

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HODERN AT ARUA
CIVIL APPEAL NO. 0013 OF 2013**

TITO OCAMRINGA ----- APPELLANT

=VERSUS=

ORWODHI EDWARD ----- RESPONDENT

BEFORE HON: JUSTICE OKWANGA VINCENT

JUDGMENT

The appeal arises from the judgment and decision of the Magistrate Grade I, His Worship, Mr. Vian Kwizera, Esq in Civil suit No. 0022 of 2012, delivered at Paidha on 06/05/2013, in which judgment was entered in favour of the defendant (now respondent) as the rightful owner of the suit land, orders to vacate/eviction from the suit land and costs were also awarded against the plaintiff, now appellant.

The appellant (plaintiff) being dissatisfied and aggrieved with that decision, appeals to this Hon. Court against such decision and orders of the trial Magistrate.

Four grounds of appeal were filed in the Memorandum of Appeal dated 06/06/2013, as follows;-

- 1. The learned trial Magistrate erred in law and fact when he failed to lind that the Magistrate G.IIhad no jurisdiction to try and handle land cases effective May, 2002, to date.**
- 2. The learned trial Magistrate erred in law and fact when he [properly] sic failed to evaluate all the evidence on record and reached a wrong decision that the appellant is not a bonafide purchaser for valuer of the suit land.**

- 3. The learned trial Magistrate erred in law and fact when he refused the appellant to produce important documents and his key witnesses who are the local council I, II, III Chairpersons of the area who knew well about the suit land and also subdivided the suit land on the orders of the Magistrate Grade II in civil suit No. 0010 of 2001 between the respondent and one Akumu Martha on 21/12/2004.**
- 4. The learned trial Magistrate erred in law and fact when he denied the appellant and his witnesses on opportunity to testify and show the borders of the suit land but only accorded the respondent opportunity to do so.**

The appellant prays Court for the orders that the judgment and orders of the trial Magistrate Grade I in land case No. 0022 of 2012 be set aside, the appellant be declared the lawful owner of the suit land and for orders of eviction of the respondent out of the suit land and for orders of costs in this court and the court below.

As a background to this appeal, the respondent in this case bought the suit land from one Martha Akumu in 2009 at a consideration of Uganda shillings, 310,000= (Three hundred ten thousand) only. The suit land is situate at Ocunguli village, Jangukuro sub county, Zombo District.

Before this same piece of land was sold to the appellant, the respondent had had a series of civil litigations over this same piece of land with one Martha Akumu and her late husband before he died and one Kasiano Orombi, which dispute also touched on another piece of land which is not the subject of this appeal. Those litigation disputes were disposed of in the various courts and various fora and orders which do not emanate from the trial court in Nebbi civil suit No. 022/2012 which is the subject of this appeal.

As the appellant started working on the said piece of land in 2009, the respondent protested such actions of the appellant and demanded that the appellant backs off from his claims over that land or he is treated as a trespasser. The appellant then filed civil suit No. CV – CS – 22 of 2012 at Paidha Grade I Court against the respondent, seeking (among other things), for a declaration that the appellant was the rightful owner of that land and the respondent, a trespasser.

He lost that suit and that court declared in its judgment of 6/05/2013 that the respondent (defendant) is the rightful owner of the suit land, that the appellant (then plaintiff at the trial Court) was a trespasser, an eviction order and costs were made against the appellant in that court.

On 9th May 2013, the appellant filed this appeal and subsequently the memorandum of appeal with the above grounds as enumerated above.

With the court's permission, the parties filed written submissions for the hearing in this appeal.

In considering this appeal, I am cognizant of my role and the duty of the first appellate court which is to subject the entire evidence before court to an exhaustive scrutiny and to an independent evaluation to arrive at its own conclusion while making due allowances for the fact that it has not had the benefit of seeing and hearing the witnesses during the trial.

In my analysis and evaluation of the evidence before the trial court, I shall consider the appellants' grounds of appeal in the order in which they are filed beginning with the 1st ground of appeal while grounds 3 and 4 shall be considered together.

Ground 1

In his first ground of appeal the appellant contends that the learned trial Magistrate erred in law and fact when he failed to find that the Magistrate Grade II court of Nebbi had no jurisdiction to try and handle land cases with effect from May 2002 to-date.

With all due respect to counsel for the appellant, I find it very strange that counsel has made this issue a separate ground of appeal when the appellant's appeal is not arising from the decision and the judgment of his Worship Kumakech George, Magistrate Grade II, in civil suit No. 0010 of 2001, decided in July 2002. Furthermore, that civil suit No. 0010 of 2001 was between one Mananno Remijo, (husband of Martha Akumu) and one Kasiano Orombi as plaintiffs versus Edward Orwodhi as defendant. The present appellant, nor Martha Akumu, through whom the appellant now claims the suit land were not parties in that civil suit No. 0010 of 2001. No appeal was ever preferred by the losing party in that suit to any court.

I agree with the submission of learned counsels for the appellant from M/s Alaka & Co. Advocates that with effect from 16th May 2002 when the land tribunals (Procedure) Rules SI-33 of 2012, came into effect, Grade II Magistrates all over this country ceased to handle all land matters.

However, section 95 (6) of the land act, 1998, provides as follows:-

“Where any case relating to land dispute was pending before a Magistrate’s Court or an executive committee court prior to the 02/07/2002, the case shall continue to be heard by the Magistrates’ court or the executive committee court until completion”

Section 95 (7) of that Act provides:-

“Until the land tribunals are established and commence to operate under this Act, Magistrates’ courts and executive committee courts shall continue to have jurisdiction they had immediately before the 2nd July, 2002.

Consequently I am in total agreement with the submission of counsel for the respondent, Mr. Henry Odama of M/s Odama & Co. Advocates that all land matters/cases that were pending before the Magistrates’ court (any Magistrates’ court regardless of the grade of that court) and executive committees before the commencement of the defunct land Tribunals as per the land Tribunals (Procedure) Rules SI -33 of 2002, which came into force on May 16th 2002, continued to be heard in those courts until completion.

Accordingly Nebbi Civil suit No. 0010 of 2001, filed in 2001 falls under such cases whose hearing were to continue in that court where it was being heard until completion. By practice direction No. 1 of 2006, issued by the Ag. Chief Registrar, courts of Judicature, on 06/12/2006, the Grade II Magistrate’s court ceased to have jurisdiction to handle all land matters.

Accordingly, the orders and decree of the Grade II Magistrate made in Misc. Civil application No. 0056/2011, arising out of civil suit No. 0010 of 2001, were made in error and consequently null and void.

However, such orders did not arise from civil suit No. 0022 of 2012, and nor did they affect civil suit No. 0022 of 2012 at all.

I am therefore unable to fault the findings and decision of the trial Magistrate Grade I Paidha in Civil suit No. 0022 of 2012 on this point. In any case, no miscarriage of justice was ever occasioned to the appellant by the Grade II Magistrate's orders in Misc. Civil Application No. 0056/2011 and civil suit No. 0010 of 2001 where the appellant was not a party.

Accordingly ground one of the appeal fails, and is hereby dismissed.

Ground 2

It is the appellant's contention on ground 2 that the learned trial Magistrate erred in law and fact when he properly failed to evaluate all the evidence on record and reached a wrong decision that the appellant is not a bonafide purchaser for value of the suit land.

I find that the appellant allegedly purchased this suit land in 2009 (on 23/01/2009) from one Martha Akumu at shs. 310,000/= and started using the land until July 2012 when the respondent chased his workers and agents away from the land. He then sued the defendant for criminal trespass, a declaration from court that he, the appellant is the rightful owner of the suit land, and an eviction order and costs against the respondent.

By January 23rd 2009 there was already a Civil suit No. 0010 of 2001 going on in court between the respondent and the late husband of Martha Akumu, one Manano Remijo before the latter died in 2004.

By the time the respondent filed Misc. Civil application No. 0056/2011 in 2011, Martha Akumu's late husband had already lost the case in court against the respondent. According to PW.2, Martha Akumu, the land dispute between her late husband and the respondent was resolved in favour of the latter and costs was awarded against her late husband and another person Kasiano Orombi. According to this witness, PW.2, the appellant was aware of the land dispute between her late husband and the respondent. The following is the evidence of PW.2 at the trial court:-

See page 13, of the records of proceedings; 1st paragraph from top.

“My husband died in 2004. Tito was aware of the case regarding the suit land between my husband Kasiano and Remijo but did not attend to the judgment of Nebbi court regarding the suit land”

From the above evidence it is my finding that the appellant, being aware of the pending court case between the respondent Manano Remijo and Kasiano by 2004 – before PW.2’s husband had died couldn’t be said to be a ***bonafide purchaser for value.***

A bonafide purchaser for value must be somebody who purchases the land in issue without knowledge of any attendant dispute pertaining to the ownership thereof.

In the instant case, the appellant was not.

The learned trial Magistrate was therefore right in holding so. This Hon. Court can’t fault the trial Magistrate on that ground which hereby fails as well. It is hereby dismissed.

I shall now proceed to handle and consider grounds 3 and 4 together as the issues pertaining in both grounds appear interrelated.

In ground 3, the appellant contends that the learned trial Magistrate erred in law and fact when he refused the appellant to produce important documents and his key witnesses who are the local council I, II and III Chairpersons of the area who knew well about the suit land and also subdivided the same on the orders of the Magistrate Grade II, Nebbi Court in civil suit No. 0010 of 2001 between the respondent and Akumu Martha on 21/12/2004.

In ground 4, the appellant contends that the learned trial Magistrate (Grade I) erred in both law and fact when he denied the appellant and his witnesses an opportunity to testify and show the borders (boundary) of the suit land but only accorded the respondent to do so.

With all due respect to counsel for the appellant on these two grounds, I find the appellant’s criticism as even imputing some elements of bias on the part of the trial Magistrate as being unfair and baseless as I find no such evidence on records to suggest that the appellant was not afforded an opportunity to call and examine all his key

witnesses and or tender all the relevant documents (exhibits) which are material in his case. On the contrary, I find from the records of proceedings at the trial court that the appellant as the plaintiff at the trial, and being unrepresented by a legal representative, was accorded a very fair and favourable opportunity of calling and presenting all his key witnesses and also tender all his key documents relevant in his case. For instance the records of proceedings at the trial court shows thus:- at page 21 of the records

“22/04/2013

Plaintiff: absent

Defendant: present

Mr. Okethi: Clerk/interpreter

Defendant: The plaintiff has not been coming to court for several occasions. I pray to proceed Exparte.

Court: Service not proved. Case adjourn [ed] to 24/04/13

On 24/04/2013 – the records continues thus:-

“24/4/13

Both parties in court

Mr. Okethi: Clerk/Interpreter

Plaintiff: I pray to close my case.

Defendant: I am ready with my defence. I have one witness in court.

Court: proceed”

From the totality of the evidence on record I am satisfied that on the balance of probability the evidence shows that the suit land belongs to the respondent and the seller Martha Akumu who allegedly sold the suit land to the appellant in 2009 did not have any legal authority to sell the suit land to the appellant. The appellant, unfortunately was aware of such defect of title and of the want legal capacity on the part of the seller, Akumu Martha to sell the suit land, but still went ahead to buy it. That makes him not a bonafide purchaser for value.

In the end I find that grounds 3 and 4 of the appeal both fail as well and are hereby dismissed as I find no merits in this appeal.

The appeal is accordingly dismissed with costs on all grounds.

It is hereby ordered!

Per curiam:

The appellant's rights to any legal redress may lie with the one who sold this piece of land to him and not the respondent.

VINCENT OKWANGA

JUDGE

07/05/2015