The Republic of Uganda

In the High Court of Uganda at Soroti

Civil Appeal No. 0039 of 2023

(Arising from Soroti Chief Magistrates Court Civil Suit No. 074 of 2015)

Aenu Joseph :: Appellant

Versus

Otuba Levi :: Respondent

(An Appeal from the judgement and orders of the Chief Magistrates of Soroti at Soroti delivered on the 26th day of November 2019 by His Worship Watyekere George Wakubona)

Before: Hon Justice Dr Henry Peter Adonyo

Judgement on Appeal

1. Introduction:

This appeal arises from the judgement and orders of the Chief Magistrates of Soroti at Soroti delivered on the 26th day of November 2019 by His Worship Watyekere George Wakubona.

2. Background:

The appellant filed Civil Suit 074 of 2015 against the respondent for recovery of two gardens situated at Omagoro village, Dacar Parish, Asuret Sub county in Soroti District.

The Appellant's claim is that he enjoyed quiet ownership of the suit land he which he had bought from one Angwedo Norah on the 19th of December 2011 and that the respondent was aware of his purchase and was present during the planting of boundary marks on the suit land.

That in August 2012 the respondent trespassed on the Appellant's land by way of clearing the suit land, cultivating it and uprooting the boundary marks.

The respondent denied the allegations of the appellant contending that the transaction between the appellant and Angwedo, if any, was a nullity since the said land belonged to him and that he had never given anyone, including Angwedo Norah the authority to dispose of it by way of sale or otherwise.

The respondent further averred that the alleged transaction which he witnessed was in respect to totally different land which was distinct from the 2 gardens which are the subject to the instant dispute but the appellant was using the said agreement to fraudulently claim ownership over his land which he lawfully acquired way back in 1983 from one Otaala Penekasi.

The respondent counter-claimed against the appellant and Angwedo Norah for a declaration that the land described as 2 gardens located in Omagor II village, Adachali Parish, Asuret Sub-county Soroti District belongs to him and the appellant was not entitled to enter or remain upon the same.

He further sought for a declaration that the purported sale of the suit land by the 2nd counter defendant to the appellant was null and void for want of title, trespass, a permanent injunction, general damages and costs of the suit.

The respondent per his counter-claim contended that in 1983 he purchased 2 acres locally known as gardens from the late Otaala Penekasi located at Omagor 2 village, Adachali Parish, Asuret Sub-county Soroti District in the presence of the 2nd counter-defendant who is a widow to the late Otaala.

That upon the purchase of his 2 gardens he took possession of the same and has been using it for occupation and cultivation of food crops without and inconvenience. But that in 2012 the appellant started to interfere with his peaceful possession of the suit land claiming to have purchased the same from the Angwedo Norah.

The trial magistrate having heard the matter determined the suit in favour of the respondent with the following orders;

a. The counter-claimant is declared the rightful owner of the suit land.
b. The defendant to the counter-claim is declared a trespasser to the suit land.
c. A permanent injunction is hereby granted barring the defendant to the counter-claim and his agents from interfering with the counter-claimant's quiet enjoyment of the suit land.
d. General damages of Ug. Shs. 8,000,000/= is awarded to the counter-claimant.
e. The counter-claimant is awarded costs of the counter-claim.

The appellant being dissatisfied with the judgement and orders of the trial magistrate appealed to this court on three grounds, namely;

a) That the learned trial magistrate erred in law and fact when he failed to adequately evaluate and scrutinize all the evidence on record as a whole thereby reaching a wrong conclusion that the suit land belongs to the respondent.
b) That the learned trial magistrate erred in law and fact when he failed to consider the inconsistencies and contradictions in the respondent's evidence thereby reaching a wrong conclusion.
c) That the learned trial magistrate erred in law and fact when he failed to exercise his discretion judiciously when he awarded the respondent

general damages of Uganda shillings eight million (8,000,000/=) which is manifestly harsh and excessive in the circumstances.

3. Duty of the 1st appellate court:

The duty of the first appellate court was well stated by the Supreme Court of Uganda in its landmark decision of ***Kifamunte Henry Vs Uganda, SC, (Cr) Appeal No. 10 of 2007*** where it held that;

> ***"...the first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate Court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it"***

This court is the first appellate court in respect of the dispute between the parties herein and is obligated to re-hear the case which was before the lower trial court by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and to re-appraise the same before coming to its own conclusion as was held in ***Father Nanensio Begumisa and Three Others v. Eric Tiberaga SCCA 17 of 2000; [2004] KALR 236.***

In rehearing afresh, a case which was before a lower trial court, this appellate court is required to make due allowance for the fact that it has neither seen nor heard the witnesses and where it finds conflicting evidence, then it must weigh such evidence accordingly, draw its inferences and make its own conclusions. ***See: Lovinsa Nakya vs. Nsibambi [1980] HCB 81.***

In considering this appeal, the above legal provisions are taken into account.

4. Representation:

In this appeal, the appellant was represented by M/s Ssetimba & Company Advocates while the respondent was represented by M/s Natala & Co. Advocates. This matter proceeded by way of written submissions which I will consider in the determination of this matter.

5. Determination:

a. Ground 1:

That the learned trial magistrate erred in law and fact when he failed to adequately evaluate and scrutinize all the evidence on record as a whole thereby reaching a wrong conclusion that the suit land belongs to the respondent.

Counsel for the appellant submitted that the trial magistrate in his judgement concludes erroneously that since the plaintiff does not mention the defendant as his neighbour, then the land which was being claimed by the appellant was not the land in dispute. Counsel submits that they disagree with this finding.

He submitted that the appellant clearly in his evidence stated that the defendant was not a neighbor on the suit land and that this fact was corroborated by PW2 Oula and PW3 Angwedo.

Counsel further submitted that PW3 Angwedo Norah who sold the suit land to the appellant did not only have the suit land but sold it to the appellant which fact the trial Magistrate ignored.

That PW3 testified in court that she sold her land not only to the appellant but to Atino Irene and that the demarcation points for each of the parcel of land had different neighbours which evidence the trial Court overlooked.

Counsel added that the trial Court did not establish whether the suit land was in the middle, on the end or at the start of the parcel that Angwedo Norah had before she disposed of the land in smaller pieces.

Counsel additionally submitted that Court further relied on the document that contained the demarcation when Angwedo Norah was giving land to Atino, which document was not exhibited in court and that it is clear from the record that this document related to the parcel that was given to Atino and not specifically the suit land.

Counsel further submitted that Court further overlooked the fact that the respondent was not staying on the suit land and that the land sold to the respondent was distinct from the suit land

Counsel further submitted that Court faulted the appellant's testimony for presenting the fact that he had six and a half gardens and not five and a half gardens, yet it reached the deduction of the five and a half gardens based on a document which was not exhibited but only identified. That this deduction left a lot to be desired as Court did not make its own independent findings on the same even if it had all the time and space to do so.

Counsel added that it was public knowledge that land in Teso sub region was generally held under customary land tenure and were classified as gardens which did not have any standard measurements as, for example, sometimes a parcel equivalent to an acre is called one garden, other times such a parcel could contain two, three or more gardens.

It was thus on those premises that counsel submitted that the Court's finding on the gardens Angwedo Norah had is not supported by any law, fact or circumstance.

Counsel further submitted that the defendant's claim that he bought the suit land from the husband of PW3 Angwedo Norah was not supported by any evidence on record whereas the plaintiff presented his sale agreement which was admitted on record and was marked PEx1.

That apart from the statement of the respondent that his sale agreement in respect of the suit land got burnt, nothing else proved his assertions that indeed he owned the same and it should be noted that DW2 who made similar statements was a step daughter to PW3 who was the vendor of the suit land to the plaintiff who even took PW3 to LC.2 Court over land.

Counsel for the respondents in reply submitted that the trial magistrate rightly noted that whereas the appellant informed court that Angwedo Norah gave him two and a half gardens and subsequently sold him two other gardens, and he named the neighbours to the suit land he bought, the respondent was not one of them yet the evidence on record states otherwise.

That furthermore at locus the trial magistrate found that the respondent was indeed a neighbour to the suit land and as such the trial magistrate was right to find that the land the appellant bought from Angwedo Norah, if any, is not the one in dispute since the disputed land clearly neighbours the respondent.

Regarding the size of the suit land, counsel for the respondent submitted that the appellant is misleading court with an argument that land in Teso sub region does not have standard measurements and as such court's finding on the gardens Angwedo Norah had was not supported by law or fact.

Counsel submitted that in the instant case the land in issue was measured at the time Angwedo Norah was giving her land to her step daughter Atino and even the witnesses of the Appellant testified in court about the size of the suit land.

That given the evidence on record it was clear that Angwedo Norah gave Atino one and a half gardens and thereafter remained with three and a half

and so if the appellant was given two and a half gardens the balance could never be two gardens and as such the appellant did not purchase two gardens from Angwedo Norah as alleged.

In reply to the appellant's claim that the respondent did not adduce any evidence to support his claim that he bought the suit land from PW3's husband, counsel for the respondent submitted that the respondent clearly informed court that he bought the suit land from Penekasi Otaala and the transaction was documented but that unfortunately the said agreement was burnt on the 4/10/1989 by the rebels.

Counsel prayed court takes judicial notice of the insurgency that befell Teso around 1989. Counsel added that the respondent testified that Angwedo and Atino were present during the transaction and even signed on the agreement and this testimony was corroborated by Atino herself while testifying as DW2 as well as DW3 who were present during the transaction where the respondent purchased the suit land for one bull and 150,000/= in 1983.

Counsel further submitted that Angwedo (PW3) acknowledges in her evidence that her late husband Otaala Fenekasi sold land in 1983 and she was present although she attempts to state that the land was sold to Ojakol and not the respondent, however, in cross-examination she stated that the respondent is using the land her husband sold to Ojakol which is a sign of lies because under what circumstances would the respondent be using land Ojakol bought if not the fact that it is the respondent himself who bought the land.

He further noted that it was PW4's testimony that the dispute arose after the transaction between Angwedo Norah and the appellant which means

before this alleged transaction Angwedo Norah was content that the land is for the Respondent.

Counsel for the respondent finally submitted that the respondent clearly satisfied court that he was the lawful owner of the suit land, having purchased the same in 1983 from Otaala Penekasi and had been utilising it since then peacefully not until 2011 when the appellant purported to have purchased the same from one Angwedo.

b. Court's analysis and Decision:

The main areas raised by the appellant in this ground are the neighbours to the suit land, its size and the proof of purchase by the respondent. I will focus my analysis on only these three points.

i. Size of the land owned by Angwedo:

The appellant in his testimony during cross-examination stated that when he was caretaker of Angwedo's land he was caretaking 6 gardens, Atino Irene was given 1½ gardens on the 30/06/2011, he was given 2½ and he purchased 2 gardens on the 19/12/2011. He further stated that the day Atino was given her share of the land the LC 2 Committee moved around the land and sub-divided it.

He continued to state that did not know the size of the garden but Angwedo Norah and Atino Irene knew the size of his uncle's land. He was shown the L.C judgement between Angwedo Norah and Atino Irene and the document indicated that after Atino Irene had been given her 1½ gardens Angwedo Norah only remained with 3½ gardens.

He claimed that the court had not measured but that is how it had written and he could not object. He further admitted that counsel for the respondent was not wrong if she said that according to earlier

measurements the land was 3½ gardens. He did not bother with measurements because the land belonged to his uncle.

In re-examination he stated that the L.C Court moved around the whole land and they were using paces to ascertain the size of the land.

PW2 Oula Isaac in cross-examination corroborated the appellant's testimony when he stated that in the meeting that took place on the 24/10/2011 where the appellant was given authority they established that Angwedo had 6 gardens, he was given 2½ gardens and he bought 2 while Atino got 1½ making a total of 6 gardens.

He further admitted that it could be true that the LC Committee discovered that there were only 3½ gardens because he did not measure those gardens. He stated that it is possible the widow was left with only 2 gardens out of the 3½.

PW3 Angwedo also stated that she gave the appellant 2½ gardens and sold him 2 gardens with the remaining 1½ was given to Atino her daughter.

PW4 corroborated PW3's evidence in this respect adding that the day she sold land to the appellant they did not mark out the gardens because the LC2 Chairman had already marked them.

PW5 Eriamu Daniel, the secretary of mass mobilisation, education and information of Adachar parish (LC2) testified that when they (Court) gave Irene her 1½ gardens they planted boundaries which separated Angwedo's land from the respondent's land. During cross-examination he stated that Angwedo remained with 3½ gardens and it will be lies if they say she remained with 4½ gardens because they counted and she remained with 3½.

DW3 Emeju Johnson testified that when they sat with the LC2 Atino was given 1½ gardens and Angwedo Norah 3½ and that those were the 5 gardens that Otaala had remained with.

The trial magistrate in his judgement rightfully noted that the question of the size of the land belonging to Angwedo Norah is very essential to this case because while the appellant claimed they were six gardens the LC2 committee found that they were five meaning after she gave Atino her 1½ gardens and the appellant 2½ gardens she remained with only one garden and that is what was sold to the appellant, not two as he alleges.

The trial magistrate also rightfully noted that the appellant never measured the land since he relied on the demarcations that had been made earlier by the LC Committee.

In fact, I note that this is the testimony of all his witnesses when the LC committee went to allocate Atino her share of the land they moved around all Angwedo's land and demarcated the same and it is these demarcations that were relied upon when the appellant was allocated land and it is for this reason that the trial magistrate relied on map drawn by the LC Committee which had been marked as PID1.

Counsel for the appellant fault the trial magistrate for relying on PID1 in his judgement.

It has been held that identified documents hold no evidential value and as such I will not rely on it.

However, I find that the evidence of PW5 Eriamu who was part of the LC committee that moved around the land is sufficient to prove that the committee moved around all of Angwedo's land and demarcated the same before allocating Atino her portion.

PW5 further lists the neighbours to the land as revealed by the committee to include Otuba the respondent to the west.

DW2 Atino Irene who was being allocated land that day corroborates PW5's testimony when she states that her mother gave her land through the L.C committee and there was a boundary separating her mother's land from Otuba's and in re-examination she stated that when the LC came to the land and drew the map it was about her case and Angwedo, the court came to give her portion and show Angwedo what belongs to her and what belongs to Otuba.

This piece of evidence shows that the LC Court clearly demarcated Angwedo's land and identified all her neighbours an exercise that no one raised an objection to as noted in the appellant's evidence.

Therefore, given that the appellant testified that he relied on the demarcations made by the LC Court when Angwedo Norah gave and sold him land, it thus follows that the demarcations and neighbours as noted by the LC Court applied to him and by his going beyond the boundaries already set by the LC he encroached on the respondent's land.

The trial magistrate further noted that the sale agreement between Angwedo Norah and the appellant did not bare the size of the land sold to him and this goes to show that the land sold to him was never ascertained in the first place.

It should be noted that from his testimony the appellant was not born or raised on the land, he only came there as Angwedo's caretaker after Otaala Penekasi, the husband of Angwedo had passed on.

For this reason, it follows that he had no proper knowledge on the boundaries of the late Otaala's land.

When the LC Committee moved around all of Angwedo's land before allocating a portion to Atino Irene, they passed through and demarcated all the rightful boundaries of the land and as stated by PW5 Eriamu the LC Court when moving around the land established its neighbours as the road going to Otoitoi in the east, Oula to the north, Arwode to the south and Otuba Levi to the west.

This fact is corroborated by DW2 Atino Irene who in her testimony stated that her mother (Angwedo Norah) gave her land through the LC and there was a boundary separating her mother's land from Otuba's land.

The respondent in his testimony admitted he was present during this exercise and he did not object because his land was not affected.

DW3 Emeju stated that the day the LC Committee came they went round the land of Penekasi Otaala with the clan and after moving around boundaries trees were planted for Atino Irene and Angwedo Norah, separate from Otuba's land and those trees were in the middle separating Norah and Otuba's land.

I thus find that the trial magistrate was right when in his judgement he found that the appellant did not lead evidence to satisfy court that he is the owner of two gardens claimed in the suit since the person he bought from did not have the two gardens available for sale.

I further find that the issue between the appellant and the respondent is a question of boundary and not two gardens as alleged. This is because PW2 Oula Isaac in his testimony stated that the dispute is about a boundary issue and not over a garden with even PW4 Egadu Musa stating that Otuba crossed the boundary and entered the land Aenu bought, PW5 Eriamu further stated that it was Otuba who had crossed to Angwedo's side and

the respondent also stated in re-examination that the problem between him and Angwedo is about a boundary.

It is worth noting that during the period the widow (Angwedo) used the land there was no dispute as testified by PW2 Oula Isaac and PW4 Egadu Musa. DW1 the respondent also stated that problems started when the appellant began using Penekasi's land.

DW2 Atino also stated that ever since the respondent bought his land Angwedo has never had a problem with him.

I thus find that the appellant being unaware of the true boundaries of the late Penekasi's land given to him by Angwedo is claiming more than what he is entitled to and that is why the dispute began after he entered the land, Penekasi and Angwedo were fully aware of their boundaries with their neighbours including the respondent and that is why there was no dispute during their occupation of the land.

The appellant did not lead sufficient evidence to show that he owned the land he claimed for or that it existed in the first place, he however managed to prove that he was never aware of the extent of Angwedo's land and he did not make any measurements when the same was given and sold to him, the agreement he tendered in evidence did not show the size or boundaries of the land sold to him. Thus on a balance of probabilities he failed to prove that he owned the land he was claiming for.

The respondent on the other gave clear testimony on how he came to own his land, that is, in 1983 he bought two gardens from Otaala Penekasi for the consideration of one bull that was brown and white as well as Ug. Shs. 150,000.

He testified that this transaction was documented unfortunately the agreement was burnt by rebels on 4/10/1989, however, he named the

witnesses to the agreement that he remembered including PW3 Angwedo, DW2 Atino and DW3 Emeju Johnson.

DW2 and DW3 all corroborated his testimony regarding the purchase of the suit land down the details of the consideration paid; Atino stated that he bought the land from her father when she was present, an agreement was made and she wrote her name and put her thumbprint on it.

That after purchasing it her started cultivating, she further stated that after these purchase, boundaries were marked.

DW3 also stated that he was present during the sale as a clan member and the land was demarcated with *edetai epapai* and *epopong* trees.

The appellant tried to deny the existence of this sale when in his testimony he stated that the respondent is not a neighbour to the suit land, he claims his uncle bought the suit land and he was given the same to care take.

In cross-examination he stated that Angwedo Norah never told him that the respondent bought part of her husband's land she told him it was another person. He further claimed that during the time when the LC 2 Committee moved around Angwedo's land and sub-divided it the respondent told him that his uncle's land was also there amongst the gardens of Mzee Otaala, however, he did not mention the size but Angwedo and Atino knew the size of the respondent's uncle's land which land was bordering the land being subdivided.

DW2 Oula also stated that Penekasi did not sell any land to the respondent, that the land was bought by his uncle Oucho which Oucho he claims is the immediate neighbour to the land on the side where the dispute is.

PW3 Angwedo Norah testified that her husband Penekasi sold land to Ojakol but not the respondent who she hears the respondent is related to.

In cross-examination she stated that the land sold to Ojakol is currently

being used by the respondent and this is the land that the respondent is using which is the same one the appellant is claiming, the same one she sold to Aenu, the appellant.

In re-examination she changed her testimony and stated that the land sold to Ojakol is not the one the appellant is claiming for.

PW4 Egadu claimed Penekasi was his father and told court that his father never sold any land to the respondent and there was a man called Oucho was using the respondent's land before the respondent acquired all. During cross-examination he stated that Penekasi was not his father but uncle and he was not present when Penekasi sold land to Oucho that he just hears that there was a relationship between Oucho and the respondent. He then adds that he is the one using the land which Oucho bought from Penekasi which land is different from the suit land and it was not affected by the demarcation.

From the appellant's evidence as well as those of his witnesses, one can tell that there was an attempt to refute the respondent's claim that he bought land from Penekasi in person. They try to introduce Oucho as an uncle to the respondent who bought land and later gave the same to the respondent, however, none of them were present during the alleged transaction between Oucho and Penekasi and merely relied on hearsay.

PW3 Angwedo, who the respondent and his witness testifies to, was present when her husband Penekasi sold the land to the respondent, claimed the transaction was between her husband and Ojakol, not the respondent but told court that she hears they are related.

While she tried to evade the purchase by the respondent, the appellant in his testimony proved she was aware of the respondent's interest in the land when he stated that the respondent is using that portion of land which

is his which Angwedo and Irene know about. This portion as testified by Atino was the one sold to the respondent by her father Penekasi.

While the appellant and his witnesses were inconsistent on who Penekasi sold the land to, they all managed to claim that the purchaser was related to the respondent.

However, they all failed to lead any sufficient evidence the sale happened with any of those two people with none of the witnesses to the transaction named or invited as witnesses or even a proper account of the transaction given. The respondent in his testimony denied knowledge of any relative called Oucho.

I find that in their inconsistent testimonies, they managed to corroborate the respondent's testimony that he bought land from Penekasi which land he occupies and he is a direct neighbour to the suit land.

In fact, the appellant himself actually clarifies this matter when he stated that during the boundary demarcation of Angwedo and Irene's land the land claimed by the respondent was neighbouring the land being subdivided and PW4 corroborates the respondent's testimony when he stated that the land belonging to Oucho which the respondent is using was not affected by the demarcation.

The testimonies above just prove that the land bought by the respondent from Penekasi neighbours the land that was subdivided for Angwedo Norah and later sold to the appellant.

These two different pieces of land are separated by a boundary that was planted by the LC Committee without objection from either party and as such by the appellant claiming beyond this boundary would amount to an act of trespass.

ii. Neighbours to the suit land:

In his judgement the trial magistrate stated that at the close of the defence case the court was able to visit locus and made various observations including the fact that the respondent was a direct neighbour to the suit land which contradicted the appellant's testimony.

However, upon perusal of the lower court file I am unable to find any locus notes that were prepared during the *locus in quo* visit and as such I cannot re-evaluate the evidence given at locus which would enable me to determine the actual neighbours to the suit land.

I will therefore determine the issue of the neighbours to the suit land basing entirely on the evidence given in court.

The appellant testifying as PW1 stated that the neighbours to the suit land were Oula Isaac to the north, Olupot on the east and the appellant himself on the western part. He stated that the respondent was not a neighbour to the suit land.

PW2 Oula Isaac stated that he was a neighbour to the east, Olupot Robert to the south, Otim to the north and Emenyu to the west.

He added that there were rocks bordering this land and Oucho was the immediate neighbour to the suit land on the side where there is a dispute.

He also told court that the respondent's home was two kilometers from the suit land and maintained in cross-examination that Otuba was not a neighbour to the suit land though he later stated that the respondent was now a neighbour to the land because he was using Oucho's land.

PW5 stated the land is neighboured to the east by a road going to Otoitoi Centre, north is Oula, south Arwode and on the west is Otuba Levi, that Otuba and Angwedo's land was separated by *ejumula* trees.

The respondent testifying as DW1 stated that when he bought the suit land there was a boundary of a rock, trees and an anthill and on the east there were *'elekai'* trees and a big rock then a small rock and some big trees and that is the side that borders Angwedo.

During re-examination he stated that now there was a shrub separating his land from Angwedo's.

This issue of boundary and land ownership has already been dealt with in (i) above for in spite of the appellant and his witnesses attempting to remove the respondent as a neighbour to the suit land, they properly corroborate the respondent's claim that he is a direct neighbour to the suit land and as such I will not make further analysis on this question.

Consequently, considering all the evidence given by the parties and their witnesses, I find that the trial magistrate properly evaluated the evidence on record and came to a correct decision as the analysis above show and proves that the land owned by the appellant is distinct from the one owned by the respondent and that the boundaries to the appellant's land were properly demarcated without any objection from him previously.

Given that he derives the appellant his interest from Angwedo, the land he received from her by way of gift and purchase cannot exceed the actual size of her land as subdivided by the LC Committee on 30/06/2011.

Subsequently, this ground thus fails.

c. <u>Ground 2:</u>

That the learned trial magistrate erred in law and fact when he failed to consider the inconsistencies and contradictions in the respondent's evidence thereby reaching a wrong conclusion.

Counsel for the appellant submitted that in his testimony DW1 states that he counterclaimed and sued the plaintiff for trespass yet throughout his

examination in chief he continuously stated that the plaintiff and Angwedo –PW3 had done nothing on his land. Counsel added that the respondent contradicted himself when he denied being convicted of criminal trespass and removing boundary marks then later admits he was taken to prison. He further points out inconsistencies in the boundary shown at locus by the respondent and DW2 Atino.

Counsel for the respondent in reply submitted that the respondent and all his witnesses were consistent on their evidence concerning ownership of the suit land. Regarding the issue of trespass, counsel submitted that nothing else can describe the actions of the appellant deliberately interfering with the respondent's lawful possession of the suit land other than trespass.

d. Court's analysis:

The respondent in his counterclaim prayed for a declaration that the appellant was trespassing on his land. In his evidence he stated that he counter-claimed because the appellant and Angwedo trespassed on his land and even blocked the road going to his garden which road was passing on the boundary. He further stated that there is nothing they have done on his land so far.

The trial magistrate having found in his judgement that the suit land belonged to the respondent further found that the respondent could not be a trespasser on his own land. He also acknowledged the respondent's testimony that the appellant had not yet done anything on his land. However, he noted that the respondent's quiet possession of his land was interrupted by the appellant including his unlawful arrest and subsequent imprisonment.

Given that the boundaries to the appellant and respondent's land were clearly demarcated by the LC Committee in their presence without objection, any interference with the respondent's quiet possession of his land regardless of absence of physical activity on the land would amount to trespass and as such the trial magistrate rightly found that the appellant was a trespasser.

Regarding the respondent's arrest and imprisonment, there was no contradiction in his evidence. The respondent was consistent throughout his testimony that he did not remove any boundary marks as he told court that in 2013 he got summons from police that he had crossed the boundary and so he went to Asuret Police Post where they sat down and discussed the issue thereafter they were referred to CPS Soroti and he was brought to court on charges of removing boundary marks and criminal trespass. He was convicted and sentenced to two years, however, he appealed which resulted into his release and he was further advised to open a civil suit so that ownership of the land is determined.

Regarding evidence adduced during *locus in quo*, as noted above, the lower court record does not bare any locus notes or report and I cannot make any findings on evidence I have not seen. This ground accordingly fails.

e. Ground 3:

That the learned trial magistrate erred in law and fact when he failed to exercise his discretion judiciously when he awarded the respondent general damages of Uganda shillings eight million (8,000,000/=) which is manifestly harsh and excessive in the circumstances.

Counsel for the appellant submitted that it is trite law that damages are the direct probable consequence of the act complained of ***Stoms Vs Hutchinson [1905] AC, 515*** Per Lord Macnaghten, with such

consequences resulting to loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering.

In ***UCB Vs Kigozi [2002] EA 305*** it was held that damages may be awarded for inconveniences caused by a defendant and the plaintiff must have suffered to benefit.

Counsel added that from the evidence on record, the defendant does not stay on the suit land, neither is it his primary source of livelihood. It is not known then what formed the basis of the award of eight million as general damages to the defendant. Counsel prayed that this court sets aside the above sum as it is not justified.

In reply counsel for the respondent submitted that Article 126(2)(2) of the Constitution provides that adequate compensation shall be awarded to victims of wrongs.

Counsel further relied on ***Luzinda vs Ssekamatte & 3 Ors Civil Suit No. 366 of 2017*** where court observed that;

> ***"...as far as damages are concerned, it trite law that general damages are awarded at the discretion of court. Damages are awarded to compensate the aggrieved party fairly, for the inconveniences accrued as a result of the actions of the defendant. It is the duty of the claimant to plead and prove that there were damages, losses or injuries suffered as a result of the defendant's actions."***

Counsel submitted that the respondent in his counter-claim sued the appellant and Angwedo Norah for their conduct of interfering with his quiet possession of his land, to the extent of causing his malicious prosecution which prosecution resulted into his imprisonment and non-use of his land.

That all these circumstances were taken into consideration by the trial magistrate, who in his discretion, found it justifiable to award general damages of Ugx. 8,000,000/=.

The trial magistrate in his judgement agreed with the respondent's counsel that the appellant interfered with the respondent's quiet possession of the land and even had him arrested which caused him a lot of mental anguish for which he deserves compensation.

It is trite law that an appellate court will not interfere with an award of damages by a trial court unless the trial court has acted upon a wrong principle of law or that the amount is so high or so low as to make it an entirely an erroneous estimate of the damages to which the plaintiff is entitled.

Given the circumstances of these case where as noted above boundaries to the land were without objection demarcated in the presence of the parties, then the subsequent actions of the appellant in prosecuting the respondent and interfering with his peaceful use of the land cannot be taken lightly and even ignored by this court. It is clear to me that the act of the appellant against the respondent was motivated by malice and as such he must suffer the consequences of his evil mind, given the fact that he wanted more land than he had got and even went ahead to maliciously accuse the respondent for a crime which he had never committed and had him imprisoned for no good reason. I thus find that the trial magistrate correctly and in his discretion rightfully awarded general damages of Ugx. 8,000,000/= to the respondent taking into account the perilous circumstances which the appellant placed the respondent into and so I will not interfere with his discretion. This ground thus fails.

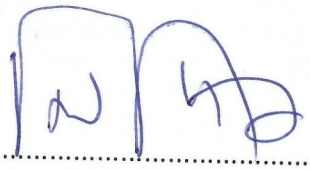
6. Conclusion:

Overall this appeal fails as it found to lack any merit and is accordingly dismissed with costs to the respondent.

7. Orders:

- This appeal fails for on all grounds.
- The judgement and orders of the lower court in Soroti Chief Magistrates Court Civil Suit No. 074 of 2015 are upheld.
- The Appellant is ordered to meet the cost of this appeal and in the lower trial court.

I so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

30th November 2023