

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

**HCT-04-CV- CA- 163 OF 2014  
(ARISING FROM PALLISA CIVIL SUIT NO. 32/2011)**

**ONYANGIN WILSON** ..... **APPELLANT**  
**VERSUS**  
**OLUPOT ROBERT** ..... **RESPONDENT**

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

**JUDGMENT**

The appellant was dissatisfied with the judgment of his **Worship Kintu Imoran** G1 Pallisa of 12/09/14.

The grounds of appeal are that the learned trial Magistrate erred in law and fact when he failed to effectively/ properly evaluate the evidence on record thereby reaching a wrong decision.

As a first appellate court this court has the duty to scrutinize and re-evaluate the evidence and reach its own conclusions, aware that it did not have chance to listen to and observe the witnesses.

I have re-evaluated the evidence, in this case.

The evidence was that plaintiff claimed for recovery of land from the defendant approximately 3 acres- which defendant has encroached on. (Paragraph 3 & 4 of the plaint.) The defendant in his written statement of defence denied all allegation.

The case for plaintiff was through PW1, PW2 and PW3. Defence was through DW1, DW2, DW3, DW4, DW5, & DW6.

The plaintiff averred that defendant's late father died and left some land. Plaintiff took care of the land. In 2005 he handed over to Defendant his portion and planted boundary marks.

This was before a clan Chief called **Omoding Sam**. Later in 2011 defendant sued him to the Clan Chief **Adome Victor**, who re-demarcated the land and took over plaintiff's 3 acres of land.

He called PW2- the Chief who demarcated in 2005, and confirmed that the land was re-demarcated in 2011, and entered plaintiff's 2 gardens( acres) and also later stated it is 2½ acres encroached upon.

**PW3- Manjeri Apus** said land is for the plaintiff.

Defendant said that the land was handed over to him as his portion of inheritance from the father on 20.6.2011. He denied that he did not receive any land from plaintiff in 2005. DW2 was around when the land was handed back to defendant in 2011. DW3 said the clan handed the land to defendant in 2011. **DW4-Evenini** also confirmed land was handed to defendant in 2011. **DW5 Epodoi Apulaise** said land is for defendant. **DW6 Okaya** confirmed that the clan handed the land to the defendant.

From the evidence above the learned trial Magistrate found that the suit land rightfully belongs to the defendant and not the plaintiff.

I have reviewed the evidence and do agree with Respondent's Counsel's argument that the plaintiff did not adduce enough evidence to prove his case on a balance of probabilities. Section 101,102 and 103 of the Evidence Act is that whoever asserts a fact must prove it.

This evidential burden is heavy on part of the plaintiff. He should have raised evidence to show that the plot of land the plaintiff occupies is his. The plaintiff only attempted to prove that the defendant in 2005 asked for his portion, but again asked for more in 2011.

However plaintiff's evidence is not conclusive on the 2005 transaction.

The defence conclusively through DW1- DW6- led enough evidence to prove that the land was handed to defendant by the clan in 2011. The evidence effectively weighs heavier than the alleged evidence of the plaintiff.

(See: *Miller V Minister of Pensions (1947) 2 A11ER 372*).

In the result I do not find any merit in the ground of appeal.

The learned trial Magistrate rightly evaluated the evidence.

I do dismiss this appeal with costs to the Respondents.

I so order.

**Henry I. Kawesa**

**JUDGE**

**03.05.2017**