

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

**HCT-04-CV-CA-0151-2014
(Arising from Pallisa Civil Suit No. 34/2013)**

**OKIA S/O LATE OKIA.....APPELLANT
VERSUS
GADIMBA PATRICK MUGARIA.....RESPONDENT**

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

JUDGMENT

Appellant appealed to this Court against the judgment and decree of His Worship **Kintu Imoran** Magistrate Grade I Pallisa of 28th August 2014 under Civil Suit No. 34/2013.

The Appellant raised 7 grounds of appeal.

The duty of a first appellate court as articulated in Pandya v. R (1957) E.A. 336, is to re-evaluate the evidence, re-scrutinize it and have fresh conclusions thereon; bearing in mind the fact that the court had no chance to examine and observe the witnesses.

Evidence in the lower court was led through **PW.1 Iddi Mugalya, PW.2 Onangiti Silvester, PW.3 Opesen Silver**, and **PW.4 Juma Bin Ausi**. The defence was through **DW.1 Okia Lawrence**.

DW.2 John Michael Muzeyi, and **DW.3 Okanyo Faustino**, defence also exhibited their agreement as DEx.1.

At the close of that evidence the learned trial Magistrate in his judgment found for plaintiff on the balance of probability.

In their submissions to court both counsel forwarded written submissions.

I have had occasion to review the pleadings in the lower court, evidence and submissions both in the lower court and on appeal. I have carefully analyzed the findings and orders of the court below. I have made a fresh assessment and conclude as follows:

Resolution:

Ground 3: Limitation

Appellant argued that appellant bought the land in 1983; and since suit was filed in 2013 30 years after he violated section 5 of the Limitation Act. The plaint therefore ought to have been rejected and struck out under O.7 r. 11(a) of the Civil Procedure Rules which provides that:

“The plaint shall be rejected where the suit appears from the statement of the plaint to be barred by law.”

The Respondent however argued that there was no evidence on record to support the above proposition. PW.2’s evidence at page 7 and 8 to the contrary showed that the incursion occurred in 2003 and suit filed in 2013, hence time had not lapsed.

In the evidence on record which I have carefully reviewed I find from evidence from PW.1 that he could not recall when defendant encroached. **PW.2 Mangiti-** a caretaker said the defendant began encroaching in 2003. (Page 7 and page 8 of proceedings).

DW.1 claimed occupation since 1983, DW.2 claimed that for 30 years they have been claiming the land till recently, when **Tali** died.

DW.3 claimed that the land was bought in 1983.

With the above evidence it is the law that limitation runs from the time when the action of trespass becomes apparent to the plaintiff. According to the plaint in paragraphs 3, 4 and 5 the mischief was noticed when plaintiff returned to claim his land and from evidence of PW.2 this was in 2003.

The suit was filed in 2013, this is a period of 10 years and is therefore not in violation of section 5 of the Limitation Act which provides for 12 years from date on which the right of action first accrued to him or her.

This is because even if its alleged that appellant bought in 1983, the plaintiff only became aware of his alleged claims in 2003; when according to PW.2 he (defendant) began harvesting potatoes from the portion of land and even wanted to build there a house.

I therefore find that this ground is not proved.

Grounds 1 and 4:

The appellant's counsel faulted the learned trial Magistrate for failing to find that the appellant was a bonafide purchaser for value. Counsel relied on evidence of purchase led through DW.1, the author of the purchase agreement (DW.2). He referred to *Iga v. Makerere University (1972) EA 65*.

He argued that fraud cannot be pleaded 25 years after the event of purchase to defeat the right of a bonafide purchaser for value; in possession for over 12 years.

Respondent's Counsel however re-emphasized that all witnesses for plaintiff/Respondent gave evidence that the land in issue belonged to the plaintiff-inherited from his father- **Mugalya. Talya** was a caretaker.

I find for a fact, and agree with learned trial Magistrate that the Title of **Talya** whom defendants claimed sold the land was never established by defendants. On the other hand plaintiffs led evidence to show that **Talya** was a mere caretaker of the land which was exchanging various caretakers. He therefore had no right to sale the land. This was evaluated at length by the learned trial Magistrate at pages 5 and 6 of his judgment thereby concluding that; "defendant was not a bonafide purchaser because he knew that what he was buying was not for **Talya** but was for **Gadimba**."

I agree with the above conclusion. The evidence on record is consistent with the fact that the appellant knew that the land he was occupying belonged to **Gadimba**. He even saw and was aware of the grave of **Gadimba** thereon. A bonafide purchaser is one who has no "notice." However defendant lived among this clan and was aware of the lineage of **Gadimba**, and should have taken steps to inquire from the clan neighbours and LCs before purchase. His title is therefore tainted and cannot be called bonafide.

The learned trial Magistrate therefore did not error (Ground I) to find that land was property of Respondent, or error in the finding that the appellant never purchased the land (Ground 4). The two grounds fail.

Grounds 2 and 7:

Failing to regard the evidence of defence, and failing to properly evaluate evidence.

The above grounds are not in any way raising any new facts.

The appellant's counsel referred to alleged contradictions in evidence of PW.1, PW.2, PW.3 and PW.4, in their testimonies in court. The contradictions pointed out in my view are very minor and do not go to the root of the matter. The testimonies regarding the lines of caretaking the property does not help to place ownership in hands of appellant. Instead it lends credence to the fact that the portion of land in issue was a clan land which various people utilized upon the death of their grandfather. It helped to question how one of the trustees went ahead to sale the land. I therefore do not find the alleged contradictions helpful to bolster the appellant's case,

I hold that they are minor and should be ignored. This fact is further given credence by the fact that the learned trial Magistrate went at length to weigh and examine that evidence from pages 4, 5, 6 of his judgment.

I am satisfied that his assessment and conclusions thereon were correct. I therefore do not find any error in law (ground 2) on failure to evaluate evidence occasioning a miscarriage of justice. The grounds are not proved.

Appellant abandoned ground 5.

In the final result, I find that this appeal has failed on all grounds raised. It is accordingly dismissed with costs to the Respondents. I so order.

Henry I Kawesa

JUDGE

21.08.2015

Right of appeal explained.

Henry I Kawesa

JUDGE

21.08.2015

