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The Republic of Uganda
 In the High Court of Uganda at Soroti
 Civil Appeal No. 0030 of 2022
(Arising from Soroti Chief Magistrates Court Civil Suit No. 044 of 2019)

10 Obila Paul :::::::::::::::::::: Appellant

Versus

1. Ochura Boniface

15 2. Ochura Boniface :::::::::::::::::::: Respondent

Before: Hon. Justice Dr Henry Peter Adonyo

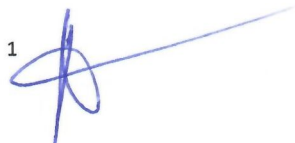
Judgement on Appeal

20 *(An appeal from the Judgement and orders of the Chief Magistrates Court of Soroti at Soroti delivered on the 30th day of June 2022 by H/W Pirimba Emmanuel)*

1. Background:

The appellant filed civil suit 44 of 2019 against the respondents for a
 declaration that the suit land measuring 4½ gardens belongs to him, an
 25 order compelling the 1st respondent to receive the refund of his animals
 paid to the appellant, general damages for inconvenience, interest thereon
 and costs of the suit.

His claim was that sometime in 2000 due to personal debt he mortgaged
 the suit land situate in Olugai village, Awaliwali Parish, Gweri Sub-county in
 30 Soroti District to the 1st respondent.

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5 The 1st respondent in turn gave the respondent one cow and a calf as consideration on the understanding that the mortgage would be cancelled when the debt has been repaid.

On the 14th of November 2000 the appellant and his family together with the two respondents and other individuals reduced their understanding
10 into writing at the appellant's home, which agreement was written by 2nd respondent however he never gave the appellant a copy.

In 2005 when the appellant sought to release the land from the mortgage by paying off the debt, the 1st respondent initially accepted one of the animals shown to him, however, he later turned around to tell the
15 appellant to buy back the land at the then market value, that he had purchased the land and not got it as a mortgage from the appellant.

When the appellant reported the matter to the local authorities the respondents produced a purchase agreement for the suit land, which agreement was fraudulent.

20 The respondents' written statement of defence is missing on record, however, from their scheduling notes and the judgement it can be gathered that the 1st respondent contended that he was the owner of the suit land and a sale agreement with the appellant was executed to that effect with the 2nd respondent as the secretary.

25 That after the sale the 1st respondent immediately took possession and started cultivation.

The trial magistrate having heard the matter entered judgement in favour of the respondents as he found that the agreement between the appellant and the 1st respondent was a sale and not a mortgage and dismissed the
30 matter with costs to the respondents.

5 The appellant being dissatisfied with the judgement of the trial court,
appealed to this court.

2. Grounds of Appeal:

a) That the learned Trial Magistrate erred in law and fact when he
considered the Respondent's evidence in isolation of that of the
10 Appellant.

b) That the learned Trial Magistrate erred in law and fact when he ignored
the grave inconsistencies and contradictions in the Respondents'
evidence.

c) That the decision of the Trial Magistrate occasioned a miscarriage of
15 justice on the appellant.

3. Duty of the 1st appellate court:

This court is the first appellate court in respect of the dispute between the
parties.

The duty of the first appellate court was well stated by the Supreme Court
20 of Uganda in its landmark decision of *Kifamunte Henry Vs Uganda, SC, (Cr)*
Appeal No. 10 of 2007 where it 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
25 judgment appealed from but carefully weighing and considering it"*

In rehearing afresh, a case which was before a lower trial court, this
appellate court is required to make due allowance for the fact that it has
neither seen nor heard the witnesses and where it finds conflicting
evidence, then it must weigh such evidence accordingly, draw its
30 inferences and make its own conclusions. See: *Lovinsa Nakya vs. Nsibambi*
[1980] HCB 81.

5 This Honourable Court being the first appellate court in respect of the
dispute between the parties herein is obligated to re-hear the case which
was before the lower trial court by subjecting the evidence presented to
the trial court to a fresh and exhaustive scrutiny and to re-appraise the
same before coming to its own conclusion as was held in *Father Nanensio*
10 *Begumisa and Three Others v. Eric Tiberaga SCCA 17 of 2000; [2004] KALR*
236.

In considering this appeal, the above legal provisions are taken into
account.

4. Representation:

15 The appellants were represented by Opio & Co. Advocates while the
respondents were represented by M/s Legal Aid Project of the Uganda Law
Society.

This matter proceeded by way of written submissions which will be
considered in the determination of this appeal.

20 5. Determination:

a. Grounds 1 and 2.

- *That the learned Trial Magistrate erred in law and fact when he*
considered the Respondent's evidence in isolation of that of the Appellant.
- *That the learned Trial Magistrate erred in law and fact when he ignored*
25 *the grave inconsistencies and contradictions in the Respondents' evidence.*

Counsel for the appellant submitted that that the Trial Magistrate did not
consider material evidence of the Appellant which would have otherwise
guided the court in finding for the appellant.

Counsel focused on the authenticity of DEX1, the sale agreement relied on
30 by the respondents. He submitted that it failed to meet the minimum
required standard of a contract which amounts to fraud.

5 He stated that the appellant throughout his evidence maintained that he did not execute a sale agreement rather a mortgage.

Counsel additionally submitted that the Trial magistrate ignored the evidence of PW3 who is the LC1 of the area who conducted the attempted refund of the animals yet this evidence was unchallenged by the
10 respondents.

Counsel also noted that the trial magistrate stated that Ogolu Lawrence did not testify yet he did which amounted to subjecting the Appellant's evidence in isolation of that of the Respondents.

Counsel for the respondents in reply submitted that the trial Magistrate
15 properly evaluated the evidence on record thereby reaching a just decision where the respondents were declared the rightful owners of the suit land. That throughout the respondents' testimony it was their case that the 1st respondent entered a sale agreement with the appellant in 2000 for a consideration of 65,000/= and two cows.

20 The 1st respondent denied having entered any other transaction with the appellant save for the sale agreement and after this transaction an original copy of the agreement was handed over to the appellant.

Counsel added that while DEX1 was disputed neither the appellant nor his witnesses state what was forged.

25 The appellant Obila Paulo testifying as PW1 stated that the sometime in 2000 due to personal debt he mortgaged the suit land to the 1st respondent and he in turn gave him one cow and a calf as consideration on understanding that he would get back his land when he repaid him.

That on 14th of November 2000, he together with his family members and
30 the two respondents and other person who were present reduced their understanding in writing at his home.

5 That it is the 2nd respondent who wrote the said agreement on an exercise book paper using a pencil whereupon he appended his thumb print since he did not know how to read and write, his sons Ogolu and Egalu were present and witnessed this transaction.

That the 1st respondent said he was taking the said agreement to town in
10 order to make for him a copy but he never came back. In 2005 when his son came back from Kampala he explained to him what had happened and he called the 1st respondent with a view to redeem the land from the mortgage by refunding the animals to the 1st respondent.

That the 1st respondent first rejected one of the cows alleging that it was
15 sick and that he needed it to be replaced but later fraudulently turned around to tell him and his son to buy back the suit land from him because he had purchased it and not got it as a mortgage.

That the 2nd respondent also fraudulently insisted that he was the secretary of the said agreement of purchase.

20 That he does not know how to read and write and only remembers putting his right hand thumbprint to the document they made, the agreement referred to by the respondents is not the one he made and he has never sold his land.

During cross-examination he stated that he did not sell his land rather that
25 he borrowed it for 2 calves. He stated that the agreement was reduced in writing and repayment was to be after one year and his copy was never given to him and there was only one copy of the agreement. His sons Egalu and Ogolu as well as his wife Celina Adongol were present and he maintained that he did not execute the agreement being read by court and
30 also did not see it and so he does not know.



5 That the contents of the agreement which copy was not given to him were read to him and he knows the contents and it was written that when Ebiku comes back he will buy the cattle and give back Ochura.

PW2 Egwapu William son to the appellant and PW3 Akurut Gabudesia both testified corroborating the appellant's testimony regarding the refund in
10 2005 for they both state that they were present as son and Vice LC1 respectively, with PW3 adding that at that meeting in 2005, the 1st respondent did not deny that it was to redeem the land the appellant had mortgaged to him.

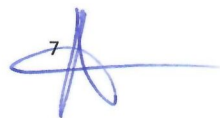
PW4 Ogolu Lawrence, son to the appellant testified that he was present
15 during the transaction where his father mortgaged the land. That it was reduced in writing in an exercise book with a pencil at the home of the appellant, by the 2nd respondent who was the secretary and after writing and reading the agreement to all people present he and the appellant witnessed the agreement by thumb printing on it.

20 During cross-examination he stated that the content of the agreement was to mortgage the land after giving or helping the appellant with two cattle and this mortgage was supposed to be for three years.

That before Egwapu coming back there was no dispute between the parties.

25 DW1 Ochura Boniface testifying as DW1 stated that on 14th of November 2000 the appellant in company of his son Elimu came to his home stating that he had a piece of land, which is the suit land, for sale and was wondering if he could buy it. That together with his father Ejoku Silver he went and checked out the land and liked it, he then fetched his brothers
30 Amodo George William and the 2nd respondent to accompany him and on

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5 the same day he paid consideration of Shs. 65,000/= to the appellant and two heads of cattle.

That on the same day an agreement was executed between them and it was reduced into writing by the 2nd respondent who wrote two original copies, one for the appellant and another for him.

10 That the witnesses who knew how to read and write wrote their names on the agreement.

During cross-examination he maintained that he bought the land with cattle and money, that at the time of the purchase the alleged place was called Takaramiam village and the ward village and parish are not seen in
15 the agreement but the name of the village is Takaramiam.

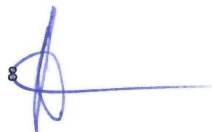
DW2 Ochura John Albert stated that the appellant sold his land to the 1st respondent for a consideration of two heads of cattle and Shs. 65,000/= and he reduced this into writing in an exercise book which the members present signed and each party was given an original agreement contained
20 in the exercise book.

During cross-examination he agreed that the agreement does not mention the district its written from.

That the appellant wrote his name on the agreement but did not sign, he also wrote his as the secretary but did not sign and that there were no
25 members of the L.C Committee at the time of the transaction but he made two copies of the agreement and the second copy was in a similar book.

DW3 Amolo George William testified that the 1st respondent paid two heads of cattle and 65,000/= for the suit land.

During cross-examination he stated that he participated in the transaction
30 between the appellant and the 1st respondent and it was a land sale.



5 That both the seller and the buyer wrote their names on the agreement but did not sign and he saw the seller write his name.

6. Assessment of evidence:

The main issue between the appellant and the 1st respondent is whether the agreement executed between them on the 14/11/2000 was a
10 mortgage or a sale.

The appellant and PW4 maintains that the agreement was for a mortgage of land whereby the appellant was to repay the two cows given to him by the 1st respondent and thereby redeeming the land. He further told court that the agreement in this regard was never given to him by the 2nd
15 respondent and later the 1st respondent turned around to claim he had bought the land and had an agreement to that effect. The 1st respondent, DW2 and 3 all maintain that it was a sale DEX1 was made.

It should be noted that the appellant testified that he cannot read and write and PW2 stated the same, the appellant further stated that he
20 thumb-printed on the agreement the 2nd respondent prepared in his presence.

In cross-examination he stated that the contents of the agreement which copy was not given to him were read to him and he knows the contents and it was written that when Ebiku comes back he will buy the cattle and
25 give back Ochura. PW4 who was present during this transaction also maintained that the agreement was not a sale. He stated that the 2nd respondent after writing and reading the agreement to all people present he and the appellant witnessed the agreement by thumb printing on it. During cross-examination he stated that the content of the agreement was
30 to mortgage the land after giving or helping the appellant with two cattle and this mortgage was supposed to be for three years.

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5 The respondents on the other maintained that it was a sale and produced DEX1 a sale agreement that was disputed by the appellant and his witnesses.

The document DEX1 is stated to be a sale agreement and is dated 14th/11/2000. As per its English translation, it is titled '**Purchase of Land**
10 **Agreement between Mzee Obila Paulo and Ochura Boniface**'. The body of the agreement is thus;

"On the above mentioned date is when I Mzee Obila Paulo sold to Ocura Boniface my gardens 4¼ (four and a quarter) at this price:

- 15
1. Two heads of cattle (2)
 2. 65,000/=

That has been paid in all, including cattle too."

In the translated version it is indicated 11 witnesses including the appellant and respondents wrote their names and signed on the agreement.
20 However, I note that the original version of the agreement in Ateso bears only one signature, that of Amolo George William.

The question then one would ask is where did the signatures on the translated document come from?

The simple answer is that the original document and the translated
25 document are not the same, with being clearly forged and presented in court by the respondents in court so as to swing the case in the favour of the 1st respondent. Such a forgery cannot be allowed in a court of law.

This is because while the 1st respondent in his testimony state that the sale was for a consideration of Shs. 65,000, which was the equivalent of two
30 heads of cattle, the so called agreement as well as DW2 and DW3 state that the sale was for two heads of cattle and Shs. 65,000/= with the

5 appellant confirming that he indeed only borrowed two heads of cattle but never received any money.

Additionally, it was the case of the respondents that each witness to the so called agreement individually wrote their own name on the original agreement yet the appellant maintained in court that since he was unable
10 to read and write he only remembers thumb printing the same. He questioned how his name came to be on the exhibited agreement which even did not bear any thumbprint.

These varying facts as regards to the document relied upon by the respondents as proving a sale cannot be ignored because the said sale
15 agreement clearly does not meet the requirements of a land sale agreement as it lacks the basic general requirements attributed to such a document and these are (a) the thing sold, which is the object of the contract;

(b) the consideration or price to be paid for the thing sold; and

20 (c) the consent of the parties to exchange the thing for the price.

See the case of *Okello v Opio (Civil Appeal No 0037 of 2015) 2018 UGHCLD 58*;

In law, the general requirement is that the thing sold must be definite or ascertainable and not vague at the time of the conclusion of the contract.

25 If an alleged agreement is so indefinite as to make it impossible for a court to fix the legal obligations and liabilities of the parties, or to define or ascertain the subject matter, it cannot constitute an enforceable contract. If a contract is not clear and certain as to all essential terms, it will fail for indefiniteness.

30 The subject matter of an agreement of sale is said to be definite if described in sufficient detail, but may also be ascertainable if mentioned

5 by type alongside such particulars of description as the number, weight, dimensions or other forms of measurement.

In the instant case, the exhibited agreement relied upon by the respondents does not contain any description of the location or the dimensions of the land allegedly sold, or other descriptive feature such as
10 neighbours or even land marks.

Furthermore, as was conceded to by the 1st respondent in cross-examination, the agreement does not bare the district, the ward or the parish where the alleged sold suit land belonged though the respondent orally, in court allege that it was found in a place called Takaramiam village.

15 Moreover, the issue of consent to this agreement was not proved as the appellant maintained throughout his testimony that he never sold his land but gave it to the 1st the appellant upon the terms that he would regain it after he repaid the two cows lent to him by the 1st respondent. From his undisputed testimony, it is clear to me that he had given out his land as
20 security for the two cows given to him by the 1st respondent and not a sale.

It is also noteworthy that up to the point when the cows where to be returned, the series of events as testified to by even the respondents' witnesses appoint to the fact of a bailment of the land for the two cows. It is only when the appellant tried to return two cows which the 1st
25 respondent deemed them to be insufficient that is when the story changes with the 1st respondent then changing the goal posts and stating that actually the appellant had sold the land yet he could not prove this so.

While the respondents rely on DEX1 as confirming the sale of the suit land, the said agreement exhibited in court has a lot of discrepancies which
30 raises a lot of suspicion as to its authenticity.

- 5 This is in addition to the fact of the appellant insisting in court that for him he was unable to read and write yet his testimony to that fact was never challenged or even rebutted by the respondents who had the burden to prove otherwise that indeed he did write his name on the so sale agreement.
- 10 This essential proof was not presented to court more so given the fact that even the surname and given name of the appellant appear to have been written in two different handwritings with no explanation made as to the latent discrepancies in the clear different handwriting seen on the document.
- 15 Its trite law that any omission or neglect to challenge the evidence in chief or any essential point in cross-examination does lead to the inference that the evidence is accepted as true as it is not assailed as inherently untrue. In this instance, since the appellant denied having written and or even signed any sale agreement, it was up to the respondents to prove that he
- 20 did so.
- The respondents, however, failed to disprove the assertion by the appellant that he did not sign the presented document thus rendering the sales agreement a contested document which cannot be relied upon a defective sales agreement as its authenticity is in doubt.
- 25 As the sales agreement is insufficient in proving that the appellant sold the suit land to the 1st respondent as it lacks the basic elements required of such a document such as the location, the size and most importantly the consent of the appellant in addition to it not being witnessed by an independent witness such as a member of a local authority and its being
- 30 signed by the seller renders the said document inadmissible in evidence

5 and as such should not have been relied upon by the trial magistrate as proof of sale.

Given the fact that the said agreement constitutes the entire basis of the 1st respondent's claim as against the appellant land and this Honourable Court having found that it is a defective document, accordingly, the claim
10 by the 1st respondent that the suit land was sold to him cannot be verified rendering nil any purported contract for sale of the suit land.

The land thus is found to still belong to the appellant with the 1st respondent only interest in the whole saga being the two (2) cattle he offered to the appellant when he hired the suit land and that is what is due
15 to him.

Given the above findings, this appeal does succeed on the basis that the trial magistrate ignored clear evidence on record and thus occasioned a miscarriage of justice to the appellant.

Accordingly, the findings, judgment and orders of the trial court are thus
20 quashed and set aside as there was no legally binding sale agreement between the parties herein as the transactions between the parties herein was clearly anchored on an "hiring" understanding between the parties of the suit land; but not its sale; of the Appellant's land by the 1st respondent. Accordingly, this appeal succeeds on all grounds with the judgment and
25 orders of the lower trial court set aside.

7. Conclusion:

This appeal is allowed with the following orders;

- a) This appeal succeeds on all grounds.
- b) The Findings, judgment and orders of the lower trial court in Soroti
30 Chief Magistrate's Court Civil Suit No 44 of 2019 are quashed, set

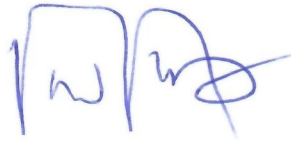
5 aside and substituted with a finding in the favour of the plaintiff as
the rightful owner of the suit land.

c) It is hereby declared that the suit land belongs to the appellant.

d) The Appellant is directed to refund to the 1st Respondent his two (2)
animals which were used for hiring his land.

10 e) Costs of this appeal and in the lower trial court is awarded to the
appellant.

I do so order accordingly.



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Hon. Justice Dr Henry Peter Adonyo

Judge

23rd January 2023