THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FOR PORTAL

HCT – 01 – LD – CA – 0032 OF 2013

(Arising from FPT – 00 – CV – CS – 0018 of 2008)

BULASIYO TINKASIMIRE BYOMA.....APPELLANT

VERSUS

BIGODI GROWERS CO-OPERATIVE SOCIETY .....RESPONDENT

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK, JUDGE

Judgment

This is an appeal against the decision of His Worship John Kategaya Senior Magistrate Grade one delivered on 11th July 2013 in Kamwenge.

Brief facts

The Respondent a Registered Community Based Organisation instituted a Civil Suit against the Appellant for a declaration that she was the rightful occupant of the suit land, order of permanent injunction restraining the Appellant and his agents from trespassing on the suit land, general damages, and costs of the suit.

That the Respondent received the suit land from Toro Kingdom in 1957, took occupation, utilized and/or developed the same continuously by cultivating thereon and built a store for produce. That the Respondent does not dispute that the suit land forms part and partial of registered land compromised in Toro Block 9 Plot 1 in the names of Toro Kingdom. That the dispute arose in 2004 when the Appellant cut down the Respondent's trees claiming the suit land belonged to him.

On the other hand the Appellant contended that he was the lawful owner of the suit land having acquired the same in the early 1950's from Toro Kingdom and took immediate physical occupation, cultivated and developed the same. That sometime in the late 1950's while the Appellant was away in Kamwenge on official duty as the then Kingdom Parish Chief, the Respondent, its agents, employees, servicemen or workmen trespassed onto the Appellant's land. That in 1959 or there about the Respondent vacated the Appellant's land after he had lodged a complaint to the County Chief. That since then the Appellant had enjoyed quiet possession of the suit land until 2004 when the Respondent started to re-claim the suit land again.

Issues for determination at the lower Court were;

1. Whether the Plaintiff is a lawful or bonafide occupant on the suit land?
2. Whether the Defendant trespassed/whether the Defendant is a trespasser on the suit land?
3. What remedies are available to the parties?

Court visited the Locus-in-quo and made observations that are on record. Court found that the Respondent was the rightful occupant of the suit land, and a bonafide occupant, the Appellant was a trespasser, and damages to a tune of UGX 1,000,000/= were awarded and costs against the Appellant.

The Appellant being dissatisfied with the decision of the trial Magistrate lodged this appeal whose grounds are;

1. That the Learned trial Magistrate erred in law and fact when he held that the Respondent is a bonafide occupant on the suit land and that the suit land belongs to it.
2. That the Learned trial Magistrate erred in law and in fact when he held that the Appellant was a trespasser on the suit land.
3. That the Learned trial Magistrate did not properly evaluate the evidence on record thereby arriving at an erroneous decision which caused a miscarriage of justice.

M/s Kayonga, Musinguzi & Co. Advocates appeared for the Appellant and M/s Bwatota Bashonga & Co. represented the Respondent.

Ground 1: That the Learned trial Magistrate erred in law and fact when he held that the Respondent is a bonafide occupant on the suit land and that the suit land belongs to it.

The duty of the first Appellant Court is to evaluate the evidence on record a fresh as a whole and draw its own conclusions bearing in mind that it neither heard nor saw the witnesses. The guiding principle was well stated by Law J. A. (as he then was) in the case of **Karanja Kago vs Karioki Njenga and Edward James Mungai, Civil Appeal No. 1 of 1979 (K-CA)** held that;

"A first appeal is by way of re-trial and the Appellate Court is in as good a position as the Trial Judge to make findings of fact and to draw inferences from those facts but to bear in mind that it has neither seen nor heard the witnesses and should make due allowance of this fact."

Bonafide occupant is defined under **Section 29(2)** of the land Act as;

"A person who before the coming into force of the 1995 Constitution had occupied and utilized or developed any land unchallenged by the owner for twelve years or more."

In the instant case the Appellant told Court that he got the suit land from Toro Kingdom in 1952 and had been in occupation of the same but with the interference of the Respondent on two occasions. The Appellant also used to pay rent (See: Exhibits D4, D5, D6, D7 and D8) in respect of the suit land and also brought witnesses that supported his claim. The Appellant immediately upon acquiring the suit land utilised it through cultivation and physical occupation.

Counsel for the Appellant submitted that the Respondent's evidence was contradictory in that where as the Respondent claimed that the Appellant did not have land below the Fort – Kamwenge Road; PW3 stated that the Appellant actually had land below the said road and also gave some to his son Bahati DW3. Thus, in the circumstances the Appellant was a bonafide occupant.

Counsel for the Respondent on the other hand submitted that it was not true that the Appellant had ever settled on the suit land since 1952 nor ever developed the same. That it is only the Respondent that had a store on the suit land and also had planted trees on the same.

That in the circumstances the Appellant was merely a trespasser on the suit land. That the land belonging to the Appellant's son is totally separate from the suit land.

I do concur with submissions of Counsel for the Respondent. According to Court when the Locus-in-quo was visited the Respondent and the Appellant were found to be having different pieces of land which were separated by a road. It is the son of the Appellant that was actually neighbouring the suit land and this was on the lower part of the road. It is therefore not correct that the Appellant had land across the road but rather his son and the said land is clearly distinguishable from the suit land. Therefore, the trial Magistrate was correct in holding that the suit land belonged to the Respondent and not the Appellant.

Ground 2: That the Learned trial Magistrate erred in law and in fact when he held that the Appellant was a trespasser on the suit land.

In the case of **Justine Emiru Lutaya versus Sterling Civil Engineering Co. LTD, SCCA No. 11 of 2002 at page 4** trespass was defined as;

"Trespass to land occurs when a person makes an unauthorised entry upon land, and thereby interferes, or pretends to interfere with another person's lawful possession to that land."

The Appellant told Court that he had been in occupation of the suit land since 1952 and it is the Respondent that trespassed on his land therefore he could not have been the one trespassing on the suit land. The Appellant also presented receipts that proved that he had been occupying the suit land fully.

Counsel for the Respondent in this regard submitted that the receipts as submitted by the Appellant did not show in respect to which land the ground rent was being paid. That besides the receipts, the Appellant had no credible evidence to prove that he was the owner of the suit land. Thus, the trial Magistrate was right in finding him a trespasser.

In my analysis the Appellant indeed did not submit any credible evidence proving that he was the owner of the suit land and thus the trial Magistrate was right in finding that he was a trespasser. The Respondent on the other hand, the prosecution witnesses and the Locus-in-quo visit all showed that the Respondent was the owner of the suit land, and previously had a store on the same and currently has eucalyptus trees on the suit land. Therefore, the Appellant was a trespasser on the suit land.

Ground 3: That the Learned trial Magistrate did not properly evaluate the evidence on record thereby arriving at an erroneous decision which caused a miscarriage of justice.

In as far as this ground is concerned, it is inconcise, too general, vague and devoid of merit and it offends **Order 43 Rules 1** and **2** of the Civil Procedure Rules S.1 71-1. Therefore, this ground should be struck out. (**See: Arajab Bossa Vs Bingi, HCT – 01 – LD – CA – 0015 of 2012 Pg. 2**)

In a nutshell all the grounds fail and this Appeal is dismissed with costs.

Dated this 9th Day of September 2016.

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OYUKO. ANTHONY OJOK

JUDGE

Delivered in open Court in the presence of;

1. Counsel for the Appellant
2. Counsel for the Respondent
3. Respondent in Court
4. Court Clerk present