

IN THE HIGH COURT OF UGANDA AT SOROTI

CIVIL APPEAL NO. 18 OF 2011

CHAKARIO AGOOS.....APPELLANT

V

ODONGO JAMES.....RESPONDENT

BEFORE HON. LADY JUSTICE H. WOLAYO

JUDGMENT

The appellant through his advocates Legal Aid Clinic appealed the judgment of HW Opio Belmos Ogwang magistrate grade one sitting at Kumi on three grounds of appeal that I will revert to later in the judgment. The judgment is silent on when it was delivered but the record shows the case was adjourned to 15.3.2011 for delivery of judgment.

The respondent was represented by Elizabeth Nampola . Both counsel were required to file written submissions but as I write this judgment, only appellant's counsel complied .

I have carefully considered submissions of counsel for the appellant.

As rightly pointed out by counsel for the appellant, the duty of the first appellate court is to re-appraise the evidence adduced in the lower court and arrive at its own conclusions on issues of fact and law.

An examination of the pleadings shows that the appellant field the claim in the Land Tribunal for recovery of land which is described as plots 84 and 86 Oumo road and customary land of approximately two plots.

In his submissions, counsel for the appellant submitted that this confusion was because the appellant filed pleadings in person without legal input.

The trial magistrate determined that there was no merit in the appellant's claim because he sold plots 84 and 86 to Osman Opio Agama and not the respondent and therefore the appellant had sued the wrong party.

I have carefully evaluated the evidence adduced in the lower court.

While the appellant admits to selling plots 84 and 86 to Agama, an agent of the respondent, he claims another piece of land some 2000 meters away which he says was sold after the court at Soroti ordered its attachment at the instance of the respondent.

PW2 Opeede Raphael and PW3 Emongot Augustine all make reference to this sale by court. From their evidence, it is apparent that the respondent claimed that the appellant had sold plots 84 and 86 when in fact these plots belonged to Aziz. As a result, the respondent paid Aziz the purchase price and thereafter sued the appellant for recovery of money received by the appellant under false pretences.

The defendant's case is in agreement with this position. The land sold under attachment is different from plots 84 and 86 whose sales was not contested by the appellant.

The trial magistrate proceeded on the basis that the appellant was claiming recovery of plots 84 and 86 whereas not.

As regards the land under customary tenure sold under attachment, no evidence of execution process was adduced but both appellant and respondent were in agreement that the land was sold under a warrant of attachment.

The agreement of both parties notwithstanding, it was necessary that proof of a court ordered sale be provided to enable the court make a finding on the appellant's claim to the land held under customary tenure. In the absence of such proof, it is impossible to say whether the respondent lawfully acquired an interest in this land .

I now turn to the grounds of appeal.

Ground one

The decision of the trial magistrate was against the weight of evidence.

Ground two

The trial magistrate did not properly evaluate the evidence

Ground three

The decision has occasioned a miscarriage of justice.

I will address all grounds of appeal together.

I find that the trial magistrate failed to recognize that the appellant sought recovery of customary land located some 2000 meters from plots 84 and 86.

Counsel for the appellant prayed that this court orders a retrial because there is a trespasser on the land.

In the interest of justice, I allow the appeal and make the following orders:

1. In the absence of proof of a court ordered execution, a retrial is ordered specifically for the parties to avail proof of court ordered attachment of land held under customary tenure .
2. The second trial will be based on fresh pleadings which specify the land in dispute which is different from plots 84 and 86 sold to the respondent.
3. Costs in the cause.

DATED AT SOROTI THIS 4TH DAY OF NOVEMBER 2015.

HON. LADY JUSTICE H. WOLAYO