



IN THE HIGH COURT OF UGANDA SITTING AT GULU

Reportable
Civil Appeal No. 030 of 2016

In the matter between

OLUMA SANTO **APPELLANT**

VERSUS

OKELLO JACOB **RESPONDENT**

Heard: 10 May, 2019.

Delivered: 30 May, 2019.

***Evidence** — Evaluation of evidence— Courts may rely on parts of the testimony of a witness which are truthful and reject the parts which are false.*

JUDGMENT

STEPHEN MUBIRU, J.

Introduction:

[1] The respondent sued the appellant for a declaration of ownership of land measuring approximately 20 acres, situate at Omokokitunge village, Idobo Parish, Lalogi sub-county in Gulu District. He sought a declaration that he is the rightful owner of the land, an order of vacant possession, a permanent injunction restraining the appellants from further acts of trespass to the land, general damages for trespass to land, and the costs of the suit. His claim was that during the year 1985, he purchased the land in dispute from the appellant's uncle, Ogut Martin, at the price of shs. 20,000/= and two goats. The respondent occupied and enjoyed quite possession and user of the land until the year 2007 when the appellant began laying claim to it as his customary land. The appellant has since

taken possession of part of the land despite successive decisions by local courts and elders in favour of the respondent.

- [2] In his written statement of defence, the appellant contended that the land in dispute belongs to his grandfather and therefore he is erroneously sued. He prayed that the suit should therefore be dismissed with costs.

The respondent's evidence;

- [3] Testifying as P.W.1 the respondent Okello Jacob stated that the appellant used to visit his grandfather who lived in the neighbourhood of the land in dispute but has now constructed a house on the respondent's land. The land measures approximately 30 acres and he bought it at a price of shs. 20,000/= and two goats from a one Ogut Martin, brother to the appellant's grandfather. Upon that purchase, the seller vacated the land and the respondent began utilising it immediately. He occupied the house the seller had vacated and lived therein peacefully until 1988 when he was displaced by the insurgency into an IDP Camp. Upon his return to the land in the year 2009, he found two huts and three gardens on his land established by the appellant. He had taken over approximately 20 acres of the land. Upon inquiry, the appellant, told him it was his uncle Oluma James who had authorised him to occupy the land.

The appellant's evidence;

- [4] In his defence, the appellant Oluma Santo testifying as D.W.1 stated that he inherited the land in dispute from his late grandfather Aliro Nekobwam. He was born on the land in dispute in 1993 and has lived thereon since then, save for the period from 1997 to 2007 when he was displaced into an IDP Camp. It is in 1993 that his uncle Oluma James gave him the land in dispute, after having vacated the land in 1983. He does not know how big it is. His father has never lived on the land but it belonged to his grandfather Aliro Nekobwam. Before he settled on

the land he had lived in Ajak village in Lango until 1993. He lived on the land for four years before the insurgency. Before Martin Ogut left Omokokitunge village, he gave all the land he had thereat to the respondent.

- [5] D.W.2; Martin Ogut testified that the appellant acquired the land in dispute from his late grandfather Aliro Nekobwam in 1989. The appellant was born on that land and that is where he has lived all his life. He gave the respondent only four acres out of the land in dispute which belonged to Aliro Nekobwam but never sold it to him. The respondent has been using the whole of the land since 1986. At the time he gave the respondent the four acres, the appellant was already living on the land. He migrated from Omokokitunge village to Ocee village because he had given all the land he had thereat to the respondent and had no land left to cultivate.

The Court's visit to the *locus in quo*;

- [6] The trial court then visited the *locus in quo* where the parties demonstrated the boundaries of the land in dispute and the respondent asserted it is the land he bought from Ogut Martin. The appellant contended the respondent had been given only four acres of it and the rest belongs to him, having acquired it from his grandfather Aliro Nekobwam. The court observed that there was a new hut on the land in dispute, that was said to have been constructed by the appellant in 2014. It also observed that the respondent does not reside on the land but uses the part not occupied by the appellant for cultivation. The court then drew a sketch map of the area in dispute.

Judgment of the court below;

- [7] In his judgment, the trial magistrate found that evidence of the respondent's purchase of the land was corroborated by D.W.2 Martin Ogut who testified that he migrated from Omokokitunge village to Ocee village after he had given all the

land he had thereat to the respondent. Had D.W.2 given the respondent only four acres as he claimed, he would not have left the village for lack of arable land. The land described in court by D.W.2 as the land he gave to the respondent, at the *locus in quo* visit was established to be the entire land in dispute. The appellant's evidence as to the root of his title was contradictory; he claimed to have been born on the land, to have inherited it from his grandfather Aliro Nekobwam and to have received it as a gift *inter vivos* from his uncle Oluma James, all in the same breath. His father never lived on the land hence he was not born on that land. There is no evidence to show that his grandfather ever owned the land. The appellant first occupied the land in 2007 without permission of the respondent who purchased the land in 1985. The appellant was therefore found to be a trespasser on the land. The respondent was declared lawful owner of the land in dispute. An eviction order and permanent injunction were issued against the appellant. The respondent was awarded shs. 3,000,000/= as general damages and the costs of the suit.

The grounds of appeal;

- [8] The appellant was dissatisfied with the decision and appealed to this court on the following grounds, namely;
1. The trial magistrate erred in law and fact when he failed to properly evaluate the evidence on record thereby arriving at a wrong conclusion and occasioning a miscarriage of justice.
 2. The trial magistrate erred in law and fact when he held that the suit land belongs to the respondent whereas not.

Submissions of counsel fro the respondent;

- [9] The appellant did not appear at the hearing of the appeal whereupon a date was fixed for judgment and the parties directed to file their written submissions. Still the appellant did not file any submissions. In counsel for the respondent's written

submissions, he argued that the fact that D.W.2 Martin Ogut migrated from Omokokitunge village to Ocee village after he had given all the land he had thereat to the respondent was admitted by the appellant who as well admitted having seen a document to that effect. Therefore the trial court came to the correct decision and therefore the appeal should be dismissed.

The duties of this court;

[10] It is the duty of this court as a first appellate court to re-hear the case by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion (see *Father Nanensio Begumisa and three Others v. Eric Tiberaga SCCA 17 of 2000; [2004] KALR 236*). In a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions (see *Lovinsa Nankya v. Nsibambi [1980] HCB 81*).

[11] This court may interfere with a finding of fact if the trial court is shown to have overlooked any material feature in the evidence of a witness or if the balance of probabilities as to the credibility of the witness is inclined against the opinion of the trial court. In particular this court is not bound necessarily to follow the trial magistrate's findings of fact if it appears either that he or she has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on demeanour of a witness is inconsistent with the evidence in the case generally.

The general ground of appeal is struck out;

[12] The first ground of appeal presented in this appeal is too general that it offends the provisions of Order 43 rules (1) and (2) of *The Civil Procedure Rules* which require a memorandum of appeal to set forth concisely the grounds of the

objection to the decision appealed against. Every memorandum of appeal is required to set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative, and the grounds should be numbered consecutively. Properly framed grounds of appeal should specifically point out errors observed in the course of the trial, including the decision, which the appellant believes occasioned a miscarriage of justice. Appellate courts frown upon the practice of advocates setting out general grounds of appeal that allow them to go on a general fishing expedition at the hearing of the appeal hoping to get something they themselves do not know. Such grounds have been struck out numerous times (see for example *Katumba Byaruhanga v. Edward Kyewalabye Musoke, C.A. Civil Appeal No. 2 of 1998; (1999) KALR 621; Attorney General v. Florence Baliraine, CA. Civil Appeal No. 79 of 2003*). The ground is accordingly struck out.

Partial reliance of the testimony of a witness is justified;

- [13] As regards the second ground faulting the trial Magistrate for having found in the respondent's favour, Courts may rely on parts of the testimony of a witness which are truthful and reject the parts which are false. It may believe the evidence of a contradicting witness and reject the part containing lies or, reject the whole evidence of such witness who may be telling lies, but act on the rest of the evidence, or accept reasonable explanation for the inconsistencies (see *Uganda v. Rutaro [1976] HCB 162; Uganda v. George W. Yiga [1977] HCB 217; Saggu v. Road Master Cycles (U) Ltd. [2002] 1 EA 258; Kiiza Besigye v. Museveni Y. K and Electoral Commission [2001 – 2005] 3 HCB 4*).
- [14] I find that although D.W.2 stated that the land belonged to the appellant and that he only gave the respondent 4 acres of the land, that is inconsistent with the other part of his evidence to the effect that he vacated the land and migrated from Omokokitunge village to Ocee village because he had given all the land he had thereat to the respondent and had no land left to cultivate. It is also

inconsistent with his testimony to the effect that the respondent had been using the whole of the land since 1986 and that at the time he gave the respondent the four acres, the appellant was already living on the land. I am therefore inclined, as the trial Magistrate was, not to believe this part of the evidence of D.W.2 He was untruthful regarding the size in so far as it is least likely that he gave the respondent only four acres of the land.

[15] Otherwise, the evidence of D.W.2 corroborated the respondent's claim. The appellant was unable to adduce satisfactory evidence to show that the land in dispute belongs to his grandfather. In one breath he claimed to have inherited the land from his grandfather Aliro Nekobwam, and later stated that his uncle Oluma James gave him the land in dispute, after having vacated the land in 1983. He does not know how big it is yet the controversy is as to whether the respondent was entitled to only four acres of it or the entire piece of land. He claimed to have lived on the land since childhood but the court only found a newly constructed hut on the land. In light of the unexplained contradictions in the appellant's case, the trial court came to the right conclusion and its decision is supported by the evidence on record.

Order :

[16] I find no merit in the appeal and it is hereby dismissed with the costs of the appeal and of the court below being awarded to the respondent.

Stephen Mubiru
Resident Judge, Gulu

Appearances:

For the appellant : unrepresented.

For the respondent : Mr. Lloyd Ocorobiya.