The Republic of Uganda

In The High Court of Uganda at Soroti

Civil Appeal No. 0021 Of 2023

(Arising from Soroti Chief Magistrates Court Civil Suit No. 0054 Of 2017)

Malinga Patrick :: Appellant

Versus

1.Otim Emou Alfred
2.Ojoo Naptali Ismail ::: Respondents
3.Esunget Stephen

Before: Hon. Justice Dr henry Peter Adonyo

Judgement on Appeal:

(Appeal from the judgement and orders of the Chief Magistrates Court of Soroti at Soroti delivered on the 11th of July 2023 by His Worship Okiror Edmond)

1) Background:

The 1st respondent filed CS No. 54 of 2017 for a declaration that the appellant is a trespasser, vacant possession, permanent injunction, general damages, interests and costs of the suit. His claim was that on the 17th day of August 2007 he bought land comprised in Plot 12 located at Igulot Close at Camp Swahili ward in Northern Division of Soroti City from one Ojoo Naptali Ismail for a consideration of 3,200,000/=.

However, that in July 2014 the appellant erected a pit latrine on the said land averring that the said plot belongs to him.

The appellant denied the 1st respondent's allegations contending that the suit land was his as he had been allocated the same as seen from an allocation letter dated 8th April 2005, thus the seller to the 1st respondent did not have any legal right to sell the suit land.

The appellant further counter-claimed against 1st to 3rd respondent and Soroti DLB for recovery of land comprised in plot 12 Igulot Close in Camp Swahili which he avers was fraudulently acquired and so he sought orders of vacant possession and quiet possession of the suit land and for Soroti DLB to cancel the 1st respondent's allocation letter and extend his lease offer and registers him as the rightful owner of the suit land as well special and general damages arising from the 1st respondent's wrongful possession of his land.

The appellant claim is based on the fact that at all material times he has been in occupation and possession of the suit land since the early 90s and only started to register his proprietary interests in the said land in 2002.

That in 2005 he sold off his interests in the suit land to a one Akwi Judith who was letter served an allocation notice and subsequently awarded a lease offer. That in 2006 Ojoo Naptali Ismail serving as the LC V Northern Division and Deputy Lord Mayor Soroti Municipality and Esunget Steven the then Secretary Soroti DLB with the intention to defraud, used their positions to intimidate, coerce, threaten and evict Akwi Judith to whom the appellant had sold his interest and on the 17th of August 2008 Ojoo Naphtali without right fraudulently sold off the suit land to the 1st respondent, which action forced him to refund to Akwi Judith the full purchase price.

The 1st respondent in his reply to the counter-claim denied the contents of the counter-claim contending that the appellant has no interest in the suit

land and it was the 2nd respondent in occupation of the suit land at the time of the sale. That the letter allocating the suit land to the appellant was later cancelled by the board.

The 2nd and 3rd respondent in their written statement of defence to the counter-claim denied the appellant's allegations contending that the 2nd respondent rightfully obtained an interest in plot 12 Igulot close upon allocation from the Soroti DLB on the 26th June 2006. That on 12th April 2005 and 7th April 2006 all and any interest the appellant may have had in the suit land was withdrawn or cancelled by the controlling authorities and the appellant was fully informed.

That by the time the 2nd respondent obtained an interest in the suit property the same was free from encumbrances and any third party interests. The 3rd respondent contended that he was transferred to Soroti DLB on 1st October 2005 and he has no personal knowledge of the averments prior to that date. He further contended that as secretary to Soroti DLB he was vested with the statutory duty to communicate decisions/resolutions of the Board and did not act in his own capacity. They further contended that by the time the appellant purported to deal in the suit property by way of sale to Akwi Judith he had no proprietary interest therein and was being fraudulent

The trial magistrate having heard the matter delivered judgement in favour of the plaintiff now 1st respondent with the following declarations and orders;

a) A declaration that the plaintiff is the rightful owner of the suit land.

b) A declaration that the defendant/counter-claimant is a trespasser.

c) A permanent injunction is issued restraining the defendant/counter-claimant and his assignees/legal representatives or any one claiming through him from trespassing on the suit land forthwith.

d) Eviction of the defendant as a consequential order.

e) Payment of general damages of shs. 5,000,000/= for inconveniences caused.

f) Interest on (e) at the court rate from the date of filing this suit till payment in full.

g) Costs of the suit and counter-claim to the plaintiff/counter defendant.

The appellant dissatisfied with this judgement and orders appealed to this court on the following grounds;

i. The Learned Trial Magistrate erred in law and fact when he shifted The Burden of Proof to the defendant to prove plaintiff's case, thus occasioning a miscarriage of justice.

ii. The Learned Trial Magistrate erred in law and fact when he framed his own issues for trial thus occasioning a miscarriage of justice.

iii. The Learned Trial Magistrate erred in law and fact when he introduced new facts in his evidence in the Judgment not conversed during trial hence occasioning a miscarriage of justice.

iv. The Learned Trial Magistrate erred in law and fact when he handled a matter whose subject matter is beyond his jurisdiction.

v. The Learned Trial Magistrate erred in law and fact when he perfunctorily handled the locus in quo misdirected the visit to locus and held that the Appellant confirmed to have erected a pit latrine on the suit land in 2014 whereas not, thus occasioning a miscarriage of justice.

vi. The Learned Trial Magistrate erred in law and fact when he jumped into conclusion that the pit latrine which the Appellant constructed was

enough to dispose of the matter with all of her evidence, thus occasioning a miscarriage of justice.

vii. The Learned Trial Magistrate erred in law and fact when he failed to make a finding about fraud committed and admitted by the Respondents, thus occasioning a miscarriage of justice.

viii. The Learned Trial Magistrate erred in law and fact when he held that the Suit Land initially belonged to family of Ali Abbas, a matter not pleaded hence occasioning a miscarriage of justice.

ix. The Learned Trial Magistrate erred in law and fact when he failed to make findings of the 2nd Respondent's allocation letter under the same minute 24th- 27th May 2005 as that of Akwii Judith, thus occasioning a miscarriage of Justice.

x. The Learned Trial Magistrate erred in law and fact when he held that the Appellant was not in possession of the Suit Land at the time, it's alleged that the 1st Respondent entered the suit land.

xi. The Learned Trial Magistrate erred in law and fact when he failed to recognize the title and interest that came first.

xii. The Learned Trial Magistrate erred in law and fact when he held that the Appellant trespassed on the 1st Respondent's suit land whereas not.

xiii. The Learned Trial Magistrate erred in law and fact when he failed to evaluate the evidence on record thereby occasioning a miscarriage of justice to the Appellant.

xiv. The Learned Trial Magistrate erred in law and fact when he failed to make a finding against Soroti District Land Board.

xv. The Learned Trial Magistrate erred in law and fact when he misdirected and misapplied the facts of the suit.

xvi. The Learned Trial Magistrate erred in law and fact when he dismissed the counter claim with costs to the Respondents.

2) Duty of the 1st appellate court:

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

An appellate court is a higher court that reviews the decision of a lower court. It does so by hearing an appeal from a lower court. The primary function of an appellate court is to review and correct errors made by a trial court. In addition, an appellate court may deal with the development and application of law.

This Honourable Court is the first appellate court in respect of the dispute between the parties herein and 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 Begumisa and Three Others v. Eric Tiberaga SCCA 17 of 2000; [2004] KALR 236.***

The duty of the first appellate court was well stated by the Supreme Court 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 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 inferences and make its own conclusions. See: ***Lovinsa Nakya vs. Nsibambi [1980] HCB 81.***

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

3) Representation:

The appellant was represented by Omongole & Co. Advocates while the respondents were represented by M/s Engwau & Co. Advocates.

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

4) Determination:

a. Ground 4: ***The Learned Trial Magistrate erred in law and fact when he handled a matter whose subject matter is beyond his jurisdiction.***

Counsel for the appellant submitted that section 207 (1)(b) of the Magistrates Court Act places the pecuniary jurisdiction of a magistrate grade 1 at Ug. Shs. 20 million, yet in the instant case, the Magistrate Grade 1 well aware that the suit land with its development and location in a municipality (then) could not be less than 20 million, went ahead to exercise such jurisdiction over property beyond his pecuniary jurisdiction.

Counsel for the respondents in reply submitted that the 1st respondent filed Civil Suit No. 54 of 2017 in Soroti Chief Magistrates Court where the subject matter was Ugx 3,200,000/= per paragraph 4 (b) of the plaint and PEX1, the sale agreement.

The appellant did not file a valuation report to challenge the said value, therefore the trial court decided the matter basing on the evidence available before it wherein it was clothed with jurisdiction.

This ground faults the trial magistrate for hearing a matter above his pecuniary jurisdiction. The law gives a Magistrate Grade 1 court power to entertain matters whose value of subject matter does not exceed twenty million shillings. **See section 207(1)(b) of the Magistrates Courts Act Cap.16.**

The claim in the plaint before the learned Magistrate Grade 1 was for recovery of land comprised in plot 12 Igulot Close Camp Swahili ward in Northern Division Soroti.

Under paragraph 4 (b) of the plaint the 1st respondent stated that he bought the suit land for a consideration of 3,200,000/= (Uganda Shillings Three million two hundred thousand shillings). This is the only value that assigned to the suit land in the pleadings, no other valuation report was provided by either party to give court the value of the suit land at the time the suit was filed. The appellant also did not dispute the consideration which the 1st respondent is said to have paid for the suit land.

Counsel for the appellant argued that the Magistrate Grade 1 well aware that the suit land with its development and location in a municipality (then) could not be less than 20 million still proceeded to hear the matter.

For matters before the court, it is not upon the court to establish the value of the property subject to the suit before him, the parties to suit bear this responsibility. The parties in their pleadings and through the production of a valuation report provide the trial court with a basis upon which to determine their pecuniary jurisdiction.

Thus since the submission by counsel for the appellant on the value of the property was not anchored on any independent professional valuation

report of the market value of the property, I would conclude that before this Hon. Court they would remain a mere conjecture and evidence from the bar. That being so this court would remain with no proof to ascertain the basis of this assumption that the suit property was beyond the jurisdiction of the Magistrate Grade 1 and since there is no such proof that the property was beyond UGX 20,000,000, then the figure of UGX 3,200,000/= as indicated in the plaint is the value of the suit property which was all that the trial magistrate could rely on in determination of whether he had jurisdiction over the matter.

Given the fact that UGX 3,200,000/= falls below the upper limit of a Magistrate Grade 1 court jurisdiction of UGX 20,000,000/=, I would conclude that the suit property fell correctly within the pecuniary jurisdiction of the lower trial court as provided for by section 207 (1) (b) of the Magistrates Act rendering the appellant's claim that the lower trial court lacked the pecuniary jurisdiction baseless and this ground thus fails.

b. Ground 2: ***The Learned Trial Magistrate erred in law and fact when he shifted The Burden of Proof to the defendant to prove plaintiff's case, thus occasioning a miscarriage of justice.***

Counsel for the appellant submitted that the trial Magistrate in his judgment stated that;

> ***"I find that the defendant does not provide a proper account of how he acquired the property before the allocation...He only states that he was living on the suit land and applied for allocation when he developed it...This is suspect because the defendant himself does not mention inheritance of the suit land from his family and did not attempt to prove that."***

Counsel relying on ***Adrabo v Madira (Civil Suit No. 24 of 2013) [2017] UGHCLD 102*** submitted that in a civil suit, the burden of proof lies with the plaintiff and it's a claimant's duty to establish and prove his claim which duty remains inviolate, whether or not the case is defended by the Defendant, and the Claimant is expected to succeed on the strength of his own case, not on the weakness of the defence, however in the instant case the learned trial Magistrate shifts the burden on the Appellant, the defendant then to prove his case.

Counsel for the respondents in reply submitted that it is trite that a plaintiff must prove his case on the balance of probabilities and this burden was discharged on a balance of probabilities by the respondents in contrast to the appellant's evidence and his witness.

The trial magistrate in his judgement recognised that the plaintiff now 1st respondent bore the burden of proving the proposed issues on a balance of probabilities.

During determination of these issues he analysed the evidence by both parties and their witnesses, he then decided to determine proprietorship of the suit land prior to plotting by the Municipality in 1998 and subsequent allocation by the District land board.

At this point he found that both the appellant and respondent had contradicting accounts regarding proprietorship, on one hand it is alleged that the suit land initially belonged to the family of Ali Abbas who sold the same to Ojoo Naphtali who later sold to the 1st respondent.

On the other hand, it is alleged that the suit land initially belonged to the defendant, now appellant's mother and other relatives. It is at this point that the trial magistrate found that the appellant had not provided a proper account on how he acquired the suit land prior to allocation.

The legal burden of proof is a burden fixed by law and is a fixed burden of proof and in civil cases, the standard is on a balance of probabilities. The evidential burden on the other hand is the burden of adducing evidence to prove a fact in ones favour.

While the evidential burden keeps shifting, the legal burden never shifts. See: ***Kamo Enterprises Limited vs Krystalline Salt Limited (Civil Appeal No. 8 of 2018) [2021] UGSC 47.***

Section 103 of the Evidence Act provides that the burden of proof as to any particular fact lies on that person who wishes court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on a particular person.

In ***JK Patel vs Spear Motors Ltd SCCA No. 04 of 1991***, it was held by the Supreme Court that the burden of proof rests before evidence is given on the party asserting the affirmative. It then shifts on the party against whom the judgement would be given if no further evidence is adduced.

When a party adduces evidence sufficient to raise a presumption that what he or she asserts is true, she is said to shift the burden that her allegation is presumed to be true unless the opposing party adduces evidence to rebut the same.

In this instance the appellant raised the claim that he owned and lived on the suit land prior to his application however, he failed to prove this claim in evidence. The 1st respondent on the other hand stated that he bought the land from the 2nd respondent who had also bought it from Ali Abbas, the sale agreements and both these persons gave their testimony in court, which evidence was sufficient to prove the assertion, which the appellant failed to rebut.This ground accordingly fails.

c. Grounds 5 and 6.

- ***The Learned Trial Magistrate erred in law and fact when he perfunctorily handled the locus in quo misdirected the visit to locus and held that the Appellant confirmed to have erected a pit latrine on the suit land in 2014 whereas not, thus occasioning a miscarriage of justice.***
- ***The Learned Trial Magistrate erred in law and fact when he jumped into conclusion that the pit latrine which the Appellant constructed was enough to dispose of the matter with all of her evidence, thus occasioning a miscarriage of justice.***

Counsel for the appellant submitted that the locus visit was not properly conducted by the trial Magistrate, he did not record any proceedings at locus in quo and yet relied upon the improperly conducted locus to arrive at his judgement.

Counsel for the respondents in reply submitted that the evidence of the respondents was a balance of probabilities more coherent than that of the appellant. That the learned trial magistrate re-echoed evidence of the parties and he did not rely on the views or opinions of persons other than the trial witnesses, neither did he rely only on the observations at locus in quo in his judgement but the entire evidence produced in court.

Counsel further submitted that locus was visited on 1st November 2023 in presence of the appellant and his counsel and the only observation on the suit land was a pit latrine which the learned trial magistrate rightly pointed out and locus notes were taken unless the record was tampered with by counsel for the appellant in the process of preparing the record of appeal.

Practice Direction No I of 2007, under paragraph 3 provides for locus in quo as follows;

During the hearing of land disputes the court should take interest in visiting the locus in quo, and while there:

a) Ensure that all the parties, their witnesses, and advocates (if any) are present.

b) Allow the parties and their witnesses to adduce evidence at the locus in quo.

c) Allow cross-examination by either party, or his/her counsel.

d) Record all the proceedings at the locus in quo.

e) Record any observation, view, opinion or conclusion of the court, including drawing a sketch plan, if necessary."

The gist of this provision is that proceedings at the locus in quo should be as near as possible in form to those recorded by the trial judge during the hearing in court. In other words, the court extends its physical boundaries to the locus in quo to continue hearing the case, while viewing for itself on the ground what the dispute is about.

The proceedings are particularly useful for establishing boundaries in disputes, as was the case in the matter now before us. ***(Sitenda v Mwamini Twemanye Sekibala (Civil Appeal No 153 of 2017) 2022 UGCA 76 (18 March 2022))***

In the instant case the trial magistrate visited locus in quo on the 1/11/2022 with both parties and their counsel in attendance. The record indicates that the trial magistrate prepared a brief record of locus proceedings and a sketch map. The trial magistrate in his judgement before the determination of issues indicated that at the end of the trial court visited locus and both parties confirmed the land in dispute and the

boundaries. The court also observed that there is a pit latrine which the defendant confirmed was constructed by himself and the evidence of the parties would be enough to dispose of the matter. Having stated thus the trial magistrate proceeded to determine the issues without reference to the locus in quo proceedings.

These grounds therefore lack merit because as noted above the trial magistrate did record *locus in quo* proceedings and he did not rely on the same because the evidence given in court was sufficient to determine the matter conclusively.

d. <u>The other grounds:</u>

Having read the submissions of the appellant and respondents I find it necessary to resolve the overlapping issue in the appellant's submissions, that is ownership of the suit plot as determination of this issue will resolve most if not all of the remaining grounds of appeal.

i. <u>Evidence on record.</u>

PW1 Emou Alfred, the 1st respondent testified that he bought plot 12 Igulot Close on the 17/8/2007 from Ojoo Naphtali Ismael for shs. 3,200,000/= and thereafter he processed the documents for a lease.

The agreement was admitted as PEX1. He applied for a lease and he was given an allocation letter dated 29/8/2008 by Soroti DLB which was admitted as PEX2, he applied for premium, conveyance and inspection which he paid and these receipts were admitted as PEX3 (a)(b)(c) and (d). However, before he could start construction he found that the appellant had erected a latrine on the suit plot, he approached the 2nd respondent and told him what happened, the 2nd respondent told him the plot was genuine and he had bought it from one Abbas which agreement he showed him. When he approached the appellant, the appellant said he had papers

for the same plot and this prompted him to conduct a search at the Land Board which search confirmed him as the owner of the plot and the documents of the appellant were cancelled. During cross-examination he stated that he inquired from the LC1 Chairperson Opio Clement about ownership of the plot and he said that the plot belonged to Ojoo as it was allocated to him and during the transaction he did not get any information that the plot belonged to anyone other than the 2nd respondent.

The appellant Malinga Patrick testifying as DW1 stated that plot 12 belongs to him, he was living on it and when he developed interest in obtaining ownership he approached the municipal council and they asked him to seek authority from the aviation authority. He asked the aviation authority for authority and they authorised development under their guidelines. The aviation authority further sent a surveyor who produced a report and letter, he then wrote to the Municipal Council who permitted him to develop the place. He went to the town clerk to seek permission to develop the plot when he got the letter from CAA, he took this document to the Municipal surveyor to carry out a survey of the said plot. After the survey he applied for and was allocated the suit plot amongst others and he paid the requisite rates. A copy of his allocation letter dated 8/4/2005 was admitted as DEX1.

After allocation he sold the plot to Akwii Judith in 2005, she applied for the transfer of the same to her names and she was allocated the plot for which she paid the stipulated sum and was granted a lease. Later she was intimidated by the secretary who told her the plot wasn't his and she asked for a refund which he did, he then reprocessed the plot. The sale agreement and refund agreement were collectively marked as DEX2. He further stated that after refunding the money he went to Soroti Municipal

Council and Soroti DLB and lodged a complaint requiring clarification about the plot. He also filed an application to have the transfer made into his names and the same is still in the hands of the lands office. During cross-examination he stated that he made some payments in regards to the plots allocated to him, he accepted the offer from the DLB but he had no copy of the acceptance. He stated that he informed the Soroti Land Board that he sold the land to Akwii. He admitted that the lease offer given to Akwii indicates that the lessee should not deal in the property without permission of the leaser before extension of the offer to the full term. The appellant denied his allocation being cancelled, he admitted to receiving a letter from the secretary but his interest was not cancelled, he paid allocation fees for the plot in question. He further admitted that plot 13 and 14 were also cancelled by the town clerk, that he has no lease offer, no allocation or application for plot 12 after transacting with Akwii. He stated that his ownership of the land arose from allocation and the ownership may be cancelled by the allocating authority. During re-examination he stated that the letter mentioned cancelled plots 13,14 Igulot Close, 4C, 4D Mohamed cemetery road and plots 4E, 4F.

DW2 Abiang Issa testified that the plot belongs to the appellant having lived there for over 30 years even before Soroti Municipal council required the survey and plotting of land within their jurisdiction around 1998. During cross-examination he stated that the appellant has been in occupation of the land for long and its customary land which he inherited from his mother. He stated that the appellant applied for and was issued with an allocation letter and also a lease which interest he later sold to Akwii but he reclaimed it. He later stated that he did not know how the appellant acquired plot 12 and the board did not error by allocating the

land the way it did as it does not control customary land. During re-examination he stated that Akwii was threatened when they went to the 3rd respondent, secretary to the DLB and he informed her that land did not belong to the appellant. That that day the Chairperson DLB said the appellant is wasting time and this made Akwii threatened and she asked for a refund.

During the hearing of the counter claim the 1st counter-defendant now 1st respondent relied on his evidence given as PW1 as did the appellant.

The 2nd counter-defendant now 2nd respondent, Ojoo Naphtali Ismael testifying DC1 stated that he rightfully obtained an interest in plot 12 Igulot close upon allocation by Soroti DLB on the 26th June 2006. In 2005, one Ali Abbas asked him to lend him Ugx. 700,000/= for purposes of surveying his land namely plot 4c Mohamedan road, Plot 12 and 13 Igulot Close. He demanded for his money to be refunded but they settled and agreed amicably that in exchange of the money he takes ownership of plot 12, he then occupied the land and began processing documents for it. That on 12th April 2005 and on 17th April 2006 all and any interest the appellant may have had in the suit land was withdrawn or cancelled by the controlling authority and the appellant was duly informed. During cross-examination he stated the lease offer given to Akwii Judith had not expired by the time he bought the land. He sold plot 12 one year after his lease offer expired.

DC2 Ali Abbas corroborated DC1's testimony that he sold plot 12 to him after. He stated that the land allocated in Camp Swahili was for his family who were the first in that area, it was surveyed and he was allocated three plots.

DC3 Esunget Stephen the 3rd respondent herein testified that he was employed as the secretary Soroti DLB effective 1st October 2005 and has no personal knowledge of the averments prior to that date. During his tenure it was his statutory duty to communicate decisions/resolutions of the Board and he did not act in his own capacity. That he is aware that whereas the allocation letter to Ojoo Naphtali Ismail was dated 26th June it was implementing Minute No. 5 (a) 121 which was passed at the sitting of 24th -27th /05/05 before he was secretary to the Board. That by the time the appellant purported to deal in the suit land by way of sale to Akwii he had no proprietary interest therein and was being fraudulent. He did not write to the appellant about the cancellation of the plot as secretary, the communication was by word of mouth. That the allocation to Akwii Judith was fraudulently done but he did not communicate the same to her. That it is true at the time of the sale the lease was still running and the holder of the lease is stronger than one holding an allocation letter.

From the evidence on record it is clear that the suit plot is public land under the control of Soroti DLB much as the appellant and his witness Abiang Issa tried to claim that it was customary land which was not proved.

More so, the appellant even applied to the DLB for allocation of the plot which shows that he identifies that it had the authority over the suit land as a controlling body.

The suit plot in this case has been the subject of various applications. 1st the appellant applied and received an allocation letter dated 8th April 2005 wherein the Land Board in its sitting of 21st -24th /2/05 under Min 2/05 (a) 75 allocated him plots 11,12 and 13 Igulot close.

Secondly we have Akwii Judith to whom the appellant sold plot 12, she applied for the plot and by allocation letter dated 27th May 2005 she was

allocated the same in the sitting of 24th-27th/5/05 Min 5/05 (a) 132. Akwii later received a lease offer for five years dated 18/11/2005. On 20/2/2006 the appellant refunded the consideration for the plot and she returned the plot to him.

Next we have the 2nd respondent with an allocation letter dated 26th June 2006 where he was allocated plot 12 in the sitting of 24th-27th /5/05 under Min 5 (a) 121.

Finally, the 1st respondent with an allocation letter dated 29th August 2008 where he was allocated plot 12 in the sitting of 24th -26th June 2008 under Min 06/08(a) 53.

Having found that the suit plot is under the control of the Soroti District Land Board, it follows that the applicants for the plot could only acquire interest in the same after having been allocated the same and granted a lease. For any of the parties in this suit to have acquired legal interest in the suit plot which is unregistered, first they must have applied to the District Land Board, the board then issues an allocation letter which offer is only valid for 30 days. In this period the applicant must file an acceptance in writing to the Land Board and make all payments stipulated in the allocation letter. Having received acceptance from the applicant the board would then direct the applicant to the area land committee, from committee the applicant comes back to the land board who grant a leasehold offer, next would be a survey and titling of the land.

In this instance all the above parties were granted allocation letters and its worth noting that this letters are granted on terms that premium, ground rent, registration fee and service fees are paid. They also indicate that the offer is valid for 30 days with the Land officer requested to prepare a lease offer.

In the instant case there is no proof on record that the appellant when he was allocated plot 12 met any of the terms of payment, during the trial he brought receipts which were in the names of Akwii and the same were declined by Court and these aside he did not tender in any receipts that showed any payments he made.

In cross-examination he stated that he had no copy of his acceptance of the allocation, so this aspect was not proved.

Furthermore, the appellant brought no proof that he got a lease offer over the suit plot which means by the time the appellant sold the suit plot to Akwii he had no legal interest in it having failed to meet the terms of allocation and having failed to acquire a lease offer. He claimed he informed the board that he had sold the land to Akwii but there is no proof of this on record.

The appellant's claim as seen in his evidence is that once he refunded the purchase price to Akwii, the suit plot reverted to him and he repossessed the documents that she had acquired including the lease offer and as such he is the rightful owner of the suit land.

However, the evidence show that the appellant did not apply for the plot together with Akwii and even after she left the plot, the same reverted to the land board which had allocated it and not him.

The appellant claimed in his testimony that he complained to the Land Board and applied to have the land transferred into his names but no proof of this was adduced.

Thus the appellant remedy was that since he had recognised the authority of the land board over the suit land, the only way he would have got plot 12 into his names was if he had applied to the land board for it to be transferred it to him or if he applied afresh for the same to be allocated to

him and thereafter if it was allocated to him and a lease granted then he would have the right to claim ownership but that is not the case as was clearly shown when in cross-examination he stated that he had no lease offer, no allocation or application for plot 12 after transacting with Akwii.

The same applies to the 2nd respondent, there is no proof that he met the terms of the allocation letter and in his testimony he admits that he sold the suit plot to the 1st respondent one year after his lease offer expired however this lease offer was not adduced in evidence and I will take it that he meant one year after his allocation letter expired which was granted on 26/06/2006 and he sold land to the 1st respondent on the 17/08/2007.

Having failed to adduce evidence of acceptance to the land board and any payments it can be rightfully stated that his allocation later had lapsed and as such he had no legal interest in the suit land.

The process of allocation can be likened to the contractual concept of offer and acceptance where an offer is made and no acceptance is given in a stipulated period one cannot say there is a contract.

Therefore, the appellant and 2nd respondent having failed to acceptance the offer within 30 days of issuance cannot be said to hold legal interest over the suit plot.

Akwii Judith on the other hand had made payments and been granted a lease offer however once she got a refund she abandoned the same however this was not communicated to the board otherwise it would have cancelled. The lease offer granted to Akwii dated 18/11/2005 was for an initial period of 5 years and on completion of the building covenant could be extended to 49 years.

However, given that she abandoned this lease after her refund the terms of the lease offer were not met and after 5 years it would have lapsed.

This brings us to the 1st respondent who having bought the suit land from the 2nd respondent paid all the requisite fees. However, given that the 2nd respondent had not met the terms of the allocation letter and such had no interest in the suit plot, the question would be whether good title was passed on the 1st respondent?

Under classical land law, there are two interests that the law recognizes. These include legal and equitable.

According to **D.J Bakibinga, Equity & Trusts (LawAfrica, 2011), at pages 46 & 47**, it is generally recognized that a legal interest is valid and enforceable against the whole world ***(in rem)***.

This means that if, subsequently, a person obtains a legal or equitable interest in the same property, his or her interest is subject to the interest of the first owner. Equitable interests however are enforceable as against another claimant ***(in personam).***

Where there are competing equities therefore, the maxim ***qui prior est tempore, potior est jure*** (*he who is first in time has the stronger right*) becomes applicable. It deals with priority where there is a conflict between two competing equitable interests in property and the general rule is that equitable interests in property take priority according to the order in which they are created.

An equitable interest is one held by virtue of an equitable title that is a title that indicates a beneficial interest in property and gives the holder the right to acquire formal legal title.

In this case, the appellant having failed to comply with the terms of the allocation within the 30 days, acquired no legal interest in the suit land and cannot be said to have acquired any equitable interest in the suit plot.

The same can be said for the 2nd respondent who also did not get a lease offer to the suit land.

This leaves a question on whether the persons that bought land from the appellant and the 2nd respondent acquired good title in the circumstances. Akwii Judith who was allocated plot 12 and later obtained a lease offer over the same has no claim to the suit having abandoned the lease after getting her refund.

The 1st respondent on the other hand bought the suit land from the 2nd respondent before he acquired any interest in it, he applied for the same and was granted allocation letter. Even if this court was to isolate the 1st respondent's application from the 2nd respondent, it would still be problematic because by the time he acquired the allocation over the suit plot in 29th August 2008, the 5-year lease offer granted to Akwii Judith on the 18/11/2005 for an initial period was still running and an allocation cannot be made over land that has a running lease.

It is worth noting that the issue of double allocation has been a constant throughout this matter and unfortunately the Soroti DLB despite being a party to the counter-claim never entered any defence or appearance to clarify these issues as the 1st instance was when the 2nd respondent and Akwii Judith were both allocated the suit plot under the same sitting of 24th-27th/ 5/05 as evidenced by their allocation letters and DEX1 which were the minutes of this meeting.

This double allocation is made complex because the allocation letter to Akwii Judith is dated 27th May 2005 and that of the 2nd respondent is dated 26th June 2006.

The 2nd instance was when the Soroti DLB allocated the same plot to the 1st respondent on the 29th August 2008 whilst the lease for Akwii was still

running and even though she had abandoned the lease there is no proof that the board was aware of this before it allocated the suit land to the 1st respondent.

Given the multiple irregularities surrounding the allocation of this plot, I find that the Soroti DLB, which had authority over this land, created the situation in which none of the parties to this suit, can be deemed the rightful owner of the suit plot, given the fact neither the appellant nor the 1st respondent has proper legal title over the suit land and as such I cannot uphold the judgement of the lower court and neither can I decree the suit land to either party.

This proper allocation of the suit land can only be resolved if the Land Board had cancelled the lease awarded to Akwii.

That not being so, I would find and hold that while this appeal fails technically, the suit land in question, belongs to neither of the parties who were before the lower trial court.

It still belongs to the Soroti DLB which must properly exercise its constitutional mandate correctly by avoiding double allocation and its action of allocation of land while there is a subsisting lease offer.

For that reason, this appeal fails in material particular as I also do set aside the decision of the lower trial court as I find that none of the parties, who were before it, had any persisting legal interests over the land due to illegalities carried out by the controlling authority which I clearly explained above.

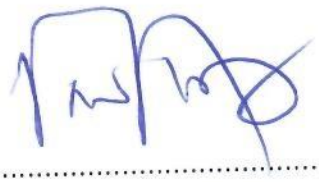
Consequently, the suit land is ordered returned to the Soroti DLB with the order that it should exercise its constitutional mandate within the ambit of the law and the procedures thereto so as to provide proper land allocation justice.

Furthermore, since the confusion over as to who had the legal rights over the suit land arose from the non-following of the laid down legal procedures by controlling authority, I would find that the parties herein were led into believing that each or any of them had any right to the suit land yet that was not so. The controlling authority provided that temptation. As the bible state lead us not into temptation.

That being so, I would order each party to bear own costs both in this court and in the lower trial court.

I also order the registrar of this Honourable Court to bring to the attention of the controlling authority these orders and for it to exercise its mandate in accordance with the law.

I so order.



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Hon. Justice Dr. Henry Peter Adonyo

Judge

16th January 2023