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The Republic of Uganda

In the High Court of Uganda at Soroti

Civil Appeal No. 0063 of 2023

(Arising from Kumi Land Claim No. 0019 of 2022)

10 Odongo Lawrence Appellant

Versus

1. Olupot Stephen
2. Ijala Daniel
3. Okedi John
} *(Beneficiaries of the estate of the late Ijala John)* Respondents

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*(An appeal from the judgement and orders of the Chief Magistrates Court of Kumi at Kumi
delivered on the 13th of June 2023 by H/W Hope Namisi)*

Before: Hon Justice Dr Henry Peter Adonyo

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Judgement on Appeal

1. Background:

The 1st and 2nd respondents filed Civil Suit No. 0019 of 2022 against the appellant for trespass on land comprised of 12 gardens located at Kongoidi cell, Kongoidi ward, Kangunga Town council in Bukedea District, a declaration that the suit land forms part of the estate of the Late Ijala John for which the plaintiffs are entitled to ownership, eviction order, a permanent injunction restraining the appellant



- 5 his agents, servants and assignees from further trespassing on the suit land, general damages and costs of the suit.

The Respondents' claim was that the suit land forms part of the large estate of the late Ijala John which he acquired by way of inheritance from his late father Ikara s/o Okiria.

- 10 That throughout his lifetime the respondents' father was in possession and utilisation of the suit land until his death on 28th June 2022 when the appellant without any colour of right on the 20th July 2022 forcefully entered and started clearing the land. That prior to the death of Ijala John, the appellant had attempted to grab the suit land from the respondents' father through the LCII
- 15 Court but failed when the respondents' father applied for revision of the LCII Judgement to the High Court and a retrial was ordered, however, the appellant did not file a fresh suit.

- That it is within the respondents' knowledge that the Appellants' father Odeke Gusberito and his brother Orone had between 1950s to 1960s trespassed on the
- 20 suit land during the lifetime of the original owner Ikara s/o Okiria and illegally settled on the land but when Okiria returned they were evicted before Okiria died. The respondents' grandfather Okiria left all 23 acres/gardens intact and free from squatters for which the respondents' father Ijala John inherited.

- The appellant in his written statement of defence stated that the suit land never
- 25 belonged to the late Ijala John and does not form part of his estate. That there is no way the respondents' father inherited the suit land which belongs to a different clan, the respondents' father was not in possession of the suit land during his lifetime rather he forcefully encroached on the suit land in 1985.

5 That in in 1983 the late Odeke Gusberito was imprisoned on a criminal charge arising from a complaint of allegedly burning the late Ijala John's house and this made the late Odeke's family to flee from the suit land. The late Ijala John then encroached on the land and started cultivating it.

When Odeke had finished serving his sentence in 1985 he attempted to repossess
10 the suit land but faced resistance from the Late Ijala including threats to his life. The late Odeke sued the late Ijala in the RC1 Court of Kongoidi claiming for the suit land and judgement was given in his favour however he passed on before this judgement could be delivered.

In a counter-claim the appellant sued the 1st and 2nd respondents together with
15 the 3rd respondent jointly and severally for a declaration that the suit land belongs to him, an order of eviction/vacant possession, an order of permanent injunction, general damages and costs of the suit.

His claim was that he acquired the suit land by way of inheritance from his late father Odeke Gusuberito who also inherited it from his late father Opirisi. That
20 the suit land is part of a chunk belonging to the clan of Ikomolo Amug to which he belongs and some of the families of his clan brothers neighbour the same. That the late Odeke was born and raised on the suit land; he repeats the averments in his WSD on how the late Ijala came to be on the suit land. He further claimed that the late Ijala sold one acre of the suit land to the 3rd respondent
25 which fact he discovered after the suit had been filed.

The 3rd respondent in his defence to the counter claim stated that in 1989 the late Ijala John approached him stating that he had a portion of a land he wished to sell, which portion is within the suit land and measures approximately 2 acres. He agreed to buy this land and on the 5th of February 1989 he purchased the land
30 for shs. 50,000/= and the sale was witnessed by elders and neighbours.

5 In a reply to the WSD and counter claim the 1st and 2nd respondents stated that their grandfather recovered the suit land from the appellant's father and when their grandfather died, the clan sat in 1977 and officially handed over the suit and to Ijala John and he used the same till 2022 when he died.

They further stated that the appellant's father was arrested and imprisoned
10 around 1973 and not 1983, and at this time he was a resident of the present day Airogo ward, Kongunga Town Council in Bukedea District and not the suit land.

The trial Magistrate having heard the matter, entered judgement in favour of the plaintiffs now respondents with the following orders;

- 15 a) A declaration that the suit land exclusive of the land Ijala sold to Okedi John, the 3rd counter defendant, in 1989, forms part of the estate of the late Ijala John.
- b) A declaration that the defendant is a trespasser on the suit land.
- c) An eviction order against the defendant.
- d) A permanent injunction restraining the defendant, his agents, servants and
20 assignees from further trespassing on the suit land.
- e) Costs of the suit are awarded to the plaintiffs.

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

- 25 a) The Learned Trial Magistrate erred in law and fact when she held that the Counter claim in Land Claim No. 019 of 2022 is time barred, whereas not and thereby occasioning a miscarriage of justice.
- b) The Learned Trial Magistrate misdirected herself on the law of adverse possession which occasioned a miscarriage of justice when she held that the suit land is the estate of the late IJALA.

5 c) That the Learned Trial Magistrate erred in law and fact when she held that the Appellant is a trespasser on the suit land thereby occasioning a miscarriage of justice.

d) The Learned Trial Magistrate erred in law and fact when she ignored the testimony of the Appellant's witnesses of the existence of the graves of the Appellant's relatives on the suit land, thereby occasioning a miscarriage of justice.

e) The Learned Trial Magistrate erred in law when she failed to properly evaluate the evidence on record and thereby occasioning a miscarriage of justice that the suit land is the estate of the late IJALA.

15 2. Duty of the 1st appellate court:

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;

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 Asire & Co. Advocates while the respondents was represented M/s Mesa Advocates.

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

4. Determination:

Counsel for the appellant indicated in her submissions that she would only proceed with ground 1,2 and 3 as grounds 4 and 5 have been abandoned.

a) Ground 1.

20 The Learned Trial Magistrate erred in law and fact when she held that the Counter claim in Land Claim No. 019 of 2022 is time barred, whereas not and thereby occasioning a miscarriage of justice.

Counsel for the appellant submitted that whereas it is true that the period of limitation for recovery of land is within 12 years according to Section 5 of the
25 Limitation Act.

However, one of the exceptions to the limitation period is disability. Disability is the inability to perform some function; an objectively measurable condition of impairment physical or mental (insanity, minority, etc.).

5 Therefore, in order for court to determine whether the case is time barred it only
looks at the pleadings and not anything else. That the appellant in his counter
claim mentions of the court case lodged by the late Odeke against the late Ijala
in 1989, before the RC1 court in Kongoidi. Then the Appellant himself lodging a
case before the LCII court of Kongoidi Parish in Kachumbala against the late Ijala
10 John in 2009, though set aside late by the High court of Uganda holden at Soroti.
That the Appellant in his counterclaim stated that the late Ijala always resisted
eviction and did not leave the suit land.

Counsel's submission is that having lodged those court cases the Appellant was
always under a disability that he was doing what it could take for the late Ijala to
15 leave the suit land but only to face resistance. The disability that the Appellant
faced was in relation to knowing that he was going to evict the late Ijala but in
vain.

That since the issue of the Ijala's occupation has always been a subject of
litigation, counsel prayed that this honorable court be pleased to find that the
20 counter claim against the 1st and 2nd Counter Defendants is not time barred.

Counsel further submitted that the trial court in its judgement alluded that even
the case before the RC1 court of Kongunga was time barred.

However, the court misdirected itself to pronounce itself on the matter that was
not before it because it had no basis in reaching the decision which it did. We
25 further submit that Trials before the LC court are not are simple and more so not
based technical legal principals and moreover, the late Ijala never appealed
against such a decision.

In regard to the 3rd Respondent, counsel submitted that in paragraph 3(t) the
counter claimant states that he got to know that the late Ijala John sold a portion

5 of the suit land to the 3rd Counter Defendant when this suit was instituted. That various court decisions are to the effect that the period of limitation starts running from the time the Plaintiff got to know about the existence of a fact and in the present case, the Plaintiff got to know that the 3rd Respondent bought a portion of the suit land in 2022 when this case was instituted.

10 That during the hearing the 3rd Respondent did not lead any evidence to prove that the Plaintiff or even the plaintiff's late father Odeke Gusuberito was ever aware of his purchase of the suit land.

Counsel for the respondents in reply submitted that the learned trial Magistrate rightly held that Odeke's imprisonment was in 1973 by virtue of PE.5, and
15 following the Appellant's /counterclaimant's assertion that Ijala entered upon the suit land at the time when Odeke was imprisoned, it therefore meant that Ijala entered the suit land in 1973 or 1974, and it is from that time that the limitation period should be reckoned.

Further, that the learned trial Magistrate rightly stated that the 12 years ended
20 about 1985 or 1986 which made any suit filed after 1986 barred by limitation, including the 1989 suit determined by the RCI.

Counsel submitted that even if this court were to believe that Odeke secured a valid judgment from RC Court in 1989, the fact that the same was not executed within 12 years, the counterclaim is still barred against the counter defendants
25 under section 35(1) of the CPA which bars any execution of a decree upon expiry of 12 years.

Counsel for the respondents added that it is their submission that the Appellant's claim being grounded on recovery of land was filed beyond the 12-year gap provided for in section 5 Limitation Act and no exception was pleaded contrary

5 to what Counsel for the Appellant alleges. A mere mention of lack of knowledge cannot be the basis upon which to defeat the 3rd counter-defendant's interests as a bonafide purchaser of the suit land for value.

It is the established law that a suit which is barred by statute where the Counterclaimant has not pleaded grounds of exemption from limitation in
10 accordance with order 7 r 6 Civil Procedure Rules SI 71-1 must be rejected because in such a suit the court is barred from granting a relief or remedy as was observed in ***Onesiforo Bamuwayira & 2 Others V Attorney General [1973] HCB 87.***

Counsel further submitted that the 3rd Counter defendant/3rd respondent during cross examination clearly stated that he bought his piece of land on the 5th day
15 of February 1989, from Ijala, after convening all the neighbours, to which an agreement was made. That at the time of purchase, neither the counterclaimant nor his late father were present and that the late Odeke had never returned to the land. The 3rd counter defendant/3rd respondent had also planted Eucalyptus trees immediately after the purchase and accordingly, has been in possession of
20 his piece of land for over 33 years with no disturbances.

Counsel finally submitted that the learned trial Magistrate rightly observed that the counter claim was barred by limitation as against the counter-defendant/3rd respondent having been filed more than 12 years after he acquired the land and took immediate possession, She rightly reasoned that the counter-claimant /
25 appellant never disputed the fact that the 3rd counter defendant/ 3rd respondent purchased the land in 1989, to which a purchase agreement was attached, and actually admitted the same during the hearing. The learned trial Magistrate rightly held that the cause of action against the 3rd counter defendant/3rd respondent started running in 1989 and that ignorance does not constitute
30 disability.

5 Counsel prayed that the counterclaim brought at this point in time be perceived by this Honourable Court as merely intended to vex the plaintiffs/respondents, is barred by the law of limitation and an abuse of court process therefore.

b) Analysis and determination:

10 The appellant herein filed a written statement of defence and counterclaim to the respondents' suit, herein the appellant claimed for amongst others a declaration that the suit land belongs to him. He claimed he inherited the suit land by way of inheritance from his father Odeke Gusberito who also inherited from his father Opirisi, his father grew up on the suit land and only in 1983 when he was imprisoned on a criminal charge did his family flee the suit land and that
15 is when the Ijala entered the same. That after serving his prison sentence the late Odeke in 1985 attempted to repossess the suit land but faced resistance from Ijala, Odeke then realised it would need some time to have Ijala stopped from utilising the suit land so he purchased a plot in Ariogo ward and built his home there. Subsequently in 1989 the late Odeke sued the late Ijala John in the RC1
20 Court of Kongoidi and judgement was given in his favour however he passed on before he could execute the same and all attempts by the appellant to execute the same were futile. The appellant then preferred a suit against the late Ijala in 2009 in the LCII court where judgment was given in his favour though in 2021 the same was revised and set aside. He further stated that he got to know that the
25 late Ijala sold a portion of the suit land to the 3rd respondent when the suit was filed by the 1st and 2nd respondents.

The respondents in reply to the WSD and counterclaim stated that from the onset a preliminary objection would be raised that the counterclaim was barred by limitation. They further stated that the suit land was recovered from the
30 appellant's father Odeke and his brother Orone who had forcefully encroached

5 on the suit land as early as 1967 and the two relocated. They contended that the
appellant's father was arrested and imprisoned around 1973 and not 1983 and
their grandfather filed a suit in 1975 to recover damages for the lost property
which the appellant's father duly paid and never claimed for the suit land. They
further contended that even at the time the appellant's father was arrested and
10 prosecuted for arson he was a resident of the present day Ariogo ward. That no
judgement was ever entered in the RC1 court as the respondents' father and his
clan members did not allow the court to proceed and the committee left and the
purported RC1 judgment is a forgery. Their father remained in full occupation of
the suit land with no execution carried out till 2009 when the appellant sued him
15 in the LC II Court. That the appellant never served their father with execution
papers till 2021 when he attempted to forcefully use the Mayor and area land
committee to enter the land.

The respondents testifying as PW1 and PW2 had similar evidence in chief wherein
they stated that the appellant's father Odeke and his brother Orone between the
20 1950's and 1960's had trespassed on the suit land during the lifetime of the
original owner Ikara s/o Okiria and illegally settled on the land but Okiria managed
to evict them off the land before he died and upon eviction the appellant's father
Odeke around 1968 stealthily came and burnt down the respondents' father's
house and was prosecuted for arson, found guilty and sentenced to 3 years in
25 prison. Their grandfather successfully sued Odeke vide CS No. 15 of 1975 for
compensation and when their grandfather died he left all his 23 acres of land
intact and free from squatters which their father Ijala John inherited and used
peacefully till 1989 when he sold part of it to the 3rd respondent who immediately
took possession by planting eucalyptus trees. In the same year, 1989, Odeke
30 again attempted to claim the suit land from Ijala but in vain as Ijala and his
clansmen objected to the attempts of the RC1 to give land to Odeke and Ijala

5 thereafter continued occupying the land till his death in 2022. In 2009 the appellant also came to claim for the suit land, he took Ijala to the LCII Court and the judgement that arose from there was revised and set aside in 2021 by the High Court.

10 PW3 Igwe Veronica wife to Oboi Samuel a biological brother to the late Ijala testified that when she came to Oboi's home for marriage in 1983 she did not find the appellant or his sons on the suit land. They used to cultivate the suit land jointly as a family, in 1989 she saw Odeke come around with a gentleman who was the RC1, he held a meeting and told the late Ijala to divide and give some piece of the land to Odeke in the presence of Ijala's clan, however, the clan
15 declined. The RC together with Odeke however, insisted, got hoes and went ahead to divide the land and the RC then told Odeke he had finished dividing the land while on the road. When Ijala came to her husband's home and told them about the division he heard he RC had done to his land, he said he would never leave his land and indeed he stayed on the land till his death in 2022.

20 PW4 Namajja Christine widow of the late Ijala testified that she married the late Ijala in the 1970s and when she came to her home the suit land was part of their land and they used to cultivate on the same. That it was after some years during the Karamojong insurgency that Odeke came wanting to take refuge on the land without her husband's permission, he was not welcomed and took her husband
25 to the RC1 and when the RC1 came he wanted to forcefully give part of the land to Odeke but her husband and his clan elders refused and Odeke left and never returned till he died and was buried in his village. They continued cultivating the land till 2009 when the appellant started taking her husband to the LCII Court. During cross-examination she maintained that she got married in the 70s and has
30 lived in that village where the suit land is most of her life. She stated that the

5 appellant's have relatives in that village but the owners of the homes near the
suit land are not related to the appellant. She further stated that she knows there
was a case between her husband and Odeke in the RC but the clan refused to go
through with what the RC was saying and they continued to use the suit land till
10 date. In re-examination she stated that the appellant's relatives whom she knows
are a bit far from the suit land, she added that when the clan refused to go
through the land as the RC wanted, people dispersed and Odeke was not given
land.

The 3rd respondent testified that on the 4/2/1982 the late Ijala approached him
for financial help and offered to sell part of his land. On the 5/2/1989 the
15 neighbourhood gathered, they discussed, went around the land and agreed on
the price of 50,000 shillings which he paid. An agreement was written and the
sellers were Ijala and his brother Oboi s/o Ikara and immediately after purchasing
the land he planted eucalyptus trees and they are still there to date. At the time
he bought the land Odeke was not there as he had been chased away and he did
20 not find out why he left the land. Since he purchased the suit land the
counterclaim filed by the appellant was the first claim ever made. During cross-
examination he stated that most of the witnesses to the transaction were
neighbours and they confirmed to him that the suit land was owned by Ijala and
Oboi.

25 The appellant on the other hand testifying as DW2 stated that he inherited the
suit land in 1989 when his father Odeke passed on. He stated that his father
Odeke grew up and utilised the suit land even after the death of grandfather
Opirisi in 1965, however, in about 1963 his father was imprisoned on a criminal
charge arising from a complaint of allegedly burning the late Ijala's house and at
30 this point he and his siblings fled to their maternal relatives in Ariogo. That the

5 late Ijala John took advantage of their absence and encroached on the suit land,
having served his sentence in 1975 Odeke attempted to repossess the suit land
but failed and went to stay with his sister Amongin Pulimeera in Ariogo. His late
father after being released from prison also purchased a plot of land at Ariogo
where he built a house and stayed pending any settlement of the dispute on the
10 suit land between him and Ijala. Odeke subsequently sued Ijala in the RC1 court
and judgment was entered in his favour but he died without executing the same.
The averments as stated in his counterclaim above are repeated in his witness
statement.

During cross-examination he stated that Ijala continued in possession of the suit
15 land till he died, that his father willingly sold the iron sheets which were on the
house he had on the suit land and upon leaving he never returned. He stated that
he did not have the application for execution which he mentioned in his witness
statement and it was in 2009 not 2006 when he applied to execute the LC2
Judgement. He admitted that after his father burnt Ijala's house, when he
20 finished his sentence he was not allowed to stay on the suit land and that is when
he sold his iron sheets and left. He admitted that he has been seeing eucalyptus
trees on the land since long ago but he thought they were for Ijala and not the
3rd respondent. Since he was 13 years when he father was arrested, he has never
stayed on the suit land, he has settled in Ariogo.

25 DW1 Amongin Pulimeera testified that the appellant is her nephew, son to her
brother Odeke and the suit land belongs to him. When Odeke was imprisoned
the children came to stay with their maternal relatives. When the late Odeke was
imprisoned Ijala entered the land and after his release he attempted to go back
to the land only to return to her with beatings. Odeke stayed in her home for one
30 year and then shifted to his home that he built on a plot he bought in Ariogo.



5 DW3 Odeke Cyprian testified that he served as the RC1 Kongoidi in 1986 and he knew the parties even before becoming RC1 he knew Ikara father of Ijala and Ikara was the former owner of the suit land. In his term he handled a case between the late Odeke and the late Ijala and the judgement dated 17/04/1989 was in favour of Odeke. During cross-examination he denied stating that the suit
10 land was for Ikara, after Odeke served his sentence he did not see him on the suit land but when he made judgement in 1989 Odeke was on the suit land. Ijala did not leave the land when he made the judgment.

DW4 Opoo Enos, DW5 Oonyu Joseph and DW6 Opolot Joseph all relatives to the appellant all testified that the suit land belongs to the appellant who inherited it
15 from his father Odeke who in turn got the same from Oporusi. They all testified that Odeke was imprisoned for allegedly burning Ijala's house and thereafter his attempts to return to the suit land were in vain, he stayed in Ariogo on the plot he bought where he died and was buried.

From the evidence above the following timeline of events is deuced. From 1968
20 or thereabout Odeke Gusberito father to the appellant was arrested for arson, prosecuted and imprisoned for three years. His prison term was completed by 1975 when Ijala John filed Civil Suit 15 of 1975 for compensation per PEX5. Odeke's first attempt to reclaim the land was in 1989 as testified above before the RC1 and even after the judgement, Ijala did not leave the suit land.

25 The next attempt to get him off the land was in 2009 when the appellant filed a matter before the LCII court which decided in his favour. This judgment was set aside in 2021.

From the above it is clear that the late Ijala was always in possession of the suit land from around 1968-1973 when his hut was burnt, and the appellant's father
30 was arrested. When the appellant's father was released, the appellant and his

5 witnesses claim he immediately tried to repossess the suit land but failed and returned to his sister in Ariong where he stayed. His next attempt to recover the suit land was in 1989 before the RC1 court. The period between 1973 to 1989 is sixteen years.

The RC1 testifying as DW3 stated that judgement was in favour of the appellant's
10 father, however, DW2 the appellant testified that his father never executed this judgment and he died the same year it was passed. The appellant in his claim and testimony claimed he also attempted to execute the RC 1 judgment but all in vain, however, no evidence on his attempts at execution were led in evidence and he admitted as much in cross-examination when he stated that he had no
15 execution application meaning his claims in his counterclaim and witness statement that he attempted to execute the LC2 judgement in 2006 were not true because the evidence on record clearly shows that after 1989 the appellant only sued the late Ijala in the LC II Court in 2009 not earlier.

So we have from 1973 to 1989, which is a period of approximately 16 years before
20 the late Odeke made any claim to the suit land. The appellant faults the trial magistrate for finding in her judgement that the suit before the RC1 was barred by limitation and was inconsequential.

The law on limitation under section 5 of the Limitation Act is clear and it states that any suit for recovery of land brought after 12 years is barred by limitation.

25 In the instant case, given that the late Odeke was imprisoned it would suffice as a disability to filing a suit for recovery of the suit land, however, by 1975 when he was sued for compensation over the burnt house he had served his sentence and this much is indicated in the judgement of Civil Suit No. 15 of 1975 (PEX5).

5 From 1975 to 1989 when he first filed his suit before the RC1, it was a period of approximately 14 years which is passed the limitation period of 12 years.

Having noticed the same, it would be wrong for the trial magistrate to turn a blind eye to the limitation period.

Even if this court is to take the judgment by the RC1 as consequential, the late
10 Odeke never executed the same and his son the appellant never attempted to execute the same despite his claims otherwise as there is no evidence on record pointing to execution of the RC1 judgment by the appellant or any of his relatives for that matter.

On the other hand, it is worth noting at this point that the 1st and 2nd respondents
15 together with their witnesses all denied the existence of this RC1 judgment because the late Ijala and his clan refused to entertain whatever the RC1 and his committee were saying and the committee left.

The appellant next attempted to recover the land in 2009 not by execution but by filing another suit. The period of 1989 to 2009 is approximately 20 years, 20
20 years of non-action on the part of the appellant cannot be ignored, this period is eight (8) years way over the limitation period of 12 years.

The appellant's claim against the 1st and 2nd respondents was therefore barred by the statute of Limitation and the trial magistrate was right to find as such.

Regarding the 3rd respondent, he bought the suit land in 1989 and immediately
25 possessed it by planting eucalyptus trees, he testified that the only claim he received over the land was the suit filed by the appellant by way of counter-claim. The appellant in his testimony stated that he had seen the eucalyptus trees on the suit land since long ago but assumed they were for the late Ijala, he only found

5 out that they were for the 3rd respondent when the 1st and 2nd respondents' filed their suit. He never disputed the sale but only pleaded ignorance.

The 3rd appellant bought the suit land in 1989 and the claim against him was filed in 2022 which is a period of 33 years, which period is also beyond the 12 years' limitation period provided under section 5 of the Limitation Act. The trial
10 magistrate found that ignorance as pleaded by the appellant does not constitute disability so as to warrant exception to the limitation period. The question, therefore, is whether ignorance can constitute a disability.

Section 1(3) of the Limitation Act defines disability thus;

For the purposes of this Act, a person shall be deemed to be under a disability while
15 **he or she is an infant or of unsound mind.**

Disability as an inability to file a suit was discussed by Mubiru J in *Gunya Company Ltd v Attorney General (Civil Suit No 31 of 2011) 2019 UGHCCD 148* wherein he found amongst others that sometimes inability may constitute disability. Inability assumes that the plaintiff is fully capable to sue in that there is no personal
20 incapacity to sue but some extraneous circumstances render him or her unable to file the suit. He found that such circumstances must be such that are beyond the control of the plaintiff and defined as problematic by the standard of a reasonable person for it to become a disability.

I agree that inability can constitute disability to file a suit within the limitation
25 period, however, in this instance the appellant relied solely on ignorance as a disability yet he was well aware of the existence of the trees on the suit land but never bothered to find out as to who owned them with his reason that he assumed that the same belonged to Ijala not considered as coming from one who is serious at all and was interested in protecting own property.

5 That this ignorance thus cannot defeat the clear limitation period meaning that the appellant's suit was time barred, especially since the appellant who claimed to own the suit land was well aware of the eucalyptus trees thereon.

The fact that he wanted to sue Ijala over the entire suit land including the portion with the trees does not exempt the area with the trees from the limitation period
10 simply because he has now found out that the part of the suit land is owned by the third respondent.

Ground 1 accordingly fails.

c) Ground 2.

The Learned Trial Magistrate misdirected herself on the law of adverse possession
15 which occasioned a miscarriage of justice when she held that the suit land is the estate of the late Ijala.

Counsel for the appellant submitted that at page 15 (para 3) of the judgement, though the trial magistrate agrees that the Plaintiffs failed to prove that the suit land initially belonged to the late IKARA from whom the Plaintiffs claim that their
20 late father inherited the suit land from, that withstanding, the Trial Magistrate found in favour of the Plaintiffs that the late IJALA JOHN acquired title by adverse possession.

That whereas the Learned Trial Magistrate outlined the elements of that entitle one to claim under adverse possession, she omitted one and a very important
25 element being that the possession must be open and undisturbed as was held in the case of *Hope Rwaguma Vs. Jingo Livingstone Mukasa C/S No. 508 Of 2012*) that;

"It need emphasis that adverse possession is a right which comes into play not just because someone loses his /her right to reclaim the land

5 out of continuous and willful neglect but also on account of
possessor's positive intent to dispossess. It is important for this court,
before stripping the defendant off his lawful title to take into account
whether the Plaintiff is an adverse possessor worthy exhibiting more
urgent and genuine desire to dispossess and to step into the shoes of
10 the defendant the registered owner of the suit land. Once again the
efficacy of adverse possession by the plaintiff would much depend on
the provisions of the limitation Act (Cap.80); by operation of which the
right of the Defendant to access the court expired through effluxion of
time. There is yet another hurdle for the plaintiff to succeed in her
15 claim of title to the suit land through adverse possession, she has to
show on what date she came into possession; what was the nature of
her possession, whether the factum of her possession was known to
the other part; how long her possession has continued, and whether
her possession was open and undisturbed."

20 Counsel submitted that in the lower court, the Appellant including all his
witnesses in their testimony gave an account as to how the counter claimants
father, Odeke Gusubrito was chased from the suit land.

More so that it was upon the imprisonment of the late Odeke Gusuberito that the
Ijala John entered on the suit land and that all attempts by the Appellant including
25 his late father to regain possession of the suit land was in vain. This fact was
alluded to by PW4, Namajja Christine in her testimony.

Counsel further submitted that the Respondents cannot benefit from then
doctrine of adverse possession because they did not lead any evidence as to how
the late Ijala John entered on the suit land other than purporting that the late

5 Ijala John inherited the suit land from his father the late IKARA which the trial court found no such evidence.

That in absence of proof of how the late Ijala came to the suit land it can be said that he entered the suit land in about 1977 when the late Odeke Gusuberito, the plaintiff's father, was imprisoned moreover on the offence that was
10 fabricated by the same Ijala John that he intended to have Odeke Gusuberito imprisoned so that he enters on the suit land, which was purely an aspect of land grabbing.

Counsel for the appellant then submitted that the doctrine of adverse possession does not apply to land grabbing.

15 Counsel further submitted that the possession of the respondents on the suit land was always disturbed as seen in the evidence on record including the case of 1989, 2009 and the various attempts by the Defendant to evict the late Ijala from the suit land as evidenced by DE1, DE2.

Regarding the 3rd Respondent, counsel submitted that since the late Ijala John
20 whom the 3rd Respondent bought part of the suit land had no interest thereon, the 3rd Respondent cannot claim to have better title over the suit land than that of Ijala John.

Counsel for the respondents in reply submitted that, prior to the Defendant's/Appellant's trespass in 2022, the land in dispute had been in
25 possession of the Plaintiffs'/Respondents' family for over 46 years, since 1977 as envisaged in paragraph 5 of the plaintiffs' reply to the written statement of defence and counterclaim.

- 5 I agree with the submissions that possession confers a possessory title upon a holder of land and is a recognizable and enforceable right to exclude all others but persons with a better title.

Possession of land is in itself a good title against anyone who cannot show a prior and therefore better right to possession as per *Asher v, Whitlock (1865) LR 1 QB*

10 1.

Possessory title is not based on a documentary title but on the exclusive occupation of the land for a period of time.

Counsel additionally submitted that in assessing the credibility of *viva voce* evidence, it may be compared to the available documentary evidence in order to
15 determine whether there are discrepancies, contradictions or inconsistencies. Counsel noted that to support their post 2022 possession of the land, the Plaintiffs/Respondents relied on:

(i) minutes of the meeting dated 13th August 1967 where the defendant's/Appellant's father Odeke Gusberito and his brother Orone between
20 1950s to 1960s, had trespassed on the suit land during the lifetime of the original owner Ikara s/o Okiria and illegally settled on the land but Okiria managed to evict them off the land and the two relocated before his demise and,

(ii) Minutes dated 10/6/1977 handing over the suit land to the late Ijala John, the Plaintiffs'/Respondents' late father.

25 All these above documents clearly state the location and where the land is situated.

Counsel further submitted that this documentary evidence is corroborated by the oral testimony of CD1 Okedi John who purchased part of the suit land from the plaintiffs'/Respondents' father the late Ijala John and managed to have quiet



5 possession of the same for a period of over 30 years until 2022 when the Defendant/Appellant trespassed on the same. Furthermore, the appellant DW2 a 63-year-old confirms the possessory right of the suit land by the Plaintiffs/Respondents when he testified during cross examination that indeed he forcefully entered the suit land in September 2022, albeit after a momentary
10 weakness occurring to the plaintiffs'/Respondents' family through the death of their father Ijala John.

DW2 further stated that his own father Odeke, whom he allegedly believes to have owned the suit land to having never possessed the same for a period of over 40 years.

15 Counsel finally submitted that the learned trial Magistrate rightly held on page 12 of the judgment that the late Ijala John obtained title to the suit land by adverse possession the moment the 12 years of his unchallenged and uninterrupted possession of the suit land lapsed and the suit land is the estate of the late Ijala.

20 I have already as above reproduced the evidence given in the lower court in ground one above and from it there is indication that both the appellant and the 1st and 2nd respondents were claiming the land through customary ownership owing to past relatives with the appellant laying his claim of inheritance through Odeke Gusberito who he claimed got the same from Opirisi and the 1st and 2nd
25 respondents claiming through Ijala s/o Ikara who they said inherited the suit land from Ikara s/o Okiria.

As is already noted above the 1st and 2nd respondents led evidence that their grandfather was on the suit land as far back as the 1960s and had chased the appellants father and brother off the same. This assertion was corroborated by
30 PEX4 dated 13/8/1967 wherein is stated that evidence was led to prove that the

5 suit land belonged to Ikara and that Orone agreed to leave the land while Odeke remained on it for some time while looking for where to go.

Further, the 1st and 2nd respondents also led evidence that the suit land was handed to their father after the death of Ikara which fact was corroborated by PEX6 dated 16/6/1977 wherein Ijala was named heir to Mzee Ikara. This piece of
10 evidence was not challenged by neither the appellant nor his witnesses.

The evidence above also show that the late Ijala occupied this land till he passed on in 2022 and this fact is also not contested.

Even the suit of 1989 left him on the land as Odeke never executed the same and only for the appellant to attempt to get him off the land in 2009.

15 As noted from the above facts both the actions to recover land from the late Ijala were time barred meaning he was always in adverse possession of the suit land and the appellant never ever succeeded in dispossessing him of the same or proving better title to the land.

Furthermore, contrary to the appellant's submissions, Odeke and the appellant
20 never tried to evict the late Ijala from the suit land.

This is even more so for even on the day when the RC1 went together with Odeke went to the suit land to remove Ijala, Ijala and his clansmen refused them to move around his land and the RC committee left immediately. RC1 (DW3) himself confirmed this and stated that he did not know whether the judgment he gave
25 was ever executed.

Odeke passed on 1989 without executing the RC1 judgment and thereafter the appellant only attempted to recover the land through a suit before the LC II in 2009.

5 DE1 and DE2 as submitted by counsel for the appellant are recent documents dated 2021 and also thereafter the LC II judgement was set aside.

From the sequence of events above, it can be stated with certainty that the late Ijala was in possession of the suit land for more than 12 years from 1973 to 1989 and again for more than 12 years from 1989 to 2009 and he was never evicted
10 from the suit land as all witnesses testified in court that he lived peacefully on the suit land till he died in 2022.

The finding of the trial magistrate to which the appellant is referring this court to was in respect to devolution of property. The trial magistrate having discussed how property devolves from one to another found that both parties were
15 claiming the suit land through customary/successive inheritance yet none had proved the customs under which this inheritance occurred through rules or practices under that custom or how estates should devolve and how they complied with those established rules and practices of inheritance.

Her finding was not on possession or customary ownership rather proof of
20 customary inheritance. She therefore decided to determine the question of ownership using the doctrine of adverse possession wherein she rightly found that the respondents had acquired title to the suit land through adverse possessions.

The submissions by counsel for the appellant that the suit land was grabbed by
25 the late Ijala through a plan that involved framing the late Odeke for arson and thereafter taking over the land cannot stand as they are pure imaginary propositions and theories as even the appellant in his evidence or claim never brought up this fact rather it was his witnesses DW5 and DW6 who did so and given that these were events that happened way back in the 1970s of which the
30 late Odeke was prosecuted and served his sentence, I find that these notions

5 were misplaced in the current suit making the issue for determination not whether Ijala framed Odeke for arson but rather the ownership of the suit land.

The trial magistrate having evaluated the evidence on record thus correctly and rightfully found so that the respondents were the owners of the suit land through adverse possession.

10 The same applies to the 3rd appellant who bought the suit land in 1989 and immediately took possession only to be disturbed for the first time in 2022 when the appellant filed his counter claim. This ground accordingly fails.

Ground 3.

15 That the Learned Trial Magistrate erred in law and fact when she held that the Appellant is a trespasser on the suit land thereby occasioning a miscarriage of justice.

Having found that the suit land rightfully belongs to the respondents, any presence of the appellant on the suit land constitutes trespass. I will thus not delve into the submissions on this ground and agree that the trial magistrate was
20 right to find that the Appellant is a trespasser on the suit land. This ground thus fails.

5. Conclusion:

This appeal fails on all grounds and it is thus found to lack merit. It is accordingly dismissed.

25 6. Orders:

- This appeal is dismissed for want of merit.
- The judgement and orders of the lower court are accordingly upheld.

- 5 - Considering the protractedness of this land dispute, I would order in the interest of justice that each party to bear their own costs in this appeal and in the lower court.

I so order.

10 

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Hon. Justice Dr Henry Peter Adonyo

Judge

28th March 2024