

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

HCT-04-CV-CA-102-2013

(ARISING FROM CIVIL SUIT NO. TOR-00-LD-CS-0053-2012)

(LAND CLAIM TL.031/2005)

ETYANG ALEX.....APPELLANT

VERSUS

ETYANG AUGUSTINE.....RESPONDENT

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

JUDGMENT

The appellant appeals the Judgment and orders of Chief Magistrate Tororo of 12 July 2013 arising from Tororo Civil Suit 053/2012.

The appellant raised 4 grounds of appeal as here below.

1. That the learned trial Magistrate erred in law and fact when he disregarded the evidence of the defendant/appellant and decided the case against him.
2. That the learned trial Magistrate erred in law and fact when he failed to properly evaluate the evidence tendered in court and therefore came to a wrong decision to the detriment of the appellant.
3. The learned trial Magistrate erred in law and fact when he failed to consider the evidence at the locus in quo and occasioned a miscarriage of justice.
4. The learned trial Magistrate erred in law and fact when he granted relief which was never sought.

This is a first appellate court and has the duty to re-evaluate the evidence, scrutinize it afresh and make independent findings thereon. See ***Pandya v. R (1956) E.A. 336.***

Appellants abandoned ground 4 and argued 1, 2, and 3 together. The respondent, made a general submission.

According to the evidence on record, **PW.1 Etyang Augustine** told court that he inherited the suit land from his late father who died in 1991. He claimed the defendant trespassed on it in 2006. In cross-examination he revealed that he began using the land in 1993, stopped using it in 2004, and defendant grabbed it in 2006.

PW.2 Monica Amukaga testified that plaintiff is his young brother and the land belonged to plaintiff. she confirmed that their father had given this land to plaintiff but the defendant encroached on it.

DW.1 Etyang Alex said he was owner of the land. He got it through inheritance of his father's estate. He told court that his grandfather (father of plaintiff) **Etyang Alex. Atyang** gave land to his four sons and then passed away in 1991. There was peace until 1999 when his father also passed away and this witness was chosen heir to his father's estate. When the father died he also hired out the land to raise fees. Then plaintiff came in 2005 and warned him to stop trespassing on the land. Defendant called **(DW.2) Samson Osikor, (DW.3) Juliano Aono (DW.4) Paulo Okirana, (DW.5) Iгаа George** and **(DW.6) Ekileng John Emongoluk**. Their evidence basically is that the suit land belongs to the defendant who inherited it from his late father.

The evidence was purely oral and was not supported by any exhibits or documentary evidence to corroborate the oral statements. Court visited the locus and observed the disputed land.

The trial Magistrate reviewed the evidence and concluded that the land belongs to the plaintiff.

The gist of argument by appellants is that the learned trial Magistrate did not properly evaluate the evidence and hence reached a wrong decision.

The standard of proof in civil cases is on a balance of probability. The law of evidence is that:

“He who alleges the existence of facts must prove so.” (Section 101 Evidence Act).

The plaintiff therefore had the burden to prove the case on a balance of probability.

In believing the plaintiff the judgment of the lower court placed heavy reliance on the evidence of **PW.2- Monica Amukaga**'s evidence. The learned trial Magistrate believed her to the extent of taking her evidence as the litmus paper test upon which all other evidence was tested.

For example at page 2 of judgment paragraph 3. The learned trial Magistrate notes:

*“This testimony of the plaintiff is collaborated by the testimony of one of the sisters of the plaintiff called **Monica Amukaga**.”*

The Magistrate further states at page 5- paragraph 2:

“She asserted the suit land belongs to the plaintiff and explained that not all the other brothers and sisters were present but she was where the plaintiff was given the suit land.”

The learned trial Magistrate on page 7 in paragraph 5 of the judgment then states:

*“I think that there was allocation. Was it in 1989 as the said **Amukaga** stated or 1990 as stated by defendant? I am inclined to believe that **Amukaga** may not have got her years right!!!”*

The learned trial Magistrate again in paragraph 6 of page 7 observes:

*“The plaintiff stated that his father gave the land in 1989 but **Amukaga** testified that the suit land was given to plaintiff much later in lieu of dowry of their father since he had not paid dowry for the plaintiff..”*

From the above analysis, it is clearly seen that there were contradictions in the evidence of plaintiff and his lone witness **Amukaga**. However the Magistrate ignored this and then went ahead to criticize the defence evidence as being not clear (last paragraph page7 of judgment). He then makes sweeping statements in paragraph 1 of page 8 which have no bearing to the evidence on record. He notes that:

“DW.6 attempted in testimony to draw a line in the pieces of land of the late Etyang Alex. He stated the old man had 2 pieces of land.... This cannot beAmukaga clearly stated that none of the parties lives on the suit land.....”

There is no indication why court believes **Amukaga** and disbelieves everyone else. When weighed **Amukaga**'s evidence was brief and was oral, just like the rest of defendant's witnesses. Moreover her evidence was sharply contradicted by the defendant and his five witnesses. I do not find any independent basis why court put over reliance on her testimony as gospel truth, and ignored the defence case. . The conclusion of the learned trial Magistrate in his Judgment page 8 last paragraphs, shows that plaintiff and his witness sharply contradicted each other

and the plaintiff never proved his case. However the learned trial Magistrate inspite of this, concluded thus:

*“I am inclined to believe the said **Amukaga** that this portion of land remained with their father after he had distributed land.”*

This was after stating that:

*“The plaintiff stated he received the portion at time of allocation. It could not be. The said **Amukaga** stated much later but before the death of **Alex Etyang**.”*

All the evidence if it had been properly weighed by the learned trial Magistrate, shows that plaintiff’s case was riddled with inconsistencies and uncertainties, while the defence case was consistent, persistent and well collaborated.

I therefore agree with the submissions as laid out by appellants in this appeal.

There was failure by the learned trial Magistrate to carefully and clearly evaluate the evidence which led him to make wrong findings. The grounds under which the arguments above were made were grounds 1, 2, and 3. I do uphold the arguments therein and do hold that ground 1, 2, and 3 of the appeal are proved. The appeal succeeds on all those grounds. The prayers are granted to the appellants.

The lower court judgment and orders are set aside. The court finds that the suit land belongs to the appellant. Costs granted to appellants. I so order.

Henry I. Kawesa

JUDGE

26.03.2015