

belongs to him, having purchased the same from a one **Antonio Senjovu** in 1997.

- [5] The trial Magistrate evaluated the evidence that was presented before him and found that the Plaintiff/Respondent's evidence was coherent and supported by documents conferring him interest of the suit land while that of the Defendant/Appellant lacked documentary evidence to support his claims. As a result, he found and entered judgment in favour of the Plaintiff/Respondent.
- [6] The Defendant/Appellant was dissatisfied with the decision of trial Magistrate and lodged the present appeal on 3 grounds of appeal as stated in the memorandum of appeal.
1. *The learned trial Magistrate erred in law and fact when he failed to conduct locus in quo hence a mistrial.*
 2. *The trial Magistrate erred in law and fact when failed to evaluate the evidence on record.*
 3. *The learned trial Magistrate erred in law and fact when he awarded general damages on monthly basis.*
- [7] As rightly put by counsel for the Respondent, **Mr. Kasangaki Simon**, the law governing first appeals like the instant one is well settled. The duty of the first appellate court is to review the record of evidence for itself in order to determine whether the decision of the trial court should stand. In so doing, court must bear in mind that the 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 discretion and that as a result, there has been a miscarriage of Justice; **Stewards of Gospel Talents Ltd Vs Nelson Onyango, HCCA No.14/2008** and **NIC Vs Mugenyi [1987] HCB 28.**

Consideration of the grounds of the Appeal

Ground 1: The learned trial Magistrate erred in law when he failed to conduct locus in quo hence a mistrial.

- [8] Counsel for the Appellant **Mr. Paul Baingana** submitted that on appeal to the High court, the High court ordered for retrial of the suit with an order that locus in quo be visited. That what happened is that the trial Magistrate on re-trial did not comply with the directions of the High court and therefore, he prayed that the judgment of the lower court be set aside and this court order that that the trial Magistrate complies with a High court direction to visit locus in quo.
- [9] In consideration of the above contention by counsel for the Appellant, for purposes of ensuring that there is no further delay in the determination of the matter, considering that this appeal arose out of a suit that was instituted in the Land Tribunal way back in 2005, instead of referring back the file to the trial court for purposes of merely visiting locus in quo, this court directed the Registrar of this court to visit locus in quo of the subject matter.
- [10] The Registrar of this court visited the locus in quo of the suit land in the presence of the parties and their respective counsel and made his observations in form of a report. He accordingly also drew the sketch plan/map of the suit land.
- [11] According to the Registrar's locus report, the boundaries of the suit land were not all that disputed. **Karoli** (DW2) who was hired by the Appellant to erect the impugned barbed wire fence on behalf of the Appellant, upon cross examination by court, denied knowledge of the barbed wire on the Eastern side which court saw that went beyond the Appellant's known land. Indeed, this is the portion that is bone of contention as per the Registrar's report.
- [12] As a result of the foregoing, queries by counsel for the Appellant regarding failure to visit locus, were accordingly answered because the Registrar's

visit for locus as directed by this court cured the defect complained of in the proceedings.

Ground 2: The trial Magistrate erred in law and fact when he failed to evaluate the evidence on record.

- [13] This ground of appeal has been found in various cases to be too general and offending the provisions of **O.43 rr.1& 2 CPR** which require a memorandum of appeal to set forth concisely the grounds of the objection to the decision appealed against. Properly framed grounds of appeal should specifically point out errors observed in the course of the trial, including the decision, i.e, specify the points which are alleged to have been wrongly decided which the Appellant believes occasioned a miscarriage of justice. Appellate courts frown upon the practice of advocates setting out general grounds of appeal that allow them to go on a general fishing expedition at the hearing of the appeal hoping to get something they themselves do not know. Such grounds have been struck out numerous times, **Katumba Byaruhanga Vs E.K. Musoke, EACA No.2/2998 [1999] KALR 621**. See also **A.G Vs Florence Baliraine, CACA No.79/2003**.
- [14] The present ground of appeal which does not point out errors observed in the course of the trial by concisely specifying points of objections but merely gloss over failure of evaluation of evidence generally offends the provisions of **O.43 rr.1&2 CPR** and on that ground, it is liable to be struck out.
- [15] However, to fulfil my mandate of evaluating the evidence before me as a first appellate court, I proceed to review the evidence as adduced before the trial Magistrate and determine whether his decision should stand. Whereas the Plaintiff/Respondent **Mukasa James** (PW1) adduced cogent evidence as to how he acquired the suit portion of land by way of purchase from a one **Kayiira Martin** in 2004 at a consideration of Ugx 650,000/= as per the executed Agreement (**P.Exh.1**), the Defendant/Appellant failed to present any proof that he purchased any land from **Antonio Senjovu**. He claimed that his agreements got lost but still, offered no evidence as to how they got lost or present any report he made to police to that effect. **Karoli Kabwa** (DW2) whom the Appellant hired to fence off his land, at locus denied participating in the fencing of that portion that is the bone of

contention. According to him, that portion on the Eastern side was beyond the known boundaries of the Appellant's land.

[16] No wonder in the instant case, the trial Magistrate found the evidence adduced by the Plaintiff/Respondent credible and found in his favour. There was no evidence adduced in support of the counter claim. It therefore had no merit. It was rightly dismissed with costs. I have no reason whatsoever to fault the trial Magistrate on his findings.

Ground 3: The learned trial Magistrate erred in law when he awarded general damages on monthly basis.

[17] In this case, the trial Magistrate ordered for General damages of **Shs.200,000/=** per annum to the Respondent "from the time of trespass until final payment". In law, General damages unlike special damages are payable from the date of judgment till payment in full. From the foregoing, it is apparent that this order appear vague in view of the fact that the "final payment" and time are uncertain since the total figure was not ascertained. Such vague order causes problems in execution.

[18] In the premises, I find that the trial Magistrate erred when he awarded such general damages annually, I set it aside for its vagueness considering the inconvenience the Respondent suffered since 2004 without making use of the trespassed upon portion of land, I substitute it with general damages of **Ugx 5,400,000/=**.

[19] In conclusion, the entire appeal is found devoid of any merit. The judgment and orders of the trial Magistrate are accordingly upheld save for the orders regarding general damages which is set aside and substituted with orders for payment of general damages of **Ugx 5,400,000/=**. The Appellant shall pay the costs of this appeal.

Dated at Hoima this 3rd day of **November, 2023**.

Byaruhanga Jesse Ruyema
JUDGE.