

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT GULU
CIVIL APPEAL NO. 71 OF 2020

(Arising from Gulu Chief Magistrate's Court Civil Suit No. 070 of 2018)

- 1. ORYEM WALTER**
- 2. ONEN PETER**
- 3. OKELLO RICHARD LAWANG**
- 4. ODONG MICHAEL OJERA ===== APPELLANTS**

VERSUS

- 1. NATIONAL FORESTRY AUTHORITY ===== RESPONDENT**

BEFORE HON. MR. JUSTICE PHILLIP ODOKI

JUDGEMENT

Introduction:

[1] This appeal arises from the ruling of the Chief Magistrate of Gulu (His Worship Matenga Dawa Francis) dated 25th October 2020 in Civil Suit No. 70 of 2018, wherein he dismissed the Appellants' suit on the ground that it disclosed no cause of action against the Respondents.

Background:

[2] The Appellants instituted Civil Suit No. 70 of 2018 in the Chief Magistrates Court of Gulu against the Respondent. They alleged that they are customary owners of land situate at Oding Village, Oding Parish, Unyama Sub County in Gulu District (hereafter referred to as the 'suit land'), having inherited the same from their late fathers. They further alleged that they utilized the suit land undisturbed for several years. Between the years 2005 and 2008 when they were in the Internally Displaced Persons (IDP) camp at Unyama, following the insurgency of the Lord's Resistance Army, the Respondent illegally encroached on the suit land and planted pine trees thereon. When they returned from the camp to the suit land, they were denied access and use of



the suit land by army men operating under the authority of the Respondent. The Appellants therefore sought for, a declaration that the suit land belongs to them; a permanent injunction to restrain the Respondent from interfering with the suit land; general damages for trespass; interest and the costs of the suit.

[3] The Respondent filed its Written Statement of Defense contending that the suit land falls in and forms part of Abera Central Forest Reserve which the Respondent has from time immemorial been in occupation. The Respondent further contended that the Appellants are trespassers on the suit land. The Respondent prayed that the suit should be dismissed with costs.

[4] On the 4th September 2019 the court conducted the scheduling conference of the matter and the 1st Plaintiff testified as PW1. The matter was adjourned for the hearing of the 2 remaining witnesses of the Appellants. On the 22nd November 2019 the Respondent filed Misc. Application No. 56 of 2019 in which it sought the orders of the court that a joint boundary opening and verification of the suit land be conducted. On the 27th November 2019 the Chief Magistrate granted the Respondent's application. On 18th November 2020, Mr. Ouma Conny (Surveyor) presented a preliminary report to Court and informed the court that the suit land is within the boundaries of the Abera Central Forest Reserve. The Chief Magistrate immediately fixed the matter for ruling on whether or not the preliminary survey disposes of the matter or the case should proceed to be heard on its merits.

[5] On the 25th November 2020 the Chief Magistrate gave his ruling in which he held that according to the preliminary survey report, the suit land is a gazetted forest reserve and it is the Appellants who encroached on the forest reserve and therefore they are trespassers. He further held that the Appellants have no locus standi to sue the Respondents for trespass and they do not have any cause of action disclosed against the Respondent. According to the Chief Magistrate, it was futile to proceed to hear the matter on merit when the eventual outcome is clear. He accordingly dismissed the suit for lack of cause of action with costs to the Respondent.

Grounds of appeal:

[6] The Appellants being dissatisfied with the ruling and the orders therein appealed to this court on the following grounds.

1. The Learned Trial Chief Magistrate erred in law and fact when he held that suit did not have a cause of action and therefore dismissed it.
2. The Learned Trial Chief Magistrate erred in law and fact when he denied the Plaintiffs a right to a fair trial hence occasioning a miscarriage of justice.
3. That the Learned Trial Chief Magistrate erred in Law and fact when he relied on a preliminary report which was not conclusive hence dismissing the suit.
4. That the Learned Trial Chief Magistrate erred in Law and fact when he awarded costs against the Plaintiffs.

Legal representation and submissions:

[7] The Appellants were represented by Mr. Douglas Odyek of M/s Kunihiira & Co Advocates. The Respondent did not appear in court for hearing despite being served with a hearing notice. Counsel for the Appellant submitted that since the appeal is not contested, it should be granted.

Consideration and determination of the court:

[8] The duty of this court, as a first appellate court, was well stated by the Supreme court in **Rwabugande Moses versus Uganda, Supreme Court Criminal Appeal No. 25 of 2014** that;

“It is trite law that the duty of a first appellate court is to reconsider all material evidence that was before the trial court, and while making allowance for the fact that it has neither seen nor heard the witnesses, to come to its own conclusion on the evidence. In so doing, the first appellate court must consider the evidence on any issue in its totality and not any piece thereof in isolation. It is only through such re – evaluation that it can reach its own conclusion, as distinct from merely endorsing the conclusion of the trial court. [Baguma Fred versus Uganda SCCA No. 7 of 2004]”

[9] I shall therefore bear in mind the principles set out in the above decisions while determining the grounds of appeal in this case.

Ground 1: The Learned Trial Chief Magistrate erred in law and fact when he held that the suit did not have a cause of action and therefore dismissed it.

[10] In his ruling, the Chief Magistrate found that no cause of action was disclosed against the Respondent. In **Tororo Cement Co Ltd Versus Frokina International Ltd Supreme Court Civil Appeal No. 2 of 2001**, a cause of action was defined to mean every fact which is material to be proved to enable the Plaintiff to succeed or every fact which, if denied, the Plaintiff must prove in order to obtain a judgment. In **Auto Garage -vs- Motokov (No. 3) (1971) EA. 514** at page 519, Spry V.P, held that;

“I would summarise the position as I see it by saying that if a plaint shows that the plaintiff enjoyed a right, that right has been violated and that the defendant is liable, then, in my opinion, a cause of action has been disclosed and any omission or defect may be put right by amendment.”

[11] In the East African Court of Appeal case of **Jeraj Shriff & Co Versus Chotai Fancy Stores [1960] 1 EA 374** Windham J.A. at page 375 held that:

“The question whether a plaint discloses a cause of action must be determined upon a perusal of the plaint alone, together with anything attached so as to form part of it and upon the presumption that any express or implied allegations of fact in it are true.”

[12] In the instant case, the ruling does not show that the Chief Magistrate perused the Plaint to determine whether it discloses a cause of action or not against the Respondent. He instead relied on the preliminary survey report to conclude that the Appellants did not have a cause of action against the Respondents. This was in contravention of the well settled position of the law stated in the cases cited above.

[13] I have perused the Plaint in this matter. It clearly shows that the Appellants enjoyed a right over the suit land having inherited it from their fathers. The plaint also shows that the Appellant's right to the suit land was violated by the Respondent who trespassed on it and denied the Appellant the use. Had the Chief Magistrate perused the plaint, as I have done, he would have come to the

conclusion that the plaint discloses a cause of action against the Respondent. I therefore find that the Learned Trial Chief Magistrate erred in law when he held that no cause of action was disclosed by the Appellants against the Respondent.

Ground 2: The Learned Trial Chief Magistrate erred in law and fact when he denied the Plaintiffs a right to a fair trial hence occasioning a miscarriage of justice.

Ground 3: The Learned Trial Chief Magistrate also erred in law and fact when he relied on a preliminary report which was not conclusive hence dismissing the suit.

[14] I have decided to deal with the two grounds of appeal together since I consider them to be inter - related. Article 28 (1) of the Constitution of the Republic of Uganda, 1995, provides that in the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial Court or tribunal established by law. The right to a fair hearing encompasses that a decision is not made against a party unless they have been given prior notice of the cases against them, a fair opportunity is given to them to answer the allegation made against them and they are given an opportunity to present their own case.

[15] In the instant case, the Chief Magistrate held that the suit land is part of Abera forest reserve. He further held that it is the Appellants who encroached on the forest reserve and therefore they are trespassers. His ruling was only based on a preliminary survey report which was inconclusive and not even admitted in evidence. The report indicated that there was remaining work which was to be done including, opening boundaries; cutting lines; and replacing missing beacons. The Appellants were never given any opportunity to present their own case or to challenge the allegation in the report by producing their evidence or cross-examining the surveyor. The procedure adopted by the Chief Magistrate was strange and breached all tenets of a fair hearing. This clearly resulted into a miscarriage of justice to the Appellants.

Ground 4: The Learned Trial Chief Magistrate erred in law and fact when he awarded costs against the Plaintiffs.

[16] The general rule is that costs follow the events and a successful party should not be deprived of costs except for good cause. See: Section 27 of the **Civil Procedure Act, Cap 71**. In the instant case, the Chief Magistrate dismissed the Appellants suit on account that no cause of action was disclosed. In his view, the Respondent was the successful party and therefore entitled to costs. To that limited extent, I do not find any fault in the Chief Magistrate awarding the Respondent the costs of the suit. However, having found in issue 1-3 that the ruling was not premised on the law, the award of costs cannot stand.

[17] In the end, this appeal succeeds with the following orders;

1. The ruling of the Chief Magistrate in Civil Suit No. 70 of 2018, dated 25th November 2020 is set aside.
2. Civil Suit No. 70 of 2018 to be heard on merit by the Chief Magistrate of Gulu.
3. The Respondent shall bear the costs of this appeal.

I so order.

Dated this 27th February 2024



Phillip Odoki

Judge.

