

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

**HCT-04-CV-CA-0092-2011  
(ARISING OUT OF LAND CASE NO. 29/2010)**

**SAGULA SINAMBIO.....APPELLANT  
VERSUS  
WALYOMBOKO LAWRENCE.....RESPONDENT**

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

**JUDGMENT**

Appellant was dissatisfied with the decision of **Amono Monica** Magistrate Grade I Bubulo Court.

The memorandum of appeal raised four (4) grounds as below:

1. That the learned trial Magistrate erred in law when she held that the plaintiff is the rightful owner of the land.
2. That the learned trial Magistrate erred in law and in fact when she ordered a permanent injunction against the appellant/defendant and those claiming interest through him.
3. That the learned trial Magistrate erred in law and fact when she failed to properly evaluate the evidence on record.
4. That the learned trial Magistrate’s decision appears to have occasioned a miscarriage of justice.

Appellant prayed that as a first appellate, this court should examine the evidence on record and enter judgment in favour of appellant; with costs here and below.

The duty of a first appellate court is to review the evidence scrutinise it and make its own conclusions thereto subject to the fact that it has no chance to hear the witnesses and also to observe them.

I have gone through the record. The plaint shows that plaintiff's claim against the defendant was for vacant possession, injunction order and general damages plus costs of the suit. The plaintiff claims in paragraph 5 of the plaint that he bought the suit land from **Tadeo Etyanga** in 1981. An agreement was fully executed witnessed by **Daniel Ekisata, Y. Oddi and F. Webisa**. Plaintiff took occupation until 1982, when defendant's father sued in court at Bubutu court and case went against him; he appealed in Mbale court, but records got burnt at Bubutu Court, and the Mbale file records got lost.

Defendant in his written statement of defence denied the claims by plaintiff. The defendant claimed he grew up on that land with his family until 1995 when his father died. He was not aware of the Bubutu land case, and hence prayed that court should dismiss the claim with costs.

When the hearing commenced in the lower court evidence was led as follows.

**PW.1 Walyamboka Lawrence** said he bought the land from **Tadeo Etyanga**, who also bought from **Teremediyo Etyanga** who also bought it from **Frantino Oryama**, who inherited it from his father as a family share.

He bought it in 1981. He took possession 1 year then **Obonyo Alfred** encroached on it, the matter went to court of Bubutu Civil Suit 35/82, and court found in his favour. Defendant's father appealed but plaintiff left Uganda in 1989 and came back in 1994. Defendant's father died on the land while still pursuing the appeal. He was buried there, and defendant became the caretaker, that is why he sued him. His explanation was that the witnesses had since died and most court documents could not be returned but he tendered in an agreement dated 05.03.81.

**PW.1 Fabiano Webisa** 84 years and a neighbour testified and confirmed PW.1's testimony and she was shown to be PW.6 on the agreement.

In defence **DW.1 Sakula Sinambio** denied all that PW.1 states as lies and stated in 1992- their father distributed the land to his children. There has been no litigation thereon. DW.2 claimed that the land belongs to DW.1.

That was the evidence in court. On record however later that court visited locus 22/09/2011. Evidence was recorded from **PW.A-Natsawana** a neighbour said the land belongs to plaintiff who bought from **Tadeo Etyanga**.

**PW.B Masafu Charles** a neighbour stated he was a chief of the area from 1973-1992. He learnt that plaintiff bought from **Etyanga**. He told court **Obonyo** was son to **Sakula**. **Etyanga** bought from **Onyama** who was also son to **Sakula**.

**PW.C Masaba Patrick**, LC.II Chairman of Buwakoro Parish also heard that plaintiff bought the land from **Etyanga**.

**PW.D Etyanga John** said land belonged to **Obonyo** father of defendant.

**PW.E Albino Palimeri** claimed the land was for the clan and disputed land was for **Obonyo** father of defendant.

**PW.F Etyang Fastine** also stated that the land is for the clan and that defendant was in occupation.

In her judgment the trial Magistrate found that the disputed land belonged to the plaintiff and gave her reasons; majorly that plaintiff had earlier on won the same dispute over defendant's father in court. She also based on proceedings at the locus to find for plaintiff.

In his arguments the appellant argued all grounds together but concentrated on two areas.

1. That the trial Magistrate failed to consider the overwhelming evidence which showed that defendant was an occupant in succession of his father's title and was therefore protected.
2. That there was violation of section 5 of the Limitation Act barring the bringing of actions to recover land after the expiry of twelve years.

I have carefully considered the arguments above, case law cited and the reasoning of the trial Magistrate in her judgment.

I am of the opinion that the conclusion reached by the trial Magistrate in this case did not consider the above issues raised by appellant, yet they have a strong bearing to the final conclusions; in determining ownership. The witnesses who testified at the locus especially.

**PW.B Masafu Charles** who was a former chief shows that the disputed land belonged to a one **Sakula**, who was father to **Obonyo** (father of defendant), and also father of **Oryama** (who sold to **Etyanga**) who sold to plaintiff.

Clearly evidence at the locus on which the trial court based its decision, seemed to suggest that the disputed land had a bearing to ownership by inheritance, a fact which could explain defendant's occupation perhaps with closer examination of evidence, at locus.

There is therefore a lacuna in the trial court's blanket assertion that plaintiff proved all the case beyond doubt at the locus (see page 2). The issues of occupation by succession and operation of the law of limitation as brought out by appellant are pertinent.

I am of the view that the trial Magistrate for reasons above, reached wrong conclusions on this evidence. I will therefore answer all grounds raised in the affirmative and uphold the appeal.

The orders and findings of the lower court are accordingly set aside. This court orders that an immediate retrial of this suit be conducted before another competent Magistrate. Costs shall abide the cause. I so order.

**Henry I. Kawesa**

**JUDGE**

**11.09.2014**