

IN THE HIGH COURT OF UGANDA AT SOROTI
CIVIL APPEAL NO. 16 OF 2012
ARISING FROM KUMI CIVIL SUIT NO. 5 OF 2010
OKIA CHARLES.....APPELLANT
V
OKALEBO STEPHEN.....RESPONDENT
BEFORE HON. LADY JUSTICE H. WOLAYO

JUDGMENT

The appellant through his advocates Makada & partners appealed the judgment of HW Opio Belmos Ogwang dated 12th April 2012 sitting at Kumi on two grounds of appeal that i will revert to later in the judgment.

Both Ms Makada & Co advocates for the appellant and Ms Ogire & Co. Advocates for the respondent filed written submissions that i have carefully considered.

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.

Three issues were framed for trial in the lower court.

1. Whether the plaintiff is the lawful owner of the suit land
2. Whether the defendant action on the suit land constitute trespass.
3. Remedies.

The appellant sued the respondent in trespass to land located at Apaama , Ngora district . From the record, the facts of this case are not in dispute. The appellant purchased a garden from Kusai Omuron by an agreement dated 3.7.2003 on which date he paid one bull and 25,000/ to the seller. On 8.1.2004, he completed payment of 25,000/. The total purchase price came to one bull and 50,000/.

According to the appellant, after he completed payment of the purchase price in 2004, Omuron showed him the boundaries. In 2005, he was in Kampala when he learnt that Omuron had divided the garden and sold to the respondent. The appellant filed a claim in the LC II court that referred him to LCIII court that decided in his favour in 2009.

In March 2010, when the appellant went to cultivate his garden, the respondent followed him with a panga . He reported the incident to police who charged the respondent with criminal trespass.

The respondent's case is that he bought his garden from Kusai Omuron his uncle at a price of 75,000/ in the presence of LC1 Chairman Atwamar John Robert on 31.1.2005(Dexh.1) Other witnesses present include DW2 Opio Moses and DW3 Erimu Joseph Vice Chairman Apama parish both of whom also witnessed the sale to the appellant in 2003.

What seems to be the bone of contention is whether Kusai Omuron sold the entire piece of land to the appellant in 2003.

The best evidence would have been a detailed sale agreement giving details of size of land and boundaries. However, Pexh. 1 merely states and a I quote:

‘ I Kusai Muron have agreed with Okia Charles about buying my garden and to possess it forever without interference from anybody at all at the price of one bull and 50,000/ ‘

There is no mention of neighbours or boundary marks or even the size.

In the absence of written evidence of size and boundaries, the next best evidence is oral testimony of witnesses to the sale.

The appellant’s witness PW2 Otai Julius to the sale admits that a map of the land sold was not drawn and no measurements were made. PW3 Okerenyang Vicent also admits no measurements were done as the garden was already earmarked.

On the other hand, the respondent’s witnesses gave some insights into the land bought by both appellant and respondent. According to DW2 Opio Moses, the parties dispute over one big garden that was divided into three pieces each of which was hired by different people. Okia hired a portion then bought that portion, Agwang cultivated the middle portion for hire , and the third portion was hired by the respondent Okalebo.

DW2 Opio states that the respondent bought the portion he hired as well as the portion used by Agwang in 2005 for which he paid two head of cattle and 75,000/. This witness stated that he witnessed the sale to the appellant and the sale to the respondent. I have examined both sale agreements Pexh. 1 and Dexh. 2 and confirmed that Opio Moses witnessed both sales.

Other witnesses who witnessed both sales include Dw3 Erimu Joseph and DW4 Atwamar John Robert LCI chairman Apama village. The trial magistrate believed the respondents' witnesses and I have no reason to fault him.

From the foregoing, I find that both the appellant and the respondent bought different portions from Kusai Omuron. It is apparent that the said Omuron sold to the appellant and the respondent the portion each was previously hiring from Omuron.

The appellant failed to prove that he bought the entire garden from Omuron in 2003.

Counsel for the appellant argued that the dispute before the LC courts between Omuron and the appellant in which the appellant emerged successful is proof that he bought the entire garden from Omuron. However, as counsel for the respondent submitted, the judgment of the LCIII court is of no effect in law because the case did not start in the LC1 court or village Local Council court as required by section 11 (1) Local Council Courts Act 13 of 2006. Even then the dispute was between Omuron and the appellant .

Counsel for the appellant also argued that the respondent was successfully prosecuted for criminal trespass and therefore this is proof that the appellant is the owner of the land. A legal interest in land is established through a civil process and not by the criminal process.

Consequently, I find that the trial magistrate properly evaluated the evidence and arrived at a correct conclusion.

Turning to the grounds of appeal, ground one is that the trial magistrate erred in law and in fact when he ignored the clear evidence by the appellant showing him as first purchaser and in use of the land thereby arriving at a wrong conclusion.

While it is true that first in time is first in equity, the evidence has shown that the appellant and respondent bought different portions of land. The trial magistrate correctly found that the appellant failed to prove on a balance of probabilities that he bought the entire garden as the sale agreement was silent on a detailed description of land bought. Ground one fails.

Ground two is that the trial magistrate erred in law and in fact when he failed to properly evaluate the evidence in relation to the facts thereby arriving at a wrong conclusion.

This ground is similar to ground one and therefore I will not belabor it.

In the premises, I dismiss the appeal and confirm the judgment and orders of the lower court with costs of this appeal and the court below to the respondent.

DATED AT SOROTI THIS 22ND DAY OF OCTOBER 2014.

HON. LADY JUSTICE H. WOLAYO

