

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

**HCT-04-CV-CA-0174-2014
(ARISING FROM PALLISA CIVIL SUIT NO. 0045-2013)**

**TEMEIRE MOSESAPPELLANT
VERSUS
1. TAKOBERWA RUTH
2. NAMUNGHA EMMANUEL.....RESPONDENTS**

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

JUDGMENT

The appellant appeals against the judgment and orders of **His Worship Kintu Imoran** Magistrate Grade I at Pallisa dated 2nd October 2014.

The memorandum raised three grounds of appeal as follows:

1. That the learned trial Magistrate erred in law and fact when he didn't evaluate the evidence on the record properly.
2. That the learned trial Magistrate decision is tainted by fundamental misdirections and non directions in law and fact.
3. That the decision reached by the trial Magistrate has occasioned a miscarriage of justice.

The duty of a first appellate court are to re-evaluate the evidence and reach its own conclusions aware that it had no chance to hear and observe witnesses. (See ***Pandya v. R [1957] E.A 336***)

The brief facts of this case in the lower court are that the plaintiff(appellant) sued defendants (respondents) for recovery of land. The plaintiff claims that he lent out the land to D.1 to cultivate in 2006. In 2013, he realized that D.1 had sold the land to D.2.

In their defence both defendants denied the claim. D.1 claimed the land belonged to her and she rightly sold it to D.2.

During the trial the plaintiff led evidence of three witnesses.

PW.1 (**Temeire Moses**), PW.2 **Mujungu Erusania**, PW.3 **Kakaire Moses**. On the other hand the defendants led evidence through DW.1 **Takoberwa Ruth**, DW.2, **Namugha Emmanuel**, DW.3 **Musa Munya**, DW.4 **Sande William**, DW.5 **Kazinga Lawrence** and DW.6 **Namugha Steven**.

I have re-evaluated all the evidence above guided by the pleadings (plaint) and (written statement of defence).

From the evidence the case for plaintiff was that he got the land from his uncle **Kakaire** in 1987. However in cross-examination he said he began using the land in 1979. His witness PW.2-**Mujungu** said that plaintiff acquired the land in 1979 from his grandmother Halima.

In cross-examination he said he didn't know about the events of 2013, and didn't know **Haji Musa Menya**. PW.3 **Kakaire Moses** told court that the land was for the plaintiff having been given him by **Yonasani Kakaire**. During cross-examination this witness feigned ignorance about what transpired after **Salama's** death.

In defence the defendant No.1 stated that the land belonged to her. It used to belong to her mother who died in January 2013. After her death the clan divided the land and she got her share which she later sold to D.2. She tendered in a document annexed as annex 'A' on her Written statement of Defence which reflects the said transactions.

DW.2 testified that D.1 sold him the land and PW.1 was aware of the transaction. DW.3 **Musa Menya** told court it was he who divided the land between PW.1 and DW.1.

DW.4 **Sedele** was present when the demarcations were done and boundary marks laid between D.1 and PW.1.

DW.5- Kazungu confirmed that after death of the mother of PW.1 and DW.1 the clan resolved to divide the land between them in equal portions. He witnessed the exercise.

DW.6 Namugha Steven also confirmed that clan sat and divided the land between PW.1 and DW.1 following death of **Nakaziba Salama** their late mother. She confirmed that D.1 sold her portion to D.2.

With all the above evidence and according to the law of evidence, the plaintiff has the burden to prove his case on a balance of probabilities.

Section 101, 102 and 103 of the Evidence Act, places the evidential burden on the one who alleges a fact to prove the said allegation.

From the evidence, the plaintiff did not sufficiently explain by evidence how he claims better title to the land. He told court that he owns the land by virtue of obtaining it from his uncle **Kakaire** in 1987. However his witness PW.2 said he got it from Halima in 1979. This is a great contradiction and waters down the probable quality of this evidence. There is however consistent oral and documentary evidence from the defendants showing that the defendant (1) got the land as a share from her late mother. (See Exhibit A). The witnesses from DW.3, D.4, D.5 and D.6 were all eye witnesses who attended the meeting and witnessed the demarcations of the land between PW.1 and D.1. D.2 even testified that while buying from DW.1, PW.1 was aware of the entire transactions.

Therefore in my opinion the evidence on record weighs heavily in favour of the defendants. The findings of the learned trial Magistrate on the said evidence were therefore correct.

I do not find any merit in all the grounds of appeal raised. None of the grounds have been proved. I therefore find as follows:

Ground 1:

The learned trial Magistrate properly evaluated the evidence. This ground therefore fails.

Ground 2:

The learned trial Magistrate's decision contains no misdirections. This ground fails.

Ground 3:

The decision of the learned trial Magistrate is correct and did not occasion a miscarriage of justice.

In the result therefore, this appeal fails and is dismissed with costs to the Respondents both here and below. I so order.

Henry I. Kawesa

JUDGE

28.10.2016