

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

**HCT-04-CV-CA- 0166 OF 2015**  
**(ARISING FROM KAPCHORWA CIVIL SUIT NO. 0051/2013)**

**LAWENDI MARTIN** ..... **APPELLANT**  
**VERSUS**  
**KIPTOO VICENT** ..... **RESPONDENT**

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

## JUDGMENT

The brief facts are that the Respondent sued the appellant and another in the Chief Magistrate's Court of Kapchorwa for recovery of 3 acres of land situate at Lutei village, Kapenguria Parish, Tegeresi sub-county in Kapchorwa District.

By amended plaint dated 24 May 2012 the plaintiff's suit against the defendants is for permanent injunction against defendants for trespass, interference with plaintiff's use/quiet possession, vacant possession of land measuring 3 (three) acres, declaration that land belongs to plaintiff, general damages and costs of the suit.

Under paragraph 4 (a) it is pleaded that plaintiff is legal/beneficial owner administrator of estate of the late **Erukana Silkwa**'s land situate at Litei Kapenguria, Kapchorwa approximately 3 acres.

6) Without rights or consent of plaintiff first defendant in 2003 trespassed and unlawfully sold to second defendant. Who also unlawfully took possession of the Suitland.

(5) The plaintiff forcefully entered / trespassed on the disputed land in 2009.

In defence the 1<sup>st</sup> defendant admitted the fact of sale to D2 1 acre but denied being in trespass.

D2 denied the contents of the plaint. He pleaded in paragraph 4 and 5 that he bought from 1<sup>st</sup> Defendant at Shs 830.000/= on 31.10. 2000. On 12. 01. 2001 he bought another piece of land located in Litei measuring  $\frac{3}{4}$  from **Chelengat Stephen Zeblon**.

He enjoyed quiet possession until 2009 when plaintiff lay claims above in the plaint.

At the scheduling two issues were framed.

1. To whom does the disputed land belong?
2. What are the available remedies?

At conclusion of the trial the learned trial Magistrate found in favour of the plaintiff hence this appeal.

The appellant in the memorandum of appeal raised 3 grounds of appeal.

The duty of a first appellate court is to re-evaluate the evidence and make its own conclusions bearing in mind the fact that it never had the chance to listen to and observe the witnesses in court.

The appellant argued grounds 1 and 2 together and ground 3 separately.

### **Ground 1 and 2: Failure to evaluate evidence**

From the evidence on record, the learned trial Magistrate concluded that the plaintiff proved his case on the balance of probabilities. However the appellant disagreed and invited this court to find otherwise. He argued that no evidence was

adduced by the respondent (plaintiff to prove that he had title to the suit land save his oral testimonies that were never corroborated in proof. He further stated that the plaintiff did not adduce letters of Administration in proof of ownership.

He claimed that DW1, D2 and DW3 had proved that D2 bought the suit land from 1<sup>st</sup> Defendant.

The respondent's counsel agrees with the findings of the learned trial Magistrate, and pointed out that the respondent/plaintiff had proved ownership through both oral and documentary evidence of PW1, PW2, PW3 and also showed that DE EXh 1 and DE EXh.2 showed a variance between what was sold /given to D2 and the suit land.

I have examined the above evidence and I do find that the plaintiff /respondent proved in court by oral evidence backed up by documentary evidence that the suit land was part of the Estate of the late **Silokwa Erukana**. I have noted that during conferencing the plaintiff listed "letters of Administration" as part of his documents and the surrender agreements by 1<sup>st</sup> defendant before the clan (see page 7 of typed proceedings).

In court during the trial the documents were marked as P.Exh 1, PEXh2, and DEXh3 (all agreements relating to this transaction).

I have also found a copy of the letters of Administration to the plaintiff in respect of the Estate of **Erukana Silokwa**, granted to the plaintiff **Kiptoo Vicent** and **Cherukut Richard** dated 26<sup>th</sup> May 2009. This document was annexed to written statement of defence of Defendant 1 of 27.7 2009. These pieces of evidence are all on record and were duly considered by the learned trial Magistrate, contrary to what appellant's counsel submitted.

The learned trial Magistrate in her Judgment considered all evidence above on page 3, 4, 5.

I am therefore unable to find any merit in the complaints raised by the appellants in submissions.

The learned trial Magistrate correctly assessed the evidence on record and reached a right conclusion on the evidence.

Ground 1 and 2 are accordingly not proved, and they fail.

### **Ground 3: Miscarriage Of Justice**

The case of *Matayo Okumu V Francis Amudhe & 2 Ors (1979) HCB 229* guided that:

*“ a decision appears to have caused a miscarriage of justice where there is a prima facie evidence that an error has been made.”*

In the submissions the appellants argued that the issues raised in grounds 1 and 2 highlighted omissions which resulted into miscarriage of justice. I have however found that the learned trial Magistrate did not commit any error or omission in her assessment of the evidence before court. There was therefore no misdirection and non direction on her part during the trial. This ground is therefore moot and fails.

In conclusion this appeal has failed on all grounds raised.

It is dismissed with costs to the respondent. I so order.

**Henry I. Kawesa**  
**JUDGE**  
**15.03.2017**

Right of appeal explained.