The Republic of Uganda

High Court of Uganda Holden at Soroti

Civil Appeal No. 034 of 2021

[Arising out of Taxation Reference No. 024 of 2021]

[Arising from Soroti Chief Magistrates' Court Civil Suit No. 007 of 2018]

Oyara Odela Albert and 2 Others :::::::::::::::::::::::::::::::::::::::: Appellants

VS

Opio Richard :::::::::::::::::::::::::::::::::::::::::::::::::::::::::::: Respondent

Before: Hon Justice Dr Henry Peter Adonyo

Judgment

1. Background:

This appeal arises from the judgment and orders of the Chief Magistrates Court of Soroti at Soroti delivered on the 27th day of August 2021 by Her Worship Amono Monica.

The respondent filed Civil Suit No. 007 of 2018 against the appellants for trespass, general damages and costs of the suit. The respondent claimed that in 2014 Mzee Oyuru Augustine approached him with the aim of selling his land situated in plot No. 103, Akisim cell, Old Mbale Road western division in Soroti to settle some domestic issues. The respondent paid shs. 9,000,000/= leaving a balance of shs 13,000,000/= but before he could complete the payment he fell sick and the 2nd and 3rd appellants

fraudulently sold part of the suit land to the 1st appellant whereas aware of the respondent's interest in the same.

The 1st appellant in his Written Statement of Defence denied the respondent's claims and contended that he is the owner of the suit land by virtue of having purchased the same from Mzee Oyuru Augustine in 2017. That the respondent failed to finalise his payments for the suit land and the sale was not successful and later when he found out the 1st defendant had bought the land he fraudulently frustrated his right of ownership.

The 2nd and 3rd defendants/appellants did not file a written statement of defence and at the start of the hearing entered a consent that the suit land belongs to the plaintiff/respondent and were subsequently struck out as parties to the suit. The suit then proceeded as against the 1st defendant/appellant.

2. Issues for determination before the Trial Magistrate:

i. Who owns the disputed land?

ii. What remedies are available to the parties?

The Trial Magistrate determined the above issues in favour of the plaintiff/respondent and declared that the suit land belongs to respondent, gave an order of vacant possession, permanent injunction, general damages of Ugshs. 8,000,000/= and costs of the suit.

3. Grounds of Appeal:

Dissatisfied with the judgment the defendants/appellants appealed on the following grounds;

i. That the trial Magistrate erred in both law and fact where she failed to judiciously evaluate the evidence on record and therefore arriving at an erroneous decision.

ii. That the learned Trial Magistrate erred in law and fact when she erroneously awarded the respondent Ugx. 8,000,000/= in general damages without giving any basis for the same.

iii. That the learned trial Magistrate erred in law and fact when she held that there was a consent judgment in respect of the main suit.

iv. That the decision of the trial Magistrate has occasioned a total miscarriage of justice.

4. Duty of the first appellate court.

In ***Kifamunte Henry vs Uganda SCCA No. 10 of 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.***

5. Resoulution of Appeal:

a. Ground 1:

*That the trial Magistrate erred in both law and fact where she failed to judiciously evaluate the evidence on record and therefore arriving at an erroneous decision.*

That the trial Magistrate erred in both law and fact where she failed to judiciously evaluate the evidence on record and therefore arriving at an erroneous decision.

Counsel for the appellant submitted that the appellant was brief on how he acquired the interests in the suit land which was by way of purchase from a one late Mzee Oyuru Augustine. Before the 1st appellant bought the suit land, he rented the suit premises to operate a video hall with a makeshift structure on permission of the late mzee Oyuru Augustine. Upon purchase he continued occupying and using the premises for the video hall business.

That he further confirmed how he doesn't know of any interests of the respondent on the suit land or even knowing him in person.

Counsel submitted that this is a unique case where an innocent buyer is given an offer to buy land available for sale and he willingly accepts to buy the same from persons known to him as his former landlord and the owner mzee Oyuru Augustine. The transaction is executed at the fall of the seller's hammer.

The consideration was received without any disclosure of the third party interests on the land. The respondent subsequently filed a suit against the appellant.

Counsel stated that its clear right from the onset that the 1st appellant bought the suit land from Mzee Oyuru Augustine without any knowledge of the respondent's interests.

Admittedly on our part he bought air after falling victim to the fraud of the 2nd & 3rd defendants.

Counsel for the respondent in reply reproduced the appellant's submissions that the 1st appellant bought air after falling victim to the fraud of the 2nd & 3rd defendants.

Counsel submitted that the foregoing admission by Counsel for the 1st Appellant in a nutshell disposes of this ground. The 1st Appellant paid for the Suitland on **01.11.2017 as per DE1 Page 10 of the proceedings** when interest in the Suitland had already passed to the Respondent by virtue of the fact that he was the first to pay for the same on **19.10.2014 as per PE1 Page 5 of the proceedings.**

At **Page 3 of her Judgment** the trial Chief Magistrate held as follows;

> ***"Despite the open tricks by the Defendants the Plaintiff completed his final payments earlier that the 1st Defendant. He completed on 01/10/2017 while the 1st Defendant completed on 01/10/2018 way after interest had passed to the Plaintiff".***

The above holding by the trial Chief Magistrate clearly shows that it was the Respondent who first paid for the Suitland.

Counsel for the respondent further submitted that page 5 of the proceedings shows that the Respondent as per PE1 made his first payment of Ugx 9,000,000/= (Nine Million Shillings) for the Suitland on 19/10/2014. In contrast the 1st Appellant at Page 10 of the proceedings as

per DE1 made his first deposit for the Suitland on 1/11/2017 long after the interest in the Suitland had passed to the Respondent.

Counsel therefore opined that in light of the above findings the lower Court rightly held at Page 3 of the judgment as follows,

> ***"This Court has also established as a fact that the Defendant (1st Appellant now) also came in after the Plaintiff (now Respondent) had made part payment and paid his first installment for the disputed land to the 2nd and 3rd Defendants".***

Counsel further submitted that the agreements of sale of the 1st Appellant were not witnessed by the local Authorities and the family members of the vendor which makes the said transactions suspicious.

Counsel submitted that the lower Court Judgment Specifically Page 3 is explicit on this.

The Chief Magistrate held as follows:

> ***"All the Plaintiff's witnesses including PW3 the area LC1 Chairperson denied knowledge of any sale to the 1st Defendant let alone signing any of his sale agreements."***

Counsel stated that the foregoing Judgment indeed confirms that the sales agreements of the 1st Appellant were fabricated to sanitize his futile attempt to grab the Suitland from the Respondent and unfortunately for him his alleged purchase of the Suitland was made way after the Respondent had already paid for the Suitland, to further compound the 1st Appellants misery none of the members of the vendor's family nor local authorities witnessed his purported purchase which qualifies all his agreements as a sham. The final nail on the 1st Appellant's head was when the 2nd and 3rd Appellants denied him and fortified the Respondents

position by entering into a consent Judgment confirming that indeed the Respondent was the rightful owner of the Suitland. This completely watered down any feeble claims that the 1st Appellant had over the Suitland.

The evidence on record shows that the respondent was the first to be approached by the vender Oyuru and he paid for the suit land in installments. PW1, the respondent testified he was approached by Oyuru in 2014 and he made the first payment of 9,000,000 in 2014 with a balance of 13,000,000 to be paid by within 2 weeks but unfortunately he fell sick and couldn't meet the deadline until 2017. Oyuru confirmed that the land was still his but he would have to pay additional costs to refund money the 2nd and 3rd defendants had taken and fraudulently sold part of the suit land to the 1st appellant. That Oyuru offered to repay the 1st appellant the money fraudulently taken from him but he was adamant. PW2 and PW4 the daughters of the late Oyuru in their testimonies confirmed that the land was sold to the respondent and they witnessed the sale. That the land was sold by Mzee Oyuru and his daughters to the respondent and it was reduced to writing. That later Mzee Oyuru summoned them and informed that the plot sold to the respondent had again been sold by their brothers to the appellant and to avoid confusion the brothers offered him another plot but he refused. PW3, the LC1 Chairperson Old Akisim ward testified that the respondent was the first to buy the land and he paid for it in installments. That the 1st defendant/ appellant attempted to buy the land and paid some money to the 2nd and 3rd defendants but Mzee rejected it. She denied signing the appellant's sale agreement.

The 1st appellant on the other hand testified that he occupied the land as a tenant prior to the purchase in 2017. That between 2015 and 2017 he was

not aware of the respondent's interest in the suit land and he later found out that in 2014 the respondent attempted to purchase the suit land but failed to pay the purchase price. He admitted that PW3 did not sign on his sale agreements rather it was a one Julius Elweu who replaced PW3 as the LC1. DW2, testified that on 11/09/2017 when the appellant entered a sale agreement with Oyuru he was present. DW3 on the other hand testified that the land was purchased on 1st November 2017. DW4 testified that when he came to his portion of land in 2014, the appellant was already on the suit land operating a video hall. That the appellant rented the land till 2017.

It is clear that the respondent entered an agreement to buy the suit land from the late Oyuru in 2014 before the appellant rented or later 'purchased' the same.

This was admitted by the appellant himself in his testimony, except he thought because payment was not completed in 2014 the transaction failed. The respondent acquired interest in the suit land after he entered the agreement with the late Oyuru and subsequently paid his first installment.

The land could not be sold to another party thereafter. Indeed, this was the case, as the respondent upon recovery from his injury inquired from the late Oyuru if the land was still his and it was confirmed so. The sell by to the 1st appellant was indeed fraudulent and the evidence led by the respondent's witnesses confirms this.

Furthermore, the fact that the 2nd and 3rd defendants did not file a WSD and later entered a consent that the land belongs to the respondent further substantiated the fact that the land was for the respondent. Counsel for the appellant himself admitted that the appellant bought air.

Another issue of interest as noted by the trial Magistrate was the disparities in the signatures of some of the witnesses to the appellant's sale agreement especially that of the vendor the late Oyuru.

The appellant himself admitted that there was a difference between Oyuru's signature in DE1 and DE2.

I, therefore find that the learned trial Magistrate was right when she found that there was overwhelming evidence on record showing that the disputed land belonged to the respondent.

This ground therefore fails.

b. Ground 2.:

*That the learned Trial Magistrate erred in law and fact when she erroneously awarded the respondent Ugx. 8,000,000/= in general damages without giving any basis for the same.*

Counsel for the appellant submitted that the trial Magistrate in her judgment at page 4, one of the orders made was an award of "general interest" of 8 million shillings. That there is no law providing for general interest and even if we consider it as a typing error, that was intended it to be general damages, it still does not add up. The law and practice as it stands requires that a party seeking general damages should plead and prove in evidence. This gives the court basis upon which to assess general damages. It is not enough to simply include a prayer for general damages and expect court to magically grant them.

Counsel cited ***Benedicto Musisi V Attorney General Hcc No. 622/1989(1996) 1 KALR 164*** where it was held that;

Plaintiffs must understand that if they bring actions for general damages, it is for them to prove their damage, it is not enough to write down

particulars and so to speak, through them at the head of the court saying, "This is what I have lost, I ask you to give these damages". They have to prove it. This case was cited in ***Eidoshal Madatali Keshwani Habib & Another Vs. DAPCB HCMC No.11 of 2019***.

Counsel further submitted while relying on the consent judgement which the trial magistrate indicated as proof of the 2nd and 3rd defendants' craftiness, that the appellant was innocent and should not have been condemned in damages.

Counsel further submitted that while it is true that the 1st appellant has been doing business on the suit and, the respondent at no time ever informed him that the suit land was his, neither did the respondent ever demand the 1st appellant to vacate or pay him rent. The 1st appellant has always known that he owns the suit premises until this suit was filed. It is therefore not basis upon which the 1st appellant can be condemned to costs.

Counsel for the respondent in reply submitted that it is a trite law that award of general damages is usually at the discretion of a judicial officer.

Counsel relied on ***Robert Cuossens Versus Attorney General (Sc, Ca No. 8/1999)*** where Justice Oder as he then was made reference to Lord Blackburn in ***LIVINGSTONE versus RONOYARD & COAL CO. (1880)*** where he defined measure of damages as

> ***"that sum of money which will put the party who has been injured or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation".***

Counsel further submitted that the justification for the award of general damages of UGX 8,000,000/= (*Eight Million Shillings Only)* is at Page 4 of the judgment where the trial Magistrate found that;

> ***"The Plaintiff proved to the satisfaction of court that the land in issue belongs to him. He has been deprived of the use of his land since 2017 to date. The 1st Defendant is in occupation of the Suitland minting money at the expense of the Plaintiff for which damages must arise".***

Counsel for the 1st Appellant also conceded that his client is doing business on the suit land at the expense of the Respondent.

The award of general damages is at the discretion of court in respect of what the law presumes to be the natural and probable consequence of the defendant's act or omission.

See: **James *Fredrick Nsubuga v. Attorney General, H.C. Civil Suit No. 13 of 1993*** and ***Erukana Kuwe v. Isaac Patrick Matovu and another, H.C. Civil Suit No. 177 of 2003***.

Furthermore, an appellate court should not interfere with the discretion of a trial court unless it is satisfied that the trial court in exercising its discretion has misdirected itself in some matter and as a result arrived at a wrong decision or unless it is manifest from the case as a whole that the court has been clearly wrong in the exercise of a discretion and that as a result there has been a miscarriage of justice.

See: ***NIC vs Mugenyi [1987] HCB 28 and Mbogo v. Shah [1968] E.A.93.***

The evidence on record clearly shows that the appellant was aware of the respondent's interest in the suit land. The unchallenged evidence of the respondent was that the appellant was offered a separate plot by the 2nd

and 3rd defendants and he refused it, the late Oyuru even offered to refund his money and he still refused hence this matter coming to court.

I find that the trial Magistrate rightfully and judiciously exercised her discretion when she awarded general damages of 8 million and I see no reason to interfere with the same.

This ground accordingly fails.

Ground three was abandoned by the appellant.

c. Ground 4:

*That the decision of the trial Magistrate has occasioned a total miscarriage of justice.*

Counsel for the appellant submitted that with all the certainty, the lower court's decision unleashed a barrage of injustice on the appellant such that, not only has he lost his money Ugx 21,000,000/= spent as the purchase price and land, he has also been illegally condemned to unexplained payment of UGX 8,000,000/= in addition to payment of costs. That the appellant only tried to protect what he honestly believed was rightly his since he knew nothing about the respondent's interests, having used the suit land for long without any intervention by the respondent.

Counsel for the respondent in reply submitted that in ***Mukenye Guster Versus Kamina Tomasi (Civil Suit No.06 Of 2006)*** Justice Kawesa made reference to the well-known case of ***Matayo Okumu Versus F. Oundhe 1979) Hcb 229*** where it was held that ***"a miscarriage of justice includes any circumstances where the decision of a Court or tribunal primafacie appears not to be supported by evidence".***

Counsel submitted that in the instant Appeal before the evidence on record overwhelmingly shows that the Suit land belongs to the Respondent. The Trial Court was alive to its duty and rightly so entered Judgment in favour of the Respondent.

I agree with the submissions of Counsel for the respondent that the decision of the trial Magistrate was supported by the evidence on record and no miscarriage of justice was occasioned to the appellant. With regard to the losses submitted on by counsel for the appellant especially with regard to the purchase money, the trial Magistrate in her judgement gave an obiter that the appellant could recover from the 2nd and 3rd defendant if he wished to. This ground accordingly fails.

6. Conclusion and Orders:

Arising from my conclusion on grounds 1, 2 and 4 above this appeal would fail on all grounds given the fact that even ground 3 was abandoned by the appellant. This appeal is thus found to lack merit and accordingly dismissed with the following orders issued.

- This appeal is dismissed.
- The Judgment and orders of the Chief Magistrate Court of Soroti in Civil Suit No. 007 of 2018 is upheld.
- The costs of this appeal and in the lower court is awarded to the respondent in any event

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Hon. Justice Dr Henry Peter Adonyo

Judge

1st September 2022