

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
CIVIL APPEAL NO. 0032 OF 2012
(Arising from FPT – 16 – CV – CS – 0048 of 2007)

SOLOMON KATAGASA KARUNGINTEAPPELLANT

VERUS

JERAZIO BARINDARESPONDENT

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

Judgment

This is an appeal against the decision of His Worship Kakooza Alias a senior Magistrate Grade one at the Chief Magistrate’s Court of Fort Portal at Kyenjojo.

Brief facts

The Appellant instituted a civil suit against the Respondent for orders that; he be declared the owner of the suit land; an eviction order be issued; a permanent injunction be issued; general damages; and costs of the suit.

That in 1997 or there about without his consent the Respondent and his agents trespassed on the suit land and cut down the Appellant’s banana plantation and forbade him from using the suit land again. That the Appellant had acquired the suit land from his father Stanley Katagasa and had extensively developed the same.

The Respondent on the other hand in his Written Statement of Defence denied all the contents of the plaint and averred that the suit land is his and was got from his paternal uncle Annia Iumba and it has a natural boundary of a swamp. That, the Respondent, is thus the rightful owner of the suit land.

The trial Magistrate found that the Appellant did not prove his case on a balance of probabilities. Judgment was passed in favour of the Respondent with cost 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 failed to properly evaluate the evidence on record.
2. That the learned trial Magistrate erred in law and fact when he decreed the suit land to the Respondent without regard to the Appellant's interest thereon.

M/s LDC Legal Aid Clinic appeared for the Appellant and Ahabwe James represented the Respondent. Both parties agreed to file written submissions.

Resolution of all grounds:

The duty of the first Appellate Court is to re-evaluate the evidence on record as a whole and come to its own conclusion bearing in mind that it neither saw nor heard the witnesses at trial. **(See: Pandya versus R. [1957] E.A 336.)**

In the instant case the Appellant in his testimony told Court that he obtained the suit land from his father. The Appellant's father PW3 corroborated this evidence and even gave the lineage as to how the land had been occupied by the Bayaga clan. The Respondent on the other hand in his evidence told Court that he was the rightful owner and even tendered in Court documents to that effect.

Furthermore according to Counsel for the Appellant he submitted that the independent witness at locus told court that the suit land belonged to the Appellant. And that indeed if the clan members were present when the Respondent's uncle was giving him land as he claims why was none of them ever called? That the Respondent also contradicted himself by on one hand saying he got the suit land as heir and again saying that he was not an heir. Thus, in the circumstances the trial Magistrate did not evaluate the evidence on record properly and arrived at wrong decision.

Counsel for the Respondent on the other hand objected to the grounds of appeal for being inconside and contravening the provisions of **Order 43 Rule 1(2)** of the Civil Procedure Rules. To which I concur however, in the interest of justice it would be unfair to dismiss this

appeal without looking at the Appellant's submissions. Counsel for the Respondent was alive to this fact and went to in submit on both grounds together without prejudice.

Counsel stated that it was the Respondent's unchallenged evidence that the land was given to him by the elders after the death of his uncle Anania Irumba. That the Respondent was even given documents to prove the same.

Counsel for the Respondent also submitted that the Respondent clearly described the boundaries of his land and that the evidence of the Appellant was just full of falsehoods. That the Appellant's father told Court that in 1996 he had a dispute with another party over his land yet the Appellant to court that he was given the suit land by his father in 1958. Therefore, one wonders how the Appellant's father could have sued on his behalf in 1996 yet the Appellant was 38 years then.

Furthermore, that the Appellant's father PW3 claims that the Respondent occupies the entire piece of land belonging to the Appellant, the Appellant however, himself stated that the Respondent only trespassed on part of it. That this inconsistency is a connivance between the Appellant and his father to deprive the Respondent of his land.

That at locus it was found that the Respondent was in occupation of the suit land which even had an old plantation from which local brew was being made. That, the Appellant, was seen not to be in occupation of the suit land at all.

In regard to the issue of being heir or not Counsel for the Respondent submitted that this was not a point in issue as this was not a succession matter but rather a land matter.

In my opinion I am inclined to concur with Counsel for the Respondent's submissions that there was no wrong decision made by the trial Magistrate. From the foregoing it can be seen that the Appellant has the intention to grab the Respondent's land.

Court while visiting the Locus-in-quo would at least found signs of the Appellant utilising the suit land however it was not the case.

Secondly, the testimony of the Appellant's father PW3 completely destroyed the Appellant's case because how, would an adult sue on behalf of another adult?

Thirdly, PW3 told Court that the Respondent was occupying the entire land belonging to the Appellant whereas the Appellant testified to the contrary. If indeed the Appellant's father PW3 had given him the suit land as they claim then he should have been in position to tell if indeed the Respondent had trespassed on the suit and to what extent. This appeal bears no merit, therefore it is dismissed with costs.

Right of appeal is explained.

Dated this.6th Day of September 2016.

.....

OYUKO. ANTHONY OJOK

JUDGE

Delivered in open Court in the presence of;

1. Both parties
2. Counsel for the Appellant
3. Counsel for the Respondent
4. Court Clerk