IN THE HIGH COURT OF UGANDA AT SOROTI

HIGH COURT CIVIL APPEAL 40 OF 2011

(ARISING FROM BUKEDEA CS 14 OF 2011)

OUMO JOHN KOKAS……APPELLANT

V

OPOLOT PETER JAMES……RESPONDENT

BEFORE HON. LADY JUSTICE H. WOLAYO

JUDGMENT

The appellant appealed the judgment of the Senior Grade one magistrate HW Felix Omalla dated 17th October 2011 , sitting at Bukedea. Through his advocate, Omongole & Co, the appellant filed a memorandum of appeal containing the following grounds of appeal:

1. The trial magistrate erred in fact and in law in holding that at the time of filing, the appellant had no locus standi as required by law.
2. The trial magistrate erred in law and in fact in failing to properly evaluate the evidence on record thereby arriving at a wrong decision.

Both Mr. Ogire for the respondent and Mr. Omongole for the appellant filed written submissions that i have examined and given due consideration.

The history of this case is that the appellant Oumo John Kokas, sued the respondent for an order for vacant possession, permanent injunction, special and general damages.

In paragraph 4 of the plaint, the appellant attempts to state the cause of action. In summary, his cause of action is based on the fact that the respondent purchased land from the late brother of the appellant without consent of the clan. Therefore, the appellant claimed recovery of the two acres sold. I must note that the appellant at the this time , was not represented by counsel.

When the case came up for hearing before the trial magistrate on 17.10.2011, the appellant was represented by Mr. Imangalit while the respondent was represented by Mr. Ogire. At the hearing, Mr. Ogire raised two preliminary objection

Firstly, that the plaint did not disclose a cause of action as the seller is not joined as a co-defendant.

To which Mr. Imangalit responded from the bar that the seller was not sued because he had passed on. Counsel then submitted from the bar that the appellant was suing as heir to the deceased seller and that he did not have letters of administration.

Mr. Ogire then responded that as the appellant had no letters of administration and prayed for dismissal for the case.

It was upon this latter submission that the trial magistrate dismissed the suit on the grounds that the appellant did not have locus standi to file the case. It is on this ground that the appeal is premised.

Nevertheless, the first preliminary objection that the plaint discloses no cause of action is relevant as will be apparent latter in this judgment. In any case,

the duty of the appellate court is to take a second look at the entire case and not just with regard to formulated grounds.

Turning to paragraph 5 of the plaint, the appellant does not disclose sufficient facts to enable the court link his claim to the land in dispute. Order 7 rule 4 stipulates that

> ‘ where the plaintiff sues in a representative character, the plaint shall show not only that he or she has an actual existing interest in the subject matter, but that he or she has taken steps to enable him or her to institute a suit concerning it’.

Failure of the appellant to disclose the representative capacity (whether as clan chairman or heir) in the plaint was irregular and contravened order 7 rule 4 of the CPR.

Further, merely stating that he sues the purchaser only for buying the appellant’s late brother’s land without clan authority is insufficient to disclose a cause of action.

The trial magistrate ought to have dismissed the suit on the grounds that the claim did not disclose a cause of action as it did not disclose the capacity in which the appellant was suing.

With regard to the decision of the trial magistrate that the appellant had no locus standi, from submission of counsel Omongole, the omission of the appellant to produce letters of administration seems to have informed the magistrate in arriving at the decision he did.

I am in agreement with Mr. Omongole that it is now well settled that any beneficiary of estate of the deceased has locus standi to file a suit. Letters of

administration are not essential although the plaintiff must take steps to secure such letters as soon as practicable. The Court of Appeal authority of **Isreal Kabwa v Martin Banoba Mugisha(CA 52 of 1995) reported in KALR 109,** cited by counsel is binding on this court.

Mr. Ogire for the respondent , in his submissions, did not canvass this point. Instead, counsel argued points of law not raised by the appellant and went on to make submissions as if the case went to full trial which it did not.

While i agree with Mr. Omongole that the trial magistrate erred in dismissing the case on the ground that the appellant did not have locus standi, there was no miscarriage of justice as the plaint did not disclose a cause of action, a finding that would have led the trial magistrate to dismiss the suit under order 6 rule 29.

An important consequence of dismissal under order 6 rule 29 is that it s not a bar to filing a fresh suit. Rather than file an appeal, the appellant ought to have filed a fresh suit disclosing a cause of action and the representative capacity. However, as the trial magistrate did not indicate the order and the rule under which he dismissed the suit, the appellant cannot be faulted for filing an appeal.

In the premises, i allow the appeal for the reasons i have given, i.e, that the plaint did not disclose a cause of action and order that the appellant files a fresh suit in Bukedea magistrate's court.

Costs of this appeal will not be awarded to the appellant because the appeal was allowed on grounds different from those formulated in the memorandum of appeal. Therefore, costs shall abide the outcome of the fresh suit.

DATED AT SOROTI THIS……09……DAY OF…….May……..2014.

HON. LADY JUSTICE H. WOLAYO