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The Republic of Uganda

In the High Court of Uganda at Soroti

Civil Appeal No. 0047 of 2022

(Arising from Katakwi Civil Suit No. 021 of 2018)

10 Okwi Pampas Appellant

Versus

Atiang Alice Respondent

Before: Hon. Justice Dr Henry Peter Adonyo

15

Judgement on Appeal

(Appeal from the Judgement and Orders of the Chief Magistrates Court of Katakwi at Katakwi delivered on the 7th of October 2022 by H/W Owino Paul Abdonson Magistrate Grade One)

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1) Background:

The respondent filed Civil Suit No. 21 of 2018 at the Chief Magistrates Court of Katakwi at Katakwi against the appellant for recovery of about 2½ acres/gardens situated at Angiriny village, Aputon parish, Toroma sub-county, Toroma county in
25 Katakwi District, an order of vacant possession, permanent injunction, general damages and costs of the suit.



- 5 Her claim was that she is the rightful owner of the suit land having inherited the same after the death of her husband called Elungat Hilary who died in 2015.

In the year 2016 and 2017 the appellant is said to have continued trespassing on the suit land by way of cultivation culminating in his building three houses thereon in 2018 where he is currently staying.

- 10 The appellant went ahead and even buried his father Maritino Okiror who died on the 2nd June 2018 on the suit land well knowing that the suit land belonged to the respondent.

That since inheriting the land she enjoyed quiet possession till the appellant started encroaching on it.

- 15 The appellant in his written statement of defence denied the respondent's claim that she is the owner of the suit land. He contended that the land in dispute is his ancestral land having inherited it from his late father Maritino Okiror who died on the 2nd day of June 2018 and he was buried on the suit land without any body raising a complaint.

- 20 That he had lived on the suit land since his birth in 1949 up to date.

The trial magistrate having heard the matter entered judgment in favour of the plaintiff now respondent and issued the following orders;

- a) The plaintiff is declared the lawful owner of the suit land.
b) The defendant is a trespasser on the suit land.
25 c) An order of eviction issues against the defendant.
d) Permanent injunction, doth issues against the defendant, his agents, servants or employees from interfering with the suit land.
e) The plaintiff is awarded general damages of shs. 5,000,000/=.
f) The plaintiff is awarded costs of the suit.

5 The appellant was dissatisfied with the judgement of the trial magistrate and thus appealed to this Honourable Court on the following grounds;

10 a) The learned trial Magistrate erred in Law and Fact when he failed to adequately evaluate and scrutinize all evidence on Court record and arrived at an erroneous decision against the Appellant there by occasioning a miscarriage of justice.

b) The learned trial Magistrate erred in Law and Fact when he held that the Respondent was the owner of the Suitland and the Appellant was a trespasser there by occasioning a miscarriage of justice.

15 c) The learned trial Magistrate erred in Law and Fact when he relied on hearsay evidence to find that the Appellant's father was forcefully buried on the Suitland.

d) The learned trial Magistrate erred in Law and Fact when he entertained the evidence of PW5 whose appearance in Court amounted to conflict of interest there by occasioning a miscarriage of justice.

20 e) The learned trial Magistrate erred in Law and Fact when he failed to consider and find that the Respondent is barred by statute of limitation to recover or claim ownership of the Suitland thereby reaching a wrong decision which occasioned a miscarriage of justice.

2) Duty of the 1st Appellate Court:

25 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,

5 an appellate court may deal with the development and application of law. In carrying out its duty, the appellate court can do one of the following:

- a. Review decisions made by lower trial court;
- b. Affirm the decision of the trial court, in which case the verdict at trial stands;
- 10 c. Reverse the decision to the trial court, in which case a new trial may be ordered;
- d. Modify an order or a decree;
- e. Remand the case back to the lower court for further proceedings;
- f. Dismiss the case.

15 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 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;

25 *"...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"*

5 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.***

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

3) Representation:

The appellant was represented by M/s Obore & Co. Advocates while the respondent was represented by M/s Legal Aid project of the ULS.

This matter proceeded by way of written submissions and the same have been
15 considered in the determination of this appeal.

4) Determination:

a. Grounds 1 and 2:

- The learned trial Magistrate erred in Law and Fact when he failed to adequately evaluate and scrutinize all evidence on Court record and arrived at an erroneous
20 decision against the Appellant there by occasioning a miscarriage of justice.

- The learned trial Magistrate erred in Law and Fact when he held that the Respondent was the owner of the Suitland and the Appellant was a trespasser there by occasioning a miscarriage of justice.

Counsel for the appellant submitted that the Trial Magistrate relied on a
25 mediation report tendered in by PW5 Akwii Harriet Faith dated 2/3/1995 to confirm the Suitland belonged to the Respondent. That interestingly the report of 2/3/1995 where the Appellant's Father is alleged to have conceded to vacate the land had different parties from the ones in the trial court and one wonders

5 how safe it was for the Trial Court to rely on such a report moreover the mediation conducted by PW5 was done in 2018, 23 years later.

Counsel further submitted that the Respondent did not lead evidence in the trial court to show how she utilised the suit land from 1995-2015, as held in the Lower Court Judgement and as such the said judgement was speculative, devoid of
10 cogent evidence and largely misleading.

Counsel added that it was a wonder why the Trial Magistrate ignored the Clan Resolution dated 14/04/2018 admitted as DEX1 at page 14 of the proceedings which confirmed that each of the litigants was to stay on their respective pieces of land as corroborated by DW5 Ibwal Martin.

15 That the Clan demarcated the Land separating the Appellant from the Respondent and in the premises if the Trial Magistrate had rightly evaluated the evidence on record he would have found that the Respondent is a trespasser and not the Appellant.

Counsel for the respondent in reply submitted that they associate themselves
20 with the findings of the trial magistrate. Counsel presented the evidence of both parties in the lower court, which I will not reproduce here.

Evidence on record.

PW1 Atiang Alice testified that the appellant is her neighbour and he grabbed her 2½ acres. That the appellant entered the land in 2015 when he could plough at
25 night, in 2018 he built four houses on the suit land. She reported the matter to her husband's clan Ikatekok Ingurubo but it did not make any decision, she then went to the LC1 chairman of their village who summoned the appellant but he refused to attend court.

5 The LC1 then gave her a letter forwarding her to the sub-county chief Toroma who heard the matter and advised them to go back and solve the matter amicably but they failed. The sub-county chief also made an order that they do not use the land but the appellant stubbornly built his houses even after this order had been made. She inherited the suit land from her husband Elungat Hillary who died in
10 2015, he also inherited the suit land from his father Oupal Cerebesio who died in 1998 and the two were buried on the suit land. She got married on the suit land in 1984 and they used the land for cultivation and up to the death of her husband the appellant was on his own land and he started cultivating the suit land in 2015 claiming it belonged to him yet he used to see her and her husband cultivating
15 the suit land. That the appellant's land is 1½ miles from the suit land.

PW2 Opus Joseph a neighbour to both the appellant and respondent testified that he is a neighbour to the suit land on the south and the suit land is for the respondent. In 1980 when he reached that village he found the appellant's father on the suit land and after sometime he heard that the respondent's husband won
20 the case and the appellant lost, this was before the LC1 Court. The appellant's father refused to vacate the suit land and he was allowed to settle as he looked for where to go and later the appellant's sister Akello took their father to her home in Aputon and the suit land remained vacant. The appellant demolished his houses and shifted, the respondent started using the land by cultivation. After
25 some time, the appellant came back and built two houses and a kitchen and is now living there.

PW3 Okiror Silver testified that the respondent is wife to his uncle Elungat and the appellant is his cousin brother. The suit land belongs to Elungat which he inherited from his father Atuda and he died in Gulu where he fled during the
30 insurgency. Elungat died around 2000 and by then the appellant was on land

5 given to him by his father-in-law Eteu which land is in the same village but about
1km away. Martino Okiror the father to the appellant died around 2016 in the
home of Akello his daughter and the appellant forcefully buried him on the suit
land. The Toroma sub-county stopped the appellant but he stubbornly used
force, earlier the father of the appellant had been chased from the suit land by
10 Elungat and an agreement was signed to that effect. That the father of the
appellant used to move from place to place. That onetime the sub county called
the two clans and the resolution was that the appellant vacates the land but he
defied the resolution of the gathering.

PW4 Omongot Mark testified that the suit land belongs to the respondent having
15 inherited it from her husband Elungat Hillary. Before his death Elungat litigated
with Martino Okiror over the suit land before the LC1 court and Martino lost the
case, he accepted the decision.

By this time Martino Okiror was on the suit land but he agreed to vacate it, he
drafted the agreement since he was the secretary, both Okiror and Elungat
20 signed the agreement. Okiror did not leave the land immediately, he fell sick and
died on the suit land. That while Okiror was on the land the respondent was
cultivating it.

PW5 Akwii Harriet Faith testified that she knew the respondent from the time
when she was the sub-county chief in Toroma in 2018. The respondent brought
25 a complaint over a land in dispute between herself and Okwii Pampas. Because
she mediated the matter she got the facts relating to that land which belongs to
the widow Atiang, she saw documents where the father of Okwi Pampas had
signed accepting to vacate the land which she presented as PEX2 to 4. During
cross-examination by the appellant she stated that he forcefully buried the
30 remains of his father on the suit land.

5 DW1 Okwi Pampas testified that he knows the respondent who is a widow to the late Elungat who was his neighbour in the village. That Elungat had eight gardens behind his, his land neighboured Elungat's to the south. He stated that the suit land comprises of nine gardens and it belongs to him having inherited it when he was still young from his grandfather Okwii (Ometuba). He started living on the
10 suit land in 1949 and the home of his late father is on the suit land. That this land dispute was resolved by the clan leader of the respondent and he won, each of them was asked to stay on their piece of land and they both signed the resolution in 2018. He inherited the suit land in 2018 and he wasn't aware that his father had agreed to vacate the suit land.

15 DW2 Okoko John Peter testified that the appellant has been his neighbour for 72 years, he also knows the respondent as his village mate since 1995. The land in dispute is nine gardens and it belongs to the appellant who inherited in 2018 when his father died and he is in occupation of the same. That the respondent occupies the land of the elder father of Okwii Pampas called Oupal in 1995 and
20 he was present.

He added that the respondent is not related to Okwi, then later changed and stated that they are related. The dispute between the parties began in 2018 when the respondent entered the appellant's land, a road separates them, this road moves from Toroma to Abirit swamp.

25 The appellant built three houses on the disputed part and before he was living away on the land he bought. During cross-examination he stated that both the appellant and the respondent are cultivating the suit land, Okwi constructed his houses and 2018.

That the father of the appellant never left the suit land and the respondent came
30 to the suit land to take refuge.

5 DW3 Omutya Henry testified that the suit land is for the appellant because having inherited from birth, his father gave him nine gardens in 1975 and he was present.

That the respondent was staying on Elungat's land and she came to the disputed land in 1995, a brother to the appellant's father Oupal Serepacio called Elungat
10 Hillary and told him to take refuge on his land and that is where the respondent is settled.

He agreed that those three gardens belong to the respondent and they were demarcated for her, however, she encroached on 9 gardens in 2001 which land belongs to Okwii Pampas. Okwi reported her to the LC1 in 2001, LC2 and LC3, the
15 respondent won the case at LC1 and LC2.

He then stated that he had lied when he stated that the appellant was given land by his father in 1976 and that his father died in 2019.

DW4 Akwii Meriselina testified that the suit land is nine gardens and the appellant inherited it from his father. The respondent is in possession of the suit land and
20 has been on the land for 14 years.

That when she got married in 1972 she found Okwii on the land, the father of Okwi had four grass thatched houses on the suit land but they got destroyed but the destroyed old homesteads are there.

That the respondent is a neighbour to the suit land to the north.

25 DW5 Ibwal Martin testified that the land in dispute is nine gardens and it belongs to the appellant having inherited it from Maritino Okiror and he is in occupation with three huts, there are 6 graves of the appellant's deceased relatives on the suit land.

5 The respondent entered the suit land in 1995 and the appellant reported it to the
clan and the clan demarcated the land separating Okwii from Atiang and the
boundary is the road that moves from Angiriny to Asinge, with Okwii's land on
the northern side of the road and the respondent is on the southern side. The
respondent has crossed the road to the northern side and has encroached on
10 nine gardens for about 20 years.

The appellant has never taken her to any authority over these gardens.

Both DW4 and 5 stated in cross-examination that the school took the
respondent's land.

Both parties claim ownership of the suit land, with the appellant claiming through
15 his father Maritino Okiror and the respondent her husband Elungat. From the
evidence it is clear that both Elungat and Okiror have at a point occupied the suit
land, with the respondent and her witnesses claiming that Okiror was chased off
the land and he agreed to leave only for his son the appellant to come back in
2015 to occupy the same.

20 That the appellant on the other hand claims he was born on the suit land in 1949
when he was born on the same, he subsequently inherited the same from his
father after his death in 2018.

The respondent and her witnesses are clear that it was the appellant who
encroached on the suit land which is 2½ acres and this was after the death of her
25 husband Elungat and the appellant is currently in occupation of the same.

The appellant only stated that he owned the suit land which is nine gardens, his
witnesses also state that the suit land is nine gardens, however, they claim it is
the respondent who encroached on the land.

5 DW2 claimed the respondent encroached on the land in 2018. DW3 claimed she did do so in 2001 with the appellant reporting her to the LC courts. DW4 stated that she encroached for 14 years while DW5 claimed she had encroached for 20 years.

10 Given that it was undisputed that the appellant had built houses on the suit land in 2018, it is clear that he is in occupation of the suit land and the claims of encroachment by the respondent are not plausible because the appellant would have sued her instead if she had been the one who had encroach on his land though DW3 claimed that in 2001 the appellant sued her in all LC courts and she won but no proof of this was led in the trial court and further more DW5 testified
15 that the appellant has never taken the respondent to any authority over the suit land.

From the sequence of events as described by the witnesses as above, it is clear to me that the appellant went back to the suit land after the death of the respondent's husband and that was when the dispute between him and the
20 respondent started as is even confirmed by DW2 who in his testimony also stated that before the appellant built on the suit land he was staying elsewhere.

Further, DW3 in his evidence raised the claim that Oupal gave the respondent 3 gardens which are not on dispute, however, no description was given of this land so as to identify it and separate it from the suit land.

25 The same goes for the land DW5 claimed the clan had demarcated for the respondent in 1995 after the appellant reported her, given that the appellant and respondent are not of the same clan. Without corroborating evidence to this effect this testimony is left wanting.

5 Turning to the documentary evidence on record, DE1 dated 25th June 2018. This is a letter from the sub-county Chief Toroma (PW5) to the Chief Magistrate Katakwi, forwarding the dispute between Atiang Alice and Okwi Pampas.

In this letter PW5 repeats the facts as stated by the respondent and her witnesses. This is that the appellant's father came to the suit land during the time
10 of insurgency and when Elungat came back in 1995 he raised a complaint of encroachment and the clan leaders handled it with Okiror accepting to leave the land before the elders.

This document is not disputed as the respondent attached a copy of this agreement to the letter.

15 She goes on to state that in 1997 a follow up was done whereby Okwii's father was asked to vacate the land in question and he accepted and even partly honoured the agreement and left for some time (See the agreement attached to this effect) only to come back in 2015.

While the sub-county found was handling the dispute, the appellant even against
20 the advice given by the elders went ahead to build a home and planted trees on the suit land even after the sub-county authority tried to stop both parties from utilising the land until the dispute is resolved.

The letter further states that on 4th/06/2018 Mr. Okwii Pampas lost his father and against the will of the elders, including the LC3 Chairperson's advice, forcefully
25 buried his father in the disputed land.

I note that there was an error in the marking of the exhibits in the lower court with two documents authored by PW4 were tendered in twice, first with the 1995 agreement as PE1 and later when PW5 the sub-county chief was tendering documents the documents authored by PW4 were marked as PE2 and 3. For



5 clarity I will use PE1 and 2. Further the forwarding letter by the sub-county chief and the clan resolution tendered in by DW1 were all marked as DE1.

PE1 was tendered in by PW4, it is the agreement made by Okiror Maritino to leave the suit land. The same is dated 2/3/1995 and PW4 testified that he personally wrote this agreement as the secretary and Maritino accepted to leave
10 the suit land.

PE2 is the second agreement made on 19/12/1997 titled Elungat Hilary vs Okiror Martine.

Herein Okiror's stay on the suit land was questioned given that he had promised to leave in 1995. Okiror said nothing had prevented him from leaving, he agreed
15 with the Elungat who had allowed him to stay on the land but now that he has asked him to leave he is leaving and he accepted to leave. This agreement was signed by both parties.

At this point the appellant's father left the suit land and returned in 2015 with the appellant and this is when the dispute between the appellant and respondent
20 started.

These documents were never challenged in the lower court and no contrary evidence regarding them was led by the appellant.

The clan resolution that the appellant claims was not used by the trial court is on court record as DE1. However, the same is not translated to English and I cannot
25 make findings based on the same.

This notwithstanding this so-called resolution is dated 14/04/2018 and the letter from the sub-county chief PW5 dated 25/06/2018 indicates that the dispute between the parties was not resolved and if indeed there had been a clan resolution directing the parties herein to remain on the portions of land they

5 were occupying the sub-county chief would not have gone ahead to try to carry out a mediation between the parties as that would be of no use given that the issued had already been resolved.

This being so I am inclined to doubt on the contents of this so-called clan resolution given the assertion by the appellant himself that even the sub-county
10 mediation failed meaning there was never a resolution between the parties.

Having considered all the evidence as above I find that the appellant's father did not own the suit land as alleged by the appellant rather the same belonged to the Elungat having inherited it from his father called Oupal even though the appellant's witnesses claim that the said Oupal was an elder father to the
15 appellant, which claim was not substantiated in evidence because Okwii denied being related to the respondent or Elungat at all.

It is true that the respondent's husband left the suit land at some point and Okiror entered on the same and when the Elungat came back he reported the said encroachment to the clan which resulted in the agreements of 1995 and 1997
20 wherein Okiror the father of the appellant accepted to vacate the suit land.

The appellant's father having accepted to leave the suit land in 1995 and 1997 without any litigation or claim over the same signifies that he was well aware that he did not own the suit land and had no claim to it. That being so, then the appellant cannot lay a claim to the suit land through his father and any act he did
25 on the suit land was clearly an act of trespass.

The above findings being so I would agree with the finding of the trial magistrate that the suit land belongs to the respondent, she having proved the same on a balance of probabilities.

Ground 1 and 2 thus fail.

5 b. Ground 5.

The Learned Trial Magistrate erred in Law and Fact when he failed to consider and find that the Respondent is barred by statute of limitation to recover or claim ownership of the Suitland thereby reaching a wrong decision which occasioned a miscarriage of justice.

10 Counsel for the appellant submitted that from the evidence of PW2 and PW4 as early as 1980 the appellant's father Maritino Okiror was on the suit land and that by the time the Suit was filed in the lower Court in 2018 as ascertained from the Respondent's own witnesses, the Appellant had been in occupation of the suit land for more than 12 years which makes the Suit time barred.

15 I will not delve much into this ground as the evidence as seen above indicates that the though appellant's father was indeed on the suit land in 1995 Elungat returned to it and reported him to LCs with Okiror then accepting to leave the suit land in 1995 and even agreement to this effect was executed and later in 1997 he left the suit land after another agreement was made. The appellant only
20 came back to the suit land after the respondent's husband died in 2015, he built on the land in 2018 and forcefully buried his father on the suit land in 2018.

His own witness DW2 confirmed this when he stated that before the appellant constructed on the suit land he was staying elsewhere on land he bought. It is also worth noting that the litigation and these agreements were never challenged
25 by the appellant or his witnesses.

Given that the suit was filed in 2018, the time limitation period of 12 years under section 5 of the Limitation Act cannot arise. This ground accordingly fails.



5 c. Ground 3.

The Learned Trial Magistrate erred in Law and Fact when he relied on hearsay evidence to find that the Appellant's father was forcefully buried on the suit land.

Counsel for the appellant submitted that the Allegation by The Trial Magistrate at Page 2 of his Judgment that the Appellant forcefully buried his father on the
10 Suitland is devoid of truth.

That if that were the case, why didn't the Respondent report this incident to the relevant authorities like the LC1 Chairperson and the Police in her area of Jurisdiction.

Counsel further submitted that be that as it may, evidence of PW4 indicated that
15 the appellant had 7 graves on the suit land and that it's not a coincidence that 7 graves of the Appellant's relatives are buried on the Suitland. It points to the fact that the Appellant and his relatives have been in occupation of the Suitland for a very long time.

Counsel for the respondent in reply submitted that the respondent led evidence
20 that the appellant's father litigated with the respondent's husband which fact was never challenged by the appellant and his witnesses. That after this litigation the appellant's father was to vacate the suit land but he did not adhere to the order.

Counsel further submitted that the evidence clearly shows that the appellant's
25 father was forcefully buried on the suit land.

This issue is very easy to resolve, PW5 the sub-county chief of Toroma in 2018 and the author of the letter forwarding the parties matter to the Katakwi court in her letter stated that she and the elders had advised both parties not to do anything on the suit land until ownership was determined, however, the



5 appellant in total defiance constructed on the suit land and forcefully buried his father thereon.

During cross-examination PW5 maintained her testimony that the appellant forcefully buried his father on the suit land in spite of her advice. This fact corroborated the testimony of the respondent that the appellant forcefully
10 buried his father on the suit land and thus it was right for the trial magistrate to find so. This ground accordingly fails.

c. Ground 4.

*The Learned Trial Magistrate erred in Law and Fact when he entertained the evidence of PW5 whose appearance in Court amounted to conflict of interest
15 there by occasioning a miscarriage of justice.*

Counsel for the appellant submitted that the evidence of PW5 Akwii Harriet Faith should be disregarded because she was simply a mediator and not alive to the facts surrounding the suit land.

He further submitted that the purported document dated 02/03/1995 upon
20 which it is alleged that Okiror Martino and a one Adiama conceded to vacate the Suitland did not involve the present parties in Court, the contents of PEX 2 and 3 were not mentioned, whether the parties appended their signatures to this agreement at the time, whether the agreement described the present suit land, other witnesses present that day among others.

25 That in the absence of other independent witnesses to confirm the authenticity of this agreement we submit that it was not safe to rely on the same.

It was the appellant's submission that as a mediator she was conflicted from taking sides and should have recused herself from testifying as a witness for the



5 Respondent premised on our foregoing submissions we pray that this Honourable Court disregards her evidence because of a conflict of interest.

Counsel for the respondent submitted that during the trial the respondent adduced evidence following mediation dated 02/3/1995 wherein Maritino accepted to vacate the suit land together with Adiama.

10 I agree with the submission of the respondent that the documents PEX 2, PEX3 and PEX4 were never challenged by the appellant during the trial.


Accordingly, Counsel for the appellant cannot seek to challenge them now after judgement has been passed, furthermore, these documents especially the agreements of 1995 and 1997 were authored by PW4 who testified to their
15 contents so their authenticity is not in question.

Regarding the testimony of PW5, she was called by the respondent to give testimony of the mediation she conducted, she simply exhibited the documents brought before her in the mediation and the result of the same.

Clearly PW5 in her brief testimony never took sides with any of the parties save
20 for stating facts as they happened during the mediation.

The mediation held by PW5 between the parties to this case was held in her capacity as a sub county chief over the parties as her subjects in Toroma sub-county.

This mediation was not directed by court or held in a quasi-judicial capacity. The
25 mediator, therefore, could be a witness in the matter if it later came to court as is the case here especially since she was the one that forwarded the parties to the court. No miscarriage of justice occurred since even under the Judicature (Mediation) Rules, 2013 even were PW5 appointed as a court mediator, the rules



5 would make her still a compellable but not an incompetent witness under rule 18(3).

Accordingly, I find it lame and not grounded on the law for the appellant to argue that the Learned Trial Magistrate erred in law and fact when he entertained the evidence of PW5 whose appearance in Court amounted to conflict of interest
10 there by occasioning a miscarriage of justice. This ground accordingly fails.

5) Conclusion:

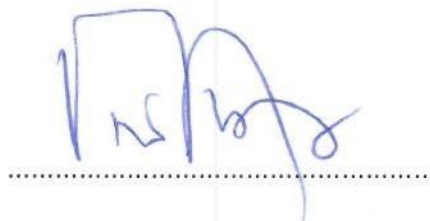
From the above findings, this appeal fails on all grounds as it lacks merits. It is accordingly dismissed.

6) Orders:

- 15
- This appeal is dismissed for want of merits.
 - The judgement and orders of the lower court are accordingly upheld.
 - The costs of this appeal and in the lower court is awarded to the respondent.

I so order.

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Hon. Justice Dr Henry Peter Adonyo

Judge

22nd March 2024

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