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

HCT-04-CV- CA- 0076 OF 2015
(ARISING FROM CIVIL SUIT NO. 01/2014)

NYAIRO BRUHAN :::::::::: APPELLANT

VERSUS

1. **KASULE IMMACULATE**
2. **IAN KITUTU :::::::::: RESPONDENTS**

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

The appellant was dissatisfied by the judgment and orders of **Her Worship Agwero Catherine** Magistrate Grade I Mbale. The background of the appeal is that Plaintiff/Respondents claimed that they purchased the land in dispute from the defendant in 1994 for shs. 150,000/=. They developed it and constructed thereon. Later on, in 2013 defendant claimed the land from them on grounds that they were tenants thereon. He wanted them to offer vacant possession, hence this suit.

On the other hand defendant's case was that he had never sold the land to plaintiffs.
He told court he had bought the land in 1995 from **Wodeya James** and plaintiffs were his tenants.

The learned trial Magistrate in her judgment found for plaintiffs.
The appellant raised three grounds in that:

1. Learned trial Magistrate erred in law and fact when she held that plaintiffs are the lawful proprietors of the suit land having been on the same for over 20 years undisturbed.
2. That learned trial magistrate erred in law and fact when she failed to give an exhaustive scrutiny and proper evaluation of the evidence of legal arguments on the court record thus arriving at a wrong decision.

3. That the decision of the learned trial magistrate occasioned substantial miscarriage of justice.

The duty of this court as a first appellate court includes the duty to re-evaluate the evidence, make its own conclusions, aware that it had no chance to listen to and observe the witnesses.

I have duly re-evaluated the evidence; and the pleadings on record. I will also handle all grounds of appeal together since they raise the same issue as to whether the learned trial magistrate properly evaluated the evidence.

The evidence on record was through **PW.1 Ian Kitutu** who stated that they bought the suit land with his wife **Kasule Immaculate** at shs. 150,000/= from defendant in 1994. The agreement was burnt in the house in 2000. PW.2 Namataka Rebecca said she witnessed the transaction when plaintiffs bought the land.

PW.3 Musene LC.I chairman gave evidence that the land is for plaintiffs, PW.4 Crysostom Magomu was present when plaintiff constructed the house.

PW.5 Manyera Asuman said he was the one who constructed the four rooms on this land.

PW.6 Nabubolo Stephen said he witnessed the sale **PW.7 Wandega Wilson** was also aware that the plaintiffs own the land since purchase in 1994.

DW.1 said the Respondents were his tenants since 1997 and he constructed on the land. He bought the land from **Wodeya James DW.2** who made an agreement for him exhibited as D.1. **D.2 Wodeya James** confirmed he sold land to defendants in 1995. **DW.3 Edirsa Wosukira**, testified that he witnessed on the sale agreement.

With that evidence appellant's counsel complains that the learned trial magistrate did not evaluate it properly. He mentions her failure to notice the evidential value of DW.2's evidence who sold to D.1 and evidence contained in the sale agreement ED.1. He argues that it was

wrong for the learned trial magistrate to find that the agreement was a forgery. He further faulted the learned trial magistrate's finding that the fact of Respondents being on the land for 20 years, does not extinguish their being tenants. The appellant also argued that respondents' evidence was full of contradictions.

In response the Respondents' counsel referred to the evidence and stated that the evidence was cogent, reliable and not contradictory, and proved the Respondents' claims on the balance of probability.

The evidence adduced by the Plaintiffs/Respondents when weighed alongside that of Defendants/Appellants, court finds that, there was evidence before court proving that the plaintiffs had interest in the suit land as far back as 1994. While plaintiffs' evidence was that their interest was of owners by purchase, the defendant/appellant claimed they were on it as tenants. However evidence of PW.1, PW.2, PW.3-W.7, and DW.1-DW.3 shows that the plaintiffs had constructed permanent buildings thereon and also carried on business thereon. Both Plaintiffs(Respondents) and defendant(Appellant), claimed to have extracted sale agreements. Respondents (plaintiffs) claim the agreement was burnt in 2000. Defendant(Appellant) said their agreement is ED.1.
The learned trial magistrate found EDI forged due to failure of DW.1, and DW.2 to show court their respective signatures.

I have examined the agreement I find it falls short of the satisfactory evidential value to attach to such a sale transaction of land. It was not signed by the buyer and the seller. No witness signed on it. During trial the alleged seller DW.2 James said he would identify this agreement by his signature.

When the agreement was put to him he failed to identify the signature saying he did not sign on it.

DW.3 also claimed he wrote on the agreement but when examined he claimed he didn't write his name thereon. However the agreement has no signature or name thereon. These facts made the agreement suspect and hence I do agree with the learned trial magistrate's refusal to rely on it.

I also note that evidence from Plaintiffs (Respondents) through PW.1-PW.7 were able to prove and corroborate the fact that the sale agreement was burnt in 2000. PW.1 told court that it is after he went and informed DW.1 that the agreement was burnt and he was seeking a replacement from him that the said DW.1 began claiming that they are tenants. This evidence when considered with the fact that plaintiffs have lived on the land since 1994, for the period of over 20 years, and have on the land permanent structures and business, raises a plausible conclusion that they could be telling the truth that they are not tenants but owners.
The law of evidence places the burden of proof on he who alleges a fact (section 101,102 and 103 Evidence Act). The Respondents had the burden to prove his ownership he did. The Appellant (defendant) had the burden to prove that plaintiffs were tenants. This evidence is lacking. There is no evidence (independent) save his (DW.1)'s own ward, DW.2 who is a seller, and DW.3 who said was also a witness on the sale. Their evidence is not of the fact of the tenancy.

The appellant's complaint of discrepancies on evidence of plaintiff's witnesses, I found them minor. The statement of PW.1 that the land was bought by his wife was a single sentence in evidence. The rest of the statements refer to "we bought" (see page 4 and 5 of proceedings).
I find that as a minor detail.

The alleged discrepancy in naming names of neighbours is also a minor discrepancy. I found that while some witnesses named neighbours who had died or left before time of purchase, others referred to the neighbours, as at time after purchase. All this was however explained in the proceedings. (See pages 7, 8, 14 and 18 of the typed proceedings).

I therefore do not find any major problems in the learned trial magistrate's findings on the evidence. I do agree with her conclusions that the weight of evidence tilted in favour of plaintiffs. I therefore find, as follows on the grounds of appeal.

1. The evidence proves that Plaintiffs/Respondents are lawful proprietors of the suit land. This ground 1 therefore fails.
2. The learned trial magistrate gave an exhaustive and proper scrutiny of the evidence and arrived at the right decision. Ground 2 therefore also fails.
3. The decision of the learned trial magistrate did not occasion any miscarriage of justice. This ground also fails.

In the result, the appeal fails. It is dismissed with costs to the Respondents. I so order.

Henry I. Kawesa

JUDGE

02.06.2017