

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT GULU**  
**CIVIL APPEAL NO. 70 OF 2020**

**(Arising from Gulu Chief Magistrate's Court Civil Suit No. 054 of 2019)**

**1. OKUMU PETER ANYWAR**  
**2. KOMAKECH FRANCIS===== APPELLANTS**

**VERSUS**

**1. NATIONAL FORESTRY AUTHORITY**  
**2. OTIKA SHANON AKENA===== RESPONDENTS**

**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 25<sup>th</sup> October 2020 in Civil Suit No. 057 of 2019, 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. 054 of 2019 in the Chief Magistrates Court of Gulu against the Respondents. They alleged that they are the lawful owners of land situate at Otumpili Village, Paduny Parish, Awach Sub County in Gulu District (hereafter referred to as the 'suit land'), having inherited the same from their late grandfather Oloya Nekomya. They further alleged that upon acquiring the suit land, they took possession by cultivating and deriving sustenance therefrom undisturbed. On the 11<sup>th</sup> March 2010 they applied for conversion of the suit land into a freehold and on the 12<sup>th</sup> June 2010 the application was granted by Gulu District Land Board. On the 2<sup>nd</sup> July 2010 they were issued with instructions to survey the land. The 2<sup>nd</sup> Defendant had interest in the suit land and all along mobilized youths to demolish their buildings and to demolish



their mark stones. On the 9<sup>th</sup> September 2013 they received an eviction notice from the 1<sup>st</sup> Defendant claiming ownership of the suit land. The Appellants therefore sought for, a declaration that they are the lawful owners of the suit land; a declaration that the Defendants' actions amount to trespass; a permanent injunction to restrain the Respondents from interfering with their use of the suit land; an eviction order against the Defendants; general damages for trespass; interest and the costs of the suit.

[3] The 1<sup>st</sup> Respondent filed its Written Statement of Defense contending that the suit land falls in and forms part of Amuka Central Forest Reserve and therefore the Appellant have no legal or equitable rights over it. The Respondent prayed that the suit should be dismissed with costs.

[4] On the 22<sup>nd</sup> November 2019 the 1<sup>st</sup> Respondent filed Misc. Application No. 55 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 27<sup>th</sup> November 2019 the Chief Magistrate granted the application. On 18<sup>th</sup> 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 Amuka 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 25<sup>th</sup> 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 Ms. Elizabeth Aloyo of M/s Kunihiira & Co Advocates and the 1<sup>st</sup> Respondent was represented by Mr. Sam Blick Okello of the legal Department of the 1<sup>st</sup> Respondent. The 2<sup>nd</sup> Respondent did not appear in court for hearing despite being served with a hearing notice. The matter thus proceeded ex parte against the 2<sup>nd</sup> Respondent. At the hearing, counsel for the Appellant applied to abandon ground 4 of the appeal which prayer was granted.

[8] On ground 1 of the appeal, counsel for the Appellant relied on the case of *Auto Garage -vs- Motokov (No. 3) (1971) EA 514* on what constitutes a cause of action. That is that the Appellant enjoyed a right, that the right was violated and that it is the Respondent who is liable. Counsel further submitted in determining whether a plaint discloses a cause of action or not, the court has to restrict itself to the plaint only. Counsel argued that in paragraph 5 of the plaint, the Appellants averred that they are the rightful owners of the suit land having inherited it from their grandfather. They applied and were granted for conversion of their land into freehold which application was granted. However, the Appellants were surprised when they received an eviction notice from the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> respondent mobilized people who to destroy their mark stones. According to counsel for the Appellant, the plaint disclosed a cause of action and therefore the Chief Magistrate erred in law when he held that the suit land did not have a cause of action and therefore dismissed it.

[9] On ground 2 of the appeal, counsel for the Appellant submitted that Article 28(1) of Constitution of the Republic of Uganda, 1995 guarantees the right to a fair hearing in civil matters. However, in this case, the Chief Magistrate did not allow the Appellants to testify but prematurely

dismissed the suit based on wrong principles of the law.

[10] On ground 3 of the Appeal, counsel for the Appellant argued that the survey report is not conclusive evidence of ownership. In addition, counsel submitted that the report was incomplete, the surveyor was not examined and cross-examined on the report.

[11] In reply, counsel for the 1<sup>st</sup> Respondent argued, on ground 1 of the Appeal, that the Appellants are not the rightful owners of the suit land and the decision of Gulu District Land Board allowing the application for conversion of the suit land into freehold was illegal and void ab initio. On ground 2 of the Appeal, counsel for the 1<sup>st</sup> Respondent argued that the Appellant failed to prosecute the case after several adjournments. On issue 3, counsel submitted that the court appointed a neutral surveyor with clear terms of reference. Counsel further submitted that the surveyor testified and the report was admitted in evidence but the Appellants did not bother to cross-examine the surveyor.

**Consideration and determination of the court:**

[12] 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]”*

[13] 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.

[14] 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.”*

[15] 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.”*

[16] 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.

[17] 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 grandfather. The plaint also shows that the Appellant’s right to the suit land was violated by the 1<sup>st</sup> Respondents who claimed ownership of the suit land and gave the Appellants an eviction notice. The 2<sup>nd</sup> Respondent mobilized youths to

demolish the Appellants' buildings and their mark stones. 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.

[18] 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.

[19] In the instant case, the Chief Magistrate held that the suit land is part of Amuka Central 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. The report indicated that there was remaining work which was to be done including, opening boundaries; cutting lines; and replacing missing beacons.

[20] I have not found any merit in the submissions of counsel for the 1<sup>st</sup> Respondent that the court appointed a neutral surveyor. In fact, the certified record of proceedings before the Chief Magistrate clearly shows that on the 19<sup>th</sup> August 2020 counsel for the 1<sup>st</sup> Appellant informed the Chief Magistrate that the parties had failed to agree on a surveyor. The record of proceedings does not also show that the surveyor took oath and he testified. 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.

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

1. The ruling of the Chief Magistrate in Civil Suit No. 054 of 2019, dated 25<sup>th</sup> November 2020 is set aside.
2. Civil Suit No. 054 of 2019 to be heard on merit by the Chief Magistrate of Gulu.
3. The Respondents shall bear the costs of this appeal.

I so order.

Dated this 29<sup>th</sup> February 2024

A handwritten signature in blue ink, appearing to read 'P. Odoki', with a long horizontal flourish extending to the right.

Phillip Odoki

**Judge.**

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