

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT SOROTI
CIVIL APPEAL NO. 11 OF 2011
ARISING FROM KUMI CLAIM NO. 36 OF 2007

OLUPOT MIKEAPPELLANT

V

EBAAT JOHN.....RESPONDENT

JUDGMENT BEFORE HON. LADY JUSTICE HENRIETTA WOLAYO

In this appeal, the appellant through his advocate Mr. Ogire appeals the decision of the grade one magistrate at Kumi delivered on 11.2.2011 on two grounds.

1. The grade one magistrate erred in law and in fact when he failed to properly evaluate the evidence hence arriving at a wrong conclusion.
2. The decision of the magistrate has occasioned a miscarriage of justice.

The respondent appeared in person.

Mr. Ogire filed written submissions while the respondent filed a written response.

The duty of the appellate court is to re-appraise the evidence and arrive at its own conclusion, bearing in mind that the trial court had the opportunity to observe the demeanor of the witnesses.

An examination of the court record shows that this case was first handled by the district Land Tribunal Kumi and a retrial ordered by the tribunal on 13.7.2007. Ebaat (current respondent)

then commenced Claim 36 of 2007 in Kumi grade one court for recovery of four gardens held under customary tenure.

The evidence on record shows that Ebaat derives his title from his late father Wilson Edit. However he joined the army in 1989 and on his return in 2001, he found the defendant cultivating two gardens. Ebaat's mother Pw3 Esther Adeke said she allowed the defendant to use the land temporarily and he still has a grass thatched house on the land during insurgency.

Olupot (current appellant) derives his title to the land from one Emodingat his father in law who in turn bought the land from Wison Idepo in 1984. From his evidence, the appellant inherited the land from his father in law in 1987 after the latter's death. He tendered a sale agreement between Emodingat and Wison Idepo as proof of sale. He called witnesses to the sale to testify.

From the evidence, it is clear that the respondent (Ebaat) has been utilizing the disputed land and the appellant (Olupot) retained use of the grass thatched house and the immediate surroundings. It is also apparent from the evidence that the appellant is a brother in law to the respondent having married the respondent's sister.

Counsel submitted that the appellant was in uninterrupted occupation from 1987 when his father in law gave him the land to 2007 when litigation commenced. The continuous use of the land by the appellant is not clear from the evidence. On the contrary, litigation commenced in LC courts in 1997, according to the appellant's testimony. Therefore the appellant did not enjoy uninterrupted occupation for 20 years.

I find that the appellant's claim to the land is premised on very shaky grounds. It is based on a sale agreement to which he is not a party. This means he has to prove that he is a legal representative of his father in law Emodingat who allegedly bought from Idepo, father of Ebaat, the respondent. Therefore, even if the trial magistrate were to accept the sale agreement as genuine, it does not entitle the appellant to claim benefit of the sale in the absence of letters of administration.

On a balance of probability, the magistrate was justified to reject the sale agreement on the basis that it was not thumb marked or signed by the alleged seller Idepo Wison.

On the other hand, the respondent is the son of Wison Idepo and under customary law, a son can inherit from his father. In the absence of challenge by other siblings or his mother, he is entitled to say he has an equitable interest in his father's land.

PW3 Adeke confirmed that the appellant was given shelter during insurgency. It is also not in dispute that he marries the appellant's sister.

On the whole, I find that the trial magistrate arrived at a correct decision.

I therefore find no merit in the appeal which is dismissed with costs of the appeal to the respondent.

I also make the following orders.

1. The respondent retains use of the four gardens that were in dispute
2. The appellant retains use of the land where he constructed a house and its compound.

DATED AT SOROTI THIS 08th DAY OF NOVEMBER 2013.

HON. LADY JUSTICE H. WOLAYO