

IN THE HIGH COURT OF UGANDA AT SOROTI

CIVIL APPEAL NO. 11 OF 2012

ARISING FROM KUMI CIVIL SUIT 29 OF 2005

OCHOM JOSEPHAPPELLANT

V

AKWAP SIMON.....RESPONDENT

BEFORE HON. LADY JUSTICE H. WOLAYO

JUDGMENT

In this appeal, the appellant appeals the decision dated 14th March 2012 of HW Belmos Ogwang Grade one magistrate sitting at Kumi on the following grounds.

1. The learned magistrate erred in holding that the respondent had bought the land.
2. The decision of the magistrate is not supported by evidence.
3. The decision of the magistrate occasioned a miscarriage of justice.

The duty of an 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 witness.

The respondent (Akwap Simon) sued the appellant (Ochom Joseph) for an injunction restraining the appellants from further cultivating three gardens. His cause of action was therefore that the appellants were cultivating the land .

Originally, the suit was against two respondents (Eugenio Obelon and Ochom Joseph

An examination of the lower record reveals the following undisputed facts.

Obelon Eugenio married Elisabeth Achom, sister of Ochom Joseph. Later, the two separated and Obelon demanded dowry refund. According to PW 2 Okiror Eugiene, it is the court that ordered the refund in 1994 whereupon execution followed and Ochom's land was attached in execution and handed to Obelon.

The respondent did not produce any documentary evidence of the attachment but all his witnesses and defence witnesses allude to this attachment that took place in 1994.

The respondent Akwap's case is that he purchased the three gardens from Obelon in 1994 by agreement marked Pexh. 1 dated 10.4.1994. Hence Obelon was sued because he sold the three gardens to Akwap. Ochom was sued because he is in possession as brother of Elisabeth Achom and as the person responsible for refund of dowry and whose land was attached in execution to recover the dowry.

At the hearing of the case in the lower court, Obelon died and the plaintiff (respondent) Akwap proceeded against Achom only. This appeal is therefore by Ochom only.

The appellant's case in the lower court is that he (Ochom) mortgaged the land to Obelon . On 13. 2 .2005 he paid four cows to Obelon , according to DW 1 Akuyan Francis, a 70 year old man. Other witnesses for the appellant supported DW1 in this regard save that they refer to 2004 when Ochom redeemed his land from Obelon by giving him cows. DW 4 Ochom testified he

gave Obelon nine cows as dowry refund some ten years after the order to refund was made.

The following were therefore the issues for determination by the lower court.

- 1) Whether Obelon acquired a good title to Ochom's land
- 2) Whether Obelon passed a good title to the respondent .
- 3) Remedies.

On whether Obelon acquired a good title, the fact that the land was subject of an attachment in 1994 with Obelon as judgment creditor renders the transfer of title void . Section 47 of the Civil Procedure Act restricts a judgment creditor from acquiring title to property attached in execution . Such acquisition can only be done with authority of the court. There is no evidence that such authority was given . Under those circumstances, there was no legal purchase by Obelon.

Secondly, the order for refund of dowry is untenable in light of constitutional provisions. Article 33 (1) of the constitution that orders that women shall be accorded full dignity of the person with men . Article 33(6) prohibits cultures, traditions, and customs that are against the human dignity of women and undermines . Dowry refund is one such custom that offends the human dignity of women as it equates a woman to a chattel. It cannot therefore be enforced by the court.

Therefore, since the dowry refund is unenforceable, it follows that Obelon was not owed any payment and there was no value he offered for Ochom's land. Ochom's sister could not be subject of a dowry refund under the new

constitutional order of gender equality. It follows that Obelon could not have acquired title to land when he was owed nothing by Ochom.

Accordingly, the trial magistrate failed to uphold constitutional principles and erroneously proceeded as if Obelon had a title to pass to the claimant.

On the second issue of whether Obelon passed a good title to the respondent Akwap, having found that Obelon had no title to pass, the respondent's claim that he purchased the land is untenable as Obelon did not pass any title to him.

In the premises, the judgment in favour of the respondent is set aside.

As the respondent opted to proceed in the absence of Obelon's legal representative, no orders will be made against his estate.

Ground one is that the trial magistrate erred in holding that the respondent had bought the suit land. I have found that the respondent could not acquire a title from Obelon who had no title to the land in dispute. This ground succeeds.

Ground two is that the decision of the trial magistrate is not supported by evidence. I have found that the decision is not supported by law. Ground two succeeds.

Ground three is that the decision occasioned a miscarriage of justice. This ground has been disposed off by grounds one and two.

In the premises, I allow the appeal, set aside the judgment and orders of the lower court and substitute the following orders.

1. The appellant to continue possession of the three gardens undisturbed by the respondent.
2. No order as to costs.

DATED AT SOROTI THIS.....07.....DAY OF.....May.....2014.

HON.JUSTICE H. WOLAYO