

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT SOROTI
CIVIL APPEAL NO. 29 OF 2009
(ARISING FROM CLAIM NO. 18 OF 2006)
OPOLOT JOHN JUSTINEAPPELLANT
V
AURA LIVINGSTONE.....RESPONDENT

BEFORE HON. LADY JUSTICE H. WOLAYO

JUDGMENT

The appellant , through his advocates, Oyoit & Co. Advocates filed a memorandum of appeal challenging the decision of the Chief magistrate HW Maruk dated 3rd July, 2009. At the hearing of the appeal, the respondent was represented by Mr. Erabu while Mr. Oyoit appeared for the appellant. Both parties filed written submission that i have carefully read and understood.

It is trite law that the duty of an appellate court is to re-appraise the evidence adduced before the trial court and arrive at its own conclusions bearing in mind that the trial court had an opportunity to observe the demeanour of the witnesses. In **Rwakashaija Azarious and others v URA Supreme Court Civil Appeal No. 8 of 2009**, the Supreme Court restated these principles.

The respondent /claimant(Aura Livingstone) filed land claim 18 of 2006 before the District Land Tribunal. The claim was later transferred to the Chief Magistrate's court when the contracts of tribunal chairmen expired. The claim was for recovery of land, permanent injunction and vacant possession of plot

2 & 4 Klover road . The claimant cited construction of a permanent house on the land by the defendant (Opolot Justin) as a trespass.

The defendant /appellant denied trespass and raised a claim of right on the land.

The undisputed facts that were before the trial magistrate are as follows:

The claimant, aged 86 years, was given a piece of land by one Benard Wabwire in 1972 . In 2002, he commissioned the survey of the land as confirmed by court witness 1 Chekwopop Stephen , surveyor and it was designated plot 2 Klover road. In the same year on 14th October 2002, Aura was allocated plot 2 - 4 by Soroti District Land board after an application dated 2nd September, 2002.

The documents, filed together with a response to the claim in 2006 by Opolot (defendant), include an application to Soroti Land Board for plot 33 Ecwou close dated 30.5.2004;

An allocation by Soroti Land Board of plot 33 Ecwou Close to Opolot dated 27th October 2004;

A lease offer to Opolot of plot 33 Ecwou Close dated 5th August, 2005;

General receipts for premium paid for plot 33 Ecwou close for the period 2004 to 2005.

During the proceedings, Opolot tendered a different set of documents .

A lease offer to Opolot dated 5th August 2005 of plot 2 Clover road . The offer letter has the same reference LM2 /6644 and date(5.8.2005) as the offer letter for Ecwou close.

In his judgment, the trial magistrate rejected this lease offer of plot 2 clover road to Opolot on the grounds that it was not authentic.

The other piece of evidence that deserves mention is the letter written by Opolot to the Land Board dated 7.8.2008 in which he points out that plot 33 Ecwou close was renumbered plot 2 Clover road. This letter was written in 2008, two years after Aura had commenced litigation .

The last document that deserves mention is the letter written by Opolot to Soroti municipal council dated 22.4.2009 in which he admits that Aura was the first to be allocated plot 2 Klover road in 2002.

Going by the documents referred to above, it is obvious that Aura's claim to the disputed land is justified by the principle of first in time, first in equity. He was first allocated the land in 2002 as sitting tenant and proceeded to survey it and it was numbered plot 2 Klover road. He was the first to be allocated plot 2 clover road in 2002 as opposed to Opolot's alleged allocation in 2004.

Even if the trial court were to accept the allocation to Opolot in 2004, that allocation is defeated by the principle that competing interests will prima facie rank according to the order of creation. (Snell on Equity, 29th edition, 1990 , Sweet & Maxwell)

Also going by the documents, it is obvious that Opolot was aware that Aura was the first to be allocated the land. In spite of this knowledge, he made pitiful attempts to acquire legal title through alteration of lease offer dated 5.8.2005 for plot 33 Ecwou road to read lease offer for plot 2 Klover road. Opolot also endeavoured to confuse authorities that plot 33 Ecwou road was in fact plot 2 Klover road but the surveyor who testified in court confirmed that the numbering of plot 2 Klover road.

Secondly, Opolot is a purchaser with notice , by his own admission. (letter dated 22.4.2009 to Municipal council). Certainly, he is not a bona fide purchaser because the lease offer and allocation letter for plot 2 clover road are doctored from allocation letter and lease offer for plot 33 Ecwou close. He cannot be allowed to benefit from this mischief.

In the premises, i find that the trial magistrate correctly evaluated the evidence and arrived at a correct conclusion.

Turning to the grounds of appeal, the first ground is that the learned magistrate , after encountering the confusion concerning the two plots failed to call relevant officials of Soroti Land Board to clarify the position of plot 33 Ecwou close and plot 2 Klover road. I am in agreement with counsel for the respondents that there is no merit in this ground because the court called Court witness 4 a surveyor with the municipal council who confirmed the existence of plot 2 from as far back as 2002 when it was surveyed.

Ground one therefore fails.

Ground two and three will be handled together. Ground three is that the learned magistrate, having found that the respondent having failed to pay for the two plots erred when he found that the respondent was the owner.

I have found above that the respondent's claim is premised on first in time. He was the first to get an allocation and where there are competing interests, the first to be created prevails. In any case, the documents submitted by the appellant were rightly rejected by the trial court as they were doctored. This ground fails.

Ground four is that the learned magistrate erred when he found that the appellant was not allocated plot 2 Klover road. I have already disposed of this ground and found that there was no allocation as the lease offer and allocation letter were doctored.

Ground five and six will be handled together. Ground five is that the learned magistrate occasioned a miscarriage justice. Ground six is that there were errors on the record.

I re-appraised the evidence and found that the magistrate correctly evaluated the evidence and arrived at correct conclusions.

I accordingly dismiss the appeal and confirm the orders of the lower court, namely,

The appellant to deliver vacant possession of plot 2 Klover road within four months from the date of this judgment;

Costs of the appeal and trial court to the respondent.

DATED AT SOROTI THIS.....26.....DAY OF.....March.....2014.

HON. LADY JUSTICE H. WOLAYO