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

HCT-04-CV- CA -0152-2015
(ARISING FROM PALLISA CIVIL SUIT 0011 OF 2012)

AWUYA PETER :::::::::::::::::::::: APPELLANT

VERSUS

OTULEM LUKA :::::::::::::::::::::: RESPONDENT

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

JUDGMENT

Appellant was dissatisfied with the judgment and orders of **His Worship Kedi Paul** Magistrate grade I of Pallisa of 16th October 2014.

The appellant raised four grounds of appeal.
The duty of this court as a first appellate court involves the duty to re-evaluate the evidence, subject it to a fresh scrutiny and reach my own conclusions bearing in mind the fact that I never listened to or observed the witnesses.

The brief facts of this matter are that the plaintiff sued the defendant for 7 acres of land. His claim was that his late father **Mukula Lawrence** purchased 5 acres of the suit land from the defendant's father in 1975 and paid 3 heads of cattle. His father later bought 2 acres of the suit land in 1979 from a one **Adukulu** daughter of the late **Okia** and paid a bull for the same. The plaintiff claimed continuous occupation and use of the land for 27 years till December 2011 when the defendant's father began laying claim on the suit land.

Defendant's case was that the suit land belonged to his late father **Ekaba Faustin**o and that he had mortgaged the suit land to the plaintiff's father in 1983. He defendant claimed that the land was still under a mortgage and he was willing to pay the cows and redeem the same.

The evidence on record was as follows:

PW.1 Otulem Luka stated that his late father **Mukula Lawrence** bought 5 acres in 1975 and two in 1979. He tendered in two agreements in respect of the transactions.

PW.2 Otorim Tadeo confirmed that suit land was for **Mukula** late father of the claimant, since 1975. He bought it from **Ekaba** in 1975 and he was not aware of any mortgage thereon.

PW.3 Okuo Girifasio, PW.4 Okiring John Michael all confirmed PW.1's evidence in all material particular.

PW.5 Aisu Alex and **PW.6 Okiria Nakileti** all confirmed the alleged purchase by **Mukula** of this land.

Defendant (DW.1) **Awuya Peter** told court that the 7 acres of land are for his late father **Ekaba Justine** who mortgaged them in 1983 to **Mukula Lawrence** father of plaintiff. He called **DW.2 James Odii** who claimed that he wrote the mortgage deed in 1983.
DW.3 Olinga Faustino said he was present when the mortgage happened and D.2 wrote the mortgage deed.

DW.4 Awuya Moses gave hearsay evidence on the issue of the mortgage as he was only told by **Odelle**. He claims he wrote all the information down vide D.I Exh.I.

Court visited the locus.

At the close of the trial Court found in favour of the plaintiff, hence this appeal.
Counsel for the appellant argued all the grounds jointly, while Respondents argued the grounds separately, and do hold as follows.

Ground 1: Learned trial Magistrate did not evaluate the evidence properly.
From evidence as above the appellant's complaint is that though plaintiff claimed he was heir, he did not recall when he was made heir, and did not have letters of Administration.

He further argues that plaintiff in cross examination referred to the land as measuring 100 acres, also that he did not sign on the alleged agreement though he claimed to have been present. He also argued that plaintiff's evidence lacked corroboration and hence fell far below the required standard of proof in civil matters.

In respect the Respondent agreed with the learned trial Magistrate's assessment of the evidence and on the issue of letters of Administration referred this court to decided case which held that a beneficiary can sue without letters to protect Estate property from waste.

I have analyzed all the evidence on record. I do find that all the prosecution/plaintiff witnesses were consistent, truthful and corroborated each other. The requirement to prove a civil suit is on a balance of probability. It is upon production of evidence to prove a fact. (Sections 101, 102 and 103 of the Evidence Act). Here plaintiff came to court with both oral and documentary evidence in proof. Being a heir, he inherited the agreements in their original forms as given to him by the late. Those who saw these agreements being authored testified in evidence. Even if none of them signed on them, these documents are relevant documents in proof of the fact of sale by the plaintiff. (Section 60 Evidence Act).

It is on record that the defence counsel applied to court to have the originals be subjected to the scrutiny of a handwriting expert and to prove a report. The documents were released to the defence, and no report by them in rebuttal of their evidential value was provided to court. The plaintiff's evidence was therefore uncontroverted on that point.

The defendant on the other hand led oral evidence insisting that the transaction was a mortgage not a sale. However apart from alleging so, there was no independent way court could verify their allegations.
All witnesses claimed no document was available. Document DEX.I is not translated and cannot be understood. However it is dated 03.12.2011, so it cannot be the mortgage deed for land allegedly mortgaged in 1983. Notably the written statement of defence does not make any mention of the alleged DEX.I.

I am also in agreement with counsel for Respondent's submissions on the issue of the Letters of Administration. The law is as stated in the quoted cases. The court in ***Israel Kaba v. Martin Banoba Musiga (1996) KALR 25***, held that:

> "*legitimate beneficiaries right to protect their interest in an intestate's estate. In that case the respondent was a customary heir and son to an intestate, and had developments on the land in question. Although he did not possess letters of Administration at the time, he successfully instituted legal proceedings for the cancellation of appellant's title to the suit land on account of fraud.*"

The case further guided that:

> "*The Respondent's locus standi is founded on his being the heir and son of his late father. In terms of section 28 (1) (a) and 28 (2) of the Succession Act as amended the Respondent could very well be entitled to 76% more of the estate of his father. He is thus defending his interest*."

The import of that case read together with Section 27 and 28 of the Succession Act is that a beneficiary has locus to sue for his/her interest in an estate of a deceased even without letters of Administration.

Counsel's objection or complaints therefore are out of touch with the law on this point.

From the arguments and the law above, the evidence and the facts I do not find merit in this ground of appeal. It therefore fails.

Grounds 2, 3, and 4

Having determined ground 1 as above, I do not find any merit in any of the rest of these grounds. I do not find fundamental misdirections and non directions, neither is there any miscarriage of

justice. The weight of evidence was in favour of the Respondents. Grounds 2, 3, and 4 are all not proved.

In the result this appeal has failed on all grounds and is accordingly dismissed with costs to the Respondents.

I so order.

Henry I. Kawesa

JUDGE

10.4.2017