

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT MBALE**

**HCT-04-CV-CA-0003-2008  
(ORIGINATING FROM CLAIM NO. 67/2006)**

**SSEBAGALA AHAMED.....APPELLANT**

**VERSUS**

**MUGOLE DAVID.....RESPONDENT**

**BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA**

**JUDGMENT**

The appellant raised 5 grounds of appeal in the memorandum of appeal.

The duty of a first appellate court is to review the evidence and come to its own conclusions thereon. See *PANDYA V. R (1957) EA 336*.

I have gone through the evidence on record. The appellant filed submissions but Respondents did not.

I find as follows on the arguments as raised by appellants.

**Ground 1: Whether claim was time barred:**

The learned trial Magistrate considered the matter. No new argument is raised on appeal to counter his reasons for his findings. His argument was that the claimant pleaded disability and that he was not around when Respondent encroached on his land (page 6 of judgment).

The learned trial Magistrate then considered section 5 of the Limitation Act and also considered the question when time starts to run. He took guidance from case of Musoke Bafirawala v. Jogga 1976 HCB 26 and Nambalu Kintu v. E. Fulamu Kamira CA 26/1973; where the cause of action did not accrue until the plaintiff discovered the challenge to his interest.

Considering all the above the learned trial Magistrate concluded that the suit was not time barred.

On appeal the appellant only raises the fact that section 5 of the Limitation Act puts a bar to unchallenged land possession for continuous occupation of over 14 years. He argues that Kamuli is in Busoga and no disability is envisaged.

The appellant cannot use his own perception to fault a legal position. Disability if proven, offers the one raising it a plausible defence.

Moreover the quoted cases by the learned trial Magistrate were not countered on appeal. I therefore find that the learned trial Magistrate properly considered the evidence, law and facts and reached a right finding.

This ground fails.

**Grounds 2-5 The learned trial Magistrate did not evaluate the evidence properly and reached an erroneous decision.**

I have gone through the evidence. I have particularly examined the evidence of the witnesses at locus and also all evidence as a whole. The learned trial Magistrate assessed all this evidence from pages 1-6 of his judgment. He carefully examined the plaintiff's case and the defence. He made observations that:

*“The evidence of the prosecution witnesses was all indicative of the fact that there was no agreement of sale of the suit land to the respondent and that the LC.I handed over the vacant*

*possession to the claimant. As per evidence of DW.1 and his witnesses they all gave evidence to the effect that respondent took over the said land in 1987 and claimant sued him after 13 years.” (page 5).*

The above is a true summary of all evidence as it flowed in court. I note from the record that indeed there was evidence that LCs gave over the land to claimant. Evidence at locus majorly collaborated the fact that when claimant left he had been given 100,000/= by defendant, but no one was able to clearly say it was for purchase of the land. There was no agreement to show. At locus it appears defendant could not show the correct boundaries or had difficulties. At page 6 the learned trial Magistrate makes findings about the demeanour of the defence witnesses as compared to plaintiff.

He says they were inconsistent and told lies. He noted that the Respondent failed to prove his case on a balance of probability.

On appeal I have not found sufficient answers in rebuttal of the above observations. I find from my own assessment of evidence that appellant had a very weak case. He took possession of land in absence of its owner, and says because children saw him and left him it was fine. The appellant (owner) however came

and challenged his title. The court having evaluated the evidence found him without proper title.

I do not find any wrong conclusions reached by the learned trial Magistrate in assessing the evidence above.

I do not agree with appellant's observation and all grounds 1-6 are not proved. I did not see any evidence of bias as alleged. There is no justification for this appeal. I do not find it proved. It fails on all grounds. It is accordingly dismissed with costs to Respondent I so order.

**Henry I. Kawesa**

**JUDGE**

**24.3.2015**