The Republic of Uganda

In The High Court of Uganda

Holden at Soroti

Civil Appeal No. 003 of 2021

[Arising from Civil Case No. 012 of 2014]

Oumo John Kokas (Administrator/Beneficiary of Estate of late Acaitum Jackson Okwakol) :: Appellant

Versus

Opolot Peter James :: Respondent

Before: Hon. Justice Dr Henry Peter Adonyo

Judgment:

1. Brief Facts:

Oumo John Kokas, the appellant sued Opolot Peter James, the respondent at Bukedea Magistrate's Court for two acres of land at Akuoro village, Oupe parish, Bukedea sub-county, Bukedea district. The plaintiff claimed that the land was sold illegally by his brother, the late Acaitum Kackson. The defendant on his part argued that the land belongs to him lawfully as he acquired it through purchase. The suit was decided in favor of the respondent hence this appeal.

2. Representation:

In this appeal, the appellant was represented by M/s Omongole & Co Advocates of Kampala while the respondent was represented by M/s Legal Aid project of the Uganda law Society, Soroti branch.

3. Grounds of Appeal:

a) That the learned Trial magistrate erred in law and fact when he held that the sale of the suit land was done legally whereas not.
b) The learned trial magistrate erred in law and fact when he held that the transaction between the late Acaitum and the respondent was valid without letters of Administration whereas not.
c) The learned trial magistrate erred in law and fact when he held that the Applicant was not entitled to the relief sought for in court.
d) The learned trial Judge erred in law and fact when he failed to evaluate evidence on the record and arrived at a wrong conclusion.

4. Resolution of the Appeal:

The right to appeal is a creature of statute, for one to appeal he or she must have a right to appeal granted by law. The same was held in the case of Alinyo vs R [1974] EA 544.

Order 43 rule 1 provides for form of appeal that, every appeal to the High Court shall be preferred in the form of a memorandum signed by the appellant or his or her advocate and presented to the court or to such officer as it shall appoint for that purpose. The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative; and the grounds shall be numbered consecutively

Article 139 of the Constitution of the Republic of Uganda provides that, the High Court shall have such appellate and other jurisdiction as may be conferred on it by the Constitution or other law.

Order 43 of the Civil Procedure Rules s1 71-10 provides for powers of the High Court rule 20 provides and states that where the evidence upon the record is sufficient to enable the High Court to pronounce judgment, the High Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the High Court proceeds.

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 17of 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.***

An appellate 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.

a. <u>Ground 1:</u>

That the learned Trial magistrate erred in law and fact when he held that the sale of the suit land was done legally whereas not.

The appellants claim against the respondent arose from the following facts that the late Mzee Erika Okwakol was the owner of customary land in Akuoro village, Oupe parish in Bukedea District before his death. That among the late Erika Okwakol's sons were the plaintiff and the late Acaitum Jackson who was the older son. Upon the death of the late Erika Okwakol father to the plaintiff and the late Acaitum, Acaitum Jackson was appointed heir to the late being the older brother. The late Acaitum was caretaker of all the deceased's estate which included the two gardens but had no letters of administration to the estate of the late Erika Okwakol.

After some time, Acaitum Jackson died without having distributed the estate of the late Erika Okwakol. Upon the death of the late Acaitum, Oumo John Kokas, the appellant/plaintiff was appointed heir to the deceased and all his property.

That while managing the estate of Acaitum and as the only surviving beneficiary of the estate of the late Erika Okwakol, Oumo John Kokas discovered that Opolot Peter James, the respondent /defendant was claiming to have purchased part of their customary land by an agreement dated 15th December 1999 from the late Acaitum Jackson.

Oumo John Kokas insisted that the suit property was customary land and could not have been sold and thus still belonged to the clan of Irarak Icagoro clan which had never sold its land.

Opolot Peter James on his part avers that the suit land was his and not part of the estate of the late Erika Okwakol where the appellant is a beneficiary. He declared that indeed the transaction between him and the late Acaitum Jackson took place and he only started using the land after he had made part payment, to wit, one cow and UGX. 30,000/= on 16/8/1998, leaving a balance of 100,000/= as a total agreed price which he completed on 15/12/1999 as per annexure "A" and "B".

He further stated that, the land cannot be customary land available for inheritance having acquired it by way of purchase.

The dispute herein on the one relates land allegedly held under customary tenure and a purchase of value.

Customary land tenure is a form of land holding where land is held and managed according to the generally acceptable norms and practices of a particular community

Customary tenure applies to former public land that has not been registered.

Under the Land Act, a person, family or community holding land under customary tenure may acquire a certificate of customary ownership for that land, but has no obligation to do so.

Customary land purchase is legally accepted. The duties of the purchaser or seller are recognized in addition to levies of the villagers, tribe and ethnic group where the land is situated. Both parties in this dispute produced witnesses in the lower trial who testified in their favor.

Oumo John Kokas in his witness statement stated that, his brother Acaitum Jackson was made heir and caretaker of their late fathers' estate. That Acaitum Jackson never distributed the estate of their late father amongst them but that their families all ploughed and cultivated on portions of the land known to them.

That sometime in the year 2005, while he was at IUIU working, he received information that Mr. Opolot Peter James was claiming that his brother had sold him two gardens from the customary land. That when he confronted his brother, he assured him that he had only hired out the land to the defendant and but had not sold the same.

This fact was confirmed by other witnesses of the appellant that the suit land was only hired to the respondent by Acaitum Jackson who died before without redeeming the suit land which he had allegedly hired out.

On the other part, the respondent testified he purchased the suit land from Acaitum Jackson and the consideration was 2 cows and Ugx. 30,000/=. That the first installment was done on the 16/08/1998 when he paid 30,000/= and 1 cow and the second installment was on the 15/12/1999 with both transactions reduced into agreements which were executed by both sides. He tendered the agreements in court marked as Annextures "A" and "B".

According to Opolot Peter James after paying the first installment, he started utilizing the suit land for cultivation without any interruptions or complains from any one with even the knowledge of Oumo John Kokas the plaintiff, who only waited until Acaitum Jackson, the seller of the suit land, died to start laying claim on the land.

He denied any meeting in regard to the suit claimed to have been held with the late Acaitum Jackson in which the late Acaitum Jackson told the meeting that the suit land had only been merely hired out to him.

Opolot Peter James further testified that at the time he bought the suit land from the late Acaitum Jackson, the late was utilizing his own portion of land and Oumo John Kokas, the plaintiff, together with his other siblings had their own shares of land which they were utilizing. This fact was confirmed by Oumo John Kokas during cross examination as he testified that they were not using the land jointly with the late having his part and he himself also having his part.

Oumo John Kokas further during cross examination stated confirmed that the two (2) gardens actually belonged to Acaitum Jackson.

During re-examination, he revealed that they had divided the land in the middle to each other and that after that division there was no further distribution to date.

The common law accepts all types of customary interests in land ***"even though those interests are of a kind unknown to English law"*** See: ***Oyekan v. Adele [1957] 2 All ER 785.***

Section 54 of The Public Lands Act *of 1969* (then in force) had defined customary tenure as ***"a system of land tenure regulated by laws or customs which are limited in their operation to a particular description or class of persons."***

Customary tenure is recognized by **Article 237 (3) (a) of The Constitution of the Republic of Uganda 1995,** and **section 2 of the Land Act, Cap 227** as one of the four tenure systems of Uganda.

It is defined by section 1 (*l*) together with section 3 of the Land Act as system of land tenure regulated by customary rules which are limited in their operation to a particular description or class of persons the incidents of which include;

(a) applicable to a specific area of land and a specific description or class of persons;

(b) governed by rules generally accepted as binding and authoritative by the class of persons to which it applies;

(c) applicable to any persons acquiring land in that area in accordance with those rules;

(d) characterized by local customary regulation;

(e) applying local customary regulation and management to individual and household ownership, use and occupation of, and transactions in, land;

(f) providing for communal ownership and use of land;

(g) in which parcels of land may be recognized as subdivisions belonging to a person, a family or a traditional institution; and;

(h) which is owned in perpetuity.

Proof of mere occupancy and user of unregistered land, however, long that occupancy and user may be, without more, is not proof of customary tenure. See: ***Bwetegeine Kiiza and Another v. Kadooba Kiiza C.A. Civil Appeal No. 59 of 2009; Lwanga v. Kabagambe, C.A. Civil Application No. 125 of 2009; Musisi v. Edco and Another, H.C. Civil Appeal No. 52 of 2010;*** *and* ***Abner, et al., v. Jibke, et al., 1 MILR 3 (Aug 6, 1984).***

Possession or use of land does not, in itself, convey any rights in the land under custom. That occupancy should be proved to have been in accordance with a customary rule accepted as binding and authoritative.

Relating the above definition to the instant matter, the appellant during cross examination testified that he and his family migrated from to Bukedea from Kumi and that he does not know how his father acquired the suit land on top of not having any customary land in Kumi. He also testified that his family does not have any other land than that in Bukedea.

On the other hand, Michael Odoo who testified as PW2 told court during cross-examination that he knew how the appellant's father acquired the suit. That the appellant's father was a chief and was given that land by government and the land was government. He alluded that the land then became customary since according to him was land which one inherits

from one's father. He confirmed that the appellant's father hails from Kumi. He also confirmed that the appellant and his brother each had own portion of land with each utilizing own portion with the land in dispute being that which formed part of the late Acaitum's portion.

The analysis of the testimonies of each witness in relation to the law as regard customary land in, my view, makes me to conclude as was indeed concluded by the trial court that the suit land does not form part of any customary land. This is because, the suit land has no history of being characterized by local customary regulation and neither is there any application of any local customary regulation and management inferred except that the suit land belonged to the father of the Appellant yet the appellant and his late brother are clearly stated to have been utilizing a clearly dived portion and non was crossing to the other side. I do not find also any evidence of communal ownership and use of land, making me believe that the learned trial magistrate was correct to find that the suit land which was being used by Acaitum Jackson was his and he had all authority to deal with it in any way he wanted.

With that in mind and having noted that at the time the sale of the land took place, the late Acaitum Jackson was the one utilizing the land with each of the brothers having and using a particular portion of the suit land individually and not jointly would invariably point to the fact that each had own share of the land which had been left by their late father making the sale of the two acres by late Acaitum Jackson to the respondent legally tenable as there is an agreement to that effect.

Interestingly, the appellant told court that he was the administrator of the estate of his late brother Acaitum Jackson and a beneficiary of the estate of his late father Okwakol. If he avers that the suit land was customarily held then what estate belonging to Acaitum was he an administrator of?

Given his assertion that the late Acaitum had not distributed the late Okwakol land, then it would lead to conclusion that any subsequent administration would be for the estate of the late Okwakol if the land in dispute was held customarily and not belonging to Acaitum.

However, the fact the appellant himself acknowledges that he and he late brother had a clear portion of the land left by their father and each one of them was using only the portion they had, then I am inclined to believe that conclusion of the trial magistrate that the land in dispute belonged to the late Acaitum as it was not held customary land and no customary practices as provided for under the Land Act, Cap 227 is shown to place the suit land as one which would fall within the ambit of customary tenure ship. That being so, I would find and conclude that the trial magistrate correctly arrived at his conclusion the suit belonged to the respondent as he legally acquired the same by purchase and did not anymore form part of the estate of the late Acaitum Jackson. Ground one fails and resolves this appeal wholly.

5. Conclusion:

The suit land was correctly found as not being part of the estate of the late Acaitum Jackson who had sold it to the respondent being part of the portion he solely used after him and his brother demarcating portions for each individual's use after the death of their father. The suit land was thus correctly sold by the late Acaitum and ceased to be part of his estate when he died.

That was the finding of the lower court which I find to have been correctly arrived at after a careful assessment of the evidence on record. This appeal thus fails accordingly.is appeal therefore fails.

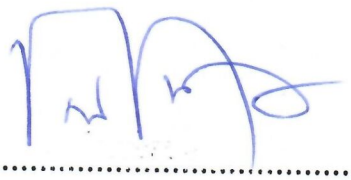
6. Orders:

a. This appeal fails for lack of merits.

b. The judgment and orders of the lower court is confirmed

c. The costs of this appeal and that in the lower court are for the respondents.

I so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

23rd June 2022