

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT SOROTI

CIVIL APPEAL NO. 17 OF 2010

ARISING FROM KUMI CIVIL SUIT NO. 21 OF 2004

ELAIT BOSCO BASIL.....APPELLANT

VERSUS

1. EMEDU TOM

2. OPIO JAMES.....RESPONDENT

BEFORE: HON. LADY JUSTICE H. WOLAYO

JUDGMENT

The appellant appealed the judgment of HW Ajiji Alex sitting at Kumi and dated 29.5.2008 on the following grounds.

1. The trial magistrate erred in law and in fact when he failed to properly evaluate evidence on record as a whole and thereby came to a wrong conclusion.
2. The decision of the trial magistrate has occasioned a miscarriage of justice.

Mr. Ogire for the appellant and Ms. D&G associated advocates for the respondents filed written submissions that I have studied and given due consideration.

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 magistrate had an opportunity to observe the demeanour of the witnesses.

The respondents filed a claim before Kumi Land tribunal in 2004 against the appellant for attaching the disputed land yet they had bought the said land from Oruka Edison.

The respondents' case before the tribunal was that the 1st respondent Emedu Tom bought the disputed land comprising three acres from Oruka James (deceased) on 5.1.2000 and on 19.3.2000, neighbours witnessed the planting of boundaries and he entered possession. In 2002, the land was attached under a warrant of attachment yet he was not party to the suit between Oruka and Emedu. The sale agreement was tendered as Id.1 and the list of neighbours who witnessed the planting of boundary marks was tendered as Id.2 . Both of these documents are missing from the record but the tribunal acknowledged receipt .

PW2 Opio James the second respondent also claimed he bought two acres from Oruka James on 28.12.99 . He tendered the sale agreement that was marked by the tribunal as Id.4 .This land was attached under a warrant for a debt between Oruka and the current appellant. Their testimonies were supported by the prosecution witnesses. PW3 Joseph Aogon, a witness to the sales, gave details of the purchase. That Opio James paid two head of cattle, 15,000/, and a he-goat. Emedu Tom paid two oxen and 15,000/.

What is not disputed is that the sales of land to the two respondents by James Oruka took place between 28.12.1999 and 5.1.2000.

It is also a fact that the appellant sued Oruka James for recovery of one garden which he Oruka sold . This garden had been pledged to the appellant in 1980

by Okima s/o Eidu. Oruka was appointed heir to Ikima hence the suit against him. The pledge was for 60,000 and a he goat for which the appellant Elait Basil sued Oruka in Mukura CS 13 of 2000. Judgment was entered for Elait Basil on 8.9.2000 for 60,000 and one he –goat.

The judgment was delivered on 8.9. 2000 long after the sales had taken place. This means that the respondents are bona fide purchasers for value without notice. At the time they entered into sale agreements, there was no legal impediment to stop them from buying the land.

DW1 Elait Basil testified that on 14.7.1999, Oruka entrusted him one garden for 15,000/. However, this assertion is not backed by any documentary evidence so I shall disregard it.

Therefore, the appellant's case seems to be that he secured judgment against Oruka and was entitled to recover against Oruka's land which unfortunately had passed to third parties by sales.

Section 18 of the Limitation Act operates against the appellant as it forbids actions for recovery of money secured by mortgages 12 years after the cause of action accrued. The land was pledged to the appellant in 1980 . 20 years later, the appellant sought to recover the money. He was statute barred. The grade two magistrate therefore erroneously gave judgment in favour of the appellant.

The trial magistrate therefore arrived at a correct conclusion when he entered judgment for the respondents.

I now turn to the grounds of appeal.

The first ground is that the trial court erred in law and in fact when it failed to properly evaluate the evidence on record as a whole thereby arriving at a wrong decision.

Counsel Ogire argued that Oruka was barred by section 8 of the Limitation Act from selling the land. Section 8 relates to trust. Nevertheless, how are third parties to know that the land was subject of a mortgage if the mortgagor was not in possession?. The appellant ought to have taken steps within the twelve year grace period to recover his money or negotiate to enter possession. He did not do so and since he didn't sue for recovery within the limitation period, he could not bring a suit outside that period.

I am in agreement with submissions of counsel for the respondent that the respondents are bona fide purchasers for value without notice.

Ground two is that the decision of the trial magistrate occasioned a miscarriage of justice. I find no merit in this ground.

I accordingly affirm the judgment of the trial magistrate and vary the orders as follows.

1. The appeal is dismissed
2. The two respondents are bona fide purchasers of land from James Oruka and there are entitled to quiet possession.
3. Costs of the appeal and the court below to the respondents.

DATED AT SOROTI THIS 8TH DAY OF JULY 2014.

HON.LADY JUSTICE H. WOLAYO

