

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT SOROTI

CIVIL APPEAL 41 OF 2009

ARISING FROM KABERAMAIDO GRADE ONE COURT CLAIM NO. 4 OF 2008

ENYIMU DANIELAPPELLANT

VERSUS

EMAYU THOMAS.....RESPONDENT

BEFORE HON. LADY JUSTICE H. WOLAYO

JUDGMENT

In this appeal, the appellant, through Ecipu & Co. Advocates appeals the decision of HW Patrick Kityo grade one magistrate dated 11.11.2009 on seven grounds contained in the memorandum of appeal. The grounds are reproduced below.

1. The judgment of the magistrate is bad in law for uncertainty is so as he did not pronounce the fate of the disputed land.
2. The trial magistrate erred in law in not conforming to the law governing locus in quo which was perfunctorily conducted.
3. The trial magistrate erred in law and fact in dismissing the appellant's claim and indirectly giving judgment to the respondent without having resolved what he had framed as issues for determination.
4. The trial magistrate was biased when he imposed a requirement for letters of administration on the appellant without the requiring the same from the respondent.

5. The trial magistrate erred in law and in fact in dismissing the appellant's claim and indirectly decreeing the disputed land to the respondent even after finding as a fact that the disputed land was once occupied by the appellant's parents and that the claimant's father and two other deceased family members were actually buried on the suit land.
6. The trial magistrate erred when he misapplied the law of adverse possession.
7. The decision has occasioned a miscarriage of justice.

Mr. Ecipu filed written submissions. Mr. Oyoit who is on record as counsel for the respondent did not file submissions although the deadline for filing the same expired more than a year ago.

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

The appellant sued the respondent for recovery of 30 acres of land . The basis of the appellant's claim is that after the death of his father Enyimu Abraham in 1994, his mother took him to Oculai . This was during the time of insurgency in Teso. In 1996, the respondent entered the disputed land . The appellant was aged about 10 years since he was 22 years in 2008. In 2002, he commenced efforts to recover the land.

It is not in dispute that the appellant's father from whom he derives title was married to a clan sister of the respondent and it is the respondent's grandfather Elubu Yafesi who gave the disputed land to the appellant's father. In 1982, the appellant's mother took him to Oculai after the death of his

father. The respondent took possession in 1982 and utilised this land until 2008 when he was sued.

From the record, the time when appellant's father died is disputed. While the appellant says he died in 1994 and PW4 Ekilu says 1990 during the insurgency, the respondent and his witnesses mention 1982 or 1984.

What is not disputed is that the appellant's father did not belong to the respondent's clan and his relationship with the respondent was that of an in-law as he married a clan sister of the respondent. It is this clan sister and mother of the appellant who had a degree of consanguinity to the respondent's grandfather Elubu Yafesi.

The trial court had an opportunity to observe the demeanour of the witnesses therefore i will not disturb its finding that the respondent took possession of the land from 1994 although it could have been earlier. This is plausible given that the appellant was very young at the time possibly eight years and had relocated with his mother to Oculai.

The learned magistrate visited the locus and found evidence of possession by the respondent.

The appellant had a duty to prove his claim on a balance of probabilities. His father was living among his wife's relations. The appellant's mother, after the death of her husband, moved to Oculai , ancestral home of appellant, according to PW1 , the respondent.

Under the circumstances, the learned magistrate was justified in his conclusion that the appellant had not proved his claim on a balance of probabilities.

Turning to the grounds of appeal, on ground two counsel argued that the magistrate performed the locus proceedings in a perfunctory manner. I have examined the sketch map that is quite detailed. There is a list of persons who attended the visit. Although the magistrate did not record responses of witnesses at the locus as required, the detailed sketch map indicates that he was alive to the requirement to look out features that confirm or conflict with what witnesses testified in court. While this ground succeeds, it is insufficient to reverse the decision of the magistrate especially as he evaluated the evidence as a whole.

Ground one and three will be considered together. The magistrate rightly conceded that the appellant's father once occupied the disputed land but that did not confer on the appellant the right to the land. The magistrate was justified in this finding because the appellant's late father lived among his in laws so it is not likely that he had proprietary rights in the land. Neither was his wife, mother of the appellant a blood sister to the respondent. I find that the magistrate properly evaluated the evidence and arrived at a correct conclusion.

On ground four, while it is true that the magistrate mentioned that the appellant had no locus as he did not possess letters of administration, no miscarriage of justice was occasioned as that was not the basis for the decision.

Ground five and six will be considered together. The magistrate did not make reference to adverse possession and the Limitation Act, he merely observed, correctly, in my view, that there was evidence of long possession by the respondent. According to Osborn's Concise Law dictionary, eight edition, possession is prima evidence of ownership. It is good against all the world except the person with a better title.

From the evidence, the appellant does not have a better title than the respondent for the reasons discussed earlier. Ground five and six fail.

Ground seven also fails as the decision did not occasion a miscarriage of justice.

I accordingly dismiss the appeal and confirm the orders of the trial magistrate. Before I take leave of this case, counsel complained that the judgment is vague as the true owner is not known. The consequence of the decision is that anyone claiming under any of the two parties in future will be caught by the doctrine of res judicata. The decision of the magistrate was therefore not vague.

Costs of the appeal and the court below to the respondent.

DATED AT SOROTI THIS 9TH DAY OF MAY 2014.

HON. LADY JUSTICE H. WOLAYO