

IN THE HIGH COURT OF UGANDA AT SOROTI

CIVIL APPEAL 56 OF 2011

ARISING FROM KUMI LAND CLAIM 34 OF 2004

OKIMAT STEPHENAPPELLANT

VERSUS

1.AGUTI AGULASI

2. OGOSO LEVI.....RESPONDENTS

JUDGMENT

The appellant , through his advocates Mbale Law chambers, appealed the decision of HW Belmos Ogwang magistrate grade one dated 29th December 2011 sitting at Kumi on four grounds of appeal that I will refer to later in the judgment.

Both Mbale Law chambers for the appellant and Oyoit & co. advocates for the respondent filed written submissions that I have studied and given due consideration.

The duty of the appellate court is to re-evaluate the evidence adduced in the lower court and arrive at its own conclusion bearing in mind that the trial court had an opportunity to observe the demeanour of the witnesses.

The appellant filed a claim in trespass to land and for orders for vacant possession.

From his testimony and that of PW2 Okiya Yason, the basis of his claim is that he bought the land measuring three gardens from Okiya in 1982 at a cost of three

head of cattle and 100,000/ . That in 1999 , the 1st respondent trespassed on the land and built a house on it.

The 1st respondent is cousin sister to the appellant as the appellant's mother is her paternal aunt. The second respondent is the husband of the 1st respondent. These two claim they purchased the land from the appellant and paid two head of cattle and 100,000/ in 1997 but that in 2001 when they requested the appellant for a written agreement, he declined and commenced litigation in LC courts .

I have read the court proceedings and I find that the appellant did not prove his claim on a balance of probabilities. In his testimony, the appellant claims that the 1st respondent trespassed on the land in 1999 and in the same breath declares that he did not like the 2nd respondent and so he returned her two head of cattle and 100,000/ and asked her to vacate the land. It is significant that the appellant does not reveal how the respondents entered possession of the disputed land.

From the evidence of DW1 Goso Levi , 2nd respondent and DW1 2 Agulasi Aguti 1st respondent, they purchased the land from the appellant in 1997 with two cows and 100,000/. This sale was witnessed by several people including DW3 Katede John Kokas, and Apedo Milton DW4.

While the respondents and their witnesses are consistent about the purchase from the appellant, there are inconsistencies in the appellant's case. Apart from his testimony that he returned the cattle and 100,000/ to the respondents because he did not like the 2nd respondent , PW4 claims that the transaction between the respondents and appellants was a mortgage as the later needed

money to take his patient to Lacor hospital. PW5 Okello David suggests the respondents entered the land in 2001 when the appellant had taken his daughter to Lacor hospital. Both these witnesses admit in cross examination their testimony is based on hearsay as a result their evidence is of no evidential value. PW2 Okiya the original seller adds another twist when he claims the land belongs to him and in the same breath admits selling the land to the appellant.

On the whole the appellant failed to prove his claim to the suit land on a balance of probabilities. I find that the trial magistrate properly evaluated the evidence and arrived at a correct decision.

All the four grounds of appeal can be summarized in ground one of appeal, namely, the trial magistrate did not properly evaluate the evidence resulting in an erroneous decision.

I have found that the trial magistrate properly evaluated the evidence and arrived at a correct conclusion.

In the premises, I find no merit in this appeal which is dismissed with no order as to costs as the trial magistrate did not award costs in the lower court. The decision of the lower court is hereby confirmed.

DATED AT SOROTI THIS 27TH DAY OF AUGUST 2014.

HON. LADY JUSTICE H. WOLAYO