

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

**HCT-04-CV- CA- 204 OF 2014
(ARISING FROM PALLISA CIVIL SUIT NO. 2/2014)**

LODA YAKOBO ::::::::::::::::::::::::::::::::::: **APPELLANT**

VERSUS

- 1. BULOLO ASANI YOKOBWAMU**
- 2. KYABANAMAIZI JAMES**
- 3. KIRYA STEPHEN**
- 4. KALYEBI PATRICK**::::::::::::::::::::::::::::::::::: **RESPONDENTS**

BEFORE: HON. JUSTICE HENRY I. KAWESA

JUDGMENT

The appellant was dissatisfied with the Judgment and orders of His Worship **Kintu Imoran Isaac** Magistrate G1 Pallisa dated 24.10.2014.

The appellant raised 4 grounds of appeal; which the appellant argued by combining 1 and 2 together and 3 and 4 together.

The duty of this court as a first appellate court is to re-evaluate the evidence and make its own conclusions bearing in mind that it never had chance to listen to and observe the witnesses. This duty was stated in *PANDYA V. R (1957) EA 336*.

The facts which constituted the case in the lower court were that by plaint dated 7th January 2014, plaintiff **Loda Yakobo** sued the defendants jointly for recovery of land approximately 15 acres for permanent injunction, temporal injunction and vacant possession.

Under paragraph 5 of the plaint he contended that he bought the land from **Lipoto Erusania** on 25. November 1998 at a cost of 8 heads of cattle vide a sale agreement annexed as “A”. He used the land until 17/4/2013 when defendants decided to chase away the plaintiff from the suit land.

In their joint written statement of defence, defendants denied the allegations above.

In court evidence was led as follows:

PW1- Loda Yakobo said he bought the land from **Erusania Lipoto** in 1998. A sale agreement was made tendered as P1D1.

PW2- Ariongo John said he was Chairman LC1 when PW1 bought the land on 25/11/1998 he was present during the sale.

In defence **DW1 Bubolo Asani** said the land was his by inheritance from his father, and PW1 had been entrusted to keep it for the children as caretaker.

DW2, Kyabanamaizi, DW3 Kirya Steven, DW4, Kalyebi Patrick told court they did not know about the claim for which plaintiff sued them.

DW5- Namulobya Faith said that she was widow of the late **Olipoto**. She said DW1 is her son. She was around when **Olipoto** called plaintiff and others to entrust the land to him to keep for the children until they became of age. Instead plaintiff grabbed the land,

DW6- Ndoboli Dawson, also stated that plaintiff was left on the land in trust for the young children, but he instead turned it over for his own use; yet it belongs to the widow and the orphans.

DW7- Kakungulu George told court that as LC1 Chairman of Majara village he found PW1 using the land in 2007. He sold off a portion of the land to **Kapere Pison** and the widow and orphans complained that the caretaker was now selling off their land.

Court visited the locus and made observations, which are not typed out but are readable vide the hand written copy.

In his Judgment the learned trial Magistrate found for the Respondents, hence the appeal.

Having assessed the evidence on the facts, I do now resolve the appeal as follow:

Ground 1 and 2 (failing to evaluate evidence)

From evidence as adduced above, the piece of evidence which is crucial, and forms the basis of appellant's complaint is that the sale agreement which the plaintiff relied on was not considered by the learned trial Magistrate, and was unfairly rejected.

I noted from the record that the sale agreement received as PID I was just received for identification.

In the Judgment, the learned trial Magistrate noted that the document was in local language, and was not translated into English. This was a fact that I also uphold. There is no way the learned trial Magistrate could rely on a photocopied document which was not translated.

The author was not called to testify on it and prove that it was authentic.

This is crucial especially given the fact that the defendant led specific evidence to controvert the same.

The requirement of the law of evidence is that he who alleges a fact proves the same (See: Sections 101,102 and 103 of the Evidence Act). The plaintiff also had the burden to prove the case on a balance of probabilities. This means that the evidential value of the agreement was wanting and the learned trial Magistrate was right to ignore it.

In the absence of the evidence of the agreement evidence of D1 and D2 remained weak compared to evidence contained in the testimonies of DW1- DW7. To back up this conclusion, the learned trial magistrate, also made observations at locus, which show that the evidence as adduced by defendants was borne out and supported by the facts and evidence of locus.

From my assessment, I do agree with the findings of the learned trial Magistrate on the evidence as a whole. From page 5-6 of the typed Judgment, the learned trial Magistrate considered all the evidence before court correctly. I also agree that the plaintiff was not able to prove his case on the balance of probability. There is therefore no merit in grounds 1 and 2 of the appeal and they fail.

Ground 3 and 4: (Rejection of Agreement)

These grounds cannot stand in view of the findings under ground 1 and 2.

As rightly argued by the respondent's counsel, this agreement was not proved by the appellant.

Evidence showed that by 1997 the late **Lipoto** was very ill.

In the evidence of D1, DW5 and DW6, it was revealed that he called plaintiff and other brothers of D5 and entrusted the land to them to keep for the children. DW6 said plaintiff was only asked to keep cultivating until the children grew. No sale was ever witnessed by him as alleged by plaintiff. Also the late is reported to have migrated in 1997 and died shortly thereafter.

The agreement of sale is dated 1998. How could a very sick man, who migrated and later died turn back in 1998 and make an agreement of sale as alleged by plaintiff? These and other unanswered questions surrounding this agreement rendered the agreement unreliable. The plaintiff failed to prove that this agreement is authentic. The learned trial Magistrate was therefore right to reject the same. These grounds of appeal are also with no merit. They are not proved.

In the final result, this appeal is not proved, it fails on all grounds. It is dismissed with costs to the Respondents. I so order.

Henry I. Kawesa

JUDGE

27.06.2017