

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT MBALE**  
**CIVIL APPEAL NO.103 OF 2021**  
**(ARISING FROM PALLISA CIVIL SUIT NO. 030 OF 2018)**  
**ANGURIA DICKSON ::::::::::::::::::::::::::::::::::: APPELLANT**  
**VERSUS**  
**OMODING JOEL ::::::::::::::::::::::::::::::::::: RESPONDENT**  
**BEFORE: HON. JUSTICE LUBEGA FAROUQ**

**JUDGMENT**

**1. Back ground**

2. The Plaintiff (herein referred to as the Respondent) sued the Defendant (herein referred to as the Appellant) for recovery of half an acre of land, general damages and special damages, vacant possession of the suit land and costs of the suit.

**3. Plaintiff/Respondent's Facts:**

4. The facts of the Respondent were that on 14<sup>th</sup> of May 1996 the Respondent's late father OBALE BOSCO bought ½ an acre of land from the late OKIRIA PHILMON at a consideration of Ugx: 35,000/= and an agreement was attached to that effect. The Respondent's late father took immediate possession of the same and constructed a home therein but died before completing the house. Upon his death, the Respondent applied for letters of administration and finalised the constructed house thereon.

**5. Defendant's/Appellant's facts:**

6. The Appellant's facts as per his written statement of defence are that he is the lawful owner of the suit land having inherited the same from his late father OPIO PETERO and his father also inherited the same from his late father ODAI IRIGEI but the creation of the new villages what makes his address different. That after the death of OKIRIA PHILMON in 1996, the clan of IRARAKA met on 28<sup>th</sup> May, 1996 in regard to the property left, immediately the Appellant started

to plough the two gardens and on 15<sup>th</sup> May, 2009 the clan resolved that the two gardens out of 13 gardens where the dispute is, should remain for the Appellant. ***(The Appellant attached the alleged clan minutes as annexure "A" to his defence but the same is not in the official language)***

7. The Appellant further averred that the sale agreement dated 14<sup>th</sup>/05/1996 is forged whereby even the so called seller OKIRIA PHILMON and OKODOI ALEX didn't sign or neither Respondent nor his father has ever utilized the disputed land.

### **8. Issues for determination in the trial Court**

9. The issues for trial court's determination were as follows;

- i. Whether the Plaintiff/Respondent is the rightful owner of the suit land
- ii. Whether the Defendant/Appellant is a trespasser
- iii. What are the remedies available to the parties?

10. The Plaintiff/Respondent called a total of 5 witnesses, a sale agreement as PEXH.1 and Latters of Administration as PEXH.2 in a bid to prove his case and the Appellant/Defendant on the other hand called a total of 4 witnesses in a bid to prove his case.

11. Relying on the evidence of both parties, the trial magistrate found the Respondent as the rightful owner of the suit land. She ordered vacant possession and awarded Ugx: 10,000,000/= as general damages for inconvenience and costs of the suit among others.

12. The Appellant was not satisfied with the trial court's decision and orders hence this Appeal.

### **13. Grounds of Appeal**

14. The Appeal is based on the following grounds;

- i. That the learned trial magistrate erred in law and fact when she failed to properly evaluate the evidence on record when she



only considered the plaintiff's side and disregarded the plaintiff's side, especially the clan minutes.

- ii. That the learned trial magistrate erred in fact and in law when she failed to hold that the suit was barred by statute of limitation
- iii. That the learned trial magistrate erred in law and fact when she held that the wives of OKIRIA were still alive at locus in quo yet this was never in evidence.
- iv. That the learned trial magistrate erred in law and in fact when she failed to appreciate the uninterrupted possession by the Appellant from 1996 to date
- v. That the learned chief magistrate erred in law and in fact when she ordered excessive general damages without justification

15. **Prayers**

- (a) The Appellant prayed that the decision below be set aside
- (b) That the High Court as the 1<sup>st</sup> appellate court may exercise its judicial functions and re-examine and appraise the evidence of both parties
- (c) That the judgment be entered for the Appellant in this court and the court below
- (d) The Appellant be granted costs here and below.

16. **Legal Representation**

17. Owori & Co. Advocates represented the Appellant whereas the Respondent was represented by Waigo & Co. Advocates.

18. **Mode of Procedure**

19. This Appeal proceeded by way of written submissions which are both on the court record and they will be considered in the determination of this Appeal.

20. **Duty of the first Appellate Court**

21. This Court takes cognizance of the fact that it is the 1<sup>st</sup> appellate court and therefore it's under a duty to re-evaluate all the evidence on the court record, putting into account that it did not get the chance to see the demeanor of the witnesses while testifying.

22. The above principle was re-echoed by the Supreme Court in the case of **Fr. M. Begumisa & Ors Vs E. Tibegana SCCA No. 17 of 2003** where court stated;

*"The appellate court has to bear in mind that its duty is to rehear the case and the court must consider the trial before the Judge with such materials as it might have decided to admit. The court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it and not shrinking from over ruling it if on full consideration, the court comes to the conclusion that the judgment is wrong"*

23. The same principle had earlier on still emphasized by the same court in **Moses Bogere Vs Uganda SC Crim. App. No. 10 of 1997** when their Lordship stated;

*"What causes concern to us about the judgment, however is that it is not apparent that the Court of Appeal subjected the evidence as a whole to scrutiny that it ought to have done ..... While we would not attempt to describe a format in which a judgment of the court should be written, we think that where a material issue of objection is raised on appeal, the appellant is entitled to receive an adjudication on such matter. On such issue from the appellate court".*

24. This court will be guided by the principles in the authorities above while resolving this appeal.

25. Ground No. 2 being a point of law, I will resolve it first and then Ground No.1 will follow. The other grounds of appeal will be resolved separately in their chronological order as presented to court in the memorandum of appeal.



26. **Determination of the Appeal**

**Ground No.2: That the learned trial magistrate erred in fact and in law when she failed to hold that the suit was barred by statute of limitation**

27. Counsel for the Appellant submitted that the Respondent's suit was time barred and had the trial magistrate addressed her mind to this issue and evaluated the evidence on the court record sufficiently, she ought to have dismissed the Respondent's case.

28. **Section 5 of the Limitation Act Cap 80** provides that;

*"No action shall 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 or, if it first accrued to some person through whom he or she claims or to that person."*

29. In the present case, the Respondent indicated in the plaint that his late father bought the suit land on 14<sup>th</sup> of May, 1996 and took possession of the same by constructing a house. However, before he could complete the house, he fell sick and died in 2004. The Respondent was appointed the heir in which capacity he applied for and obtained letters of administration on 28<sup>th</sup> of August 2014. After getting the letters, he completed the construction of the house on the suit land.

30. The Appellant on the other hand said in his written statement of defence that after the death of OKIRIA PHILMON, IRARAK clan called for a meeting on 25<sup>th</sup> May, 1996 regarding the suit land and a resolution of the same was entered on 15<sup>th</sup> May, 2009.

31. From the evidence of the Respondent, since he started constructing his house on the suit land in 2014 after obtaining letters of administration and completed it, this court will presume that the cause of action arose after 2014 and the suit was filed in court on 18<sup>th</sup> of October, 2018. By way of calculation, not even 5 years had elapsed by the time the suit was filed in court.

32. Secondly, going with the evidence of the Appellant, the cause of action arose on 15<sup>th</sup> May, 2009 when the resolution of IRARAK clan was made. From 2009 to 2018, those are roughly 9 years. The provision of the law above indicates that a suit for recovery of land must be instituted within 12 years and in both scenarios, the 12 years had not elapsed and it's my finding that the suit was filed in time.

33. Accordingly, Ground No.2 is answered in the negative

**Ground No. 1: That the learned trial magistrate erred in law and fact when she failed to properly evaluate the evidence on record when she only considered the plaintiff's side and disregarded the Defendant's side, especiarly the clan minutes.**

34. Counsel for the Appellant submitted that the trial magistrate in her decision failed to look at or consider the evidence of the Appellant. He contended that there is nowhere in her decision that evaluated or scrutinized the evidence of DW2, DW3, DW4, and DW5. He added that the trial magistrate failed to exhaustively evaluate DW1's evidence.

35. In determining this ground, I will evaluate all the evidence on the court record as a whole and where necessary for purposes of clarity, I will quote the relevant pieces of evidence.

36. **Evaluation of the trial court's evidence**

37. **PW1** told court that the Appellant grabbed the garden his father bought in 1999 in Oyugo trading center. He said; ***"my father was using the land, he had poured foundation and aggregates when my father died. I came to court and acquired letters of administration. I went ahead and built a butcher. My father had also constructed uncompleted structure on the land. The defendant has demolished the house. I went to school after I had constructed the butcher. I found the structure of my father demolished."***



38. In cross-examination PW1 said; ***“my father died in 2004. I got letters of administration in 2014. My father told me he bought the disputed land from OKIRIA. I also saw the document. The seller divided the land. I was using half an acre and the defendant was using half an acre. I grew up seeing the defendant using his portion of the land while my father was still alive. I built the butcher in 2016. I have ever used the disputed land as a butcher. My father once used the disputed land, he had a butcher & a pork joint.”***

39. The presence of the uncompleted structure on the suit land was also confirmed by DW4, DW1 and DW2. **DW3** aged 60 the Appellant’s cousin and a clan leader also said in cross-examination that; ***“yes I grew up knowing OKIRIA was using this land. There was a house that was running as a butcher but ceased. Yes, there is a foundation and a structure a part from the butcher. I do not know the owner of the structure.”***

40. **DW2** in cross-examination said; ***“When the gardens were returned by OKIRIA were given to the defendant officially. OKIRIA returned the land to PETERO OPIO’s family in 1996.”*** This would therefore imply that the Respondent’s father returned the gardens that were given to him by the Appellant’s father during his life time. This is also supported by the evidence of DW3 when he said that while in the meeting as a clan leader, the daughters of OKIRIA confirmed that their father returned the two gardens.

41. The evidence regarding the purchase of the suit land by the Respondent’s father was confirmed by PW2, PW4 and PW5 who were present when the sale agreement was made and also demarcated the land by planting boundary trees. The same boundary marks and trees were shown to court by PW3 at locus.

42. DW1 further said that; ***“... I inherited 2 gardens. My dad had given the land to Okiria Philmond. My parents used to tell us that they had given land to Okiria to use. I inherited the two gardens in 1986 and it is the same land that is now in dispute and I have been using the same up to now...”***

43. **DW2** a brother to the Appellant said that; ***"I know OKIRIA PHILIMOND he was a brother to my dad. He had little land so my dad gave him the disputed land to use..... he used the land until he gave it back to my mother in 1996."***
44. **DW1** also said that; ***"When Okiria passed on the day of installing the heir, the heir was handed over the deceased's property and it was indicated that the 2 gardens were given back to Okia Ruth....."***
45. As you may realise from the evidence quoted above, **DW1** said that **OKIRIA PHILMOND** was only given land to use by the Appellant's father but he later contradicted himself when he said that **Okiria** died and his heir was handed over the deceased's property. So, if he did not own property in the area, which property was handed over to his heir. This was however corrected by **DW2** when he said that the Respondent's father had land in the area though little.
46. **DW1** added that; ***"The gardens are mine, I inherited them from my mother, who inherited the same from my dad."*** In cross-examination **DW1** said his mother died after 1996 and **OKIRIA** died before his mother. **DW2** brother to the Appellant said; ***"AKIA LOYSE who was our mother, AKIA gave the land to ANGUNA DICKSON as her son. She gave him 2 gardens it was in 2011. AKIA passed on in 2018."*** This would in essence imply that the Respondent took over his father's land (suit land) during the life time of the Appellant's mother. The same explains why the suit was instituted in 2018.
47. **DW1** finally said that **BALE BOSCO** the father of the Respondent has never used the suit land, he however later admitted that **OCHOMU** brother to **BAALE** is the one who built a foundation on the disputed land in 2002. He said; ***"BALE BOSCO has never used the disputed land its only OCHOMU who built a foundation on the disputed land"***
48. That part of the Appellant's evidence buttressed the evidence of the Respondent's witnesses when they testified that the Respondent's father died after he had put up a foundation on the



suit land and it stopped upon his death. The alleged OCHOMU never claimed for the suit land to be his, which means he was acting for his brother.

49. **Analysis of the trial Court's evidence.**

50. **Section 101 (1) of the Evidence Act Cap 6** provides that;

*"Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist."*

51. In the instant case the Appellant told court that he inherited the suit land from his mother AKIA RUTH who also inherited it from the Appellant's father. That his mother died in 2018 and yet he allegedly inherited the same land from her in 1996 and confirmed by the clan leaders in 2011.

52. It is trite that inheritance takes effect upon the death of a person. It is therefore not clear how the Appellant inherited the same piece of land during the life time of his mother whom the alleged land was given to.

53. In a bid to prove ownership, the Respondent told court that his father left uncompleted structure on the suit land and that he was running a butcher on the suit land before his death in 2004. This part of evidence was buttressed by all the Appellant's witnesses when they admitted that indeed the un completed structure existed on the suit land. The presence of the butcher on the suit land was also admitted by DW3 (the clan leader).

54. The Appellant in his evidence said that the suit land was given to OKIRIA PHILMOND to use by his late father PETERO OPIO but the same Appellant also admit that the land which his father had given to OKIRIA was returned to his mother AKIA RUTH in 1996. At that time, from the evidence of the Respondent BAALE BOSCO who bought the alleged land from OKIRIA PHILMOND was still living and using the suit land as a butcher and a pork joint. This evidence was not challenged.

55. DW3 the clan leader also while admitting to the existence of a butcher on the suit land said that after the death of OKIRIA his daughters while in the clan meeting confirmed to him that their father returned the two gardens which did not belong to him.
56. The above evidence only point to the fact that since BAALE BOSCO was using the suit land even after 1996, that part of the land did not therefore form part of the land that was formerly given to OKIRIA PHILMOND to use by the Appellant's father.
57. The Respondent said that he grew up seeing the Appellant using his portion of the land but not the suit land. This evidence was supported by the evidence of DW2 (Appellant's brother) when he said that OKIRIA had little land and their father gave him more land to use which means the two neighbored each other.
58. The Respondent further said that his late father acquired the suit land by way of purchase. His evidence was buttressed by the evidence of PW2, PW4 and PW5 who were present when the agreement was made and also participated in the demarcation of the suit land. It should be noted as already indicated above that OKIRIA PHILMOND and PETERO OPIO (the appellant's father) neighbored each other and the sale transaction was done in broad day light which involved planting of the boundary marks. Therefore, if OKIRIA was selling land that did not belong to him, it should have attracted the attention of the Appellant's family to object to that sale but the fact that there was no such objection, it only brings this court to a conclusion that the land OKIRIA PHILMOND sold to the Respondent's father, did not form part of Appellant's father's land.
59. It is also noted that the Appellant in his written statement of defence challenged the sale agreement on ground that the vendor and the secretary never signed. However, PW2, PW4 and PW5 in their undisputed evidence told court that the sale agreement was made in their presence and they even participated in the demarcation of the suit land by planting boundary marks.
60. I however note that there were contradictions in the Respondent's evidence regarding the date when his father purchased



the suit land but the same did not go to the root of the case since he admitted that he was not present at the time of sale.

61. This court further observed that from the way this ground was framed, the Appellant referred to the clan minutes but the same were never tendered in court as an exhibit. It should be noted that court is only bound by documents tendered as exhibits. Not every document that is placed on the court file forms part of the court record.

62. In the East African Court of Appeal in **Mbogo V. Shah (1968) EA 93**, court stated that;

*“A court of appeal should not interfere with the exercise of the discretion of a judge unless it is satisfied that the judge in exercise of his discretion has misdirected himself in some matter and as a result has arrived at a wrong decision, or unless it is manifest from the case as a whole that the judge has been clearly wrong in exercise of his discretion and has as a result there has been injustice.”*

63. In **U.R. Virupakshaiah V. Sarvamma & Anr. SSCA No. 7346 of 2008** S.B. Sinha, J. referred to Hero Vinoth (Minor) v. Sheshammal [(2006) 5 SCC 545] where it was stated that:

*“The High Court will, however, interfere where it is found that the conclusions drawn by the lower appellate court were erroneous being contrary to the mandatory provisions of law applicable or it's settled position on the basis of pronouncements made by the Apex Court, or was based upon inadmissible evidence or arrived at by ignoring material evidence.”*

64. In the instant case, I have not found any misdirection or fault to call for the interference of the trial magistrate's decision.

65. Accordingly, it is my finding that the trial magistrate properly evaluated the evidence before her and came to a proper decision.

66. Ground No.1 is answered in the negative.

**Ground No.3: That the learned trial magistrate erred in law and fact when she held that the wives of OKIRIA were still alive at locus in quo yet this was never in evidence.**

67. I have perused through the trial magistrate's court judgment and noted that at page 4 she stated: **"Court also discovered while at locus in quo that indeed the wives of OKIRIA were still alive as well as the heir of OMIT JULIOUS. These were key witnesses who could have guided court on the true position regarding return of the suit land to the family of OPIO PETERO but were not summoned...."**

68. To me, the above quotation is just a comment the trial magistrate made regarding the other witnesses the Appellant ought to have called to prove or disprove a fact that was alleged by the Respondent. It did not form the basis of the trial magistrate's decision.

69. Ground No.3 is answered in the negative.

**Ground No.4: That the learned trial magistrate erred in law and in fact when she failed to appreciate the uninterrupted possession by the Appellant from 1996 to date**

70. Having answered ground No.1 in the negative, ground No. 4 automatically fails.

**Ground No. 5: That the learned chief magistrate erred in law and in fact when she ordered excessive general damages without justification**

71. It is trite that general damages are awarded at the discretion of court.

72. In the instant case, it is clear from the evidence that the Respondent's late father left un completed structure and a butcher on the suit land but the same were destroyed by the Appellant. The



Respondent further told court that he constructed a butcher on the suit land in 2016 and thereafter went back to school but when he came back, he found when the Appellant had taken over the suit land. In other words, the Appellant has kept the Respondent away from the use of his land.

73. The trial magistrate awarded the Respondent Ugx: 10,000,000/= as general damages for the inconveniences caused.

74. Considering the inconveniences described under paragraph 72 of this judgment, the trial magistrate was justified to award such general damages.

75. I therefore, find no merit in this Appeal and it is accordingly dismissed with costs to the Respondent.

I so order.



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**LUBEGA FAROUQ**  
**JUDGE**

**DATE: 4<sup>th</sup> December, 2023**