THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASINDI

CIVIL APPEAL NO. 0063 OF 2020

(ARISING FROM THE CHIEF MAGISTRATE'S COURT AT MASINDI CIVIL SUIT NO. 0047 OF 2015)

1. MAGADU JAMES
2. PETER RWANYICHIRO..... APPELLANTS

VERSUS

KIIZA JOHN ..... RESPONDENT

BEFORE: Hon. Justice Isah Serunkuma

JUDGEMENT

BACKGROUND

This was an appeal arising from the decision of Her Worship Aber Irene in **Civil Suit No. 002 of 2015 John Kiiza versus Magadu James t/a James Stores and Peter Rwanyichiro.** The Respondent filed Civil Suit No. 047 of 2015 in the Chief Magistrate's court at Masindi seeking declaration seeking orders that the suit land situate at Waiga 1, Kyakamese Parish, Pakanyi sub county, Masindi belongs to him, an eviction order against the 1st Defendant from the suit land, a declaration that the Appellants were trespassers on the suit land, a permanent injunction restraining the Appellants herein or their agents from interfering with the suit land any further and compensation for damaged crops which he alleged that the 1st Defendant had destroyed when he trespassed on his land and damages.

The Respondent's allegation at the Magistrate trial was that he has been the owner and in possession of the suit land since 1986 when he acquired the same through Mukulu w'omugongo. He alleged that he peacefully occupied the suit land until 2014 when the 1st Appellant forcefully trespassed on the same and destroyed the crops thereon.

In response, the 1st Appellant alleged that he was the owner of the suit land, having purchased the same from the 2nd Appellant on 4th September, 2014. He presented a sale agreement to that effect. The 2nd Appellant confirmed having sold to the 1st Defendant and submitted that he in turn purchased the suit land from the children of the late Alikonyerwoha Mwajuma Majid on 27th April, 2011. The said sellers were acting on behalf of a one Martin Byaruhanga that had purchased from their mother, who had formerly owned the land customarily. The 1st Appellant's submission then was that he bought the property from the owner and that the predecessors in title were at all times in possession of the property. He counterclaimed for the ownership of the property and for court to declare him a bonafide purchaser for value without notice.

The issues for determination at the trial court were as to who owned the suit property and what remedies were available to the parties. The suit was determined in favour of the Plaintiff, on the basis that he had proved ownership on a balance of probabilities. She held that Plaintiff's submissions were consistent with the history and ownership of the suit land, unlike the Respondents whose submissions were riddled by grave inconsistencies and contradictions. She held that the Respondent/ Plaintiff's witnesses proved that he acquired the suit land through Mukulu W'omugongo in 1986 and has since been in possession as evidenced by actions like applying for a lease in 1998 and thereafter a freehold tile in 2012. PW2, the former Chairperson of the area land committee confirmed inspection of the land. Accordingly, she found that the Respondent/Plaintiff was always in possession of the suit land.

Regarding the Appellants/ Defendants' evidence, the trial Magistrate held that the 1st Defendant was not a bonafide purchaser for value without notice as the said defence applies to only registered land and not untitled land like the one in this case. She further held that however, be that as it may, the Defendant did not do the necessary due diligence to establish the ownership of the property before purchasing from the 2nd Defendant. She found that the Plaintiff had contested the purchase of the suit land by the 1st Defendant but he was ignored.

Further, that the 1st Defendant could not even clearly trace the ownership of the property given that his witnesses' evidence was riddled with contradictions as to who owned the property that he eventually brought from the 2nd Appellant/ 2nd Defendant. The trial magistrate held that the 1st Defendant/ Plaintiff had failed to prove ownership on a balance of probabilities. As regards trespass, the Defendant/1st Appellant was found to have wrongfully entered the suit land in 2014, destroyed the Plaintiff's crops he found thereon and has since been in occupation as a trespasser.

Accordingly, the trial magistrate determined the suit in favour of the Plaintiff. He was declared as the owner of the suit and that the 1st Appellant/ 1st Defendant was a trespasser. He was awarded special damages worth UGX 3,440,000/= for the crops that were destroyed, general damages and mesne profits, in addition to the declarations that were sought. The Defendants/ Appellants were dissatisfied with the decision of the trial Magistrate, and so they appealed. Two issues were raised at the appeal;

1. That the learned trial Magistrate erred in law and fact when she failed to properly evaluate the evidence on record thereby arriving at a wrong decision in Civil Suit No. 002 of 2015 that the suit land belongs to the Respondent.

2. That the learned trial Magistrate erred in law and fact when she totally disregarded the Appellant's evidence and agreements for purchase of the suit land thereby arriving at a wrong decision in Masindi Chief Magistrate's Court Civil Suit No. 002 of 2015 that the appellants had not proved their claim on a balance of probabilities.

Representations.

The Appellants were represented by Mr. Simon Kasangaki of **M/S Kasangaki & Co. Advocates** while the Respondent was represented by Mr. Emmanuel Semwogerere of M/**S Moriah Advocates**. Both parties filed their submissions.

The duty of the 1st Appellate Court

Section 220(1) of the Magistrate's Courts Act, Section 76 of the Civil Procedure Act and Order 44 rule 1(3) of the Civil Procedure Rules make provision for appeals from the Magistrates' courts to be filed in the High Court. The appeals arising from final orders of the Magistrate's Court such as the ones in the instant case are filed in the High Court and thus, it is the first appellate court in this case.

The 1st appellate court has the duty to re-evaluate the evidence led at the trial court to come up with its own conclusion by subjecting the evidence on record to exhaustive scrutiny, re-evaluating it and coming to its own conclusion. This duty was espoused in the case of **Selle & Anor versus Associated Motor Boats Co. Limited & Ors (1968) E.A 1968,** where it was held that;

"Briefly put…. this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect. In particular this court is not bound necessarily to follow the trial judge's findings of fact if it appears either that

he has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on the demeanor of a witness is inconsistent with the evidence in the case generally. "

Submissions of the Parties

The Appellants' submissions

Counsel submitted that the Appellants/ Defendants presented 5 witnesses at trial. DW1, Alinda Sarah, was the daughter of the original owner of the suit property who was identified as the Late Alikonyerwoha Mwajuma Majid. Her evidence was to the effect that she has lived on the suit land since her birth in 1974 and her mother had been in occupation of the suit land until her death in 2004. She also stated that the 2nd Appellant, Peter Rwanyichiro, bought the suit land from a one Byaruhanga Martin, who had bought from her mother and thereafter, the 2nd appellant sold to the 1st Appellant. Counsel submitted that this was corroborated by DW2, Musinguzi Ali, who led evidence that he bought 40 acres from the Late Mwajuma and sold 10 of them to the 1st Appellant on 12th December, 2014. He further stated that the Respondent is not his neighbour and that the land in issue belongs to the 1st Appellant.

The 3rd witness was the 1st Appellant, who led evidence that he purchased the suit land from the 2nd Appellant. He said that the 2nd Appellant had also purchased from children of the Late Alikonyerwoha Mwajuma Majid. The purchase by the 1st Appellant was supported by a sale agreement and a receipt for payment of stamp duty both dated 4th September, 2014. He said that the boundaries of the land were clearly marked and that he has been in possession of the land since its purchase in 2014. He further submitted that on 15th November, 2014, he applied for grant of a freehold title and the Area Land Committee carried out inspection for that purpose on 28th November, 2014. The instructions to survey were even issued, and it is only then that the Respondent started falsely claiming ownership of the suit land. However, he admitted that the Respondent is his neighbour in the West and during the locus visit, he pointed out the land marks separating his land from the Respondent.

The fourth witness was the 2nd Appellant and it was submitted that he corroborated the 1st Appellant's evidence by stating that he purchased the suit land from the children of the Late Mwajuma in 2011. He said the said children were acting on behalf of a one Martin Byaruhanga who had purchased the land from the Late Alikonyerwoha. He testified that upon purchase in 2011, he immediately took possession by cultivating on the land until 4th September, 2014 when he sold to the 1st Appellant.

Lastly, the Appellants presented the evidence of DW5, Binuge William, who testified that he was the Chairperson of the Area Land Committee in 2014 when the 1st Appellant applied for a freehold title. He testified that notices were issued for the inquiry prior to granting the freehold title but and that during the last meeting, the Respondent and his family were in attendance though they did not sign the attendance list in protest because they claimed that the land belonged to the Respondent.

The Appellants' lawyers submitted that the 1st Appellant the ownership of the suit land by him can be traced back to the Late Alikonyerwoha through the predecessors to him. They further submitted that 1st Appellant did all the necessary due diligence by consulting with the neighbours apart from the respondent and that the said neighbours witnessed his purchase from the 2nd Appellant.

Additionally, the Appellants' lawyers submitted that the Respondent's evidence at trial was riddled with grave inconsistencies and contradictions. First, they pointed out that PW1, the Respondent had confirmed that the 1st Appellant was in possession of the suit land since September, 2014 and yet contradicted himself when he said the boundary mark stones on the suit land were recent. Further, the Respondent had confirmed the presence of a mango tree which was showed to court and yet PW4, Umos Jafai, who claimed to have been worker on the same land since 2002, said there was no mango tree on the land. Additionally, that the Respondent lacked documentation to prove his ownership and had admitted that the Late Mwajuma owned a piece of land the size of which he did not know.

The other inconsistence noted was that PW2, Rugongeza William, who testified that he was the Chairperson of the Area Land Committee at the time when the Respondent applied for a Freehold title in 2012, had stated in cross examination that prior to 2008, he didn't know the Plaintiff. He also admitted that he currently stays at Kisindizi village, which is over 3 miles from suit land. He also confirmed that intended inspection of the land for purpose of issuance of a freehold title failed because the LC Chairperson did not turn up for the same.

The other inconsistence highlighted was that PW3, Kagoro William told court that PW2 had lied about Ali Musinguzi being his neighbour. That despite being one of the recipients of the land on the village with Late Alikonyerwoha, he did not know the size of her land but the Respondent was not part of the original recipients when the land was first given out.

Finally, PW5, Byaruhanga Job during cross examination in respect to the destroyed crops confirmed that he assessed the damaged crops in the presence of only two

witnesses and in the absence of the LC1 Chairperson and Police. Further that he used a wrong assessment of 2010-2011 instead of 2012-2014 and did not know that there was a land dispute on going. Thereafter, he also didn't follow up to know what happened to the criminal case.

In conclusion, the Appellant's lawyers submitted that the 1st Appellant had presented sufficient evidence of her possession of the suit land since 2014 until the respondent forcefully cleared 1.5 acres and that he rightly identified the mango tree, boundary marks and neighbours.

In respect to the contradictions and inconsistencies, they submitted that the 1st Appellant had proved ownership unlike the Respondent who was trespassing. They submitted that their evidence was consistent and not rebutted at cross examination as was the case with the Respondent and prayed that court accepts their evidence on the consideration that where a party fails to challenge evidence, the evidence is accepted as true.

In respect to Ground 2, the Appellants submitted that the 1st Appellant's claim to ownership and purchase of the suit land was corroborated by DW4, the 2nd Appellant in his evidence. The sale agreement between the parties was tendered in as evidence. The Appellant also exhibited the agreement by which he purchased 10 acres from Musinguzi Ali. It was submitted that it was incumbent on the Court to refer to these agreements in determining ownership of property, which the trial magistrate did not do.

On the basis of the above evidence and submissions, the Appellants prayed that the decision of the trial magistrate is overturned and a declaration is made that the 1st Appellant is the rightful owner of the suit land.

Respondent's Submissions

The Respondent handled the two grounds of appeal jointly. Counsel submitted that it was the Respondent's uncontroverted evidence that he acquired the suit land measuring 31 acres from the village chief "Mukulu Mugongo" and was in possession from 1986 until 2014 when the 1st Appellant forcefully evicted him and destroyed his crops. As a result of the said trespass, he filed a criminal case although the same was eventually abandoned.

The Respondent presented four witnesses at trial who included PW1, the Respondent who submitted that he acquired the land in 1986 through the chief, Mukulu w'omugongo and has been in possession since till 2014 when the 1st

Appellant forcefully took over. It was submitted that during locus visit, the Respondent had demonstrated that he acquired the suit land in 1986 as a customary tenant and applied for conversion to leasehold in 2012. He presented a receipt to that effect and it is on record. It was also noted that the Respondent was not contesting the ownership of the 1st Appellant in respect to the 10 acres which he bought from Musinguzi Ali.

The PW2 was Rugongeza William who testified that he was the Chairperson of the Area Land Committee in 2012 when the Respondent applied for a Freehold Title. He testified that the suit land had always belonged to the Respondent and that the freehold title was only not issued because the LC Chairperson was absent at inspection. He prepared minutes following the inspection to state why it did not proceed and the same were on record.

PW3 was Kagoro William, who testified that he was the Plaintiff's neighbour, having acquired his land around the same time with the Plaintiff in 1986. He testified that he did not know the 2nd Appellant and only got to know the 1st Appellant when he destroyed the Respondent's crops. It was submitted by Counsel that during locus, it was confirmed by PW3 that the suit land belongs to the Respondent and it was forcefully separated from his other land by the 1st Appellant when he planted new mark stones in 2014.

PW4 was Byaruhanga, who is an Agricultural Officer and was tasked by Police to make a report on the Plaintiff's case in 2014 when he reported that the 1st Appellant had destroyed his crops that were on the suit land. He made a valuation report dated 30th October, 2014.

The last witness, PW5, was a man who testified that he had worked for the Respondent as a casual labourer on the suit land where he was growing crops since 2003 until 2014 when the 1st Appellant destroyed their crops.

Counsel for Respondent submitted that their evidence was consistent unlike the Appellants' evidence which is riddled with inconsistencies and contradictions including the following;

During cross examination, DW1, Alinda Sarah, said she never sold land to the 2nd Appellant the suit land. However, thereafter, she changed her evidence and said that she and her siblings sold the suit land to the 2nd Appellant on behalf of Byaruhanga Martin that had bought from their mother. She also told court that she was in possession of the suit land until 2014 when it was sold to the 1st Appellant.

However, the 1st Appellant instead claimed that it was 2nd Appellant in possession and growing crops on the land at the time of purchase. On the other hand, the 2nd Appellant denied ever occupying the land or being a resident of Waiga B. He also said he never personally used the land until its sale in 2014. Further, during cross examination claimed he has a certificate of title, which was a falsehood.

The other inconsistence noted was that when the 1st Appellant came to inspect the suit land in 2014 with the Area Land Committee, the Respondent's family objected but their complaints were ignored. This was admitted by the Chairperson of the Area Land Committee, Mr. Binuge William, who was a witness for the defence. He also admitted that during inspection, they were informed that the suit land belonged to the Respondent and he had been there for over 15 years.

Thirdly, that during locus, the 1st Appellant informed court that he bought the land from the children of Late Alikonyerwoha and his agreements point to that but he now alleges that he bought from the 2nd Appellant.

With regard to the defence of Bonafide Purchaser for Value without notice that had been raised at the trial by the learned Magistrate, it was submitted that the same applies to only registered land, which the suit land wasn't.

Counsel for the Respondent concluded by stating that learned trial Magistrate was justified to rule in favour of the Respondent, given the evidence that was presented in Court.

The Appellants did not present any further evidence in the submissions in rejoinder other than reiterating the information that had already presented in the first submissions.

The issues for determination at appeal

There were two issues raised on appeal and they are set out below;

1. That the learned trial Magistrate erred in law and fact when she failed to properly evaluate the evidence on record thereby arriving at a wrong decision in Civil Suit No. 002 of 2015 that the suit land belongs to the Respondent.
2. The learned trial Magistrate erred in law and fact when she totally disregarded the Appellant's evidence and agreements for purchase of the suit land thereby arriving at a wrong decision in Masindi Chief Magistrate's Court Civil Suit No. 002 of 2015 that the appellants had not proved their claim on a balance of probabilities.

Issue 1

That the learned trial Magistrate erred in law and fact when she failed to properly evaluate the evidence on record thereby arriving at a wrong decision in Civil Suit No. 002 of 2015 that the suit land belongs to the Respondent.

Section 101 (1) of the Evidence Act Cap 6 provides that whoever desires any court to give judgment as to the legal right or liability dependent on the existence of facts which he or she assents must prove that those facts exist and the burden of proof lies on that person.

The 1st Appellant herein alleges that he acquired the suit land from the 2nd Appellant who in turn had bought the land from the children of the customary owner, the Late Alikonyerwoha Mwajuma Majid. It is alleged that she had been allocated the said land by the village chief and had been in possession until the sale of the same. The Respondent on the other hand alleges that he is the owner of the same land, having acquired the same in 1986 arising from an allocation of the land to him by the chief, Mukulu W'omugongo. Both parties have presented evidence to support their claims of ownership and it is evident that both parties are claiming unregistered interest on unregistered land. The burden therefore falls upon each of them to prove ownership by occupancy of the persons from whom their interests stem.

The Late Alikonyerwoha, from whom the Appellants' title accrued and the Plaintiff seemingly had unregistered interest in the suit land as the customary owners from as early as 1986. Unregistered interests in land are usually equitable and are as good against the whole world except a bonafide purchaser of a legal interest for value without notice. Therefore, it is important to establish whether the Respondent's claimed interest existed or whether as alleged, the property belonged to the Late Alikonyerwoha whose title is said to have been passed on to the Appellants.

The determination of the ownership of the suit between the Late Alikonyerwoha and the Respondent is peculiar and ought to be purely a question of court's reasoning as there is no proof as to how either of the two parties may have acquired ownership. In the authority of **Nebbi & Anor v. Manano (Civil Appeal No. 003 of 2005) [2016],** Hon. Justice Stephen Mubiru held that;

> "*…….there is no set form of evaluation of evidence and the manner of evaluation of evidence in each case varies according to the peculiar facts and circumstances of each case…….that while evaluating the evidence before it, a trial court may adopt any reasonable course to arrive at an objective finding in*

accordance with its judicial conscience bearing in mind that that it can only make a finding in his favour of the Plaintiff, in only those cases where the known facts are not equally consistent, where there is ground for comparing and balancing probabilities as to their respective value, only if a reasonable man might hold that the more probable conclusion is that for which the Plaintiff contends….." .

It is our opinion that in the absence of accurate evidence as to how either the Respondent or the alleged original owner, Late Alikonyerwoha may have acquired the suit land, the question of ownership shall be determined based on the balance of probabilities.

The Respondent alleged that he occupied the suit land in 1986 albeit he does not have proof of the acquisition of the land as none was issued to him when the land was being allocated. He stayed in occupancy till 2014 when the 1st Appellant trespassed and took possession of the suit land. His claim of ownership is being corroborated by PW3, Kagoro William who has testified that during the acquisition of the land by him and others in 1986, they did not write anywhere as the only records were those kept by the Chief that gave them the land. Further, all the Appellant's witnesses have admitted that the Respondent is their neighbour.

The Respondent has presented evidence of an application for a leasehold title for the total land area of 80 acres in 1998 and further by application of the same land to be converted to freehold tenure in 2012. PW2, William Rugongeza, the Chairperson of the Area Land Committee by the time testified to the same.

Additionally, there are numerous witnesses who have testified that the suit land has always belonged to the Respondent while with the exception of the DW1, the Appellants do not have such similar evidence. It is more probable therefore, that the land belongs to the Respondent.

As regards the ownership of the land without documentation, this land falls under customary ownership. 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**. Customary tenure is defined by **Section 1 and Section 3 of the Land Act** as a 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 specific description or class of persons; (b) governed by rules generally accepted as binding and authoritative by the class of people to which it applies; (c) applicable to any person acquiring land in accordance with those rules; (d) characterized by local customary regulation, among others.

It is my considered view that the Respondent acquired the suit land according to the customs that was existent and the authoritative figure at the time, the chief, Mukulu W'omugongo. The evidence of his ownership in this case could be inferred from the long-term usage of the land.

Additionally, the Respondent qualifies as having an equitable interest in the land arising from occupancy. Pursuant to **Section 29 (2) of the Land Act**, a person occupying land having been settled on the same by the Government, in this case, the local authority, is considered a bonafide occupant and his title is protected despite being unregistered. The Respondent was settled on the land by the Chief who was in charge at the time and so has a protectable interest in the land.

On the other hand, the Appellant claims ownership of the land pursuant to a purchase agreement dated 4th September, 2014 with the 2nd Appellant and that the 2nd Appellant had purchased from the children of the late Alikonyerwoha who were acting on behalf of a one Martin Byaruhanga on 27th April, 2011. The said agreement was not on record although Alinda Sarah testified to having carried out the sale. It is also noteworthy that the said Martin Byaruhanga was not called as a witness.

The law relating to land purchases places a duty on the vendor to carry out due diligence on to establish ownership before purchase of any piece of land. The purchaser is not only required to establish the status of the land but also that the vendor has the right to sale the same. As has been rightly referred to by the Appellants in their submissions, the Court in **Sir John Bageire versus Ausi Matovu; CACA No. 007 of 1996** held that,

> *"Land is not vegetables bought from unknown sellers. There must be thorough investigation not only of the land but of the seller before purchase".*

It is my considered view that the 1st Appellant did not duly fulfil this duty of investigating the seller and ultimately bought land for which he could not trace ownership. First, the Appellant admitted that the Respondent is his neighbour to the East and yet while carrying out consultations before purchase, he consulted with every neighbour but the Respondent. It is not explained why the 1st Appellant decided to exclude the Respondent during his investigations.

Further, the 1st Appellant has informed court that he found crops on the suit land which he claims had been planted by tenants of the 2nd Respondent and demanded that the same be removed. This was prima facie evidence of the occupation of the suit land at which the vendor, the 2nd Appellant was not himself available. The 1st Appellant has

not provided any proof that he consulted about the ownership of the crops beyond the 2nd Appellant, who sold to him the land. Given that this was unregistered land and thus ownership could not be established through the registry he ought to have made more detailed investigations. The 1st Appellant was well aware of the Respondent's claim to the land especially following the institution of the criminal case in 2014 and yet still went ahead to apply for conversion of the land to leasehold. Thereafter the Respondent even turned up during inspection by the Area Land Committee. This shows that deliberate steps were taken to inform the 1st Appellant of the Respondent's interest but he ignored the same.

Additionally, the sequence to the ownership of the property by the 1st Appellant is unclear as some vital evidence was not presented. For instance, the parties refer to the agreement between the 2nd appellant and the children of the Late Alikonyerwoha who were acting on behalf of a one Martin Byaruhanga but the agreement on record refers to the children as the sellers and no mention of the said Martin Byaruhanga. Further, the said Martin Byaruhanga has not been called as a witness in the matter. It is therefore difficult to establish whether he had acquired ownership of the property as is alleged or if authorised for the sale to be done on his behalf in order for valid title to have passed.

In the circumstances, it is clear that the 1st Appellant deliberately ignored the duty to carry out diligence and resultantly purchased the suit land without regard to the interests that already existed thereon.

Inconsistencies and contradictions

Both parties cited inconsistencies and contradictions in each other's evidence and prayed for the same to be impeached on grounds of the said inconsistencies.

Minor inconsistencies and contradictions do not result into impeachment of evidence. In the case of **Oryem David versus Omory Phillip; Civil Appeal No. 0100 of 2018**, it was held that;

> *"It is trite law that grave inconsistencies and contradictions unless satisfactorily explained will usually but not necessarily result in the evidence of a witness being rejected. Minor ones, unless they point to deliberate unfaithfulness will be rejected…..What constitutes a major contradiction will vary from case to case. The question always is whether or not the contradictory elements are material, i.e., essential to the determination of the case. Material aspects of evidence vary from case to case but generally in trial, materiality is determined on the basis of*

the relative importance between the point being offered by the contradictory evidence and its consequence to the determination of any of the facts or issues necessary to be proved. It will be considered minor where it relates to only a factual issue that is not central or is only collateral to the outcome of the case. "

There are inconsistencies and contradictions that were pointed out in the evidence of either party. For the respondent, the fact that the Respondent and another witness said the stone marks were recent and yet they were set in 2014 cannot negate the fact that everyone, including the Appellants have submitted that they got onto the land in 2014. Besides, in consideration of the claim that the Plaintiff has been on the land since 1986, the marks set up in 2014 can be considered relatively new.

It is not relevant that PW3, Kagoro William did not know the size of the land that was allocated to Late Alikonyerwoha given that the land was untitled and his evidence was for the purpose of proving that he was aware of the neighbours and not how much each originally owned. Further, regarding the assessment of the crops, the Appellants did not produce any evidence to show that it was compulsory for the witnesses in the assessment to be the police and the assessor has explained that he used the 2010-2011 assessments because the latter ones were not approved. The only contradiction that was of essence was the claim by PW4, Umari Jafari who did not know that there was a mango tree on the property he alleged to have worked on for a while since 2002 but this could be explained by a lapse in memory given that he last worked there in 2014.

Regarding the inconsistencies in the Appellants' evidence, the only major inconsistence that arose was the claim by both the children of the Late Alikonyerwoha and the 2nd Appellant that they were in possession of the suit land till 2014. This brought the question of possession into doubt and created the possibility that neither of them even knew the exact piece of land that was being sold.

Despite the above cited inconsistencies and contradictions, the same are not major as to go the root of the case and accordingly, defeat the evidence of either party wholly. Therefore, the same have been disregarded in coming to the conclusion that the trial magistrate was right in finding that the Respondent had proved ownership of the suit land.

Issue 2:

The learned trial Magistrate erred in law and fact when she totally disregarded the Appellant's evidence and agreements for purchase of the suit land thereby arriving at

a wrong decision in Masindi Chief Magistrate's Court Civil Suit No. 002 of 2015 that the appellants had not proved their claim on a balance of probabilities.

Whereas the different purchase agreements have been presented to the Court, it has been determined in issue 1 that the land in question belongs to the Respondent. Resultantly, neither the Appellants nor their predecessors had the right to sale as neither of them had good title to pass on to the next.

It has also been exhibited that the 1st Appellant knew or had notice of the interest of the Respondent in the land and yet chose to ignore the same to proceed and purchase from the 2nd Appellant.

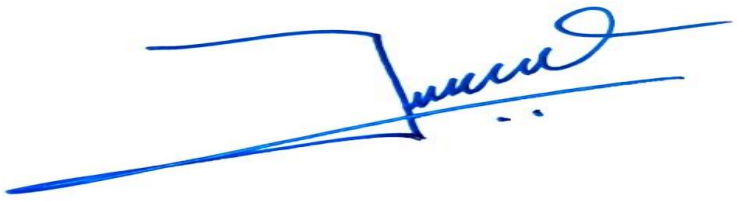
Based on the conclusion of the 1st issue, it is my considered view that there was never good title passed in the execution of the purchase agreements, given that neither of the alleged predecessors proved ownership of the suit land on a balance of probabilities.

Conclusion

In conclusion, I find that the trial Magistrate came to the correct conclusion in respect of the evidence presented at trial and this court shall uphold her decision. Appeal is dismissed with costs both here and below to the respondents.

I so Order.

Dated and delivered this 22ND day of December 2023.



Isah Serunkuma
JUDGE