THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MUBENDE

CIVIL APPEAL NO.20 OF 2019

(Arising from Mityana Civil Suit No.065 of 2016)

KABUZI SSEMWANGA GODFREY — APPELLANT

VERSUS

1. KABUGO YUSUF
2. NAKAJUBI ESTHER — RESPONDENTS

BEFORE HON JUSTICE MOSES KAZIBWE KAWUMI

JUDGMENT

This judgment arises from an appeal against the judgment of the Magistrate Grade 1 at Mityana Court delivered on 11th June 2016. The Respondents who filed the suit sought a declaration that the Appellant had trespassed on their land, a Permanent injunction, Special damages, General damages and costs.

Background.

On various dates between 20th March 2012 and 17th May 2015 the Respondents bought various pieces of land from different people at Kisana Village, Namungo Sub county in Mityana District. The pieces of land were in the same location. In a letter dated 16th January 2015 the Respondents sought to purchase registrable interest from a one Mohammed JJagwe who was introduced to them as the Landlord.

The Landlord who apparently was managing the land as an undivided estate on behalf of his family advised them to wait until the distribution was done. The portion of the estate on which the Respondents bought

bibanja approximated to be 3.9 acres was allocated to a sister of the **"Landlord"** named Namyalo who sold all her 20 acres to the Appellant on 20th May 2015.

In April 2016 the Appellant is alleged to have forcefully and unlawfully entered the Respondents' land, cut the barbed wire fence, damaged growing crops and cut the eucalyptus trees they had planted which he transported away for financial gain.

The Respondents had the extent of the loss incurred computed by an Agricultural Officer at UGX. 16,623.750/- based on the market value and not the values stipulated by the District Land Board.

The Appellant denied the alleged trespass contending that he is the lawful owner of the land having bought the same from Amina Namyalo. It was the Appellant's case that a one Abasi Kaswa who sold bibanja interests to the Respondents was just a caretaker of the land and that the agreements he executed with the Respondents were illegal.

It was further contended by the Appellant that the same Abasi Kaswa had agreed to compensate the Respondents for having sold them what he did not own. The Appellant sought a dismissal of the suit with costs.

Counsel for the parties agreed on three issues for resolution by the trial court: -

1. Whether the defendant is a trespasser on the suit land?
2. Whether the defendant destroyed the Plaintiffs' crops?
3. Remedies available to the parties.

The trial Magistrate found for the Plaintiffs and held that they are the lawful occupants of the Kibanja in dispute and that the Defendant's legal interest is subject to their Kibanja interest. The defendant was declared to be a trespasser on account of his interference with the Plaintiffs'

possession. A Permanent injunction was issued to restrain the defendant from further trespass.

The court awarded the Plaintiffs special damages of Ugx. 16,623,750/= and General damages of Ugx.6,000,000/= with interest and costs of the suit.

Dissatisfied with the judgment of the court the Appellant filed a Memorandum of Appeal with the following grounds of Appeal:-

1. The learned Magistrate erred in law and fact in her finding that the Respondents own the suit Kibanja and are lawful occupants of the suit land.
2. The learned Magistrate erred in law and fact in her finding that the Appellant was a trespasser on the suit land.
3. The learned Magistrate erred in law and fact in her finding that the Respondents were entitled to special damages of shillings. 16,623,750/= without being supported with evidence.
4. The learned Magistrate erred in law and fact in her finding that the Respondent is entitled to General damages of shillings. 6,000, 000/= without being supported with evidence.
5. The learned Magistrate erred when she failed to evaluate and scrutinize the evidence on record and arrived at wrong conclusions.

The Appellants prays for the setting aside of the judgment in Civil Suit No.065 of 2016 and for costs of the Appeal.

Representation.

M/S Kajubi &Co. Advocates appeared for the Appellant while M/S Kazungu, Kakooza & Alinaitwe Advocates appeared for the Respondents.

Counsel filed submissions which have been considered in rendering the decision but not reproduced since they are part of the record.

Duty of the 1st Appellate court.

The duty of the first appellate court is to subject the evidence adduced in the trial court to a fresh and exhaustive scrutiny. The court is mandated to make its conclusions both on the law and the facts but taking into consideration the fact that it had no opportunity to observe the witnesses during the trial. The court must weigh the conflicting evidence and draw its own inference and conclusions.

Lovinsa Nankya V Nsibambi {1980} HCB 81; Fr.Narcensio Begumisa & Others V Eric Tibebaga. SCCA No.17 of 2000.

Grounds of Appeal No.1,2 and 5.

The suit before the trial court was entirely premised on ownership of the respective interests of the parties. While the Appellant claims to have bought legal interest in the land from Namyalo a beneficiary in the estate, the Respondents claim to have acquired unregistered interest in the same piece of land prior to its sale to the Appellant.

A determination as to whether the Respondents purchase of their interests in the undivided estate was backed by the law suffices to determine the 1st,2nd and 5th issues.

The Respondents bought bibanja at different times from Abbasi Kasswa, Nyiramugisha Juliet and Nyamwasa Ronald. The agreements of purchase were all admitted in evidence as PEX1,PEX2 and PEX3.The agreements were witnessed by Kasswa Abaasi and Kaziso Paul who represented the Landlord.

The Respondents through the same agents were introduced to the Landlord for purposes of acquiring legal interest (okwegula) in their consolidated portion. The Landlord received busuulu for 3 years from them amounting to Shillings. 90,000/= and a Kanzu for Shillings 200,

000/=. Receipts dated 28th February 2014 evidencing the payments were admitted in evidence as **PEX4.**

Later on 16th January 2015 the Respondents communicated their interest in acquiring a title for the portions they held but were advised to wait until the estate/land was distributed by the Landlord who later introduced them to his sister Amina Namyalo who also told them to wait but instead sold all the land to the Appellant.

Kasswa (PW2) confirmed that he sold a portion of his kibanja to the Respondents and that he had been the caretaker of all the land on behalf of Hajji Jaggwe the Landlord since 14th October 1988.A letter of appointment was exhibited and marked **PEX7.**

It was the evidence of Kayiso Paul(PW3) that he later became a care taker of the land and its distribution was done after the death of Hajji Jaggwe.PW3 now oversees the interests of a one Taubunas one of the beneficiaries in the same estate.

It was the argument of the Appellant that Kasswa(PW2) was a caretaker of the estate land and had no ownership interest to pass on to the Respondents. Evidence was however led to show that PW2 bought a kibanja in 1982 from Kato Ntungenabo. An agreement dated 17th February 1982 was admitted for identification pending translation into English.

Counsel for the Respondents contends that a translated copy of the agreement was later placed on the court record. The document was not seen by the court or reflected on the record of proceedings.

The Appellant however contends that PW2 offered an alternative piece of land to the Respondents if after the sub-division it was to be found that what he sold to the Respondents was located on Namyalo's share of

the estate. The Appellant relies on this evidence to show that PW2 was just a caretaker who had no ownership on any part of the estate.

The document attributed to PW2 dated 15th December 2015 was however retracted by PW2 claiming he was coerced to sign it by a Major Mukasa and the Deputy Resident District Commissioner. The latter apologized on realizing that PW2 owned the kibanja he sold to the Respondents since it was a portion of what he purchased in 1982 from Kato Ntungenabo.

It is however pertinent to note that the Respondents were not privy to the 15th December 2015 document and are thus not bound by it. The document was not also signed by Namyalo and the Appellant who are also not bound by it. The Appellant in cross examination stated that he did not attend any meeting in the office of the Resident District Commissioner and denied knowing Major Mukasa who claimed to have represented the Landlord when the document was signed.

I am inclined to believe the evidence of PW6 to the effect that PW2 was coerced into signing the document agreeing to offer the Respondents another piece of land in lieu of the portion located on what the Appellant had bought from Namyalo. The document in its form and by the mode of its acquisition cannot amount to evidence to rebut PW2's ownership of a kibanja on the suit land.

It is also an undeniable fact that by the time the Appellant bought the land, the Respondents' kibanja was known. PW3 confirmed that he collected busuulu from them and he would remit it to Hajji Jjagwe who died when he knew them.PW4 was also not challenged on the evidence that he introduced the Respondents to PW2 and Nyamwasa who sold them parts of their bibanja in 2012 and they planted crops and trees.

The Appellant's narrative about how he purchased the land also raises questions as to whether he indeed carried out due diligence before the transaction. The title of the land was in the name of Emuran Kewaza who was dead and his estate administered by the time the Appellant bought. The agreement was made at Kibuye and not witnessed by any of the Local Authorities and the boundaries were opened after he had completed the purchase based on a Certificate of Succession.

The evidence on record sufficiently proves that by the time the Appellant bought the land, the Respondents lawfully owned bibanja on it purchased from PW2, Nyiramwisha and Juliana. The Respondents had paid busuulu to the then Landlord and it cannot be said that they were trespassers on the land.

PW2's agreement of purchase of his kibanja in 1982 was not supported by an Agreement admitted on record as an exhibit. The fact that Namyalo for whom he was a caretaker of the land acknowledged his role and even gave him a token of UGX.2.000.000/= after the Appellant had bought the land points to the fact that she knew that he owned a kibanja on the land coupled with his role as a caretaker.

I find that Namyalo would not have paid any token to PW2 if he had unlawfully sold part of the land he had been entrusted to safeguard. Even then it was her role to arbitrate any dispute arising from the transaction she entered into with the Appellant as stated in the sale agreement admitted on the court record.

With the above facts established from the record of the lower court, the question to pose is whether the Respondents were legally in possession of the 3.7 acres on the portion of land allocated to Namyalo during the distribution of the estate.?

Under sections 29(1 (2) and (5) of the Land Act, the Respondents acquired the consent of the then Landlord through payment of busuulu and a kanzu and thus had protection of the law as lawful occupants. Further to that, PW2 who sold them had owned the kibanja for more than 12 years before the promulgation of the 1995 Constitution and they had the protection of the Law on that account having purchased from a bona fide occupant.

I hold that the Respondents legally held their kibanja interest in the land and they are not trespassers. The Appellant bought subject to their interest as lawful occupants.

The 1st,2nd and 5th grounds of Appeal are devoid of merit and are dismissed.

Ground of Appeal No.3.

The learned Magistrate erred in law and fact in her finding that the Respondents were entitled to special damages of shillings. 16, 623, 750/= without being supported with evidence.

Rubwama Deogratious (PW5) is an Agriculture extension worker who was attached to Namungo sub county in which the suit land is located and was contacted by the Respondents to value the trees and crops allegedly damaged by the Appellant on 10th May 2016.PW5 established that 1000 eucalyptus trees sitting on 0.56 acres were destroyed and 352 trees were bruised by fire.

The trees were about 1 year old and were about 30 centimetres in circumference capable of fetching shillings 10,000/- each at the market value price then amounting to shillings 13,520,000/-. The rest of the crops were valued at shillings 3,103,750/- going by the market value.

PW5 told court that he did not apply the Local Government compensation rates for the area because the values are so low hence the

resort to the open market rates. He told court that he asked the workers about the age of the trees destroyed and they were about 10 years from his experience.

The Appellant challenged the use of the open market prices to arrive at the special damages by PW5.The trial Magistrate did not canvass this issue but chose to adopt the computation by PW5.

Section 59 (1) (e) and (f) of the Land Act mandates District Land Boards to compute compensation rates which are required to be reviewed annually. These rates are binding and I find no cogent reason for PW5 ignoring them in the computation of the damage/loss occasioned to the Respondents.

I fault the trial Magistrate for adopting the computation of Shillings 16,623,750/- since it was based on a wrong computation basis. I find merit in the 3rd ground of Appeal and uphold it.

Ground of Appeal No.4.

The learned Magistrate erred in law and fact in her finding that the Respondent is entitled to General damages of shillings. 6,000, 000/= without being supported with evidence.

General damages are awarded at the discretion of the court considering the nature of the suffering encountered. They are compensatory in nature and are intended to put the victim in the position they were in before the cause of action arose.

As a general rule, an Appellate court will not interfere with the award of damages by the trial court unless the court acted upon wrong principles of law or the amount awarded was so large or so low as to make it an entirely erroneous estimate of the damages to which the party was entitled.

Crown Beverages Limited V Central {2006}2 EA 43.

Given the fact that the Respondents were inconvenienced by should have been avoided by the Appellant, the trial Magistrate correctly exercised her discretion and the quantum awarded was modest in the circumstances. I find no reason to interfere with the award of Shillings 6,000,000/=. I dismiss the 4th ground of Appeal.

In sum the Appeal succeeds on the 3rd ground. The 1st,2nd.4th and 5th grounds of Appeal are dismissed. The judgment of the lower court is sustained save for the award of special damages of shillings 16,623, 750/=. 4/5 of the taxed costs of the Appeal are awarded to the Respondents.

Moses Kazibwe Kawumi

Judge

26th February 2024