The land in dispute was for a long time occupied by Eronayo Wilson Oryem, husband of the respondent. The appellants used to hire the land from the respondent.

The respondent's evidence in the court below:

- [5] In her defence as D.W.1 Everina Anek, the 1st respondent, testified that it is during the year 1958 that her late husband Janayo Odota migrated onto that land when he obtained employment in a mission school nearby as a cook. The then Chairman of the mission school, a one Yuweri Lubba, gave him the five acres of land in 1960. She and her husband had quiet enjoyment of the land from then until the year 2012 when the dispute with the respondent erupted. She had five huts on the land but only one is left.
- [6] D.W.2 Abonga Joel Odota, testified that the approximately five acres in dispute occupied by her mother D.W.1 Everina Anek belong to the Church. During the year 2000 the respondent had a dispute with the Church over that land. The appellants have ceased using the land. On 26th March, 2012 the respondent set the 1st appellant's house on fire. D.W.3 Acen Susan, the 2nd appellant, testified that the approximately five acres in dispute belong to her grandmother D.W.1 Everina Anek. It was given to her by her father in law. They had been cultivating

the land until the respondent stopped them on 10th May, 2012. There are pending court proceedings between the respondent and the Church over the same land.

- [7] D.W.4 Okot Benson, testified that the approximately five acres in dispute belong to D.W.1 Everina Anek who acquired it before this witness was born. It is on 5th May, 2012 that the respondent stopped them from cultivating the land yet he had been in peaceful possession since 1993. D.W.5 Josephine Lalum, a neighbour to the land in dispute testified that it is during 1962 that D.W.1 Everina Anek and her late husband Janayo Odota began utilising that the approximately five acres in dispute. The common boundary between the appellants' and the respondent's land is the road to Palabek. D.W.6 Josephine Lalum, who lives about half a mile from the land in dispute testified that the approximately five acres of land in dispute at the Lamit mission belong to the appellants. The dispute began during the year 2012.

Proceedings at the *locus in quo*:

- [8] The court then visited the *locus in quo* on 28th November, 2013 where it recorded evidence from; (i) Labeja Bobs William; (ii) Florence Oyoo; (iii) Angeyo Florence. A sketch map was drawn indicating the location of the boundaries.

Judgment of the court below:

- [9] In his judgment delivered on 24th March, 2014, the trial Magistrate found that the respondent's late father in law was the first settler at Lamit village where he occupied land part of which is the approximately six acres now in dispute. The land is outside the freehold given to the Church in 1967. The respondent's late husband Eronayo Wilson Oryem acquired the land before she married him. It is Eronayo Wilson Oryem who from time to time permitted various persons to temporarily use the land. The land therefore belonged to the respondent's husband. The 1st appellant's late husband was given only one acre of that land.

When she was given two acres in the year 2000 she turned them down. She instead took possession of approximately six acres belonging to the respondent. Therefore the appellants are trespassers onto that land. Having been given only one acre, the appellants' activities on the extra five acres constitute acts of trespass. The court therefore declared that the appellants are only entitled to one acre. The five acres constitute part of the 12 acres belonging to the respondent and therefore a permanent injunction was issued restraining the appellant from undertaking any more activities on the five acres. The respondent was awarded shs. 2,000,000/= as general damages for trespass to land, and the costs of the suit.

The grounds of appeal:

[10] The appellants were dissatisfied with that decision and appealed to this court on the following grounds, namely;

1. The learned trial Magistrate erred in law and fact when he failed to properly evaluate, the evidence before her and relied on hearsay and contradictory evidence presented by the respondent thereby coming to a wrong decision.
2. The learned trial Magistrate erred in law and fact when she erroneously declared the respondent as the rightful owner of the suit land and ordering the appellants to vacate the suit land which they have occupied since 1958, and on which their family homestead and graveyard is located.
3. The learned trial Magistrate was rude and harsh towards the appellants thereby coming to a wrong decision

Arguments of Counsel for the appellant:

[11] Counsel for the appellant did not file submissions despite having been accorded sufficient time to do so.

Arguments of Counsel for the respondents:

[12] In their submissions, counsel for the respondent argued that the respondent's case was that the land in dispute originally belonged to her father in law Festo Oywak before her late husband Eronayo Wilson Oryem inherited it. None of the respondent's witnesses adduced hearsay evidence. There were neither contradictions nor inconsistencies in their testimony. There is no evidence to show that the trial Magistrate was either rude or harsh. She allowed all witnesses to testify and to be cross-examined. The trial magistrate came to the right decision after a proper evaluation of all the evidence. The appeal should therefore be dismissed.

Duties of a first appellate court:

[13] It is the duty of this court as a first appellate court to re-hear the case by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion (see *Father Nanensio Begumisa and three Others v. Eric Tiberaga SCCA 17 of 2000; [2004] KALR 236*). In a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions (see *Lovinsa Nankya v. Nsibambi [1980] HCB 81*).

[14] In exercise of its appellate jurisdiction, this court may interfere with a finding of fact if the trial court is shown to have overlooked any material feature in the evidence of a witness or if the balance of probabilities as to the credibility of the witness is inclined against the opinion of the trial court. In particular, this court is not bound necessarily to follow the trial magistrate's findings of fact if it appears either that he or she has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the

impression based on demeanour of a witness is inconsistent with the evidence in the case generally.

For convenience, all grounds of appeal will be considered concurrently.

[15] The 1st appellant's case was that she and her late husband Janayo Odota have been in possession of the land in dispute since 1960. They had been cultivating the land until the respondent stopped them on 10th May, 2012. On the other hand, the respondent's case was that following a dispute between her and the 1st appellant with her husband Janayo Odota over that land in 1967 when the couple had unlawfully occupied about six acres, the couple was permitted to keep only one acre for construction of a house. In 1971, Janayo Odota took advantage and encroached onto the additional land of the respondent. When P.W.1 Abur Oryema Pereci returned to the land during the year 2000, she demanded that the family of Janayo Odota retains only two acres temporarily and vacates the rest of the land but they refused.

[16] The implication is that the 1st appellant and her late husband were in adverse possession of the extra five acres from 1971 until the year 2000 (a period of 29 years) when she sought to recover three of the acres of land from the 1st appellant, which she rejected. She did not sue them until the year 2012 (a period of 41 years from the commencement of the adverse possession). Section 5 of *The Limitation Act*, provides that no action may be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her. The activities complained of were alleged to have begun in the year 2014. According to section 16 of *The Limitation Act*, time begins to run from the date of the adverse possession. Limitation begins to run from the date of the cause of action to the date of filing the suit (See *Miramago F. X. S. v. Attorney General [1979] HCB 24*). Since it was alleged that the adverse possession began in 1971, a suit filed in the year 2012 would clearly be time barred.

- [17] Section 21 of *The Limitation Act* provides for extension of time whereupon the suit may be brought at any time before the expiration of six years from the date when the person ceased to be under a disability. A litigant takes advantage of the provision when he or she puts himself or herself within the limitation period by showing the grounds upon which he or she could claim exemption, failure of which the suit is time-barred, the court cannot grant the remedy or relief sought and must reject the claim (see *Iga v. Makerere University* [1972] EA 65). This disability must be pleaded as required by Order 7 rule 6 of *The Civil Procedure Rules*, which was not done in the instant case. It is trite law that a plaintiff that does not plead such disability where the cause of action is barred by limitation, is bad in law. The respondent in the instant case did not plead any disability that occurred after 1971 that would have justified extension up to the year 2012 when she filed the suit. In any event, even if a disability had existed, section 21 (1) (c) of *The Limitation Act* places the cap at "thirty years from the date on which the right of action accrued to that person." The suit was filed 41 years out of time.
- [18] Time ceases to run against a claimant when he or she commences proceedings (see *Thompson v. Brown Construction* [1981] 1 WLR 744 and *Dresser UK Ltd v. Falcongate Freight Management Ltd* [1992] 1 QB 502, 517-518). The respondent did not adduce evidence to show that she filed a suit before a court of competent jurisdiction within the limitation period. Section 16 of *The Limitation Act* provides that at the expiration of the period prescribed by the Act for any person to bring an action to recover land, the title of that person to the land is extinguished. It lays down a rule of substantive law by declaring that after the lapse of the period, the title ceases to exist and not merely the remedy.
- [19] In respect of unregistered land, the adverse possessor of land acquires ownership when the right of action to terminate the adverse possession expires, under the concept of "extinctive prescription" reflected in sections 5 and 16 of *The Limitation Act*. Where a claim of adverse possession succeeds, it has the effect of terminating the title of the original owner of the land (see for example

Rwajuma v. Jingo Mukasa, H.C. Civil Suit No. 508 of 2012). As a rule, limitation not only cuts off the owner's right to bring an action for the recovery of the suit land that has been in adverse possession for over twelve years, but also the adverse possessor is vested with title thereto.

[20] This means that since the respondent, by allowing her right to be extinguished by her inaction, could not recover the land from the appellants as persons in adverse possession. Uninterrupted and uncontested possession of land for a specified period, hostile to the rights and interests of the true owner, is considered to be one of the legally recognized modes of acquisition of ownership of land (see *Perry v. Clissold [1907] AC 73, at 79*). When the respondent's title to the land was extinguished, if it existed at all in the first place, her ownership of the land passed on to the appellants and their adverse possessory right got transformed into ownership by operation of the law. The trial magistrate misdirected herself when she failed to find that the appellant's suit was time barred.

Order:

[21] In the final result, the appeal succeeds and is accordingly allowed. The judgment of the court below is set aside. Instead judgment is entered dismissing the suit. The costs here and below.

Delivered electronically this 22nd day of May, 2020

.....Stephen Mubiru.....

Stephen Mubiru

Resident Judge, Gulu

Appearances

For the appellant :.....

For the respondent : M/s Donge and Co. Advocates