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

HCT-04-CV- CA- 0103 OF 2015
(ARISING FROM MBALE CIVIL SUIT NO. 50 OF 2010)

WERE ISAAC :::::::::: APPELLANT

VERSUS

MRS. ANNET MAKUMA :::::::::: RESPONDENT

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

Appellant raised four grounds of appeal in this appeal.

The Appellant's counsel however did not address court on any of the said grounds. The Respondents filed written submissions in rebuttal of the appeal.

It is the duty of a first appellate court to re-evaluate the evidence, make its own conclusions aware that it did not have chance to listen to and observe the witnesses.
Kifamunte Henry v. Uganda SCCA 10/97 and ***Pandya v. R (1957) EA*** followed.

I have re-evaluated the evidence. The Plaintiff (Respondent) filed the suit against the Defendant (Appellant) for trespass; encroachment, forceful entry and an order for vacant possession, and declarations that Plaintiff is the lawful owner of the disputed land. She prayed for damages and costs.

The Defendant denied and by written statement of defence contended that the land was not for Plaintiff. Defendant averred that he bought the land in 1987 and was thereon lawfully. He prayed that the suit be dismissed.

In court Plaintiff (Appellant) called a total of five witnesses while the Defendant called three witnesses.
Both Plaintiff and Defendant handed in their respective sale/purchase agreements. The court then visited locus, and heard the evidence at locus. At the end, the learned trial magistrate found in favour of the Plaintiff.

The evidence on record is that PW.1 said he sold the land to Plaintiff and an agreement was made. PW.2 said she purchased the land from PW.1 on 25.11.1987 cultivated till 2009 when Defendant laid claims thereon she tendered the agreement of sale PE.2. **PW.3 Gorreti Modebo** said land is for Plaintiff. She cultivated between 2005-2007 without disturbance.

PW.4 Mayende Dauson, used to work for Plaintiff since 1990 on that land. She confirmed that she planted some of the eucalyptus trees on the land in 1999. She planted 50 and only 10 grew. She said defendant cut the trees in 2009.

PW.5 Mwolobi Sophia used to cultivate the land for Plaintiff between January 2005 to 2007 when she left.

In defence evidence was that land was for defendant. DW.1 Were Isaac said he bought the land from **Fenekase Tegule** on 6.3.1987 and an agreement made by T. Dolton for him. He planted eucalyptus trees thereon in 2002.

DW.2 Bwaga Dauson, said Defendant bought the land from **Tegule F**.

DW.3 Mereth Were confirmed that defendant bought the land, and he witnessed the agreement.
At the locus, court was shown the land and heard evidence thereat.

From all evidence above, this court finds that the case turned on the evidential value of the two agreements before court. The burden of proof is that Plaintiff had to prove on the balance of probabilities that she bought the land. She did so through evidence of her witnesses PW.1, PW.5 and Ex.I. The evidence shows that PW.1 sold the land to Defendant. She took possession. There was evidence that she employed services of PW.3, PW.4, PW.5 on the land and hence she had undisturbed use thereof from 1982 to 1990, then **Mayende** care took from 1990 to 2000 and PW.3 also cultivated on it between 2004-2007. PW.5 also cultivated the land. All that time, they cultivated and planted eucalyptus trees thereon undisturbed, until 2009 when defendant came on the land and cut the same.

PW.1 gave evidence that he made an agreement for PW.2 signed on by DW.2 who in court denied the same. This denial was critical and worked to put this agreement in question. Defendants through DW.1 showed court a separate agreement which DW.2 claims he authored.

I have carefully considered the above facts and do agree with the learned trial magistrate that the findings at locus, coupled with the advanced age of PW.1 makes PW.1's evidence credible and believable. I do believe that PW.1 sold the land to the Plaintiff.

I also believe that the evidence from Plaintiff holds enough weight to disapprove the allegations by Defendants. The Defendants are relatives, and young descendants of **Tegule**. PW.1 in evidence in chief said on page 5. "*The land formerly belonged to the grandfather of Were…..*"
The said PW.1 said he had bought from **Fenekansi Tegule**.

During cross-examination (page 6) the witness PW.1 said, "***Tegule**'s son made an agreement for him but time came and he changed…..*"

All the above evidence, is honest, truthful and cogent and explains why D.2 in court denied the agreement. Given evidence at the locus, and observations by court, it puts the defence case in doubt.

I am convinced that the learned trial magistrate did properly evaluate all the evidence on record and did reach a right conclusion. I therefore find that grounds 1, 2, 3, 4, 5 and 6 all fail and are not proved.

Ground 7:
The award of general damages is discretionary. No reasons are articulated why the learned trial magistrate is faulted.

In her judgment the learned trial magistrate considered the pain, suffering, inconvenience and the value of trees destroyed and put the figure of damages at 5,000,000/=. I take judicial notice of the fact that the cost of eucalyptus is quite high. The fact that about 10 were destroyed if each is valued at 200,000/= and given which puts it at 2,000,000/=. If it is given a value of 6 years from 2009 to 2015 (when destruction occurred to judgment) each year she lost the use of her

garden she could have cultivated and earned crops and earned therefrom the equivalent of 5 eucalyptus tree income which is 200,000 x 5 =1,000,000/= hence shs. 2,000,000 plus 1,000,000 = 3,000,000/=.

The Plaintiff suffered pain and suffering which are unquantifiable. The award of 2,000,000/= for that pain is reasonable. I do find the total award of shs. 5,000,000/= as general damages reasonable in the circumstances. This ground also fails.

The appeal has not been proved. It fails on all grounds. It is dismissed with costs to the Respondent. I so order.

Henry I. Kawesa

JUDGE

08.06.2017