

IN THE HIGH COURT OF UGANDA AT SOROTI

CIVIL APPEAL NO. 7 OF 2014

ONGALA RICHARD.....APPELLANT

V

1. ERUKET HERBERT

2. IKWALINGAT MARY

3. AKAEREUT STELLA.....RESPONDENTS

BEFORE HON. LADY JUSTICE H. WOLAYO

JUDGMENT

The appellant through his advocate Erabu & Co. appealed the judgment of HW Jude Muwone dated 6th February 2014 sitting at Ngora on two grounds of appeal that I will revert to latter in the judgment.

The respondents appeared for the hearing in person.

The duty of the first 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 witnesses.

Parties are therefore entitled to a decision by the first appeal court on the facts and law .

The appellant sued the respondents for a declaration that he is the rightful owner of ten gardens of land located at Gawa village. His case was that he was given these gardens in 1985 by his father Echakara Victor who showed him the land in the presence of several of his witnesses and that he has been on this land since then.

I have evaluated the evidence on record and arrived at the following conclusions on the facts.

From my analysis of the evidence, although the appellant and witnesses PW2 Osakole Christopher, PW4 Opolima Stephen, PW3 Osire, PW5 Oteten emphasize that he was given land by Echakara Victor his late father, and that the appellant has been on the land since 1955 when

this was done, there is also evidence from the appellant that his mother Helen Isoto has a share in the same land.

It is also a fact that the appellant has a home on the land which he built when his father's home collapsed and he brought his mother to live with him.

The agreement on which he was donated land by his father was not adduced in evidence as it got lost during insurgency.

With regard to the defense case, although the defendants and their mother DW4 Isoto Helen are in agreement that the appellant is not the son of Echakara and that he was never gifted land by the said Echakara, I find that the said appellant grew up in this home and was accepted as a member of the family. This is because DW Isoto admitted in her evidence that during her marriage to Echakara, misunderstandings developed whereupon she went to Busoga where she produced the appellant. Later, she returned to her marriage with the appellant with the consent of her husband Echakara.

What seems to be the bone of contention is that the appellant wants control and ownership of the entire land left by Echakara to the exclusion of his siblings although he seems to be willing to live with his mother Isoto.

In the absence of any written document suggesting that Echakara donated ten gardens to the appellant, I find that the trial magistrate arrived at a correct conclusion when he dismissed the appellant's claim.

Having found that the real problem is the exclusion of other beneficiaries from the estate of the deceased Echakara, I will exercise my inherent powers to render a decision that settles the real matter in controversy among the parties.

The main ground of appeal is that the trial magistrate failed to properly evaluate the evidence and hence arrived at a wrong decision.

I have evaluated the evidence and found that the trial magistrate arrived at a correct conclusion.

Although the appellant failed on his ground of appeal, this case being about sharing of their father's property among siblings and their mother, and in order to promote family unity, I make the following orders:

The 1st respondent who holds letters of administration shall distribute the ten acres as follows:

1. Appellant retains the land where he has built his house and also gets one other garden preferably one adjacent to the home.
2. The mother of the parties Helen Isoto gets three gardens.
3. The three respondents share equally among them the remaining six gardens.

No order as to costs

DATED AT SOROTI THIS 4TH DAY NOVEMBER 2015.

HON. LADY JUSTICE H. WOLAYO