

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT SOROTI

CIVIL APPEAL NO. 9 OF 2008

ARISING FROM KATAKWI CLAIM NO. 13 OF 2006

OKWI SAMSONAPPELLANT

VERSUS

MALINGA GRACE.....RESPONDENT

HON. LADY JUSTICE H. WOLAYO

JUDGMENT

In this appeal, the appellant appeals the decision of HW Komakech William Grade one magistrate sitting at Katakwi and dated 28th February, 2008, on the following grounds.

1. The decision of the learned magistrate was not supported by evidence on record.
2. The learned magistrate failed to hold that the appellant had genuinely bought the disputed land from Okiror Pantaleo in 1969.
3. The decision of the learned magistrate occasioned a miscarriage of justice.

The appellant prayed that the appeal be allowed, and judgment entered for the appellant.

Mr. Ogire for the appellant filed written submissions within the time stipulated at their last appearance on 3.3.2014. Mr. Ecipu for the respondent

did not filed written submissions within the time stipulate, i.e. before 2.5.2014. As I write this judgment, those submissions have not been filed.

I have studied submissions filed by Mr. Ogire for the appellant and given them due consideration.

The duty of the appellate court is to re-evaluate the evidence adduced in the lower court and arrive at its own conclusions bearing in mind that the trial magistrate had an opportunity to observe the demeanour of the witnesses.

The respondent sued the appellant in trespass to land located at Atiira village, Odoot parish, Katakwi district.

Her case in the lower court was that in 1975 she got married and they lived on the land , measuring about nine gardens, in dispute and she produced four children. CW 3 Ipejot Teridebo named the husband as Igelas Ademo. During insurgency, the family fled the area for ten years and returned in 2001 after her husband had died in 2000 and was buried at their in-laws' home.

Her evidence is that the appellant settled on the land during the insurgency and in their absence.

Her testimony is supported by CW2 Bwoyomo Basiliano, one of the neighbours. He testified that the land in dispute is located between his land and that of Pantaleo Okwii, his brother. According to the witness, both himself and his brother Pantaleo invited the appellant their cousin brother to live on the land in dispute as he had no home , until the respondent returns.

The respondent's case is that he bought the land from Pantaleo Okiror and paid for it in installments from 1969 to 1974. That in 1972, Iglesia Agemo was allowed to settle on the land temporarily because the Karamojong had forced them out of their land. This was before he had paid the full purchase price. In 1987, according to the witness, he took control of the land when Iglesia Agemo left for Omasio parish. That the respondent returned twelve years later to claim for land. RW 2 Otudi Yowana testified that the appellant bought 40 gardens from Pantaleo . While RW Aमितुम put the number at 20 gardens. The appellant himself was silent on the number of gardens purchased from Pantaleo.

The appellant seems to have filed the sale agreement but it was never formally tendered in court. Counsel for the appellant in his written submissions, relies on this agreement as proof of purchase.

I am in agreement with the trial magistrate that it is not in dispute that Iglesia Agemo once lived on the disputed land with his family and left due to insurgency in about the year 1987. In 1972 when Agemo began living on the land in dispute, the appellant acknowledged that he acquiesced to it.

By his own admission, the appellant entered the land during the absence of Iglesia Egemo .

His defence that he bought the land from Pantaleo is suspect in light of his own admission that Iglesia was allowed settle on the land in 1972. If it is true he bought land from Pantaleo, he did so with notice that Iglesia had an interest in the land.

The trial magistrate properly evaluated the evidence and arrived at a correct conclusion.

Turning to the grounds of appeal, counsel Ogire submitted that the trial magistrate visited the locus but did not make any notes thus rendering the trial a mistrial. While it is true that the magistrate did not make notes, he drew a detailed sketch map which is self explanatory. The omission to make notes is regrettable but not fatal so as to require a re-trial. Magistrates within the circuit have been guided on how to conduct locus visits and I anticipate better records of locus visits in future.

Ground one is that the decision of the trial magistrate was not supported by evidence. Ground two is that the trial magistrate erred when he failed to hold that the appellant had genuinely bought the disputed land from Okiror Pantaleo in 1969. These two grounds will be considered together. That the appellant bought land measuring between 40 to 45 gardens is not in issue. What is in issue is if the nine gardens decreed to the respondent are part of the 40 to 45 acres.

I have found that by 1972 when the appellant was buying land from Pantaleo, he admitted that Iglesias lived in the area and he took over Iglesias's land when the latter fled the area due to insurgency in 1987. In any case, Pantaleo could not have sold land which did not belong to him. Both ground one and ground two fail.

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

In the premises, I dismiss the appeal and confirm the judgment and orders of the trial magistrate with costs to the respondent both here and in the trial court.

DATED AT SOROTI THIS 9TH DAY OF JULY 2014.

HON. LADY JUSTICE H. WOLAYO