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The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Civil Appeal No. 87 of 2023

(Arising from Civil Suit No. 009 of 2020 of the Chief Magistrate's Court of Kumi at Kumi)

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- 1. Apupuret Grace
- 2. Apolot Kolostica

..... Appellants

Versus

Omani Samuel Respondent

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Before: Hon. Justice Dr Henry Peter Adonyo

Judgement:

(An Appeal against the Judgment and Orders in Civil Suit No. 009 of 2020 of The Chief Magistrate's Court of Kumi at Kumi delivered on 30th August 2023 By Her Worship Afoyorwoth Winnie Epiphany, Magistrate Grade One)

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1. Introduction:

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Omani Samuel who is the Respondent herein filed a suit against Apupuret Grace, Apolot Kolostica and Ikwanat Pascal in the lower trial court of the Chief Magistrates' Court of Kumi jointly and severally in trespass and for a declaration that four gardens measuring approximately four acres situated at Ngabet village, Asinge parish in Kumi district belonged to the estate of the late Omani Justine, a declaration that the



5 defendants had trespassed on the land, general damages for trespass, permanent injunction, interest and the costs of the suit.

The defendants on the other part objected to the Respondent's claim stating that they inherited the suit land from their late husband. That their late husband had been on the suit land which he had inherited from his father before the 1970s even
10 when they got married to him.

The Trial Magistrate received evidence from both sides and in her judgment decreed three (3) gardens of the suit land as belonging to the Appellants however and at the same time decreed the 4th garden as belonging to the Respondent declaring the Appellants trespassers on this latter piece of land.

15 The Appellants being aggrieved and dissatisfied with the judgement and orders of the trial magistrate Her Worship Afoyorwoth Winny Epiphany, a Magistrate Grade One of Kumi delivered on the 30th day of August 2023 appeal to the High Court of Uganda holden at Soroti premising their appeal on the following grounds;

a) That the trial Magistrate erred in law and fact when she decreed the fourth
20 piece of land to the estate of Omani Justine.

b) That the decision of the Trial magistrate has occasioned a miscarriage of Justice upon the appellants.

2. Appellants'/Defendants' Claim:

The Appellants/defendants claim was that the 1st and 2nd Appellants/defendants
25 were the rightful owners of the suit land which they inherited from the late Aduman Daniel who was their husband who passed on in 1995 and that they had lived on the same for now 46 years.

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- 5 Apupure Grace, the 1st appellant testified that she had been on the suit land for over 72 years since 1952 when she got married as she found her husband living on the same. That even when Apolot Kolostica was married in 1974 she joined her on the suit land with Apolot Kolostica also having resided on the suit land for over 48 years.
- 10 The defendants denied the Respondent/plaintiff's claim of ownership of the suit land and insisted that the same belonged to their late husband who acquired the suit land through inheritance from his father with both their husband and his father buried thereon.

That even on the day of the last funeral rites of the late Aduman Daniel, Omani
15 Samuel attended the same and never raised any objection when the suit land was included to list of the properties belonging to the estate of the late Aduman Daniel.

Accordingly, the defendants prayed that the trial court dismisses the suit brought by the plaintiff and should declare all the suit land belonging to them since the same had been in possession of their family for over 100 years.

20 3. Respondent/Plaintiff's Claim:

The Respondent's grandfather sued the Appellants for the recovery of approximately four gardens of unregistered land situated at Ngabet Village, Asinge Parish, in Kumi District, a declaration that the suit land belongs to him (now for the estate of the late Oman Justine), a declaration that the Appellants trespassed on the
25 suit land, general damages for trespass, a permanent injunction restraining the defendants from further interference with the Plaintiff's ownership and enjoyment of the suit land, interest and costs of the suit.

5 Unfortunately, he died before the case was concluded. The Respondent obtained letters of administration and was made a party to the suit. Consequently, the Plaintiff was amended to reflect so and the case proceeded upto judgment.

The Respondent/Plaintiff's claim was that the land in dispute originally belonged to his grandfather Erikitai Geresemu who had lived on the suit land his entire life. That
10 upon his death, the suit land was inherited by his son who is the plaintiff's grandfather Omani Justine. That when he, Omani Justine, too died in 2020, the plaintiff inherited the suit land.

That sometime during the occupancy of the plaintiff's late grandfather, he permitted a one Okello, the father to the 1st and 2nd Appellants' late husband to temporarily
15 take refuge on the suit land as they were friends as a measure of protection following a conflict in Okello's ancestral village in Omatenga allegedly due to witchcraft and loss of children.

That shortly, Okello died, but due to the then intense insurgencies prevailing in Teso sub region, he was temporarily buried on the suit land to enable the family organize
20 themselves in future to relocate his remains to its proper resting place.

That even the late Aduman Daniel who was the 1st and 2nd defendants husband occasionally paid his father (Okello) visits and would go back to Soroti where he was working and through such visits he also developed a great friendship with the Respondent's/plaintiff's father.

25 That it was upon Okello's demise that Aduman Daniel then requested the late Omani Justine for a piece of land to temporarily settle his family while he planned to

5 purchase land in Amuria, which land he later managed to buy where his children such as Olaboro Ben, were settled.

That the late Justine Omani then gave Aduman Daniel permission to temporarily bury Okello but unfortunately Aduman Daniel himself also died in 1995 before vacating the suit land which prompted the plaintiff's late grandfather Omani Justine
10 to frequently remind the 1st and 2nd defendant to vacate his piece of land which they agreed and promised to leave in vain.

That at a point in time, the late Omani Justine had also given one garden to one Omuria Aloysius, a brother to Aduman Daniel to temporarily cultivate and that upon his demise the late Justine Omani did not allow Omuria's body to be buried on the
15 said one garden and so his body taken to and buried in Omatenga, their original ancestral home and so thereafter the plaintiff's grandfather Oman Justine continued using that said one garden.

That the plaintiff's and defendants' families lived in harmony until the year 2020 when the Appellants/defendants started claiming that the entire land was theirs,
20 hence the dispute.

The plaintiff thus prayed that the court find that the land was for his family and should thus find that the defendants had jointly and severally trespassed on their land and should be restrained and penalised with general damages for trespass, a permanent injunction slapped on them and that they be condemned further to pay
25 interest and the costs of the suit.

5 4. Scheduling Conference:

The parties agreed on three issues to wit:

- a) Whether the suit land forms part of the estate of the late Oman Justine.
- b) Whether the Defendants have trespassed on the suit land.
- c) What remedies are available to the parties?

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5. Grounds of Appeal:

According to the memorandum of appeal, the appellants raised two grounds of appeal as follows:

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- a) The learned trial magistrate erred in law and fact when she decreed the fourth piece of land to the estate of Omani Justice.
- b) The decision of the learned trial magistrate occasioned a miscarriage of justice upon the appellants.

The appellants prayed for judgment to be entered in their favour as follows:

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- a) The appeal be allowed.
- b) The judgement and orders of the trial court be set aside.
- c) The appellants be awarded costs here and in the court below.

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As this is a civil suit/appeal, the appellants have the burden of proof. See: sections 101 and 102 of the Evidence Act, Cap 6. That duty is to prove their case on a balance of probabilities as was held in the case of *Nsubuga vs Kawuma [1978] HCB 307* and expounded in the case of *Erumiya Ebyetu v. Gusberito [1985] HCB 64* where it was held that;

5 *"where the plaintiff leaves his case in equilibrium, the court is not entitled to incline the balance in his favour. The plaintiff must prove his case against the defendant to the required standard."*

Accordingly, in this suit , it was the plaintiff's duty to prove his case on a balance of probanbility.

10 6. Representation:

Ms Obore & Co. Advocates represented the appellants, whereas M/s Natala & Co. Advocates represented the respondent. The matter proceeded through written submissions filed by the parties for which this Honourable Court is grateful. The said submissions together with the record of proceedings of the lower court, including
15 its judgment and orders have been studied and subsequerntly considered together with the law in resolving this appeal.

7. Duty of the First Appellate Court:

This is the first appeal from the learned magistrate's decision. The duty of the first appellate court is to scrutinise and re-evaluate all the evidence on record to arrive
20 at a fair and just decision.

This duty was well laid down in the case of *Kifamunte Henry vs Uganda SCCA No. 10/1997*, where it was pointed out.

25 *"The first appellate court has a duty to review the evidence of the case and to reconsider the material 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 the case *Father Nanensio Begumisa and three others vs Eric Tiberaga SCCA 17 of 2000; [2004] KALR 236*, the obligation of a first appellate court was pointed as being;

"...under an obligation to re-hear the case by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion."

10 See also: *Baguma Fred vs Uganda SCCA No. 7 of 2004*.

8. Power of the Appellate Court:

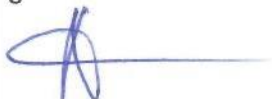
Section 80 of the Civil Procedure Act, Cap 71, grants the High Court appellate powers to determine a case to its finality.

The resolution of this appeal involves considering the above legal position regarding
15 the duty and legal obligation of the first appellate court.

9. Procedural:

In proof of his case, the plaintiff called three (3) witnesses, to wit, PW1 Omani Samuel, PW2 Asimo Anna, and PW3 Olaboro Kupa. The defendants called four (4) witnesses, to wit, DW1 Apupuret Grace, DW2 Apolot Kolosika, DW3 Omoding John
20 Kokas, and DW4 Okuno James.

The learned trial Magistrate considered the evidence brought before her and declined to grant a blanket prayer for declaration of ownership of the suit land as belonging to the plaintiff but went on to declare the Plaintiff was the owner of the fourth (4th) garden while she declared the defendants as owners of the 1st, 2nd and
25 3rd gardens.



5 The learned trial Magistrate further went on to make findings that the the defendants were not trespassers on the 1st, 2nd, and 3rd gardens as they were lawfully in possession of them but were trespassers on the 4th garden which she found belonged to the plaintiff.

Accordingly, the learned trial Magistrate issued a permanent injunction against the
10 defendants in regards to that 4th garden among other orders.

The 1st and 2nd defendants were not satisfied with the finding and orders of the trial magistrate and so appealed against the decision of the trial court which declared that the ownership of the 4th garden to the Respondent and sought a reversal of the said orders.

15 10. Determination:

The appellants' counsel submitted on the grounds raised consecutively. I will resolve them individually because the respondent's counsel submitted them similarly.

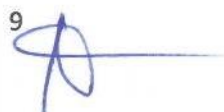
- i. The learned trial magistrate erred in law and fact when she decreed the fourth piece of land to the estate of Omani Justine:

20 The contention and take of the appellants in making this appeal is clearly anchored on the holding at page 8 of the lower court judgement where the learned trial magistrate held as follows;

"I am not persuaded by the argument of the Plaintiff. In the premises, I therefore find that the defendants 1st & 2nd and their families are not temporarily on the land in their possession."

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5 According to the appellants, that conclusion above captures the Trial Magistrate's confirmation that the appellants had lived on the suit land for a long time and had thus acquired proprietary interests in the same given the fact that they had established permanent structures on the said gardens in addition to their having buried their dead on the suit land with the said activities not shown to have been
10 limited to only the 3 gardens which were decreed to the Appellants.

The appellants further argue that since it was the duty of the plaintiff (respondent) to prove on a balance of probabilities that at the time the defendants' (appellants') husband was given land to settle on, the suit land comprised only 3 gardens and not 4 gardens. That this fact was not proved by the respondent in the lower court.

15 That instead the Trial Magistrate seems to have shifted this burden to the defendants(appellants) for at at Page 8 of the Record of proceedings she held that,

"I find that the defendants did not establish the required degree of evidence to show that Indeed this piece is theirs."

That the Trial Magistrate came to the above conclusion without taking into account
20 the evidence on record arising from the testimonies of the witnesses yet as was pointed out in the case of ***Odiya Anthony versus Lukwiya Samson & 3others Civil Appeal no. 53 of 2018***, ownership of land is acquired either by purchase, inheritance, gift, transmission by operation of law or adverse possession.

Yet that in this case, the appellants clearly stated that they inherited all the four (4)
25 gardens from their husband and had used them from since their getting married, had lived it , cultivated it and even had structures on the same.

5 That even this evidence was not challenged at all by the Respondent and his witnesses in the lower court thus giving credence to their submission that even the one garden decreed to the Respondent rightfully belonged to them.

That still at page 8 of her judgment the Trial Magistrate erred when she held that;

10 ***“ It is clear that only one piece of land is in contention. The piece being that one garden that was previously cultivated by Omuria.”***

According to the appellant, this was not an issue for determination. That the issue for determination was whether the suit land formed part of the estate of the Late Omani Justine which suit land were the 4 gardens as was highlighted at page 1 of the trial court’s judgment (last paragraph) as follows;

15 ***“PW1, Omani Samuel stated that he is the administrator of the estate of the late Omani Justine. That the late Omani Justine has at all material times been the Lawful and beneficial owner of the suitland measuring approximately 4 acres located at Ngabet village, Asinge parish, Kumi sub-county, Kumi district....”***

20 That this fact was corroborated by PW2 (Asimo Anna) during cross examination at page 12 of the record of proceedings for she admiytted that;

“Yes the late Omuria was a relative to the husband to the 1st and 2nd Defendants”

25 That similarly, during re-examination at page 13 of the proceedings the same witness (PW2 Asimo Anna) buttressed the foregoing she averred as follows;

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- *"Omuria came to stay there to care take the 1st and 2nd Defendants, he was caretaking his daughters in law (1st and 2nd Defendants)."*
- *"He just came to stay on that Land cultivating while caretaking the women (1st and 2nd Defendants)"*

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That from the foregoing testimony of PW2(Asimo Anna), it was abundantly clear that the Late Omuria was related to the Appellants' late husband and that was why he was allowed to cultivate the suit land while taking care of the Appellants.

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That the fact that the Respondent's own witness could concede to this fact clearly showed that the 1 acre garden that was previously cultivated by Omuria rightfully belonged to the Appellants.

The appellants' follows up the above testimony of PW2 as being corroborated by the first appellant DW1(Apupuret Grace) who at page 17 of the proceedings during cross-examination. Testified that;

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- *"No Omani Justine did not give Omani Samuel a garden"*
- *"It is us who are using the garden of the Late Omuria"*
- *"No, Omani Samuel has never used the garden of the Late Omuria."*

That the said testimony was re-echoed by the 2nd appellant DW2 (Apolot Kolostica) at page 19 of the proceedings during cross examination when she told the lower trial court that;

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- *"No, Omani Justine did not give the garden that was cultivated by Omuria to Omani Samuel."*
- *"No, Omani has never utilized the one garden."*

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- *"No, we used to cultivate the one garden before 2020."*

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The appellants thus concluded their submitted that from the testimonies of PW2(Asimo Anna), the 1st Appellant DW1(Apupuret Grace) and the 2nd Appellant DW2(Apolot Kolostica), it was abundantly clear that the one garden given by the lower trila court to the respondent which was previously cultivated by Omuria rightfully belonged to the appellants and as such the learned Trial Magistrate erred in law and fact by decreeing the same to the Respondent and so this appellate court should find so and reverse that decision.

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The respondent denied tha assertions of the appellants and insisted that the suit land belonged to the estate of Omani Justine as was rightfully found by the lower trial court.

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In resolving this issue, I have carefully perused the pleadings, the record and the judgement of the lowewr trial court and I have also considered the submissions of counsels and invariably I would find that the first ground of appeal pivots on the ownership of the 4th garden that the trial magistrate decreed/declared as being owned by the estate of the late Omani Justine who was the father of respondent (then plaintiff).

The appellants dispute that conclusion and claim ownership of the 4th garden as well in addition to the 1st, 2nd and the 3rd gardens which were decreed to them.

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The dispute herein is thus relates to the ownership of the 4th gardenwhich was decreed to the respondent.



5 In the case of *Imodot Paphras Edimu vs Soroti Municipal Council and 35 Others HCCS No. 13 of 2012* while I was considering a similar question of ownership, I went on to point out that;

10 “... ownership refers to the state or fact of possessing something or having control over it. It can refer to various contexts such as owning property, shares in a company, intellectual property, or even personal belongings. Ownership grants rights and responsibilities, and it often carries legal implications”.

15 I supplemented the above definition with other legal definitions including that found in Halsbury's Laws of England, 80th Edn at pages 812 to 813, where it is stated that common law did not recognise the alternative that the ownership of goods could be split up into lesser successive interests or estates, or remainders or reversions in chattels.

Indeed, Sas tephen Mubiru J. also pointed out in the case of *Odiya v Lukwiya & 3 Others (Civil Appeal No. 53 of 2018) [2019] UGHC 69* that;

20 “Ownership of land is acquired by either; purchase, inheritance, gift, transmission by operation of law, prescription or adverse possession.”

I would state that for the appellants to convince the courts that they own the 4th gardens, then they must not only stop at their claim in which they state that they inherited the 4th garden from their late husband who also is said to have inherited it from his father, they must provbre that their late husband owned it.

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5 On the other hand, the respondent state that the 4th garden as was rightfully found by the lower trial court had always been in the lawful custody of and benefit of cial Omani Justine as its owner with the appellants' late husband brother only granted a temporarily licence to cultivate it but died before he could vacate and was not even buried thereon.

10 The question then one would ask is this; *What is the interest of each of the parties as regard to the suit 4th garden?*

In *Okullo vs Opiyo Civil Appeal No. 26 of 2016 UGHCCD*, Mubiru Stephen, J. while handling a similar situation in regard to the importance of ascertaining the root ownership of land pointed out that;

15 *"As regards the claim of acquisition by purchase, when considering the validity of a claimed purchase of unregistered land, the court needs first to establish the root of title.*

This means identifying, as far back in time as is possible, a proven original owner to use as a point of reference, to commence the chain of ownership which will end with the current owner.

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Once the root is established, it is then necessary to show an unbroken chain of ownership from the root to the seller.

Where one or more of the previous owners is known to have died whilst they still owned the property, and the sale was by the personal representative of the owner, then it is necessary to show how the

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deceased's legal interest in the land passed to the personal representative of the deceased.

In that case, the grant of probate (or letters of administration as the case may be) must be produced as part of the chain of ownership.

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In the alternative, there should be cogent evidence of inheritance under custom."

Moreover, Byamugisha J (as she then was) in the case of *Ojwang vs Wilson Bagonza CACA No. 25 of 2002*, was even extra straight forward for she, as a matter of fact, went on to hold that for one to claim an interest in land, that claim must arise from someone with an interest.

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Relating the above holdings to the instant matter, I note that the appellants undisputedly proved that ever since they were married to them and their late husband had stayed on the three gardens and had on them a house in which they lived in and even had graves thereon. However, they did not prove possession, even constructive of the 4th garden.

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While they base their claim on inheritance as they argued that they inherited the suit land from their late husband, there was no evidence brought in court in proof of how their late husband acquired the suit land apart from their possession of the three gardens upon which they even have their house and the graves of their relatives as was even observed by the trial court during its court *locus in quo* visit.

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In respect the 4th garden, the trial court clearly noted that this was distinct from the three gardens under the possession of the appellants and that no cogent evidence

5 was led to prove the assertions by the appellants that they that had usuary of it
either by cultivation or otherwise before and or after Omuri Aloysius , who they say
was a brother to their husband, used it but died thereafter.

This is because as is shown by the evidence on record, late Omani Justine clearly
gave this one particularly garden (4th garden) to Omuria Aloysius, a brother to
10 Aduman Daniel(Husband to the appellants) to temporarily cultivate and upon his
demise, the late Justine Omani did not even allow Omuria's body to be buried on
this said one garden and so his family had to taker his remains for burial in Omatenga
where he originated from clearly showing that Omuria Aloysius was merely a licensee
of that garden and used theat garden at the behest of Omani Justine who thereafter
15 continued using that said one garden.

This fact is further confirmed by the *locus in quo* report in which it is noted therein
that the 4th garden was within by undisputed plots of the respondent which
observation by the court was not controverted by the appellants.

Indeed , while commenting on this factual finding, the trial magistratewent on to
20 state in respect of the four gardens particularly stated in respect of the 4th garden
as follows t;

*"The piece being that one garden that was previously cultivated by
Omuria. When court visited Locus, court found that two pieces of land
that forms the two gardens is adjacent to the 1st piece of land upon which
25 the defendant's home and grave yard are found.*

*These three pieces are well demarcated and are next to each other. It is
very clear that they have been utilised concurrently by the defendants*

5 *and their family. The question of their possession by the defendants therefore does not arise under any circumstances.*

10 *But as regards to the fourth piece of land that forms one garden previously in use by Omuria. Court found during the locus in quo that this piece is sandwiched by other two pieces of land that are in possession of the plaintiffs family. It is this piece of land that forms the crux of this case.*

However, having analysed the evidence on record and submissions of both sides regarding this piece of land, I find that the defendants did not establish the required degree of evidence to show that indeed this piece is theirs.

15 *The demarcations of this pieces of land are clearly old and have been around for decades as observed by Court. This fourth piece of land is set apart from the three pieces in possession of the defendants. It is rather sandwiched by the other pieces of land in possession of the plaintiff."*

(Underlining for emphasis by me).

20 From the above, it can be safely concluded that (since no evidence was led or shown by the appellants thast ever possessed or were in possession of the 4th garden, apart from the unsubstantiated testimonies of DW1 and DW2 who told the court that Omuria used the one garden with the permission of their late husband and when they stopped him, they started using the garden themselves) the 4th garden was rightfully
25 found to belong to the sestste of the late Omani Justine who allowed the late Omuria Aloysius to temporarily use it and it did not form part of the three gardens that the

5 late husband of the appellants had usufruct of and which was rightfully decreed to them by the lower trial court.

Given the fact that the appellants provided no proof that their late husband owned or used the 4th garden or even had any interest in it, they could by any stretch of imagination go on to assume that because their late husband's brother, Omuria
10 Aloysius temporarily cultivated the same and when he died so they could claim on the same. This could not be for even when the late Omuria Aloysius died, the late Omani Justine objected to any burial of his remains on the suit land and that is why his remains had to be taken and was buried in Omatenga.

I further note that the appellants' counsel submits that the holding by the trial
15 magistrate that ***"I am not persuaded by the argument of the Plaintiff. In the premises, I therefore find that the defendants 1st & 2nd and their families are not temporarily on the land in their possession"*** would confirm that the appellants had lived on the suit land for a long time and acquired proprietary interests in the same as was shown by their establishing permanent structures and burying their dead on the suit land, this
20 submission was selective and ignored the overall finding of the lower trial court when it clearly pointed out that the mentioned activities were limited to only to three (3) gardens and not the 4th garden.

The above being so, it is thus my considered assessment of the evidence on record that the appellants while the appellants proved actual possession and use of the 1st,
25 2nd and 3rd gardens 4th gardens through inheritance from their late husband, they failed to show any related interest which their late husband could have had on the 4th garden which was temporarily used their late husband's brother, Omuria Aloysius.

5 The finding of the trial court was thus correct that the 4th garden did not belong to the appellants as it did not form part of the 3 gardens decreed to them. It belongs to the estate of the late Omani Justine (represented by the respondent) thus any interference with it by way of any claim on it or otherwise without the permission of its owner would amount to trespass.

10 I would thus not fault the trial court's findings and decision that undeniably the 1st and 2nd defendants were not owners of the 4th garden which it decreed to the estate of the late Omani Justine represented by the respondent. This ground would thus fail.

15 ii. The decision of the learned trial magistrate occasioned a miscarriage of justice upon the appellants.

The appellants' counsel submitted that the Trial Magistrate misdirected herself and occasioned a miscarriage of justice upon the appellants when she held that the 4th garden was not theirs but belonged to the estate of Omani Justine.

20 In making this assertion counsel referred to the holding in the case of **Matayo Okumu Versus Fransiko Amudhe [1979] HCB 229** where it was held that

"... substantial miscarriage of justice occurs where there has been misdirection by the trial court on matters of fact relating to evidence tendered or where there has been unfairness in the conduct of the trial."

25 The appellants' counsel went further to cite the case of **Olanya James Versus Ociti Tom & 3 Others Civil Appeal No. 064 of 2017** where Hon. Justice Stephen Mubiru held that

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“... a miscarriage of justice occurs when it is reasonably probable that a result more favourable to the party appealing would have been reached in the absence of the error.”

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On the other hand, the respondent's counsel prayed that all the grounds of appeal should fail and judgement and orders of the trial court be upheld because the trial court ably evaluated the evidence on record and gave reasons as to why she believed the respondent's evidence in relations to the 4th garden as against that of the appellants and as such there was no miscarriage of justice occasioned to the appellants.

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I have already found above, as was equally determined by the trial court, that the 4th garden belonged to the estate of the late Omani Justice. That finding means that the decision of the trial magistrate did not occasion any miscarriage of justice upon the appellants at all.

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In my assessment of evidence I clearly find that the appellants did not provide any , linkage between the three gardens decreed to them by the trial court and the fourth garden. Indeed the evidence on record show that the fourth garden was sandwiched within the uncontested gardens held by the respondent and no inling of evidence was shown that the appellants had at any time either cultivated or had use of the fourth garden at all.

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In my considered view, the appellants are being simply greedy and would want to get what was clearly not theirs given the fact of their having no interests in the suit 4th garden by way of having any structures on it and their having cultivated the same. This ground equally fails.



5 11. Conclusion:

All the grounds raised by the appellants in this appeal fail. This appeal is unmeritorious. It is accordingly dismissed.

12. Conclusion and Orders:

10 This appeal fails on all the Two (2) grounds raised by the appellants and as such it is dismissed with the following orders issued;

- The appeal is dismissed as being unmeritorious.
- The judgement and orders of the learned trial magistrate in Civil Suit No. 009 of 2020 of the Chief Magistrate's Court of Kumi at Kumi, delivered on 30th August 2023 by Her Worship Afoyorwoth Winnie Epiphany, Magistrate Grade One, are hereby confirmed and upheld.
- 15 - The appellants are condemned to pay in equal amounts the costs of this appeal and the costs in the court below to the respondent.

I so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

24th April 2024