The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Civil Appeal No. 25 of 2020

[Arising from Kumi Magistrate's Court Land Claim No. 009 of 2018]

Outa Charles Omoda :: Appellant

Versus

Agwang Joyce Lucy :: Respondent

(Appeal from the judgment and orders of the Magistrate Grade I of Kumi Magistrate's Court Chief Magistrate's delivered on the 4th August 2020)

Before: Hon Justice Dr Henry Peter Adonyo

Judgment:

Background:

The respondent instituted land claim No. 009 of 2018 against the appellant and Okello Charles Richard in Kumi Magistrate's Court for a declaration that she is the rightful owner of 4 gardens which Okello Charles Richard had sold to the appellant. The appellant stated that he had bought the suit land from Okello Charles Richard with the consent of the respondent's mother Anna Oba Margaret.

At trial, judgment was entered in favour of the respondent hence this appeal. According to the memorandum of appeal, the appellant raised four grounds of appeal as follows;

a. Ground ONE: That the learned trial magistrate erred in law and fact when he held that the land sale between Okello Charles Richard and the appellant was unlawful.

b. Ground TWO: That the learned trial magistrate erred in law and fact when he held that the appellant was a trespasser.

c. Ground THREE; That the learned trial magistrate erred in law and fact when he condemned the appellant to pay general damages without supporting evidence.

d. Ground FOUR: That the decision of the trial magistrate has occasioned a miscarriage of justice.

Duty of the Appellate Court:

This is the first appeal from the decision of the learned magistrate. The duty of the appellate court is to scrutinize and re-evaluate all the evidence on record in order to arrive at a fair and just decision.

In ***Baguma Fred vs Uganda SCC Appeal No. 7 of 2004,*** the Supreme Court stated that;

First, it is trite law that the duty of a first appellate court is to reconsider all material evidence that was before the trial court, and while making allowance for the fact that it has neither seen nor heard the witnesses, to come to its own conclusion on that evidence. Secondly in so doing it must consider the evidence on any issue in its totality and not any piece in isolation. It is only through such re-evaluation that it can reach its own conclusion, as distinct from merely endorsing the conclusion of the trial courts.

See also ***Banco Arab Espanol versus Bank of Uganda, Supreme Court Civil Appeal No. 8 of 1998; Byaruhanga Yozefu vs Kahemura Patrick HCCS No. 19 of 2016***

Power of the Appellate Court:

Section 80 (i) of the Civil Procedure Act Cap. 71 grants the High Court appellate powers to determine a case to its finality, providing that; "

Power of Appellate court.

(1) Subject to such conditions and limitations as may be prescribed, an appellate court shall have power—

to determine a case finally;

(2) Subject to subsection (1) the appellate court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Act on courts of original jurisdiction in respect of suits instituted in it.

Submissions and Decision of the court:

The parties' submissions are reproduced in summary here below;

Ground ONE: That the learned trial magistrate erred in law and fact when he held that the land sale between Okello Charles Richard and the appellant was unlawful

It was argued by counsel for the appellant that the trial magistrate erred when he relied on the provisions of the Illiterates Protection Act in relation to the consent that was signed by PW2, the mother of the respondent. That, the learned trial magistrate misapplied the Illiterates Protection Act to the consent (DEXH2) which was written in Ateso and found that PW2 was illiterate, whereas not since she is well conversant with Ateso. It was argued for the appellant the learned trial magistrate wrongly faulted the appellant for not conducting a due diligence yet he accordingly acted the way a reasonable man would and conducted due diligence, when he purchased the

land in the presence of 40 people including neighbors', the area LCII and with the involvement of clan leaders.

Another argument by the appellant's counsel was that the PW2 is estopped, as provided under section 114 of the Evidence Act from denying that she authorized the sale of the suit land, after initially authorizing the sale by signing the consent, and through other representations she made to appellant.

For the respondent, it was submitted that the suit land belongs to the respondent and that her consent to the said sale lacked, which made the land sale illegal. It was submitted that the court has a duty to investigate and evaluate evidence, in accordance with the law and to arrive at the correct decision and that the trial magistrate correctly found that the PW2 was erroneously required to thumbprint a document in English, a language in which she is illiterate. Furthermore, that PW2, was not customarily married to Okello Richard and was therefore not a spouse within the meaning of section 39 of the Land Act (as amended).

According to counsel for the respondent, although the appellant argues that he conducted due diligence and that 40 people were present at the time of the sale, the respondent, who is the actual owner of the suit property, was absent at the time. Counsel also argued that the case of ***Asiimwe Erisa & Kikundi vs Yosita Mukirania HCCS No. 019/2015*** can be distinguished from the present case because in the case

before the court now, the respondent did not consent to the sale of the suit land and her whereabouts were also known unlike the cited case where the owner could not be readily found. The arguments of counsel were that the appellant was not a bonafide purchaser without notice. Lastly, that the principles of proprietary estoppel are inapplicable in the present case.

Determination of Ground One:

On this ground it was the submission of the appellant that the trial magistrate erred when he relied on the provisions of the Illiterates Protection Act in relation to the consent that was signed by PW2 who is the mother of the respondent in contravention of the law.

Section 1 (b) of the Illiterates Protection Act defines an illiterate means, in relation to any document, to be a person who is unable to read and understand the script of language in which the document is written or printed.

Section 2 of the same Act provides for the verification of signatures of illiterate persons. It states that no person shall write the name of an illiterate by way of signature to any document unless such illiterate shall have first appended his or her mark to it and any person who so writes the name of the illiterate shall also write on the document his or her own true and full name and address as witness and his or her so doing shall imply a statement that he or she wrote the name of the illiterate by

way of signature after the illiterate had appended his or her mark and that he or she was instructed so to write by the illiterate and that prior to the illiterate appending his or her mark, the document was read over and explained to the illiterate.

Section 3 of the Act provides that any person who shall write any document for, at the request, on behalf or in the name of any illiterate, shall also write on the document his or her own true and full name as the writer of the document and his or her true full address and his or her doing so shall imply by a statement that he or she was instructed to write the document by the person for whom it purports to have been written and that it fully and correctly represents his or her instructions and was read over and explained to him or her.

In resolving Ground One whether the sale of the suit land by the 1st defendant to the 2nd defendant was lawful, the learned trial magistrate traced the origin of the ownership of the suit land.

He noted that the testimony of PW2, PW3 and PW5 corroborated the respondent (plaintiff) claim to ownership of the suit land and were also present when the land was given to her as a gift *inter vivos* in 1993 by her grandfather, one Omiat. That, the respondents mother, Anna Obba Margaret then started using the land as caretaker until it was sold in 2008.

The learned trial magistrate further stated that the although the defendants' witnesses all denied that the land was given to the plaintiff, they were not present at the time the land was being given to her. In addition, the learned trial magistrate noted that DW1, DW2 and DW3 testified that after the death of Omiat, the 1st Defendant inherited the said Anna Obba Margaret with all the property.

The learned trial magistrate also considered the testimony of the 1st defendant Okello Charles who testified that he came to Ngabet in 1997 and fell in love with Anna Obba Margaret and inherited Anna Obba Margaret along with the said land, as well as the testimony of the 2nd defendant (appellant) that he bought the land on 31 August 2008 from the mother and father of the respondent, that is Okello and Anna Obba.

From all these pieces of oral evidence, the leaned trial magistrate went on to conclude that the land in dispute was for one Omiat and later Anna Oba Margaret occupied the same after the demise of Omiat until Okello Charles found her on the land in 1997.

On whether the said Okello had good title to sell the land to the 2nd defendant, and whether the 2nd defendant is a bonafide purchaser for value without notice, the learned trial magistrate noted that according to PW2 she testified that she was present at the time of the sale and even tried to stop the 1st defendant from selling the land but he refused and instead she was told to put her thumb print on the sale agreement

which she did with the said witness confirming through her testimony that the land belonged to the respondent (plaintiff).

The learned trial magistrate also noted that the plaintiff's witnesses also testified that the matter was reported to the LCI and clan leaders by the plaintiff but Outa Charles frustrated them.

The trial magistrate found that the 2nd defendant did not make sufficient inquiries before purchasing the suit land going on to conclude that the 2nd defendant from his testimony testified that the before the signing of the agreement the vice clan chairperson had asked the question of whether there was any objection by any family member with the respondent's mother stating that there was no objection since it was the 1st defendant Okello Charles who redeemed the land which according to the learned trial magistrate this statement did not amount to sufficient inquiries about the land.

Another consideration by the learned trial magistrate was the 1st defendant's admission in the written statement of defence that he wrongfully and without any right, sold off the suit land comprised of 4 gardens to the 2nd defendant after manipulating Ana Oba Margaret into doing so. That, when the plaintiff / respondent demanded for her garden, he asked the 2nd defendant return the garden but he refused.

In coming to his decision, the learned trial magistrate cited the holding in ***Miza s/o Beki (Miza Bhakit) versus Bruna Ososi Civil Appeal No. 0026 of 2016*** which was to the effect that a purchaser of unregistered land who does not undertake lengthy investigations and inquiries of title is bound by equities relating to that land of which he had actual or constructive notice. That, before the purchase of the land, the appellant / 2nd defendant did not make sufficient inquiries into the presence of Mr. Okello Charles / 1st defendant on the land and he was well aware or ought to have been aware that the 1st defendant was only a caretaker and not the owner of the land.

Furthermore, the principles of law in respect to due diligence has been well explored by courts and decided upon. In ***Nafula vs Kayanja & Another Civil Suit No. 136/ 2011***, the court while citing several authorities in respect of the value of land including the case of ***Hajji Nasser Katende vs Vithalidas Halidas & Co. Ltd CACA No. 84 of 2003*** which emphasized the value of land property and the need for thorough investigations before purchase, noted that lands are not vegetables that are bought from unknown sellers. That lands were valuable properties and buyers are expected to make thorough investigations not only of the land itself but of the sellers before making any purchase. Other cases which confirms this position include that of ***Taylor vs Stibbert [1803 -13] ALL ER 432*** and ***UP & TC vs Abraham Katumba [1997] IV KALR 103***, both of which emphasize the importance of making reasonable inquiries of the persons in possession and use of the land.

Also according the case of ***Ibaga Taratizio vs Tarakpe Faustina Civil Appeal No. 4 of 2017***, the standard of due diligence imposed on a purchaser of unregistered land is much higher than that expected of a purchaser of registered land. See

In his testimony during trial, the appellant told the court that he bought the land on 31st August 2008 from the mother and father of the plaintiff called Okello Charles who was a caretaker of the respondent. He testified that there were many people buying the land and that there were relatives from each side as well as LCI, and Clan Chairperson. That, upon inquiry on any objection to the sale, the mother of the respondent said there was no objection since Okello Richard had redeemed the land from Nicholas Omodat. He also testified that the agreement showed that the land was sold by Okello Richard and that from his inquiries he concluded that Okello Richard acquired the land from his late father Omiat. That, the respondent's mother Anna Oba Margaret had even signed the consent as a spouse of Okello as they were customarily married were husband and wife since they stayed together and had children.

Coming back to the trial magistrate's findings, it is my considered opinion that he rightly held that the appellant failed to carry out due diligence regarding the history of the presence of Okello Richard on the suit land for in his findings, the learned trial magistrate he rightly concluded that where the appellant to have carried out proper inquiries he would have found out that Okello Richard had never inherited the land

from Omiat and neither was Omiat the father of Okello and he would also have known that Okello Richard and Anna Oba Margaret were only caretaking the suit land on behalf of the respondent who is the true owner. More importantly, the Appellant would have found out the fact as to whether or not Okello Richard had good title to sell the land to him.

Therefore, given that the appellant failed to carry out due diligence as to the real ownership of the land in dispute his arguments that the learned trial magistrate wrongly faulted him for not conducting due diligence would be found to be wanting by this honourable court given the fact that in law, as pointed by the above cited cases, it is a requirement that due diligence must be conducted in respect of the occupation and ownership of the land before nasty transaction on such land can be carried.

The argument that the transaction was carried out in the presence of neighbours, clan leaders and local council officials at the time of the sale, however, many is lame and insufficient and legally untenable.

On the issue of the application of the Illiterates Protection Act, the argument of the appellant was that the trial magistrate erred when he relied on the provisions of the Illiterates Protection Act in relation to the consent that was signed by PW2, the mother of the respondent.

I have read the findings of the learned magistrate in respect of this aspect and I note the trial court cited sections 1 (b), section 2 and 3 of the Illiterates Protection Act as well as decided cases including ***Violet Nakiwala and 2 Others vs Ezekiel Rwekibra and Another HCCS No. 280 of 2006*** and ***Kasaala Growers Co-operative Society vs Kakooza and Another*** and correctly pointed out the principle the law as well as the cited cases which is that the contents of a document must be explained over to an illiterate and that a certificate or *jurat* must be added to that effect and that an illiterate person cannot own the contents of a document when it is not shown that they were explained to him or her or that he understood them since the law was intended to protect illiterate persons with its provisions couched in mandatory terms and any failure to comply with the same renders the document inadmissible.

In this respect, the learned trial magistrate then went on to find in his judgment that although the PW2, the respondent mother, Anna Obba Margaret had thumb printed the documents, there was no certificate or *jurat* attached to the effect that the content of the said consent form was explained to her or that she understood the consent form as required under the Illiterates Protection Act and that since the provisions of the Illiterates Protection Act were fully applicable to the consent form then it could not be relied upon to enforce any rights thus finding that the 2nd defendant's reliance on the consent form as untenable since the consent form was of no evidentiary value.

The appellant's counsel had also argued that consent (DEXH2) which was written in Ateso meant yet the lower court found that that Anna Obbo Margaret (PW2) was illiterate whereas not since she is well conversant with Ateso for an illiterate is defined under ***Section 1 (b) of the Illiterates Protection Act*** in relation to any document as a person who is unable to read and understand the script of language in which the document is written or printed.

It is true that the consent document (DEXH2) was written in Ateso. However, in indication that she was not literate in the said language as defined by the law, PW2 told the lower court that she was only told to put her thumb print on the sale agreement meaning that even if the said consent form was written in a language which presumably PW2 was well conversant with, no evidence was adduced to show that could read and understand the said language. While it true that she is able to speak Ateso, there is no proof on record that she is able to read and understand the said language.

After careful consideration of the proper provisions of the Illiterates Protection Act in relations to reading and understanding a language so as to decide one was illiterate or not, I would concur with the finding of the that trial magistrate that he correctly arrived at the decision that PW2 was illiterate which makes the consent form not be relied upon since there was no certificate attached to the effect that the contents of

the said consent form were explained to the respondent's mother Anna Obba (PW2) and any reliance on it to enforce legal rights of the appellant is therefore untenable.

Also under ***Section 39 (1) (c) of the Land Act*** it provided that no person may sell or enter into any transaction in respect of land on which the person ordinarily resides with his or her spouse and from which they derive their sustenance, except with the prior consent of his or her spouse. From the testimony of the witnesses including PW1, PW2, PW4, and PW5 all testified in the lower court that the Okello Charles was cohabiting with Anna Obba and was not customarily married to her. Therefore, Okello and Anna Obba could not have been said to be spouses within the meaning and requirements of section 39 (1) above.

The Appellant raised the principle of promissory estoppel and cited the case of ***Ibaga Taratizio vs Tarakpe Faustina Civil Appeal No. 4/ 2017*** where it was held that a ***"promissory estoppel... operates where the claimant is under a unilateral misapprehension that he or she has acquired or will acquire rights in the land where that misapprehension was encouraged by representations made by the legal owner or where the legal owner did not correct the claimant's misapprehension.***

However, the perusal of evidence on record shows that this principle is inapplicable given the fact that in the present case there is no proof on the record that the owner of the suit land, that is, the respondent, made representations that led the appellant

to believe that he had acquired rights in the suit land as evidence of the both the plaintiff's and defense's witnesses proves the non awareness of the sale and presence at the time when the purported sale was concluded.

In the circumstances, I found no substance in the applicability of the doctrine of promissory estoppel which was pleaded by the appellant to the present case.

Having examined in detail Ground One, I would resolve it in the negative. Ground One thus fails.

Determination of Ground Two:

The Appellant's Ground Two was that the learned trial magistrate erred in law and fact when he held that the appellant was a trespasser. Counsel for the appellant argued that it was an erroneous conclusion by the trial magistrate as the issue on trespass was never pleaded in the head suit as was required under Order 6 rule 7 of the Civil Procedure Rules.

Counsel further argued that since there was insufficient evidence to prove that the respondent ever had possession of the suit land and that the entry of the appellant on the suit land was authorized by the respondent's mother and one Okello Charles who were in possession of the suit land therefore the appellant was never a trespasser on the suit property.

For the respondent, it was argued that that the issue of trespass was raised and agreed to by both parties, with the guidance of the court and was premised upon the plaintiff's / respondent's pleadings as whole based on the fact that the plaintiff was seeking the recovery of the suit land and thus the appellant became a trespasser because he had wrongfully acquired the respondent's land as the respondent remained in constructive possession of the suit land at all times.

In resolving whether issue of trespass was correctly framed by the lower court, I would refer to Order 15 rule 3 of the Civil Procedure Rules which deals with how issues may be framed. According the provisions of the law, the court may frame the issues from all or any of the following materials: -

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the advocates of the parties;

(b) allegations made in the pleadings or in answers to interrogatories delivered in the suit; and

(c) the contents of documents produced by either party.

In addition, Order 15 rule 5 of the Civil Procedure Rules allows the court at any time before passing a decree to amend the issues or frame additional issues on such terms as it thinks fit and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed. This position was highlighted in ***Mundua Richard vs Central Nile***

Transporters Miscellaneous Application No. 3 of 2017 where the court explained the role of the court in framing issues. In that case the court noted that the ***"obligation is cast on the court to read the pleadings, listen to the evidence and then determine, with the assistance of the learned counsel for the parties, the material propositions of fact or law on which the parties are at variance."***

The learned judge in that case also noted that the parties and their counsel are bound to assist the court in the process of framing of issues but the duty of counsel does not take away the primary obligation cast on the court in that the presiding magistrate also has a duty to frame sufficiently expressive issues as Order 15 rule 5 empowers the court at any time before the passing of a decree to amend the issues or to frame the additional issues on such terms as it thinks fit meaning with this primary duty lying with the magistrate, with counsel only being required to assist the court in the framing of the issues.

Coming to the present ground in this appeal, the record of the lower court shows that during the scheduling conference of the head suit and in court proceedings of 26th November 2018 all parties were present and agreed on the issues framed before the court with one of the issues agreed to being, and I quote, ***"whether the 2nd defendant is a trespasser."***

Arising from this fact, it is my considered view that the allegation that the issue of trespass was alien to the trial in the head suit would not stand since it is clear that the

learned trial magistrate merely adopted what the parties agreed in accordance with the provisions of Order 15 rule (3) & (5) of the Civil Procedure Rules and correctly framed for determination the issue on the whether the 2nd defendant was a trespasser accordingly with the assistance of counsel for both parties.

Additionally, it is clear that the appellant was not taken by surprise in preparing his case since the issues were framed at the scheduling conference of the head suit at which he was present. But most important of all, the provisions of Order 15 rule 3 of the Civil Procedure Rules are clear in that it provides that issues may be raised from pleadings, allegations made on oath by parties or their advocates or by court from contents of documents produced by the parties. Therefore, the appellant's arguments that the issue on trespass ought to have been gleaned only from the plaint and that it was never pleaded has no basis at all in law.

Another argument by the appellant was that the respondent never had possession of the suit land and that the entry of the appellant on the suit land was authorized by the respondent's mother and Okello Charles. This is a false argument for I note that, in his finding, the trial magistrate found that the respondent / plaintiff was given the suit land by her grandfather and her evidence was supported by that of PW2, PW3 and PW5. In addition, the learned trial magistrate pointed out that, PW2 who was the mother of the respondent /plaintiff was merely caretaking the land on behalf of the respondent / plaintiff when the plaintiff was dispossessed of her constructive

possessory right by the unlawful sale of the land to defendant /appellant given this position the learned went on to find that there was trespass upon the suit land since the respondent did not consent to the appellant's entry on the suit land.

Trespass to land occurs where a party directly enters onto another person's land without permission and remains on the land or places or projects any object on the land.

An action for trespass is an action for enforcement of possessory interest in the land, which a plaintiff must prove. An action for trespass may, therefore, be maintained only by the one whose right to possession has been interfered with. Therefore, a plaintiff must demonstrate that he or she was in possession of the land at the time of the defendant's entry and that such entry was unauthorized. ***See Adrabo Stanley vs Madira Jimmy Civil Suit No. 0024 of 2013***

Coming to the present case, it was demonstrated through evidence of PW1, PW2, PW3 and PW5 in the lower court that the respondent was the actual owner of the suit land. According Anna Obba (PW2) the suit land was given to the respondent when she was 12 years old by Omiat and she, PW2 then started staying on the land as it caretaker meaning that the respondent was the owner of the suit land.

When Okello Richard started to cohabiting with Anna Obba Margaret (PW2) he also started staying on the suit land but not as its owner with PW2, Anna Obba continuing

to care take the land even when the respondent went and started staying at Kachumbala.

In this respect, it can be safely concluded that the respondent was in constructive possession of the suit property through her mother who continued to care take the land since it was given to the respondent by Omiat and it never changed hands from the respondent. From the evidence on record PW2, Anna Obba Margaret and Okello Richard did not have any good title on the land given the fact that at no time did the caretaker ship change into ownership. Therefore, they could not have had the authority to sell the land to the appellant without express authorization by the respondent.

Arising from the very overwhelming evidence that the appellant's entry on the suit land was unauthorized, I would find no reason to disturb the finding of the learned trial magistrate that the appellant was a trespasser on the respondent's land. In the premises, Ground Two of this appeal also fails.

Determination of Ground Three:

Ground Three of this appeal was that the learned trial magistrate erred in law and fact when he condemned the appellant to pay general damages without supporting evidence. On this ground it was the appellant's arguments that the amount of UGX 6,000,000/= which was awarded to the respondent by the trial court was excessive

and not guided by any legal principle or authority and neither was it justified or based on any proof and as such this first appellate court should find so.

For the respondent, it was argued that the respondent / plaintiff was entitled to general damages for inconvenience and loss suffered during the time that the 2nd defendant illegally occupied her land. That the appellant / 2nd defendant occupied the suit property for a whole period of 9 years and was even cultivating cassava for his own benefit thereon.

In his decision, the learned trial magistrate awarded the respondent / plaintiff an amount of UGX 6,000,000/= in general damages for the inconvenience and loss suffered by her and this was to be paid by both the 1st defendant, Okello Charles and the 2nd defendant, the appellant herein. The appellant disputes this amount as being excessive and not guided by any law.

In law damages are a direct probable consequences of the fact complained of and include loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering. See: ***El Termewy vs Awdi & Others civil suit No. 95/2012.***

In ***Coasta Construction Services Vs National Water and Sewerage Corporation HCCS No. 429 of 2012***, it was noted by court that "*General damages are those that the law presumes to arise from direct, natural or probable consequences of the act*

complained of by the victim. They follow the ordinary course and relate to all other terms of damages"

Relating the above to the instant case, I find from the evidence adduced in court satisfactory to show that the respondent suffered loss of use of her land and was physically greatly inconvenienced when she not allowed to use her land for she vividly in detail in court of her woes and effort to regain possession of her land including her reporting the matter to Okalany Raymond, the LC1 Chairperson of the area, to the LC3 Chairperson of Kumi sub county and even given to clan leaders where the 2nd defendant was summoned but declined to attend all the meetings called by those authorities in trying to resolve the matter. Additionally, the respondent sought assistance through Action Aid and Legal Aid so as to regain her land but all those efforts were in vain until she took the matter to court in which finally the lower court found the case in her favor in addition to awarding general damages which from the record was guided by legal principle and authority and was supported by the evidence on record.

Given this explicit and vivid determination of the issue of general damages amounting to Ug. Shs. 6,000,000/= which was awarded by the trial magistrate as appropriate for the physical inconvenience, pain and suffering faced by the respondent, I would find no cause to disturb the assessment made by the learned trial magistrate. In the premises, ground three of the appeal also fails.

Determination of Ground Four:

Ground Four was that the decision of the trial magistrate has occasioned a miscarriage of justice. According to the appellant's counsel, the decision of the trial magistrate occasioned a miscarriage of justice because it delved into matters that were neither pleaded or proved.

For the respondent it was submitted that the trial magistrate did not commit any error in assessing the evidence and arrived at a correct decision that the suit land belonged to the respondent and that the sale between the 1st defendant and 2nd defendant / appellant was illegal.

The appellant pleads miscarriage of justice by the learned trial magistrate.

Miscarriage of justice occurs when it is reasonably probable that a result more favourable to the party appealing would have been reached in the absence of an error.

Where there is a claim of miscarriage of justice before an appellate court that appellate court must examine the entire record of the lower court including the evidence adduced before it before setting aside a judgement or directing a new trial on that account as was pointed out in ***Olanya vs Ociti & 3 Others Civil Appeal No. 64 of 2017.***

In this respect I have had the opportunity to examine the entire record and the testimonies and evidence of the parties and as was earlier pointed out and resolved

in Ground One, Two and Three which I fittingly resolved, I am satisfied that the trial court arrived at its decision and findings based on very sound plausible legal principles and arrived at his conclusions upon proper assessment of the evidence on record.

That being the case, I would find that the allegation of miscarriage of justice misplaced and only an attempt to pervert the cause of justice by the appellant.

Therefore. Ground Four of this appeal would equally fail.

Conclusion and Orders:

The conclusion of this court is that the trial court correctly arrived at its conclusion when it decided in favour of the respondent/plaintiff in its judgment.

In the final result, I find no merit in this appeal which I hereby dismiss with costs to the respondent.

I so order.

.....

Hon. Justice Dr. Henry Peter Adonyo

Judge

9th July 2021

Order:

This ruling is forwarded to the Registrar of this court to have it delivered online to parties in line with the Hon Chief Justice's directions on COVID-19 SOP's.

I so order

Judge

9th July 2021

23/7/021
Court: Judgment delivered via
Email to parties.
M/s Engola & Co. Advocates
Counsel for Appellants
Email: philip.engola@gmail.com
M/s Byaruhanga, Lubega, Odhiambo
& Co. Advocates Counsel
for Respondents
Email: emmanuelodhiambo03@
gmail.com.

23/7/021 AR.