The Republic of Uganda

In The High Court of Uganda Holden at Soroti

Civil Appeal No. 13 of 2021

(Arising from Civil Suit No. 007 of 2018 at Ngora Magistrate's Court)

Opolot Michael :: Appellant

Versus

Okolimong Simon :: Respondent

Before: Hon. Justice Dr Henry Peter Adonyo

Judgment.

1. Background:

This appeal arises out of the judgment and orders of the Magistrates Court of Ngora delivered on the 17th day of March 2021 by H/w Tibagonzeka Jane. Okolimong Simon, now the respondent filed Civil Suit No. 007 of 2018 against Opolot Michael, now the appellant for trespass and recovery of land measuring two gardens situate at Kabakuli Eastern Ward, Ngora Town Council, Ngora District, general damages and costs of the suit.

Okolimong's claim before the lower trial court was that after the death of his father, the appellant, his stepbrother, was chosen as the heir and caretaker of the father's estate and he was to take care of the two families their father left behind. In 2005 the respondent and his siblings together with the appellant agreed to purchase four gardens from Okello Joseph their cousin brother and both families agreed to contribute to the

purchase of the four gardens with the respondent's side contributing 2 cows and Ugx, 150,000/= and the appellant contributing 2 cows.

The agreement was executed but since the respondent was away in Kampala on the date of the agreement, the agreement was executed in the name of the appellant as an heir.

The appellant after the purchase and later distribution of the land is now occupying the land that belonged to the respondent.

The appellant in his written statement of defence denied the respondents claims and contended that the suit land legally and rightfully belongs to him.

The trial magistrate H/w Tibagonzeka Jane delivered judgment in favour of the respondent with the following orders;

a) Plaintiff is the rightful owner of the suit land and is entitled to own and use the suit land.
b) A permanent injunction is issued against the defendant and his agents.
c) The defendant shall give vacant possession.
d) Costs of the suit are awarded to the plaintiff.

The appellant being dissatisfied with the judgment of the lower trial court appealed on the following grounds;

a. The trial Magistrate erred in law and fact when she decreed the suit land to the respondent in total disregard of the appellant's evidence of purchase.
b. The trial Magistrate erred in law and fact when she misapplied section 92(b) of the Evidence Act to exempt exhibit D.E.1 and P.E.1 from the parole evidence rule.

c. The trial Magistrate erred in law and fact when she relied on a custom which was neither pleaded nor proved.

d. The decision of the trial Magistrate has occasioned miscarriage of justice.

2. Duty of the first appellate court:

In ***Kifamunte Henry vs Uganda SCCA No. 10/1997***, it was held that;

> ***"The first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate Court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it".***

In ***Father Nanensio Begumisa and three Others v. Eric Tiberaga SCCA 17of 2000; [2004] KALR 236,*** it was held that;

> ***"This being a first appeal, this court is under an obligation 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."***

3. Summary of evidence on record:

Okolimong Simon, the respondent testified as **PW1** that the appellant is his step brother and they were in court over land situate at Kabakuli Cell, Eastern Ward, Ngora Town Council approximately two gardens. That the land belongs to his family, the 4 gardens were for his uncle but his father was caretaking the same and when their father died in 1995 the appellant was appointed as customary heir. In 2005 his uncle's children came claiming their land and the appellant being the heir gave it to them, however, they later wanted to sell which resulted in his sister and the appellant buying the same for 4 heads of cattle and shs 150,000/=.

That since his father was caretaking 4 gardens with his mother's family using two and the appellant's mother's family using two they decided to purchase the land and they both contributed for the purchase with each family bringing two heads of cattle and since they didn't have money his sister topped up another cow instead of money.

This purchase was done on 17.04.2005 in the presence of the clan leader Aogon, Elimu Silver, Okodong Stephen, Ajang, Atwamar. This agreement was written in the name of the appellant as he was the heir of the family and the respondent was in Kampala.

On 09.06.2005 he had a meeting with the appellant on a way to divide all the land including the land that was purchased. After the purchase the land amounting to 18 gardens including the 4 gardens purchased was equally divided between the two widows and their children with each getting 9 gardens.

The people present at the dividing were the clan chairperson Aogon, Elimu Silver, Ajang Mislam, Okutui Robert and the appellant and his wife

Asekeny were also present. The respondent was present and the division was documented.

The appellant led the division of the land and did not raise any complaint and when the respondent started utilizing the land the appellant was at home. That it is not true that the appellant personally purchased the suit land.

During cross-examination he stated that after the death of their father, the appellant's mother was using 2 gardens and his mother was also using two gardens.

During the division of the land they moved through the land and went up to the purchased land. He hired one garden to the appellant.

During re-examination he stated that he was not present during the purchase but Apio Dinah and Amoding Jessica were representing his mother's family during the purchase.

He is currently cultivating the one garden he hired out to the appellant.

PW2, 3 and 4 all corroborated the above evidence.

PW2 Apio Dinah, the respondent's sister also testified that the land was purchased from Okello Joseph and the agreement had the name of the secretary and the appellant.

After the purchase she utilised the land for 5 years before her brother returned. After the division of the land the appellant did not complain but he started cultivating the suit land in 2017.

That it is not true that the appellant bought the land personally, he was the heir of the family and custodian of their father's property and that is why he appears as the buyer.

That it was not true that the respondent mortgaged the suit land to the appellant, that the 1 garden mortgaged it not part of the suit land and it was redeemed.

During cross-examination she stated that the purchased land is on the same block as their father's land and it shares a common boundary.

During re-examination she stated that their mothers elected the appellant as customary heir before they died.

PW3, Okodom Steven was the author of the sale agreement and he testified that as he was writing the agreement he asked the parties in whose name it should be since they had shared the purchase and Apio (PW2) told him to write the appellant since the respondent was not around. That the appellant was standing as a caretaker of both families and after the purchase Apio and the appellant were cultivating 2 gardens each. It's not true that the appellant personally purchased the land, in fact the appellant approached him and informed him that they had discussed as a family to buy it and Apio had got two bulls and he asked him for one bull and even mortgaged his one garden.

PW4, Elimu Silver was a witness to the division of the land as well as the secretary and he testified that the parties father left 14 gardens and the parties in 2005 both bought 4 gardens and he was present at the transaction as a member of the clan land committee. Okello Joseph wanted 4 heads of cattle and 150,000/= and he was present when the consideration was paid.

That after the purchase they each utilized 2 gardens and later joined the purchased land with the 14 gardens their father left and divided them. That the appellant showed them all the land and a division agreement was written.

During cross-examination he stated that the purchased land is not on the same block as that was left by the parties' father. That upon death of the parties' father, the appellant was made the caretaker or head of the family and it was not true that he was the one who showed the siblings where to cultivate.

During re-examination he stated that the respondent's name was not included in the agreement because he was not present and the sisters Apio and Adong were also not included as purchasers because they decided that being the elder in the family the agreement should be written in the appellant's name and when the respondent comes they would see how to handle. He was present when this resolution was made and he confirmed that Apio and Adong contributed more to the purchase than the appellant.

Opolot Michael, the appellant on the other hand testifying as **DW1** stated that he bought the land (4 gardens) on 17.04.2005 from Okello Joseph, a purchase agreement was made and he signed it. After the purchase he started cultivating and the respondent started disturbing asking for the father's land and he gave him 9 gardens and remained with 9.

That the respondent mortgaged out the rest of his gardens to him and went to Kampala.

That the respondent's sisters came to him requesting for where to cultivate and added that after they redeem their land they will give his gardens to him and he gave them 2 gardens.

During cross-examination he stated that before buying the land it was his father who used it and when he died he left behind 18 gardens and these are different from the 4 gardens he bought.

That he bought the 4 gardens for himself and not as an heir and the respondent did not contribute towards the purchase of the same.

DW2, Okello Joseph testified that the appellant requested that he sell him the 4 gardens and at the time of the sale the respondent was not there. That the appellant paid the consideration and the purchase was documented.

During cross-examination he stated that the 4 gardens are near the appellant's land which was initially his father's but there is no common boundary between the two.

That he was not around when the land was divided so he does not know where the respondent was given but by the time he sold his land the parties had not yet divided the father's land. That he was not aware if consideration was a collective contribution from the family.

DW3, Atwamar John testified that he signed on the agreement as a witness because the appellant called him as a neighbour to the suit land. That on the day of the purchase the respondent was in Kampala and in the transaction it was the appellant buying and Okello selling.

During cross-examination he stated that he knows the parties' father's land but not all. That the appellant began utilizing the four gardens after the purchase and the appellant also informed him that sometime back the respondents sisters requested for land as the respondent had mortgaged theirs.

The above constitute, together with documents the full evidence and testimonies received by the trial court.

4. Submissions:

M/s Engulu & Co. Advocates, counsel for the appellant submitted that the evidence of the respondent and all his witnesses in the lower court is to the effect that the suit land was given to the respondent by the clan during the division of the estate of the late **Peter Ojulu** the father to both the respondent and the appellant.

It was his submission that the suit land did not form part of the estate of the late Peter Ejulu, this fact was not disputed as all parties agree that this was purchased land.

Counsel submitted that **PEX 1 (A & B)** which the respondent relied upon as a back born of his case to prove the division of land between him and the appellant is silent about the land purchased by the appellant.

According to counsel, **PEX 1 (A & B)** only relates to the estate of the late **Peter Ojulu** which did not include the suit land and this was also confirmed by a witness called Aogon John at locus as he categorically stated that the suit land did not belong to the plaintiff's late father.

Further according to counsel, the purchase agreement **DEX 1 (A & B)** does not mention the respondent in any of its paragraphs or any contribution by the respondent's siblings as alleged.

That **DEX 1** gives the appellant exclusive ownership of the suit land as the purchaser and that this position was confirmed by **DW2 Okello Joseph,** the vendor of the said land.

Counsel further submitted that the appellant, just like PEX I, the appellant, could not rely on DEX I to found a claim over the suit land but despite all this the trial magistrate decreed the suit land to the respondent.

He further submitted that trial magistrate was wrong to consider oral evidence for purposes of explaining **PEX 1 (A&B)** and **DEX 1(A&B).**

According to counsel, **Sections 91 and 92 of the Evidence Act Cap 6,** do not permit a party to introduce oral evidence to counter documentary evidence as in the instant case where the plaintiff and his witnesses are trying to introduce oral explanations to **PEX I (A & B) and DEX 1 (A & B).**

Counsel further relied on ***Shine Pay (U) Ltd Versus Sarah Kagoro & Little Sisters Co. Ltd Civil Suit No. 548 Of 2004.***

He finally submitted that in the instant case therefore, it was wrong for the trial magistrate to import oral evidence in the interpretation of **PEX 1** and **DEX 1.**

Counsel for the appellant additionally submitted that the respondent's case was also premised on the fact that it was the clan that distributed the estate of the late Peter Ojulu the father to both the appellant and the respondent.

He submitted that whatever the clan purported to do in the estate of the late Ejulu was a nullity in law because the only person who can deal in an estate of a deceased person is an administrator legally appointed per section 180 of the Succession Act.

Counsel asked court to note that none of the clan members who purported to distribute the estate of the late Ejulu was an administrator of the said estate making the entire exercise of the clan in distributing the estate a nullity.

Thus according to counsel for the appellant, for the trial magistrate to rely on decisions illegally taken by the clan was wrong a*b initio* as was pointed

out in ***Okiror Joseph Vs Oyonga Julius High Court Civil Appeal No. 66 of 2019.***

In reply counsel for the respondent M/s Legal Aid Project of Uganda Law Society submitted that from the evidence on record it is very clear that the suit land belongs to the respondent since he partly contributed to the purchase of the 2 out of 4 gardens in dispute bought from Okello in 2005.

Counsel added that the 4 gardens do not form part of the late Peter Ojulu's estate but it was combined to the 14 gardens left behind and divided between the two families. Counsel reproduced the evidence of the respondent and his witnesses which corroborate that the respondent and appellant's families had an oral agreement to jointly contribute and purchase the 4 gardens including the 2 gardens in dispute and they further agreed that since the respondent was not around and the appellant being the heir of the estate the purchase agreement should be in his name.

To appellant counsel's claim that the distribution by the clan was illegal, counsel for the respondent submitted that the appellant consented to the said division and was the one who led the team and even planted boundary marks on the land and he did not dispute this division in his evidence.

In rejoinder, counsel for the appellant submitted that there was no evidence of the respondent's contribution towards the purchase and the agreement is silent about the respondent's involvement in the transaction.

Counsel for the appellant submitted that the trial magistrate in her judgment, states that there are exceptions to the parole evidence rule and goes ahead to quote **section 92 (b) of the Evidence Act** for this position. Counsel agreed with the trial magistrate that section 92 (b) provides for exceptions to the parole evidence rule but only to the extent

that the oral evidence adduced is not inconsistent with the documentary evidence which was not the case in the trial court.

Counsel further submitted that in the instant case, the oral evidence which the respondent was adducing in court was repugnant and inconsistent to the documents which the parities were relying on.

That for example, while **PEX 1** was for the distribution of purely the estate of the late Peter Ejulu and makes no mention of the land which was purchased by the appellant, the respondent adduces oral evidence to the fact that **PEX 1** was inclusive of the land purchased by the appellant. Also that while **DEX 2** only contained the appellant as the purchaser but the respondent adduced oral evidence to the effect that he was part of **DEX 2**.

Counsel finally submitted that the trial magistrate misapplied the provisions of Section 92 (b) of the Evidence Act in arriving in her decision in this respect.

Counsel for the respondent submitted on grounds 2 and 3 jointly that **DEX1** was the purchase agreement and **PEX1** was the distribution document and the oral evidence adduced that the appellant's family and the respondent's family had an oral agreement to contribute towards the purchase of the 4 gardens and subsequently they were added to their father's estate and divided equally with the respondent taking 9, 7 from his father's estate and 2 from the purchased land.

Counsel further submitted that given that **DEX1** was between the appellant and Okello Joseph as the seller without mention of the respondent or his family, it's clear that the parole evidence rule doesn't apply to the respondent and further **PEX1** was not disputed by the respondent which means he admits the contents. It was counsel's

submission that the learned trial magistrate properly applied **Section 92(b) of the Evidence Act.**

5. Court's decision.

a. Grounds 1 and 2:

I will consider both ground 1 and 2 concurrently because they hinge on the documentary evidence exhibited in court in relation to the purchase and later division of land.

PEX1 is the document that was drawn after the distribution of the late Ejulu's land amongst his sons, the appellant and respondent. In this document18 gardens are stated to have been equally distributed amongst the two parties.

DEX1 is the purchase agreement which indicates that Okello Joseph sold 4 gardens at the price of four cows and Ugx. 150,000/= to Opolot Michael who is the appellant.

The issue raised by the appellant is that the agreement was between him and the buyer and he purchased the land alone. That similarly the distribution agreement was in reference to their father's estate and not the 4 purchased gardens.

This is where the parole evidence rule arises, the respondent and all his witnesses testified that prior to the purchase of the 4 gardens there was an oral agreement between the two families that they jointly contribute and purchase the 4 gardens.

That furthermore because the respondent was away at the time the agreement was written it was resolved by both families that the appellant who the heir and caretaker of the families be put as the buyer.

The trial Magistrate considered this and in her judgment after evaluating the evidence, found that the respondent did not dispute that the purchase agreement was written in the names of the appellant and as a matter of principle **Section 92 of the Evidence Act** on oral evidence was not be admitted as between the parties to an instrument. She found that on the face of it that **DEX1** was between Opolot and Okello meaning that the respondent and his siblings were not parties to the agreement and as such the parole evidence rule would not apply to them.

She further found that the respondent did not seek to either vary, add or subtract anything in that agreement but all he was arguing was that prior to the purchase there was an oral agreement with the appellant to jointly purchase the 4 gardens.

She also noted that the appellant denied this agreement but found that the respondent and his witnesses were consistent throughout the case pointing out that indeed the appellant was part of the agreement.

She also made notice that all the key players in the purchase except the seller testified about the arrangement between the families and the contribution.

She then found that on a balance of probabilities that the respondent proved that there was an oral arrangement prior to the purchase of the 4 gardens including the 2 in dispute.

With regard to **PEX1** which is the distribution agreement, the trial Magistrate reiterated the parole evidence principle but added that there are exceptions provided under **section 92 (b) of the Evidence Act** and common law.

She then analysed the evidence as adduced in court with regard to division of the land. She found that the evidence adduced by the respondent and

his witnesses that the 4 purchased gardens were added to the 14 left by their father and equally distributed credible. She further added that the appellant claim that the 18 gardens that were distributed were strictly his father's estate was not supported by evidence.

The trial magistrate relying on ***Akugoba Transport Develop Services Ltd v. Sun Auto Co. Ltd & Anor H.C.C.S 050/2006*** found that the guiding principle for allowing oral evidence is the need to protect the intentions of the parties. She also relied on ***Future Star Investments (U) Ltd v Nasur Yusuf HCCS No. 0012 of 2017*** where court cited with approval the guiding principle in ***F. A. Tamplin Steamship Co. Ltd. v. Anglo-Mexican Petroleum Products Co. Ltd [1916] 2 A.C. 397, at p 403-404*** as follows;

> ***"A court can and ought to examine the contract and the circumstances in which it was made, not of course to vary, but only to explain it, in order to see whether or not from the nature of it the parties must have made their bargain on the footing that a particular thing or state of things would continue to exist. And if they must have done so, then a term to that effect will be implied, though it be not expressed in the contract ... no court has an absolving power, but it can infer from the nature of the contract and the surrounding circumstances that a condition which is not expressed was a foundation on which the parties contracted."***

Relying on the above the trial magistrate admitted the oral evidence given by the respondent's witnesses in accordance with **section 92(b) of the Evidence Act** and was persuaded that the respondent family together with the appellant's family had an oral agreement to and contributed

towards the purchase of the 4 gardens and subsequently they were added to their father's estate and divided equally with the respondent taking 9 gardens 7 from his father and 2 from the purchased land.

Section 91 of the Evidence Act provides that;

> **When the terms of a contract or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence, except as mentioned in section 79, shall be given in proof of the terms of that contract, grant or other disposition of property, or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.**

Section 92 of the Evidence Act provides thus;

> **When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 91, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to or subtracting from its terms; but—**
>
> **(a) any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto, such as fraud, intimidation, illegality, want of due execution, want of**

capacity in any contracting party, want or failure of consideration or mistake in fact or law;

(b) the existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this paragraph applies, the court shall have regard to the degree of formality of the document;

(c) the existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved;

(d) the existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property may be proved, except in cases in which that contract, grant or disposition of property is by law required to be in writing or has been registered according to the law in force for the time being as to the registration of documents;

(e) any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description may be proved if the annexing of the incident would not be repugnant to, or inconsistent with, the express terms of the contract;

(f) any fact may be proved which shows in what manner the language of a document is related to existing facts.

When the above provisions of the law are applied to the instant facts, I would find that the ***parole evidence rule*** as observed by the trial

Magistrate does not apply to the respondent as he was not a party to the agreement.

I would further agree with the trial Magistrate that the exception under **Section 92(b) of the Evidence Act** really do apply in the instant case for the evidence adduced by the respondent and his witnesses clearly shows that there was an oral agreement prior to the purchase of the suit land that both families contribute and purchase the 4 gardens.

The Respondent and his witnesses were very consistent intis regard and never dithered even in cross examination in this regard and the appellant did not adduce any evidence to the contrary apart from a denial.

These witnesses included the respondent, his sister who gave part of the consideration, the author of the sale agreement and the author of the distribution agreement and their testimony was clear and largely unchallenged by the evidence of the appellant.

DW2 who was even the seller of the suit land was not aware if the consideration he received was a result of a collective contribution from the family.

DW3 simply witnessed the agreement as a neighbour and gave no evidence whatsoever on the happenings before the transaction. The same applies to the distribution of the land the respondent's witnesses were very clear on how the two brothers resolved to combine their late father's 14 gardens with the 4 purchased gardens and distribute them equally amongst the two families.

The appellant actually led the distribution process and more so he never objected to it.

It was also the respondent's evidence that after the purchase they each used 2 gardens peacefully till 2017 when the appellant trespassed on his land.

This evidence was corroborated by all the respondent's witnesses. This further put the appellant's claim in question because it would be strange for him to purchase the 4 gardens on his own and let the respondent's family use it unbothered, furthermore, during the division he did not dispute the land being given to the respondent's family and actively participated in the division of the same.

It is unbelievable that he left the respondent's family to use the land from 2005 when it was divided till 2017 without complaint.

It is thus clear to me that the appellant decided to take advantage of the trust both families had in him as an heir and caretaker when his name was put on the purchase agreement, to later claim that he purchased the land solely.

From the foregoing, I would agree with the findings of the trial magistrate that there was an oral agreement prior to the purchase and both families contributed to the purchase. Furthermore, I would find that the distribution agreement is with regard to 18 gardens including the 4 purchased.

Ground 1 and 2 accordingly fail.

b. <u>Ground 3:</u>

Counsel for the appellant submitted that the trial magistrate found that the distribution of the land by the clan was following customary ways, however, the respondent did not plead any customary law or practices in his plaint neither did he adduce any evidence to show that their clan had a peculiar custom of distributing land of the deceased among his family

members. Relying on some customary practice which was never proved in court was erroneous. Counsel relied on ***Ernest Kinyanjui Kimani Vs Muira Gikanga (1965) EA 735 At 789.***

Counsel additionally submitted that any customary practice which are not in line with the provisions of the law are a nullity.

Counsel for the respondent did not make any submissions regarding this ground although they had intended to submit on it together with ground 2.

The trial magistrate in her judgment considered Counsel's submission that the exercise to divide the land by the clan was a nullity as none of the clan members was an administrator of the estate. She found that though as a matter of law, customary law or practice does not apply in an intestate's estate, the appellant and respondent decided to deal with their father's estate following customary ways.

She further found that the appellant not only invited the clan but also consented to them dividing the land and is therefore estopped from challenging their involvement in the distribution. She further noted that throughout his evidence the appellant did not challenge the distribution or division of his father's estate or involvement of the clan in its distribution, but rather his interest was that the 4 gardens were not part of the estate distributed. She found that the submissions were diversionary.

I agree entirely with the trial magistrate that the appellant was the lead person in the distribution of the estate and did not challenge the process in his defence or evidence. Having invited the clan to distribute the land and participated in the same and most interestingly not challenged the process from 2005 when it happened till the case was filed and even then

only challenging the same trough submissions, I would agree that the appellant is estopped from finding the process illegal at this point. This ground accordingly fails.

c. Ground 4:

Counsel for the appellant submitted that the trial court having delved in matters which were neither pleaded nor proved by the respondent as indicated in ground 3 occasioned a miscarriage of justice. Also having misapplied section 92 (b) of the succession Act leaves no doubt that there was a miscarriage of justice. In ***Onek Manacy & Dwoka Christopher Versus Omona Michael High Court Civil Appeal No. 0032 Of 2016;***

> ***"A miscarriage of justice occurs when it is reasonably probable that a result more favorable to the party appealing would have been reached in the absence of the error."***

Counsel for the respondent in reply submitted that the trial Magistrate rightfully determined Civil Suit No. 007 of 2018 in favour of the respondent thus no miscarriage of justice was occasioned.

Having resolved the grounds 1-3 in the negative, I find that no miscarriage of justice was occasioned to the appellant and resolve that the judgment of the trial lower court was rightfully delivered in the favour of the respondent.

This ground fails.

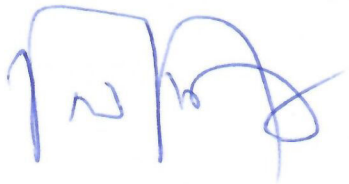
6. Conclusion:

Given that fact that all the grounds of this this appeal fail, I would conclude that this appeal has no merit and is accordingly is dismissed with orders as below.

7. Orders:

- This appeal is dismissed for want of merit in the favour of the respondent.
- The judgement and orders of Her Worship Tibagonzeka Jane in Ngora Civil Suit 007 of 2018 are accordingly upheld.
- The costs of this appeal and in the lower court are awarded to the respondent in any event.

I do so order.



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Henry Peter Adonyo

Judge

30th September 2022