

5                                   **THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA HOLDEN AT GULU**  
**CIVIL APPEAL NO. 11 OF 2020**

10                   **(ARISING FROM CIVIL SUIT NO. 009 OF 2013, CHIEF MAGISTRATES**  
**COURT OF KITGUM HOLDEN AT PATONGO)**

**OWON AKWILINO OKONGO.....APPELLANT**

**VERSUS**

15   **1. OMARA YOSAM**

**2. OMORO LUPUAMOI.....RESPONDENTS**

**BEFORE: HON. MR. JUSTICE GEORGE OKELLO**

20                                   **JUDGMENT**

This is an appeal from the Judgment and Decree of His Worship  
Oji Phillips, the then Magistrate Grade One of Patongo  
25   Magistrates Court, given on 14<sup>th</sup> February, 2020, in Civil Suit  
No. 009 of 2013, a land matter.

The Appellant sued the Respondents jointly and severally  
claiming that the Respondents trespassed on approximately ten  
30   (10) acres of customary land situate at Tee- Oryang village,  
Lumoi Parish, Omiya- Pachwa Sub-County, Agago District. The



- 5 Appellant sought to be declared the lawful customary owner of the suit land. He also sought for a permanent injunction, general and punitive damages, mesne profits, interests and costs.
- 10 The Respondents denied the claim and averred that they have never gained possession of the alleged land. The Respondents contended that they live in different villages from the Appellant and have separate land. The Respondents also averred that their forefathers acquired land located in Lumoi central village
- 15 on which the Respondents have lived without any adverse claim. The Respondents prayed that the suit be dismissed with costs.

The parties testified and called witnesses, consequent on which

20 the trial court visited the *locus in quo*. In his Judgment, the trial Court held and declared the Respondents to be the owners of the suit land, and that the Appellant lacks valid claim. The court ordered for the eviction of the Appellant, his son, a daughter, a Nephew, and three other persons whom the trial Court found

25 had entered on a portion of the suit land when the dispute was pending in court. The trial Magistrate therefore dismissed the suit, with costs. Aggrieved and dissatisfied, the Appellant lodged this appeal.



5    **Grounds of Appeal**

1. The Learned trial Magistrate erred in law and fact when he failed to find that the Appellant is the lawful customary owner of the suit land thereby arriving at a wrong decision.

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2. The learned trial Magistrate erred in law and fact when he held that the Appellant contradicted the evidence of his witnesses as to the location of the suit land, thereby arriving at a wrong decision.

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3. The Learned trial Magistrate erred in law and fact when he failed to properly conduct the *locus in quo* visit thereby occasioning a miscarriage of justice

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4. The Learned trial Magistrate erred in law and fact when he imported his own facts as evidence of *locus* visit whereas they were never observed or seen at *locus* visit thereby arriving at a wrong decision.

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The Appellant asked this Court to allow the appeal; set aside the Judgment and orders of the trial court; that the appellant be declared the lawful owner of the suit land; a permanent injunction issues; eviction order issues; and that general damages, interests and costs are awarded to the Appellant.

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*Hutoan.*



5   **Legal Representation**

The Appellant was represented by learned counsel Mr. Louis Odongo, while the Respondents were represented by learned counsel Mr. Ronald Ngobi. Counsel filed written submissions which court has considered and is grateful.

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**Duty of the first appellate Court**

This court, sitting as the first appellate Court, has a duty to subject the evidence as a whole to a fresh and exhaustive examination and reach its own decision on the evidence. The  
15 Court must weigh conflicting evidence and draw its own conclusions. It is not merely to scrutinize the evidence and see if there was some evidence to support the lower court's findings and conclusions, and only then can the court decide whether the trial court's findings should be supported. In doing so, the  
20 appellate court should make due allowance for the fact that the trial court had the advantage of hearing and seeing witnesses. In short, an appeal from a trial court is by way of a retrial and an appellate court is not bound to follow the trial court's findings of fact if it appears either that it failed to take account  
25 of particular circumstances or probabilities or if the impression of the demeanour of a witness is inconsistent with the evidence generally. See: **Selle & another Vs. Associated Motor Boat Co. Ltd & others (1968) E.A 123; Pandya Vs. R (1957) E.A 336; David Muhenda & 3 Others Vs. Margaret Kamuje, Civil**

Hutoo



5 Appeal No. 9 of 1999 (SCU); Fr. Narensio Begumisa & 3  
others Vs. Eric Tibebaga, Civil Appeal No. 17 of 2002.

In Kifamunte Henry Vs. Uganda, Criminal Appeal No. 10 of  
1997, the Supreme Court held that it was the duty of the first  
10 appellate court to rehear the case on appeal, by reconsidering  
all the materials which were before the trial court, and make up  
its own mind. The Court observed that failure by a first appellate  
court to evaluate the material as a whole constitutes an error of  
law.

15

#### **Resolution of the grounds of appeal**

I will resolve all the grounds together as they relate to the  
findings on the ownership of the suit land, and the evaluation  
of evidence, some of which were taken at the *locus*, as well as  
20 the conduct of the *locus in quo* proceedings.

#### **Resolution of the grounds**

In the trial court, parties filed witness statements and witnesses  
were cross examined and re-examined. Issues were framed in  
25 the written submissions. The issues were; *who of the parties is*  
*the lawful owner of the suit land*; and, *remedies available to the*  
*parties.*

The Appellant (PW1) who was 27 years at the material time of  
30 signing the witness statement (3<sup>rd</sup> September, 2018) testified



5 that he was a resident of Te-Oryang Village, Lumoi Parish, Omia  
Pachwa Sub-County, Agago District. He stated he knew the suit  
land, being 10 (ten) acres, located in Te-Oryang Village, Lumoi  
Parish. He also asserted that the ten acres form part of 1,500  
acres. PW1 traced the history of the suit land to his grandfather,  
10 a one Acaye Gabriel (Rip) whom PW1 said had settled thereon  
in the early 1940s. The grandfather lived with the Appellant's  
father, Okongo Yokonia and three other children. PW1 then  
inherited the suit land upon the father's demise in the year  
2004.

15

Regarding the 1<sup>st</sup> Respondent's interest, PW1 stated in chief that  
in the early 1970s, the 1<sup>st</sup> Respondent's mother (a clan sister)  
approached the Appellant's father who on consulting his  
siblings, allowed the 1<sup>st</sup> Respondent's mother to settle on the  
20 southern part of the suit land. The demarcation, according to  
PW1, was a tree called Atigo, a path created along the '*other  
shea nut trees*' to the Odugu (tree) towards Padye swamp.

About the 2<sup>nd</sup> Respondent, PW1 asserted, the 2<sup>nd</sup> Respondent  
25 was neither a neighbor nor was he using the suit land. He  
further stated that between the years 1999 up to 2005 at the  
peak of Joseph Kony insurgency (LRA war), part of the suit land  
was turned into an Internally Displaced Persons Camp (IDP)  
and several persons settled there, including the Respondents.  
30 That, the camp was administratively called Lumoi trading



5 Central village. According to PW1, after the camp disbandment, the place became a local trading Centre. To PW1, the Respondents were laying claim to the area where the trading Centre has since been created. PW1 further asserted that the trading Centre was however beyond the common boundary. PW1  
10 concluded that the Respondents erected illegal structures on the suit land and sold part thereof to unknown persons at the time the suit was pending in the trial court.

PW2 (Auma Santa), a 90 year old and an in law to the father of  
15 PW1, supported PW1's testimony about how PW1's father accommodated the 1<sup>st</sup> Respondent's mother and gave her part of the suit land in the 1970s. PW2 stated that the gifted land was separated by Atigo tree in a straight line with several shea nut trees, kiwa tree, an ant hill, and Odugu tree, stopping at  
20 Padye swamp. PW2 stated that the Appellant inherited the suit land. She asserted that it was in the year 2007 that the 1<sup>st</sup> Respondent started to claim part of the suit land which had become a trading Centre.

25 PW3 (Ogwang Christopher), a 72 year old, and PW4 (Odida Patrick), a 50 year old, repeated what PW2 had testified about.

The Appellant and his witnesses were cross examined. In cross examination, PW1 stated that the 1<sup>st</sup> Respondent owns 500  
30 acres of land in Lumoi Central village. PW1 also maintained that



5 the 1<sup>st</sup> Respondent's parent was given land, not in 1970s stated  
in chief, but was given in 1955. PW1 also conceded the 1<sup>st</sup>  
Respondent has lived there since then. He also conceded that a  
road was constructed through the suit land in 2010 (funded by  
Oxfam) and that he did not complain and was not compensated.  
10 PW1 however claimed he was in possession of the suit land in  
the year 2010. At the same time, PW1 conceded the  
Respondents are in possession of the suit land (10 acres) since  
the year 1997 in case of the 1<sup>st</sup> Respondent who took 09 acres  
thereof, and the 2<sup>nd</sup> Respondent who took 01 acre in the year  
15 2000.

PW1 also stated that he owns 1500 acres of land in Te-Oryang  
village. This was corroborated by PW2. However, PW2 was  
inconsistent in her testimony in other respects, for instance, she  
20 later denied that the Appellant (PW1) owns land in Te-Oryang  
village. PW3 stated that Te-Oryang and Lumoi are villages, in  
Lumoi Parish. He stated that formerly the suit land was in Te-  
Oryang village before the village was split into other villages.  
This was after disbandment of the IDPs. PW3 however did not  
25 know exactly the land in dispute, as he claimed it measures 150  
(One Hundred Fifty) acres, yet the parties stated it to be 10 (ten)  
acres. PW3 insisted the land in Te-Oryang is the Appellant's  
who was in possession of. PW3 however later conceded he  
lacked information about the size of the disputed land.



5 On his part, PW4 testified that the 10 (ten) acres of land are in Te-Oryang village and that the Respondents occupy. Unaware of what PW1 had stated, PW4 claimed that the Respondents encroached on the suit land in the year 2007. PW4 however conceded the 1<sup>st</sup> Respondent has land within Lumoi village.  
10 PW4 also accepted that Te-Oryang and Lumoi are separate villages.

What I can deduce from the Appellant's witnesses is that, they contradicted each other in material respects. They however  
15 accept that new villages were created after the disbandment of the IDP camps. Of significance in this appeal are, Lumoi and Te-Oryang villages. The witnesses also accept that the bigger chunks of the suit land remained in Te-Oryang village and the smaller portion went to the newly created Lumoi village. The  
20 Appellant also agreed that the entire portion of the 1<sup>st</sup> Respondent's 500 acres is within Lumoi village, and that the 1<sup>st</sup> Respondent has been there since the year 1997, but the 1<sup>st</sup> Respondent's mother was there since the year 1955. The Appellant also agreed that the 10 (ten) acres (the suit land) is  
25 located within Lumoi village and the 1<sup>st</sup> Respondent occupies 09 acres, while the 1<sup>st</sup> Respondent occupies 01 acre thereof.

In their defenses, the 1<sup>st</sup> Respondent (DW1), a 60 year old at the time, testified that he does not own any land in Te-Oryang but  
30 in Lumoi village. He said he owns approximately 1 ½ kilometer



5 in length and 1 kilometer in width. DW1 asserted he inherited  
the land from his father in 1962 upon the father's demise. DW1  
denied the gifting allegation. DW1 stated that in the year 2006,  
Lumoi village was subdivided into new villages to create Lumoi  
Central village, Kamuka village, Wipolo village, Te-Oryang  
10 village, Arua village, Tekire village, and Labworomor village.  
DW1 testified that in August 1997, the community sat down  
and identified part of DW1's land as being a suitable location  
for establishing a trading Centre, and that, that is how Lumoi  
trading Centre was birthed. DW1 continued that the trading  
15 Centre has grown over time and many persons have established  
permanent structures thereat. He stated that in the year 2000,  
Oxfam helped the community to construct main road in the  
trading Centre connecting to Kalongo town from the South and  
Namukora town in the North. DW1 asserted, at the time of the  
20 road construction, the Appellant and his father were at their  
home in Te-Oryang and never complained. DW1 asserted, it was  
when the town started growing, that the Appellant started  
claiming in the year 2007 that his grandfather owned the area.  
DW1 asserted that the Appellant's father never claimed the suit  
25 land during his life time, till his demise in 2004.

On his part, the 2<sup>nd</sup> Respondent (DW2), a 69 year old at the time  
(Sept, 2018) denied owning any land in Te-Oryang but in  
Kamuka village.



5 The 1<sup>st</sup> Respondent called DW3 (Labeja Caesar), a 62 year old,  
a neighbor of the 1<sup>st</sup> Respondent, who corroborated DW1,  
stating the later owns land in Lumoi Central village. DW3 also  
stated that the Appellant's family had relocated from Lakwa to  
Te-Oryang where the Appellant and his parents settled and  
10 never migrated anywhere. DW4 (Okot Mathew), a 54 year old,  
also testified, stating he acquired land in Lumoi village from the  
1<sup>st</sup> Respondent in the year 2000. DW4 also testified that he  
knew the Appellant's father (Yokonia Okongo) who at the time  
DW4 purchased the land (2000), was resident in Te-Oryang.  
15 DW4 asserted that the Appellant and his father never  
questioned DW4's land purchase from the 1<sup>st</sup> Respondent.

The defense witnesses were cross examined at length. In cross  
examination, DW1 stated that during the years 1994-1995 he  
20 was at his home where Lumoi Central village was ultimately  
created. DW1 also recalled a tree where the LC Chairperson of  
Te-Oryang village used to have his office, saying the tree is (now)  
located in Lumoi Central village. DW1 also agreed that the  
Appellant secured a plot of land for himself in Lumoi Central  
25 village just like other persons who acquired plots in the area.  
DW1 also admitted the 2<sup>nd</sup> Respondent (DW2) was using part of  
the suit land. DW1 admitted that the 2<sup>nd</sup> Respondent is DW1's  
paternal uncle, whereas the Appellant is a son to the maternal  
uncle of DW1. DW1 also admitted selling land (part of the suit  
30 land) to many persons such as Opio David; Okot Mathew (in the



5 year 2000); Okwangu William; and Olwoch Samuel Aliba. DW1  
also confirmed that others got plots and did not pay DW1 while  
other persons paid for the plots. DW1 clarified that between the  
years 1990-1995 his home was in Lumoi village, and has  
remained to-date. DW1 was also the LC1 Chairperson of Lumoi  
10 Central village, and that by 1997, he was the Resistance Council  
1 Chairperson of the area. DW1 asserted that during the times,  
the Appellant was resident in Te-Oryang.

On his part, DW2 (the 2<sup>nd</sup> Respondent) stated in cross  
15 examination that the road (I suppose the road constructed with  
the aid of Oxfam) passes through the 1<sup>st</sup> Respondent's (DW1's)  
land. DW2 stated the suit land does not extend to the area  
which DW2 cultivates. DW2 asserted that he inherited the land  
from his father. DW2 however stated that between the years  
20 1997 to 2000, he lived in Lomoi village. He wondered why he  
was sued by the Appellant.

On his part, DW3 stated that the trading Centre is situate on  
the suit land and that the land belongs to the 1<sup>st</sup> Respondent.  
25 DW3 conceded the Appellant built a house in the trading Centre  
just as other persons who got Plots in that area. DW3 testified  
that the 1<sup>st</sup> Respondent gave land to the community (including  
the Appellant) (to help develop the trading Centre). DW3 named  
persons who got plots from the 1<sup>st</sup> Respondent.



5 DW4 was cross-examined as well. He stated that the community of Lumoi agreed that the land of the 1<sup>st</sup> Respondent was good for the establishment of a trading Centre and requested the 1<sup>st</sup> Respondent to give people plots, at a fee. According to DW4, the 1<sup>st</sup> Respondent (DW1) accepted the request, and that is how  
10 DW4 got his plot. DW4 asserted that the Appellant also got a plot. DW4 stated that the Appellant however sued the 1<sup>st</sup> Respondent in the LCII Court when the 1<sup>st</sup> Respondent asked for money for the plot.

15 In light of the evidence adduced by the two sides, it has become clearer to me that the suit land is situate where the current trading Centre of Lumoi is. It is also my finding that, that area is occupied by other persons who were not sued by the Appellant in the trial Court. None of the occupants of the suit  
20 land who are non-parties herein, testified for the Appellant, to contradict the defense case, that, it is the 1<sup>st</sup> Respondent who gave the community plots within Lumoi trading Centre, for the purpose of developing the area.

25 It is also clearer to me that the dispute became more pronounced after the trading Centre was birthed and became more commercially viable. There is no evidence to show that, before the creation of Lumoi Central village, the Appellant or his father or relations, placed any claim to the area now in issue as  
30 being his/theirs. The presence of the Appellant appear more



5 pronounced in the present day Te-Oryang village not Lumoi  
village. After the creation of Lumoi Central village, the  
Appellant's presence in Lumoi Central village was limited, for  
commercial reasons, he operating a shop, just like others. The  
Appellant's presence in Lumoi Central village was thus not on  
10 account of his purported interests in the ten (10) acres of the  
suit land situate within Lumoi Central trading Centre, but on  
account of a plot he acquired and where he had established his  
shop, just like other persons, as testified to, by the defense.

15 In his Judgment, the trial court did its best to summarize the  
relevant pieces of evidence adduced. The trial Court however,  
with respect, approached the matter from a wrong footing when  
it observed that the Appellant had to prove that he was the  
owner of the 10 acres of land (situate) in Te-Oryang village. I  
20 however understand the trial Court's approach was informed by  
the pleading of the Appellant and evidence he had adduced in  
chief (*vide* the witness statements). The Appellant and his  
witnesses, unlike the Respondents and their witnesses, knew  
less about the approximate boundaries of the new  
25 administrative units. That is why they erroneously thought the  
suit land is located within Te-Oryang, and not Lumoi Central  
village. It seems to me the 1<sup>st</sup> Respondent, having been the RC  
Chairperson and in the later years, the LCI Chairperson of  
Lumoi village/ Lumoi Central village, was more informed about  
30 the administrative units and their boundaries than the



5 Appellant. That perhaps explain why in their witness  
statements and that of their witnesses, the Respondents  
maintained their stance that they own no land in Te-Oryang  
village. Technically, I think the Respondents wanted to hold the  
Appellant to his pleading and evidence, and defeat the  
10 Appellant's land ownership claim at that point. However, as it  
transpired, the creation of Lumoi Central village as a new  
administrative unit meant that the suit land comprised of  
approximately ten (10) acres, found itself in this new village  
which had developed into a commercially viable trading Centre.

15

Given the above finding, the trial court, with respect, placed  
unnecessary weight to the finding made during the *locus* visit,  
that the suit land is not situate within Te-Oryang, but Lumoi  
village. With respect, the trial Court erroneously thought that  
20 by so finding, the Appellant had failed to prove his claim, and  
the dispute had been finally resolved. That conclusion was not  
entirely correct. In my view, the finding that the suit land was  
in a different place other than the place pleaded, in the special  
circumstances, did not and could not undermine the plaintiff's  
25 case. On the facts, the Appellant was still, together with the  
Respondents, able to move the trial Court to the exact suit land,  
a place the Appellant and the 1<sup>st</sup> Respondent conceded, had  
been visited in the past by the LCII Court. In the circumstances,  
if the Appellant called the place *Te-Oryang*, but the Respondents  
30 called it *Lumoi*, that, in my view, was not fatal to the Appellant's



5 claim. Therefore, the trial court should have gone ahead to  
evaluate, on the evidence, whether the Appellant had proved his  
claim, to the required standard, and not merely dismissing it  
because the Appellant had misstated the name of the area  
where he believed the suit land is located. It is therefore, for the  
10 above reason that I next proceed to consider whether there was  
ample material to justify the findings of the trial court that the  
Appellant does not own the suit land.

The learned trial Magistrate straight away considered the  
15 Respondents' evidence, having discredited the Appellant's case.  
The Learned Magistrate considered the fact that it was conceded  
by the Appellant that the 1<sup>st</sup> Respondent owns 500 acres of land  
in Lumoi Central village and that the Appellant's father never  
challenged that ownership, as well as the claim to the 10 acres  
20 situate in Lumoi. The trial Court also considered the evidence  
that the land the Appellant claims to have inherited from his  
father, did not exclusively belong to the father but that the  
father jointly owned with the Appellant's other paternal uncles.  
The trial Court also considered contradictions in the Appellant's  
25 case.

I have considered the evidence as a whole, and find nothing to  
fault the trial Court in the manner it evaluated the evidence on  
record. The court gave reasons for rejecting the Appellant's  
30 version while accepting the Defense case. I find that the



5 Appellant did not demonstrate the clear basis for his claim to  
the land in the present Lumoi Central village. The totality of the  
evidence placed the Appellant and his relations in the present  
day Te-Oryang village and not Lumoi Central village. The  
creation of Lumoi Central village, although curved out of Te-  
10 Oryang, did not affect the land linked to the Appellant and his  
relations, not being the suit land. On the contrary, the land in  
Lumoi trading Centre is strongly linked to the 1<sup>st</sup> Respondent,  
whom the Appellant and witnesses conceded, owns 500 acres  
there.

15

I have also considered the fact that during the *locus* visit, the  
Appellant did not demonstrate where his alleged 10 acres of  
land begin and end, at least going by the sketch plan of the  
*locus*. I have considered the argument for the Appellant that the  
20 trial Court record at the *locus* did not reflect that the appellant  
was tasked (by court) to identify the boundaries of the suit land.  
With respect, the record at the *locus* shows that the Appellant's  
then counsel instead of asking the appellant to identify the land  
boundary, chose to recall the 1<sup>st</sup> Respondent (an adversary) for  
25 cross examination at the *locus*. There is nothing more than that.  
In the circumstances, the present Counsel who did not  
participate in the prosecution of the Appellant's case in the trial  
court, cannot blame that court for not tasking the Appellant to  
prove his claim while at the *locus*. The blame can fairly and  
30 squarely fall on the then counsel for the Appellant. I must state



5 that it was not the duty of the trial court, in an adversarial  
system of litigation such as ours, to help any party to prove his  
case whilst at the *locus*. The court had no duty to ask a party to  
do what that party did not wish to. A court should even be more  
cautious in the conduct of court proceedings where parties are  
10 represented, lest a court is accused of descending into the arena  
of litigation.

Similarly, Learned Counsel for the Appellant cannot allege that  
other happenings occurred at the *locus in quo beyond* what was  
15 captured on record, in the absence of proof. It appears the  
Appellant's counsel, with respect, is mixing the notes of the trial  
Court taken at the pre hearing *locus* visit, which is not evidence,  
with that taken at the *locus* visit on the close of the Defense  
case. Pre hearing *locus* visit, in my view, is not a judicial  
20 hearing, as it happens before witnesses are sworn and heard in  
court. Pre-hearing locus visit merely helps Court to appreciate  
the *status quo* on the suit land before the hearing. This Court  
understands that this is now guided by the rules of this Court,  
as amended in the year 2019. See O.11A rule 3(2) CPR, as  
25 amended.

Adverting to the map drawn at the post trial *locus* visit, I find  
that it encompasses what the Defense had testified about in  
Court. Significantly, it shows the location of the suit land, as  
30 being in Lumoi trading Centre, and not elsewhere. It also shows



5 the trading Centre buildings without necessarily naming who  
owns what building. From the Padyer stream in the south  
towards Kalongo-Lumoi Road, but before reaching Lumoi  
trading centre, lies the home of the Respondent's son (the record  
does not specify which of the two Respondents), a grave of the  
10 Respondent's Nephew (the exact Respondent is not stated).

The locus map also shows the home of the Appellant, but  
sandwiched from the suit land. I note that the trial Court did  
not rely on the stated features at the *locus in quo* (son's home,  
15 grave, and the plaintiff's/ Appellant's home) in its Judgment.

In the circumstances, I find that the alleged improper conduct  
of the proceedings at the *locus in quo* and the alleged  
importation of material in evidence, not made out. In any case,  
20 no material is shown to have informed the decision of the trial  
Court, beyond that on record. The *locus* conduct, in my view,  
complied with the Practice Direction No. 1 of 2007, and case law  
on the subject. See: Alimarina Okot & 4 Others Vs. Lamoo  
Hellen, High Court Civil Appeal No. 026 of 2018, (Stephen  
25 Mubiru, J.); David Acar & 3 others Vs. Alfred Acar Aliro  
(1982) HCB 60, Bongole Geoffrey & 4 Others Vs. Agnes  
Nakiwala, Civil Appeal No. 0076 of 2015 (Court of Appeal).

*Hutoa*



5 I would therefore, with respect, disagree with the criticisms levelled against the trial Court. Consequently, all the grounds of Appeal would fail which I would dismiss.

10 The dismissal of the grounds aside, I have however noted that the trial Court, with respect, ordered for the eviction of the Appellant from the trading Centre. The evidence on record shows that, the Appellant and his children had been allowed to use part of the suit land, just like other members of the community, and have plots there, for commercial ventures. The  
15 evidence shows that the 1<sup>st</sup> Respondent had no serious qualms with that arrangement and did not purport to challenge it in the trial court. In that limited context, the trial court, with respect, erred in ordering for the eviction of the Appellant from Lumoi trading Centre. Similarly, the trial court erred in ordering for  
20 the eviction of persons who were not parties to the suit, from Lumoi Central village. Those affected include Nyeko Richard (the Appellant's son), Alice Obol (the Appellant's Daughter), Oyoo Charles (the Appellant's Nephew); and a one Opio Thomas, Okot Albino and Ogun Alex.

25

In the absence of a counterclaim by the Respondents against the Appellant and those affected persons, the eviction order was groundless and erroneous at law. Although no ground of appeal was framed in respect of my above finding and conclusions, this



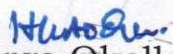
5 Court is justified in making the findings, in the exercise of its powers under 43 rule 27 of the CPR.

In light of the above findings and conclusions, I order as follows;

- 10 1. The Appeal wholly fails and is hereby dismissed.
2. The order of the trial Court is however varied to the extent that the eviction of the Appellant, his daughter, son, nephew, and all persons named in this Judgment, from  
15 the suit land located in Lumoi Trading Centre/ Lumoi Central Village where the Respondents concede those persons lived, is hereby set aside and they may regain their respective portions, if already evicted.
- 20 3. The Appellant shall pay full taxed costs of the trial Court but half of the taxed costs of the Appeal, to the Respondents.

It is so ordered.

25 Delivered, dated and signed in Chambers this 24<sup>th</sup> day of April, 2023.

  
George Okello

JUDGE HIGH COURT



5 Judgment read in Chambers in the presence of;

**1:15pm**

**24<sup>th</sup> April, 2023**

**Attendance**

10 Mr. Louis Odongo, Counsel for the Appellant.

The Appellant is in court.

Mr. Ngobi Ronald, counsel for the Respondents.

The Respondents in Court.

Mr. Abala Robert Robby, Court Clerk.

15

**Appellant's Counsel:** The matter is for Judgment. We are ready to receive the Judgment.

**Respondents' Counsel:** I am ready to receive the Judgment.

20

**Court:** Judgement read in Chambers. Right of Appeal explained.

25

*Handwritten signature* 24/4/2023  
George Okello

JUDGE HIGH COURT

30