

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
CIVIL APPEAL NO. 11 OF 2022
(Arising from C.S No.12 of 2017)

1. TULLOW OIL (U) OPERATIONS PTY (TOTAL EXP (U)
2. BAZARE AMOS & 43 ORS ::: APPELLANTS

VERSUS

FRANCIS KAAHWA ::: RESPONDENT

Before: Hon. Justice Byaruhanga Jesse Rugyema

JUDGMENT

[1] This is an appeal from the decision of the Chief Magistrate in the Chief Magistrate’s court of Masindi delivered on the 19/1/2022.

Facts and background of the appeal

[2] The plaintiff/Respondent filed **C.S No.12 of 2017** against the 1st defendant/1st Appellant **Tullow Oil (U) Operations Pty Ltd** for a declaration that he is the rightful owner of land comprising the **access road to Taitai 1 Oil Site**, an order directing the defendant to compensate the plaintiff for the use of the said **Taitai Access Road**, general damages, interest and costs of the suit.

[3] The plaintiff averred that at all times, he had been the owner of land comprising the **access road to Taitai 1 Oil Site** (from Taitai 1 Oil Site, past the bridge on River Waki in Hoima District to Butiaba - Kikonko (Biiso) main road in Buliisa District).

[4] The plaintiff contended that by virtue of **S.139 of the Petroleum (Exploration, Development and Production) Act 2013**, the plaintiff is entitled to compensation from the defendant for use of the said land. That the defendant without any justification, refused to compensate the plaintiff.

- [5] The 1st defendant/1st Appellant in their written statement of defence denied the plaintiff's allegations and contended that before the defendant constructed both the Taitai oil well site and an access road to the Taitai well site, it carried out due diligence with the guidance of the Buliisa District authorities to ascertain the rightful owners of the land on which the said access road is situate and it was discovered that the ownership of the property on which the Taitai access road is situate was contested by the Booma Community Association which claimed that the area was communal land or customary land. Suffice to however say, it was the defendant that had requested the plaintiff for permission to construct the said access road.
- [6] Subsequently, the 1st defendant filed **Misc. Application No.31/2017** interpleader application including the 2nd - 45th Appellants for court to determine the owner of the suit land. The Application was determined in favour of the Applicant as the rightful owner of the suit land. The Respondents were aggrieved by the ruling and they applied to court for Revision. The High court heard the Revision application and ordered for the re-hearing of the interpleader.
- [7] Upon the re-hearing of the interpleader application by the present trial Chief Magistrate, the same was found to be proper for interpleader and the matter was set for hearing on the following issues;
- 1. Who of the parties is the rightful owner of the suit land and therefore entitled to rental proceeds from the 1st defendant, Tullow (U) Operations Pty Ltd.**
 - 2. Whether the defendants were trespassers.**
 - 3. What remedies were available to the parties.**
- [8] The trial Chief Magistrate on his part, upon consideration inter alia, of the following documents here below, he found that the land on which Tullow Oil established a road of access was property of the plaintiff. That he acquired it legally and legitimately in accordance with the law on land acquisition. The relevant documents he considered were;
- 1. The Land Inspection Report by the Area Land Committee of Biiso Sub county where the land in dispute is situate and was attended by the L.C1 Chairman of Booma L.C1 where the land is situate.**
 - 2. A letter by the Chief Administrative Officer Buliisa District to the Masindi District Land Board recommending the plaintiff to process title to the land.**

3. A letter by the Secretary Masindi District Land Board recommending the land to the District surveyor for survey.
4. A request to the plaintiff by the Sub county Chief of Biiso Sub County for 50 acres of the land for construction of a Health Unit.
5. A request addressed to the plaintiff by Tullow Oil for permission to construct a road for access to the River crossing from Butiaba main road on the land in dispute.

[9] The 2nd - 45th defendants/Appellants were dissatisfied with the decision of the trial Chief Magistrate and filed the present appeal on the following grounds of appeal.

1. *The trial magistrate erred in law and fact when he relied upon presumptions and extraneous matters to conclude that the Suitland was vacant public land at the time the respondent applied to acquire it.*
2. *The learned trial magistrate erred in law and fact when he disregarded/ignored the Appellant's evidence of non-availability of Buliisa district land board minutes that the suit land had been allocated to the respondent and reached a decision that the Suitland had been allocated to the respondent by Buliisa district land board.*
3. *The learned trial magistrate erred in law and fact when he relied upon an alleged approval and recommendation of the chief administrative officer Buliisa to conclude that the Suitland belonged to the respondent.*
4. *The learned trial magistrate erred in law and fact when in absence of any evidence in proof concluded that the sub county area land committee of Buliisa had recommended the respondent to acquire the Suitland.*
5. *The trial magistrate erred in law and fact when he decided that the Suitland is owned by the respondent who had failed to disclose the nature of interests he had in the suit land.*
6. *The learned trial magistrate erred in law and fact when he praised the respondent's fraudulent and unethical behavior of attempting to procure registered interest in the suit land in order to defeat the respondent's unregistered interest in the Suitland as being sharp and not amounting to illegality.*
7. *The trial magistrate erred in law and fact when after finding that the respondent's fore fathers were in occupation of the suit as way back in the 1980's and carried out cotton growing on the Suitland*

under their cooperative society rushed without any proof to conclude that they left and abandoned their interests in the Suitland.

8. *The learned trial magistrate erred in law and fact when after finding that the appellants were grazing on the suit land concluded that the appellants had no interests in the Suitland and had never occupied the Suitland.*
9. *The trial magistrate erred in law when he disregarded the appellants' evidence in proof of their customary communal ownership interest in the Suitland.*
10. *The trial magistrate erred in law when he disregarded/ignored the appellants' evidence in proof of their possession of the Suitland.*
11. *The trial magistrate erred in law and fact when he failed to evaluate evidence on record in totality hence arriving at a wrong decision.*
12. *The trial Chief Magistrate's decision occasioned a miscarriage of justice.*

The Duty of the 1st Appellate Court

- [10] As rightly submitted by counsel for the Appellants, this court as the 1st Appellate court is under duty to take into consideration the evidence as a whole and to evaluate all the material evidence on issues that have to be determined; **Wepukhulu Nyunguli Vs Uganda, S.C.Crim. Appeal No.21 of 2011**. See also the case of **Tibarumu Vs Bangumya [1975] E.AC.A 1** where it was held;

“Whereas it is the duty of the first appeal court to make its own findings and arrive at its own conclusions from the evidence on record, it is also the duty of such appeal court to attach the greatest weight to the opinion of the trial Magistrate who saw the witnesses. An appeal court will not substitute its own opinion for that of the trial court and a judgment of facts will be upheld unless it is satisfactorily shown to be unsound or contrary to the weight of the evidence on record.”

See also **Okeno Vs R [1972] E.A 32** and **Watt Vs Thomas (1947)2 All ER 584**.

Consideration of the grounds of appeal

- [11] Counsel for the Appellants opted to argue, and correctly so, all grounds together as one ground because they all revolve around how the trial Chief Magistrate evaluated the entire evidence before him. Counsel for

the Respondent however raised a preliminary point of law which this court is mandated to resolve first and it is as follows:

Preliminary point of law

[12] That with exceptions of grounds **9, 10, 11** and **12**, the other grounds of appeal raised by the Appellants are defective for they are in violation of **O.43 r.1 (2) CPR** as they are not concise, are argumentative and narrative and therefore ought to be struck off.

[13] **O.43 r.1 (2) CPR** provides thus;

“The memorandum shall set forth; concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative, and the grounds shall be numbered consecutively.”

The **Black’s Law Dictionary, 8th edition** at page **1191** defines an argumentative pleading as;

“a pleading that states allegations rather than facts and thus forces the court to infer or hunt for supporting facts.”

[14] It was held in **Nyero Jema Vs Olweny & Ors H.C.C.M.A No.50/2018 [2020] UGHC 161** thus:

“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.”

[15] I have perused the impugned grounds of appeal, I find that they set out the decisions which the Appellants believed occasioned a miscarriage of justice. The grounds pointed out errors observed including the decision which the Appellants believe occasioned a miscarriage of justice.

[16] Besides, it is apparent that what the Respondent is complaining about as regards the grounds of appeal, is a mere matter of form rather than substance. In the premises, by virtue of **Article 126(2)(6) of the Constitution** I am bound to proceed and rehear the case by subjecting the evidence to a fresh and exhaustive scrutiny and re-appraisal as required of a 1st appellate court; **Wepukhulu Nyunguli Vs Uganda (supra)** and **Fr. Narsensio Begumisa Vs Eric Tibebaga, SCCA No. 17/2000**.

[17] In the premises, I find the preliminary objection devoid of any merit and I accordingly overrule it.

Grounds of Appeal: Evaluation of evidence

[18] The main issue for consideration in the lower court was;

Who of the parties was the rightful owner of the suit land and therefore entitled to rental proceeds from the 1st defendant, Tullow (U) Operations pty ltd.

[19] In his bid to prove his case, the plaintiff adduced the following evidence; that he is the lawful owner of the suit land having applied for it from the Area Land Committee which in turn inspected the land and accordingly issued a report upon which the District Land Board granted him the land. A certain number of families applied and claimed to had interests in the suit land but the plaintiff compensated them and they left the land.

[20] The area Land Committee report (**P.Exh.2**) in favour of the plaintiff was followed by a recommendation letter from the Chief Administrative Officer Buliisa, addressed to the Secretary District Land Board for titling of the plaintiff's land (**P.Exh.7**). The Secretary District Land Board also directed the District surveyor to survey the land in question in favour of the plaintiff. The plaintiff paid all the relevant fees for acquisition of the land.

[21] **Rugongeza Hannington** (PW2), the Gombolora Internal Security Officer is the one who spear headed the claimants (the 9 families) for compensation from the plaintiff who had developed interest in the suit land. The claimants had abandoned the land but returned upon getting information that the plaintiff had applied for the land (probably upon hearing of the exploration of oil issues). They came up because they had ever lived on the land and the plaintiff paid them compensation.

[22] The defendants/Appellants on the other hand led evidence generally i.e, **Asiimwe William** (DW1) and **Bazaare Amos** (DW2) that the land in dispute is communal/customary land occupied by various clans including **Basimu, Bakana, Basanshya/Bayaga, Bamoli, Balokoli, Batyanga, Bakibiru, Basingo** and others who used the land for cultivation but later used it for grazing of their animals. That the plaintiff/Respondent attempted to make a request for land but he has never been allocated the disputed land by the authorities responsible for allocation. That the plaintiff/Respondent is of the Bakindwa clan and has never been invited on the land. That the land belongs to the

Basonga clan and it takes its name from the Basonga-Butiaba clan and the land in Butiaba.

- [23] Lastly, that as occupants and users of the land, the Appellants formed themselves into a communal Land Association called **Booma Farmers Communal Land Association** which they registered in 2018. That it was formed after the threats to have their communal land taken. It helped them stop the plaintiff from realizing his title of the land in dispute.
- [24] All in all, it is apparent from the foregoing that the Appellants' claim of the disputed land is based on occupation by way of communal use of the land for grazing purposes. Otherwise, no evidence was led by the Appellants that they were born, raised and are still living and deriving their livelihood from the suit land as submitted by their counsel.

Proceedings at locus

- [25] The plaintiff/Respondent described his land as starting from the junction of the road to the lake (Butiaba) boarded by the road to Waki River up to Junjubaire stream and the Airstrip. He allowed the 1st defendant Tullow to construct the access road. The suit land comprises of his buildings and a church, kiosk put up with his permission. Then settlement of the people who were evicted from the barracks and displaced by floods established with his permission. The settlers are grazing their cattle on the land in dispute.
- [26] Nothing was on the other hand disclosed at locus by the Appellants to prove their claims of ownership and or occupation of the suit land. Ordinarily, the usual evidence of being born and raised on land include graves of ancestral and descendants, homesteads, traditional and perennial food crops/trees e.g mitooma, palm, ovacado, jack fruit, pawpaw and cactus as a sign of Kraals of cattle that existed and probably wells for watering animals and or as source of water for domestic use. None of these were located on the suit land by any of the Appellants during locus visit by court.

Appellants' representative claim and status

- [27] The Appellants testified that they are members of Booma village who registered themselves under **Booma Farmers Communal Land Association** and **Butiaba Livestock Farmers Association (BULIFA)** of various clans that claim ownership of the suit land. According to **Ndakimanya Deo (DW3)**, these Associations are registered, in fact,

BULIFA is the registered proprietor of land described as **FRV HQT 87 Folio 19 Block (Road) 4 plot 9 at Booma**. There is no evidence that this land forms part of the disputed land.

- [28] The pleadings however disclose a total of 45 Appellants/defendants who include deceased persons; **Kabahumbura Goreti** (14th defendant), **Balamu Keeye** (16th defendant) and **Night Alice** (30th defendant). The 45th defendant is **“Others of the Booma Community yet to be established”**
- [29] It is settled law that a suit cannot be sustained against a dead person. **Batemula Vs Anywa (19977) HCB 77, Zainabu Binti Rekwa [1964] EA 24** and **Patrick Vs Mpwekwe (1964) EA 24**. It follows therefore that the suit against the 14th, 16th, and 30th defendants is a nullity. It should however be noted that these deceased defendants were joined or added to the suit by the 1st defendant. The trial Magistrate ought to have struck them off of the pleadings. The above notwithstanding, I do note that **O.24 r.2 CPR** permits the action to survive against the surviving defendant(s).
- [30] As regards the 45th defendant, it is my view that **“others of the Booma Community yet to be established”** is a **non entity**. It is trite that for an entity to sue or be sued it must possess the legal capacity to do as a suit by or behalf of or against a non-existent entity is a nullity and so is any decision arising there from; **Chemonges Khamis & Anor Vs Kapchorwa Referral Hospital HCCS No.27 of 2012[2015] UGHCLD 10**. Again, it is my view that the trial Magistrate ought to have struck out the 45th defendant as being a non entity with costs against the 1st defendant.
- [31] Lastly, the fact that the remaining defendants purport to represent various claims under Booma Farmers Communal Land Association and Butiaba Livestock Farmers Association, there should be proof that the defence was brought under a power of Attorney or proof of a Representative order (**O.1 r.8**) as evidence that the stated various clans or Association Members have a claim over the suit land and therefore consented to the defence action. That required proof is lacking.
- [32] I find the Appellants’ defence a disguised representative defence action with no leave of court as required by **O.18 CPR** and therefore is untenable, See also **Paul Kanyima Vs Rugooru [1982] HCB 33**.

Respondent's ownership of land

[33] The Respondent/plaintiff **Francis Kaahwa** testified that he applied for the suit land. The said Application was acknowledged by the Area Land Committee and accordingly made a report dated 9/5/2007 (**P.Exh.1&2**).

[34] There is evidence that the land was subsequently allocated to the plaintiff by the District Land Board as per the Chief Administrative Officer's communication to the Secretary District Land Board who in turn instructed the District surveyor to survey the land for the Board's approval (**P.Exh.8**). Her letter was to this effect:

"The following applications for freehold were recommended for surveying in the Board meeting held on 20th/12/2006 and 30th /11/2006. Could you please carry out the exercise and forward survey reports for final approval."

Name, 1. Kaahwa Francis, **Application No.** 8525, Area; 700 ha, **Location**; Boomal Katete, Butiaba.

[35] Under **S.59 (1) (a) of the Land Act**, the District Land Board is empowered inter alia, to hold and allocate land in the district which is not owned by any person or authority. The Respondent would not therefore be responsible for any omissions and or procedural errors if any, done by the District Land Board during allocation of land to him. It is therefore not correct as counsel for the Appellants submitted that the Respondent was allocated land through mere correspondences. The Secretary Land Board referred to meetings dated **20/12/2006** and **31/11/2006** in which the plaintiff was offered 700 ha of land at Booma 1, Katete, Butiaba as proof to the contrary claims of the Appellants.

[36] On the other hand, the Appellants offered nothing as evidence of their claims. Communal land ownership is characterized inter alia, by exclusive use and occupation by the community. Occupation has to be proved by evidence. Under **S.15 (1) of the Land Act**, an association may be formed for the "communal ownership and management" of land. There must however be evidence linking the association to the land in question. As conceded by **Asimwe William** (DW2) during cross examination, though the Appellants/defendants claim to be under Booma Farmers Communal Land Association, they did not have a certificate of communal ownership of land or any other evidence linking them to the land in dispute.

- [37] The trial Chief Magistrate on his part found that the plaintiff/Respondent permitted and was paid compensation for the creation of the access road on the suit land by Tullow Oil (1st defendant), see **P.Exh.16** and that if there had been occupants on the land, they would have been visible to Tullow Oil and therefore, Tullow Oil would not have gone to approach Buliisa District authorities as to the status of the land. Lastly, that the Report of the Area Land Committee authored in May 2007 revealed that the suit land was not occupied by the Appellants. Besides, as per **P.Exh.15** in 2007, the Sub county Chief Biiso wrote to the plaintiff/Respondent requesting him for 50 acres to construct a Health Centre.
- [38] The totality of the foregoing was and is proof of recognition of the plaintiff/Respondent as the rightful owner of the suit land. The Appellants' claim that they were using the land for grazing is in the first instance not supported by any evidence and even if it were as rightly found by the learned trial chief magistrate, mere grazing on land without more cannot confer a person ownership of that land.
- [39] In the premises, I do not have any reasons to depart from the findings of the trial Chief Magistrate. He considered the evidence before him and I am duty bound to up hold his judgment of facts unless it is satisfactorily shown to be unsound or contrary to the weight of the evidence on record; **Okeno Vs R (supra)**.
- [40] In conclusion, I find the evidence on record favoured the plaintiff/Respondent's case. He discharged his burden of proving his case on the balance of probabilities; **Miller Vs Minister of Pensions [1947] 2 All ER 372**. As a result, I find this appeal devoid of any merit. I uphold the trial Magistrate's decision and orders. The Appeal is accordingly dismissed with costs.

Signed, dated and delivered at Masindi this 20th day of **October, 2022**.

Byaruhanga Jesse Ruggyema
JUDGE.