

IN THE HIGH COURT OF UGANDA AT SOROTI

CIVIL APPEAL NO. 38 OF 2012.

(ARISING FROM KABERAMAIDO GRADE ONE COURT CIVIL SUIT NO. 4 OF 2007)

1.PETER OTIKOR

2.EMORU GEOFREY

3. RAYMOND ELWOKU.....APPELLANTS

V

MARGRET ANYA.....RESPONDENT

BEFORE HON.LADY JUSTICE H. WOLAYO

JUDGMENT

The appellants appealed through his advocates Wegoye & Co. advocates the judgment of HW Galiwango Mukuye grade one magistrate dated 11th July 2012 sitting at Kaberamaido on four grounds of appeal that i will revert to later in the judgment.

When the appeal came up for hearing, by consent of both counsel and at their request, i directed the grade one magistrate at Kaberamaido to visit the locus and file a report which he did on 19th October 2015.

Mr. Ewatu of Ewatu & Co. advocates appeared for the respondent.

Both counsel filed written submissions that i have carefully considered.

The duty of the first appellate court is to re-evaluate the evidence adduced in the lower court and arrive at its own conclusions on issues of fact and law bearing in mind the trial magistrate had an opportunity to observe the demeanour of the witnesses.

The respondent sued the appellants for recovery of 20 gardens of land located in Agule, Kakure, Kalki sub county which claim the appellants denied .

I have carefully evaluated the evidence and arrived at the following conclusions.

The respondent based her claim on inheritance from her late father whom she did not name in her testimony neither did any of her witnesses. It is at the locus visit that the magistrate

recorded that her father Asudu Philip and grandfather Acanyu Philimon were buried on the suit land. This was after the appellant showed the magistrate their graves.

The 1st respondent Otikor made mention of Acanyu as someone his grandfather Edweu allocated land in 1960 approximately. According to Otikor first respondent, Asudu father of the respondent Anya died in 1985 and was buried on the suit land and in 2001 when the appellant left the suit land, Otikor entered the suit land.

According to the appellant, she left the suit land to take refuge from Karamojongs and in 2004, she discovered that the respondents had encroached on the land.

All the appellant's witnesses support her case with PW3 Ocen Patrick adding that the appellant belongs to Itira clan while the respondents are from Eboketa clan.

It is therefore not in dispute that the appellant left the land in 2001 and on her return in 2004, the respondents had settled on the land. Indeed the second respondent Emolu Goeffrey(DW2) asserted he had no interest in the suit land while DW3 Elwoku Raymond had no evidence to offer. The second and third respondents are sons of the 1st respondent Otikor.

It is also not in dispute that Edweu, grandfather of the 1st appellant Otikor gave Acanyu grandfather of the respondent Anya the suit land in 1959 or 1960.

At the locus, one Eligu Stanley aged 81 years clarified that among the Kumam, if land is given to someone with a child, that land belongs to the child when the donee dies and that a girl can inherit land from her parent.

To me this seems to be genesis of the dispute between the appellant and the 1st respondent. The 1st respondent grabbed the suit land because the appellant, the only descendant of her late grandfather, was a female.

It is not disputed that the suit land was given to appellant's grandfather way back in 1960, he utilised the land until his death. After Acanyu's death, his son Asugu continued to use the land until his death in 1985 and the appellant's mother Bibiyana left the land in 1986.

It is not disputed that the Anya's descendants utilised the land for more than three decades after they initially entered possession. Anya continued with possession until about 2001

when she was dispossessed by the 1st respondent when she fled for refuge from the Karamojong warriors.

On her return, she took steps through her son Enyagu Wiliam to sue the 1st respondent in the LC1 Court of Agule which court determined in her favour on 9.2.2006.

In 2007, the appellant sued the respondents in the Land Tribunal at Kaberamaido.

The appellant who had a the duty to prove her case ably demonstrated that she inherited the suit land from her grandfather Acunga, a fact admitted by the 1st respondent except he says she abandoned the land in 2001 and that is when he moved in. Counsel Wegoye submitted that Anya departed from her pleadings where she stated that she was given land.

I find this argument diversionary. Whether Anya was given land or she inherited has the same consequences, i.e, that she is a successor in title to her ancestors.

The fact that she is female doesn't take away her right to ownership as the only descendant of Acunga. The appellant did not abandon her land but merely fled for refuge from Karamojng warriors.

In his written submissions, counsel for the appellants contended that the suit land was clan land of Eboketa clan . Counsel argued that as Acunga's immediate descendant did not produce a male child to continue the lineage, the land initially donated to Acunga by Atikor's grandfather Edweu reverted to the his clan.

Counsel for the respondent submitted that even within the practice of clan ownership of land, individual ownership is respected and therefore, Otikor cannot argue that the suit land belonged to Eboketa clan generally.

I find that Otikor's basis for the claim to the suit land cannot be upheld by a court of justice. His basis is that because his grandfather Edweu gave away land in 1960 and that person (Acunga) to whom land was given no longer has a male descendant and therefore that the land reverts to Otikor descendant of Edweu is a retrogressive analysis.

When his grandfather gave land to Acunga of Atira clan in 1960, it was not a temporary arrangement because two generations of Acunga continued to live on this land until 2001 when Otikor entered part of the suit land . For forty years after 1960, Anya's predecessors in title lived peacefully on the land.

By the virtue of section 16 of the Limitation Act, Acunga and his descendants acquired title by adverse possession undisturbed until 40 years later. Edweu and his descendants' interest in the land, if any, was thereby extinguished. The land ceased to belong to Edweu and his descendants became vested by long and undisturbed possession in Acunga and his descendants.

Section 16 of the Limitation Act provides as follows:

Subject to section 8 and 29 of the Limitation Act,at the expiration of the period prescribed by this Act for any person to bring an action to recover land, the title of that person shall be extinguished.

The Limitation Act applies to land under customary tenure (section 29 thereof).

Consequently, the 1st respondent by moving into possession is a trespasser with no legal basis for entering the suit land.

Apart from the erroneous argument that the land reverted to Ebokota clan, counsel for the appellant also submitted that land is kept through male descendants and that therefore Anya cannot be seen to inherit her father's land.

This argument is contrary to **article 32(2) of the Uganda Constitution** that provides that customs , cultures, and traditions that undermine the dignity or interest of women are prohibited by the Constitution. **Article 5 of CEDAW (UN Convention on Elimination of All Forms of Discrimination Against Women)** urges States to modify the cultural patterns in society that impair, or nullify the enjoyment by women of fundamental human rights.

By counsel arguing that a woman cannot inherit land , counsel is advancing the erroneous argument that Anya is a woman and therefore her right to inherit as a female descendant should be nullified.

It is this type of thinking that is targeted by article 32(2) of the Uganda Constitution and article 5 of CEDAW.

I find that the trial magistrate properly evaluated the evidence and arrived at a correct conclusion.

I now turn to the grounds of appeal.

Ground one

1. The trial magistrate erred in law and in fact when he failed to scrutinize, evaluate and appraise the evidence thereby arriving at a wrong conclusion.

I find no merit in this ground as the trial magistrate valued the evidence and arrived at a correct conclusion.

Ground two

2. **The judgment is riddled with irreconcilable contradictions and misdirection.**

This is a vague ground that lacks substance.

Ground three

3. **The trial magistrate was biased in favour of the appellant.**

I find no merit in this ground.

Ground five

4. **The decision appealed from has occasioned a miscarriage of justice.**

There is no merit in this ground as the trial magistrate arrived at a correct conclusion.

I therefore dismiss this appeal, affirm the judgment of the trial court and vary the orders as follows:

1. The suit land measuring approximately 20 acres is decreed to belong to the respondent, Anya Margret.
2. A permanent injunction shall issue restraining the appellants or their agents and successors in title from making any further claims to the suit land or interfering with the quiet enjoyment of the respondent, her agents or successors in title.
3. The appellants to vacate the suit land within sixty days from the date of this judgment failure of which, an order for vacant possession shall issue.
4. Costs of this appeal and the court below to the respondent.

DATED AT SOROTI THIS 5TH DAY OF MAY 2016.

HON. LADY JUSTICE H. WOLAYO