

**IN THE HIGH COURT OF UGANDA AT SOROTI**

**CIVIL APPEAL NO. 20 OF 2014**

**(ARISING FROM AMURIA MAGISTRATE’S COURT CIVIL SUIT NO.  
59 OF 2012)**

**ERIKU JOHN PETER.....APPELLANT**

**V**

<b>1. OPOLOT SILVER</b>	<b>.....RESPONDENTS</b>
<b>2. AGWAUN HELEN</b>	
<b>3. ORIT SIMON</b>	
<b>4. ODONGO JAMES</b>	
<b>5. MRS. OCHUNG</b>	
<b>6. OMODING JOHN</b>	

**BEFORE HON. LADY JUSTICE H. WOLAYO**

**JUDGMENT**

The appellant through Ogire & Co. advocates appealed the decision of HW Baligeya Moses Mufumbiro grade on magistrate sitting at Amuria on three grounds of appeal that I will revert to later in the judgment.

Ogire & Co. advocates for the appellant and Byamugisha, Lubega Ochieng & Co. Advocates for the respondents filed written submissions that I have carefully considered.

This appeal is unique because it is an appeal against the decision of the learned magistrate dismissing the suit at the preliminary stage on the grounds that it was *res judicata*.

Therefore what i have to re-evaluate are the pleadings in the lower court to ascertain whether indeed the suit was *res judicata*.

The appellant sued the six respondents for recovery of 30 acres/gardens of land situate in Ajeluk village that was curved out of Okutui cell, Amuria district.

He avers in his plaint that he inherited the land from his late father Esogu Wilbarido after his death in 1987. In 1988, he fled the insurgency and returned in 2006 only to find the 1<sup>st</sup> respondent had settled on the land.

In 2011, he found that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents had settled on the land.

In October 2012, he filed a suit in Amuria court.

In t he written statement of defence, the 1<sup>st</sup> respondent avers he inherited the land in 1987 after his father's death.

That his step brother Oile Patrick sued the appellant's step brother Orit Samuel in Amuria Civil suit 4 of 1995 and judgment was passed in Oile Patrick's favour by Grade II magistrate Apedu J.P and no appeal was preferred.

Further, that the appellant and his relatives left the disputed land in 1983. That one Opila handed the suit land to Eiru Stephen father of the 1<sup>st</sup> respondent in 1981 and it was 31 years since this happened.

The other respondents derive their titles from the 1<sup>st</sup> respondent.

I have studied the judgment of HW Apedu delivered on 5.6.1996. The suit was between Patrick Oile as plaintiff and Orit Samuel as defendant. From the judgment, it is clear that Eiru father of the plaintiff in that suit and the 1<sup>st</sup> respondent in this suit had a dispute with one Opila father of the defendant in that suit and the dispute that was resolved by the local authority in favour of Eiru.

The dispute persisted between their sons and in 1995 Patrick Oile sued Orit Samuel resulting in judgment in favour of Patrick Oile for approx. 8 acres.

In his submissions, Mr. Ogire submits that the dispute is currently over 30 acres/gardens and not 8 acres.

As it cannot be disputed that there was litigation over eight acres, the plaint should have been specific that the eight acres are outside the land being

claimed. As the facts currently stand, the eight acres are within the land being claimed yet those eight acres were litigated over in 1995.

Section 7 of the CPA provides:

No court shall try any suit or issue in which the matter directly and substantially in use has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court’.

I agree with counsel for the respondents that the part of the land being claimed was adjudicated upon in Amuria CS 4 of 1995. As a higher court has never overturned the decision, it is binding on all.

I therefore find that the trial magistrate arrived at a correct conclusion when he found that the suit was res judicata.

I now turn to the grounds of appeal.

### **Ground one**

The trial magistrate erred in law and fact when it dismissed the matter on ground that it was res judicata.

I have found above that the trial magistrate arrived at a correct conclusion when he dismissed the suit as the subject matter had been in issue before a previous court with competent jurisdiction. Ground one fails.

### **Ground two**

The trial court erred in law and in fact when it failed to properly evaluate the evidence hence coming to a wrong decision.

This ground is covered by ground one.

### **Ground three**

The decision has occasioned a miscarriage of justice.

There was no miscarriage of justice.

This appeal is accordingly dismissed and the decision of the lower court confirmed. Costs to the respondents.

**DATED AT SOROTI THIS 14TH DAY OF APRIL 2015.**

**HON. LADY JUSTICE H. WOLAYO**