

IN THE HIGH COURT OF UGANDA AT HOIMA

(Formerly MSD Civil Appeal No.05 of 2022)  
(Arising from Kagadi C.S No. 077 of 2019)

## VERSUS

## JUDGMENT

- [1] The Respondent/plaintiff sued the Appellant (2<sup>nd</sup> Defendant) and Global 21<sup>st</sup> Engineering Ltd (1<sup>st</sup> Defendant) for inter alia; trespass to land, eviction order against the 2<sup>nd</sup> defendant, compensation of Ugx 20,000,000/=, an injunction and general damages.
- [2] It was the Respondent's case that around 22/8/1997, he was allocated about **200 acres** of land for grazing, now registered in his names as comprised in **Block (Road) 2 Plot 3 at Kitebere/Nsungaraho village, Ndaiga sub county in Kagadi District.**
- [3] That around 2008, the Appellant tried to trespass upon part of the 200 acres but was stopped by the L.Cs (1 & II) and he left the suit. However, that later, he stealthily, without the consent, knowledge and authority of

the Respondent, trespassed on part of the suit land measuring approximately **12 acres** and constructed a small semi-permanent house. Then on or about 15/7/2019, he trespassed upon another part of the suit land measuring approximately **1 acre** where he excavated marrum therefrom using an excavator.

- [4] The Respondent contended that as a result of the excavation of the marrum, the land could no longer be put to any reasonable use for either farming or even construction purposes. It is for this reason that he sought for compensation for his alienated land.
- [5] In his defence, the Appellant denied the Respondent's allegations and pleaded inter alia, that he acquired and was in occupation of the suit land measuring about **18 acres**, since 2005, having occupied it as free public land, and that the Respondent in 2008, in connivance with the then L.C.III Chairperson claimed that he (Appellant) had encroached on the Respondent's land. That he however later in 2009, applied for this land to the Kibaale District Land Board and under **Minute KDLB/05/01/2010 part (a) (06)** was granted the **18 acres** of land.
- [6] The trial Magistrate on his part, upon correctly addressing himself on the position of the law as regards the legal and evidential burden of proof in civil cases, i.e, that the burden of proof lies on the plaintiff/Respondent to prove his case on the balance of probabilities while the evidential burden shifts to the Defendant/Appellant where the plaintiff makes an assertion, proceeded to evaluate the evidence before him and concluded with the following findings:
- a) That whereas the Respondent presented and tendered/exhibited documents explaining how he acquired the suit land, the Appellant did not have any documents explaining how he got possession or acquired the suit land.
  - b) That the Appellant at one time claimed that the suit land formed part of public lands and then later claimed that it forms part of land owned by National Environment Management Authority (NEMA).
- [7] The trial Magistrate concluded that the Respondent was the registered proprietor of the suit land whose title was neither challenged nor a counter

claim filed against the plaintiff/Respondent for the land. He found in favour of the Respondent/plaintiff as the rightful owner of the suit land, the Defendants as trespassers and ordered inter alia, for the eviction of the Appellant and the 1<sup>st</sup> Defendant.

- [8] The Appellant was dissatisfied with the judgment and orders of the learned trial Magistrate and lodged the present appeal on the following grounds:
1. *The trial Magistrate erred in law and fact when he failed to properly evaluate evidence on record and came to a wrong conclusion that the suit land lawfully belongs to the Respondent, inter alia, when;*
    - (a) *He relied on the Respondent's evidence of allocation of the suit land by the commandant of the settlement, which was false.*
    - (b) *He failed to consider that the land in question was public land and the Appellant had applied for and was allocated the same land by the lawful authority of the time prior to Respondent's purported land certificate of title.*
    - (c) *He relied merely on the Respondent's land certificate of title which was acquired by the Respondent purposely to defeat the prior existing equitable interest of the Appellant in the said land.*
  2. *The learned trial Magistrate erred in law and in fact when he unfairly and exorbitantly awarded Ugx 11,000,000/= as general damages.*

## **Counsel legal representation**

- [9] The Appellant was represented by **Mr. Lubega Willy** of **M/s Lubega, Babu & Co. Advocates, Masindi** while the Respondent was represented by **Mr. Woswama Emmanuel** of **M/s P.Wettaka Advocates, Kampala**. Both counsel filed their respective written submissions as directed by this court for consideration in the determination of this appeal.

## **Duty of the 1<sup>st</sup> Appellate court**

- [10] This is an appeal from the judgment and orders of the Magistrate Grade 1 court. This being the 1<sup>st</sup> Appellate court, it is required to subject the evidence on record to fresh and exhaustive scrutiny and come out with its own conclusion on the findings of the trial Magistrate and decide whether

the trial court's decision should stand or not; **Ugachick Poultry Breeders Ltd Vs Tadjin Kara, CACA No.2 of 1997, Sitefamer Baraba Vs Hajji Edirisa Kimuli [1977] HCB 137 and Fr. Narsensio Begumisa & Ors Vs Eric Tibebaga, SCCA No.17/2000 [2004] KALR 236.**

[11] The legal principles above in regard to the duty and obligation of this court as a first Appellate court shall be taken into account in disposing of this appeal.

## **Consideration of the Appeal**

**Ground 1: The trial Magistrate erred in law and fact when he failed to properly evaluate evidence on record and came to a wrong conclusion that the suit land lawfully belongs to the Respondent, inter alia, when;**

- a) He relied on the Respondent's evidence of allocation of the suit land by the commandant of the settlement, which was false.**
- b) He failed to consider that the land in question was public land and the Appellant had applied for and was allocated the same land by the lawful authority of the time prior to Respondent's purported land certificate of title.**
- c) He relied merely on the Respondent's land certificate of title which was acquired by the Respondent purposely to defeat the prior existing equitable interest of the Appellant in the said land.**

[12] Counsel for the Appellant submitted that the learned trial Magistrate relied on the document dated 22/8/1997 (**P.Exh.1**) which was to the effect that the Respondent acquired the suit land by allocation of **200 acres** on the land under the **Kagadi Refugee Resettlement Scheme** by the Resettlement commandant yet the said commandant has authority over land gazetted for refugees by government and not any other land as that managed by the District Land Board for it is not public land. That on the other hand, the Appellant presented evidence that the Appellant was allocated public land under the authority of the District Land Board of Kibaale. That the Respondent's certificate of title is therefore illegal and was illegally obtained and can be impeached by this court for that illegality. That besides, according to the same allocation document (**P.Exh.1**), the Respondent was allocated only **200 acres** and not **223.47 acres** as



reflected on his Certificate of title and the Survey Report, yet the land occupied and granted to the Appellant is only **13 acres** thus the land in excess is **23.47 acres** which the trial Magistrate never investigated.

- [13] Counsel concluded that the said land in excess constitutes part of the land of the Appellant, the suit land purportedly included in the Respondent's certificate of title (from public land) by the Respondent to defeat the Appellant's interest.
- [14] Counsel for the Respondent on the other hand submitted supporting the trial Magistrate's findings that the trial court correctly relied on the Respondent's evidence of allocation of the suit land by the Commandant of settlement, which evidence the trial Magistrate found credible and reliable. That thereafter, in 2010, the Respondent applied for freehold interest of the allocated land and eventually acquired a certificate of title of the land (**P.Exh.2**).
- [15] Lastly, that the Respondent's cogent evidence as to acquisition of the suit property was never challenged in cross examination by the Appellant. That instead, unlike the Respondent who possessed proper documentary proof of the allocation of the suit property by the commandant, the Appellant has no document of any such allocation. That therefore, there is no basis for the Appellant to fault the trial Magistrate on his findings.

### **Respondent's allocation of the suit land by the Kagadi Resettlement Scheme Commandant and acquisition of the certificate of title.**

- [16] According to the Respondent/plaintiff who testified as **PW1**, he acquired the suit property in 1980 mainly for grazing purposes. In 1997, he formalised his stay on the suit property by filling forms from the office of the **Kagadi Resettlement Scheme** under a one **Hajji Barakuraha** and was accordingly allocated land measuring **200 acres** (**P.Exh.1 (ii)**).
- [17] According to the Allocation document (**P.Exh.1 ii**), it is apparent that the Respondent's allocation of the **200 acres** was based on the directive of the

Permanent Secretary, Ministry of Local Government as per **Min. of Local Gov't No. MLG/A/135 of 7<sup>th</sup> March 1991** directing all herdsmen to be offered the communal Grazing Block subject to conditions and regulations that govern all settlers in the schemes of Uganda.

- [18] Since the centre of argument of counsel for the Appellant is about acquisition of title on Refugee gazetted land, it is imperative to have the background of land conflicts in Kagadi examined. The background of the land conflict in Kagadi especially as regards the Resettlement schemes, appear in the working paper, "Decentralisation as a means & conflict management: A case study of Kibaale District, Uganda" (2005), by **Schelnberger, Anna Katharina IEE Working Papers, No.181 Institute of Development Research and Development Policy, Ruhr University Bochum**. She wrote that the 1<sup>st</sup> official resettlement in Kagadi took place in 1991/1992 when several groups of settlers from Western Uganda especially the Bakiga who were fleeing scarcity of land because of over population and later those evicted from Mpokya Game Reserve in Kabarole District, Rwandese fleeing for their safety and returnees from Tanzania were resettled on vast square miles of land that were apparently either without people or were sparsely inhabited. According to the study, it estimated that 75% of the land occupied by the scheme was mailo land and the rest was public land.
- [19] The 2<sup>nd</sup> **schedule of the Local Government Act Cap.243** gives districts the responsibility for land administration which includes the regulation of settlements. In its bid to address the issue of the settlement when conflicts arose between the inhabitants and the settlers, the District Land Boards who hold public land embarked on allocating land to whoever occupied land and applied for it. The residents were politically mobilised to acquire land titles to avoid future land evictions from absentee land lords, i.e, the Baganda mailo land owners who returned to their homeland with their titles after the 1964 Referendum, see **Baligire: Land politics and conflicts in Uganda [2017]**.
- [20] From the foregoing, it would appear that the Respondent was one of those who benefited from the above developments. As one of the persons affected by the settlement scheme i.e, a Refugee hosting community the

Respondent applied to the District Land Board for the land he had been offered and relocated by the Commandant Kagadi Resettlement scheme who also appeared to have acted under the directives of the Permanent Secretary Ministry of Local Government (**P.Exh.1 (ii)**) for allocation of land to herdsmen. The Respondent eventually obtained a certificate of title of the suit land.

[21] However, in my view, as to whether the acquisition of the title to the land was irregular and or illegal or not, is a matter that is not for this court to settle in this case. It is not the dispute that is before court. It is for the Respondent and the Refugee Settlement/Prime minister's office which under **Ss. 7-10 of the Refugees Act 2006** is responsible for all administrative matters concerning refugees in Uganda or the Kagadi District Local Government, which under **Article 241 of the Constitution** holds land and is responsible for its allocation under the District Land Board to administrative handle if need arises. The Appellant therefore has no *locus standi* in the circumstances of this case, to challenge the title offered by the District Land Board and acquired by the Respondent purportedly on the Refugee land as counsel for the Appellant appear to suggest.

[22] The above notwithstanding, as per the interpretation of the Respondent, during cross examination, he revealed that the land he was offered and allocated to by the Kagadi Resettlement Scheme commandant ceased to be property of the settlement but became public land which he was entitled to apply for and regularise his stay by acquiring a title. Indeed, even **Muhiigwa Cosma**, a witness of the Appellant who testified as DW3 stated thus:

*".....i knew they all (parties) first occupied it as **public land** when I was first chairperson L.C1 but they got some disagreements....."*

The disagreements referred to are the complaints that were made by the Respondent to the L.Cs regarding the Appellant's trespass (**P.Exh.3**) where the Appellant was eventually stopped from trespassing on the Respondent's land. This was in 2008. Though the Appellant denied any such complaint against him as per from his cross examination, he admits

to such complaints against him in the Written Statement of Defence, and at **page 17 of the typed proceedings** he stated thus:

*“.....the local authorities stopped the 1<sup>st</sup> defendant from excavating the marrum.....”*

The 1<sup>st</sup> defendant had contracted with the Appellant for the excavation of the marrum from the suit land.

[23] It is therefore evident from the above that generally, the Respondent's acquisition of the suit land by way of allocation from the Commandant **Kagadi Resettlement Scheme** and later acquisition of the certificate of title of the suit land was not and could not be challenged by the Appellant. The Appellant merely claim that the title was fraudulently obtained. This particular fraud was neither pleaded by the Appellant nor did he adduce any evidence to prove the alleged connivance between the Respondent and the L.C III chairperson **Sirajjr Ngabirano** in the procurement of the allocation of the land or later on, the procurement of the title. The standard of proof of such fraud would have to be slightly higher than that in ordinary suits, See **Kampala Bottlers Ltd Vs Damanico (U) Ltd, SCCA No.22/1992**, which test the Appellant failed to pass.

[24] The Appellant on the other hand claimed to had applied for the suit land as per **D.Exhs.4 & 5** and was allocated the land on 24<sup>th</sup> June 2010 (**D.Exh.1**). There is however no credible evidence that the Appellant was indeed allocated the land. **D.Exhs.1,4 &5** have no endorsement of the District Land Board. **D.Exh.1** is a letter that was merely written by the Ag. District Land Officer, Kibaale to the Appellant. The letter did not confer any interest in the land to the Appellant. The Appellant's claim in his evidence that he did not secure title because Government halted issuance of titles in Bunyoro Region is not supported by any evidence. If it were true, then the Respondent would not have been issued one (**P.Exh.2**) his certificate of title was issued in 2018 yet the Appellant could have processed his earlier since, as claimed, he had started the process before the Respondent.

[25] The general principle is that a certificate of title is conclusive evidence of ownership of land in question and it takes priority over any adverse claims, **S.59 RTA**. By virtue of **S.176 RTA**, save for fraud, possession of a title is an absolute bar and estoppel to an action of ejectment or recovery of any



land, see also S.64(1) RTA. In the old case of **Tayebali Alibhai Vs Adamji Alibhai** [1938] 5 EACA 1, Sir Joseph Sheridan on a certificate of title he stated this about a certificate of title:

*"Once it became clear that what is in dispute was something which required a certificate of title under the land titles ordinance to support it and that the respondent was not possessed of such a certificate the appellant was bound to succeed....in as much that property is included in the certificate of title of the appellant and excluded from that of the respondent no claim to it can be recognised ..... initial registration under the land titles ordinance must be taken to be the foundation of title and that the certificates of titles issued thereunder must be regarded as conferring an absolute and indefeasible title to the property referred to therein and subject to no other interests than those mentioned therein....."*

[26] In this case, as I have already observed, there is no credible evidence that the Appellant was allocated the suit land by the District Land Board as he claims. Indeed, as he admits, no certificate of title was actually issued to him. The Appellant's application (**D.Exhs.4 & 5**) must have been wrongly passed, if at all they were passed, by the Ag. Land Officer of Kibaale District who must have colluded with the Appellants to have the Application seem duly dealt with by the DLB. However, none of these documents had the endorsement of the Land Board thus confer no interest in any land to the beholder.

[27] In the premises, I find that there is no credible evidence that the Appellant was allocated the suit land by any lawful authority and or that the Respondent's title was acquired purposely to defeat the prior existing equitable interest of the Appellant in the suit land. The Appellant neither pleaded nor adduced any evidence to prove such an equitable interest. The Appellant's mere claim of possession which was resisted and opposed by the Respondent as evidenced by the intervention of the L.Cs in the Appellant's favour without proof of how he acquired it is not enough.

[28] As a result of the above, I have no reason to fault the trial Magistrate's finding that the suit land belongs to the Respondent. Ground 1 of appeal is therefore found without merit, it accordingly fails.

**Ground 2: The learned trial Magistrate erred in law and in fact when he unfairly and exorbitantly awarded Ugx 11,000,000/= as general damages.**

[29] In the instant case, as found by this court, the Respondent's certificate of title is conclusive evidence that the person named in such title is the proprietor seized of the interest in the title. The Respondent/plaintiff have an impeccable registrable interest granted by the Kibaale District land Board and therefore the Appellant was merely a trespasser.

[30] The law on general damages is that the damages are awarded at the discretion of the court and the purpose is to restore the aggrieved person to the position he would have been in had the breach or wrong not occurred, see **Kibimba Rice Ltd Vs Umar Salim, SCCA No.17 of 1992**. In the assessment of damages, the court is guided by the value of the subject matter, the economic inconvenience that the plaintiff may have been put through and the nature and extent of the injury suffered; **UCB Vs Kigozi [2002] 1 EA 305**.

[31] In the instant case, the Appellant first trespassed upon the Respondent's part of his **200 acres** land in 2008 and built a small semi-permanent house thereon. The L.Cs successfully intervened in the Respondent's favour. In 2019, the Appellant trespassed on the Respondent's **12 acres** of his land and then excavated murrum from approximately **1 acre** of land. The land was so destroyed that it could no longer be used for arable farming and grazing of cattle.

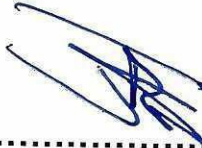
[32] The Respondent/plaintiff must have suffered inconvenience as a result of the Appellant's unlawful actions which had an element of malice and arrogance (since the L.Cs had already intervened in favour of the Respondent). The Respondent definitely suffered economic loss since as per **P.Exh.5** (the photos of the scene), the land was left bare as a result of murrum excavation. Lastly, the Respondent suffered psychological torture

and mental anguish. In consideration of the totality of the above, the trial Magistrate would not be faulted for awarding the Respondent/plaintiff general damages of **Ugx 11,000,000/=**.

[33] In the premises, the 2<sup>nd</sup> ground of appeal is found devoid of any merit. It accordingly fails.

[34] All in all, the appeal is found without any merit. It is accordingly dismissed with costs.

Dated at Hoima this 29<sup>th</sup> day of February, 2024.



.....  
**Byaruhanga Jesse Rugyema**  
**JUDGE.**