

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT LIRA
LAND CIVIL APPEAL NO. 010 OF 2018

(Arising from Civil Suit No. 12 of 2015)

EZIZAFAN OGOK ::::::::::::::::::::::::::::::::::: APPELLANT

VERSUS

LONARD ONGIA ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE. ALEX MACKAY AJIJI

JUDGMENT

The Plaintiff (herein referred to as the Appellant) sued the Defendant (herein referred to as the Respondent) for recovery of land located at Apolika village, Ajar Parish, Chawente sub-county, Apac District measuring approximately 36 acres, general damages for trespass to land and breach of contract, interest, permanent injunction and costs of the suit.

Plaintiff/Appellant's facts

The facts of the Appellants case were that the Appellant sold 5 acres to the Respondent in 2006 at Ugx. 1,000,000/= and 4 cows all valued at Ugx. 300,000/=. The Respondent paid the money in instalment but remained with an unpaid balance of Ugx. 800,000/=. That despite failure to pay all the money, the Respondent went ahead to utilize the land beyond the 5 acres hence Civil Suit No. 12 of 2015.

Defendant/ Respondent's facts

In the written statement of defence the Respondent denied all the Appellant's claims and averred that in 2006 he heard that the Appellant wanted to sale his land and he went to his home with Otunga Francis and Obongi David were the Appellant agreed to sale off his land at an agreed price of 1,500,000/= and 5 cows. That he paid the money in instalment and completed it by 15/02/2010. That on that day the Respondent gave the Appellant 3 cows and he only accepted the two bulls

which were valued at Ugx. 1,020,000/= and declined to take the Ankole breed. That the LC.1 and LC.2 advised that the Ankole cow be replaced on an agreed date which the Respondent complied to but the Appellant did not show up and is instead the whole land which he sold to the Respondent.

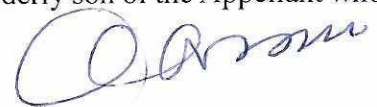
1. The appellant called a total of 3 witnesses in a bid to prove his case and the Respondent also called 3 witnesses.
2. The issues for court's resolution were that;
 - i. Who is the rightful owner of the suit land?
 - ii. Whether the Defendant has trespassed over the suit land?
 - iii. Whether there was a breach of contract by the Defendant
 - iv. What remedies are available to the parties?

The trial magistrate resolved the above issues in favour of the Respondent. The Appellant was dissatisfied with the decision and orders of the trial magistrate hence this Appeal.

Grounds of Appeal

The appeal is based on 11 grounds of appeal and they are given below;

- i. The trial magistrate erred in law and in fact when he declared and decreed the Respondent as the owner of the 40 acres of land at Apolika Village, Ajar Parish Chawente Sub county
- ii. The trial court erred in fact and law when it held that the whole of the land in dispute belongs to the Respondent since the Appellant sold land to the Respondent as a lump sum without measuring it
- iii. That the trial magistrate erred in law and in fact when it acted with bias in holding that the dispute arose at a later stage fuelled by the elderly son of the Appellant who wanted land from their grandfather.



- iv. The learned trial magistrate erred in law and fact when she held that the Appellant sold off the entire land and transferred possession of the all piece of land because the Appellant relocated to Inomo
- v. That the magistrate erred in law and in fact when she held that since the sale was not mentioned in acreage, then the whole land was sold.
- vi. The trial magistrate erred in law and fact when she held that there was no breach of agreement
- vii. The trial magistrate erred in law when she ignored , failed to rule that the agreement was illegal and violation of the illiterates protection Act
- viii. That the trial magistrate erred in admitting and placing reliance on hearsay evidence to the prejudice of the Appellants and thus came to a wrong decision occasioning a miscarriage of justice.
- ix. That the trial magistrate erred in law and fact when it admitted fresh and new evidence at locus and generally conducted the trial and locus in an unsatisfactory and irregular manner as to amount to mistrial.
- x. The trial magistrate failed to properly evaluate the evidence on record and came to a wrong decision occasioning a miscarriage of justice
- xi. That the trial magistrate erred in law and in fact when it awarded the Appellant 1,500, 000/= only as general damages.

The Appellant prayed that the Appeal be allowed and the decision and orders of the trial magistrate be quashed and set aside.

Legal Representation

Omara & Co. Advocates and solicitors represented the Appellant and Justice Centres Uganda represented the Respondent.

This Appeal proceeded by way of written submissions and all the parties complied.

I have read all the submissions of both counsel but I will not reproduce them here.



Duty of the first Appellate Court

This court takes note that it is the first Appellate Court which is under a duty to re-evaluate all the evidence on the court record not forgetting that it did not get the chance to see the witnesses. See

Fr. M. Begumisa & Ors Vs E. Tibegana SCCA No. 17 of 2003

I have looked at all the grounds of appeal and noted that they all relate to the size of the land which was purchased by the Respondent and the award which given to the Appellant. For that reason, I will resolve all the grounds of Appeal together as below;

Evidence in the trial court

PW1 Erizaffan Ogwok aged 90 years in his testimony in chief told court; "I gave 5 acres of land to the Defendant/Respondent. He bought Ugx. 600,000/= per acre. He paid 1,000,000/= and 4 heads of cattle. Each cow was valued at 300,000/= making a total of 1,200,000/= and we put the agreement in writing which I signed. The defendant is remaining with Ugx. 800,000/= out of the 2,200,000/=. The defendant is encroaching on the other land which I did not give him."

PW2 Etu Moses aged 61 a neighbor said; "The defendant started buying this land through me and the sale negotiation went on in my presence. The defendant paid 500,000/= and the agreement was 600,000/= per acre for 5 acres. I also saw the defendant brought 4 cows but I do not how much value was attached to it.....The land in dispute is about 20 acres. The defendant is using where he bought."

PW3 David Obongi aged 35 years said; "The Plaintiff left his place and left his son where the defendant is now staying. The defendant bought the land from the plaintiff and I participated in the purchase as a witness. The plaintiff was selling only 5 acres though he had more land. He was selling each acre at 600,000/= per acre. The defendant was looking for the land to buy and I took him to the Plaintiff. He did not want to sale but the son said he would leave and he agreed to sale 5 acres since he wanted to use the rest for grazing cows."



In cross-examination PW3 said; "The land measures around 30 acres. We did not measure it. The defendant is using more than 15 acres. While at Inomo the plaintiff said he is going to sell 5 acres."

DW1. Leonard Ongia aged 45 years said that; “.....I got one Obongi David to take me to my relatives’ house. He told me the plaintiff was selling land which had been announced in church. He took me to the plaintiff the next day on 19/08/2006. We agreed that I give the plaintiff 1, 500,000/= and 5 cows for the land on sale. We did not state the acre as he said in Apac.....I gave him 500,000/= on 26/08/2008 I went to see the land and he made a demarcation.....the seller allowed me to continue with construction. I constructed 2 grass thatched houses.”

DW2 Bruno Okello aged 62 told court; “The land is for the defendant this is because he planted trees on it. I participated in the last payment.

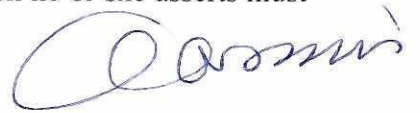
In cross-examination he said; “The plaintiff’s son Okeng stayed on the land where the defendant is. We did not make a sketch map of the land but we matched upon it

Analysis of Court

From the above evidence, it is clear that right from the start there was no mention of the size of the land the Appellant was selling. As it can be observed, the said sale of the suit land was even advertised in church. This means the advert of sale went public and if the Appellant was selling just a part of the land, he ought to be very clear. It is prudent that upon sale and purchase, both parties to the transaction ought to consent to its terms. Ordinarily, one would not pay for something which he or she does not know.

Section 101 (1) of the Evidence Act provides that; “ Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist.

In **Nsubuga V. Kavuma [1978] HCB 307** it was held that in civil cases the burden lies on the plaintiff to prove his or her case on the balance of probabilities.



It is also apparent from the court record that the Appellant and his witnesses did not know the exact size of the land in dispute. Whereas the Appellant at one point says the land measured 40 acres, on the other occasion he says it measured 48 acres and his witnesses said it measured 30 acres. This in my view explains why the Appellant did not indicate the size he was selling to the Respondent because to him he was selling the entire piece of land.

However, one cannot benefit from a contract of sale where parties are at cross roads with another. In this case the size of the land sold was not stated. However, the Appellant and his witnesses allude to 5 acres at the price of 600,000/= per acre.

It is the reason a value was attached to a garden and arrived at 5 cows, 4 of which were delivered and one was rejected. Though consideration need not be adequate a sum of shs 1,000,000 paid plus 4 cows could not be said to be sufficient consideration for the 40 acres of the land.

The Appellant was illiterate and it would appear that the Respondent exploited this fact to his advantage.

However, before I take leave of this matter, I would like to note that damages in any civil suit are awarded at the discretion of court and ordinarily, they are awarded to the successful party.

In the circumstance, it is the finding of this court that the trial magistrate failed to properly evaluate the evidence.

This appeal succeeds and costs awarded to the Appellant.

Dated and delivered at Lira this ^{17th}..... day of January 202~~4~~



ALEX MACKAY AJIJI

JUDGE