

The Republic of Uganda
In the High Court of Uganda at Soroti
Civil Appeal No. 0027 of 2022
(Arising from Civil Suit No. 049 of 2004)

(An appeal against the judgement and orders of the Chief Magistrates Court of Soroti delivered on the 30th of June 2022 by His Worship Pirimba Emmanuel)

Otim Ogira Appellant

Versus

Onyait Stephen Respondent

Before: Hon. Justice Dr Henry Peter Adonyo

Judgement

1. Introduction:

This is an appeal from the judgement and orders of the Chief Magistrates Court of Soroti delivered on the 30th of June 2022 by His Worship Pirimba Emmanuel.

Onyait Stephen, the respondent filed a suit against Otim Ogira, the appellant in Land Claim No. 0049 of 2004 in the Soroti District Land Tribunal for trespass on plot No. 55 Aliabu Road, Soroti Municipality.

After the phase-out of the Land Tribunals the matter was transferred to the Chief Magistrate Court of Soroti holden at Soroti.

The parties proceeded with the same pleadings before the Chief Magistrates Court and never filed amended pleadings.

The respondent's claimed was that he had been allocated Plot 55 Aliabu Road by Soroti District Land Board under Min. 25/00 and his ownership commenced on the 17th of January 2001. That the appellant trespassed on the land by chasing away surveyors who had come to open boundaries claiming the land was his.

The appellant in his defence denied the respondent's allegations and averred that he bought the suit land from Mustafa Juma on 25/8/1993.

The trial Magistrate heard both parties and their witnesses and subsequently delivered judgement in favour of the respondent with the following orders;

- a. The plaintiff is declared the owner of plot 55 Aliabu Road.
- b. The defendant is declared a trespasser.
- c. Permanent injunction is issued against the defendant, his agents. Assignees and or anybody claiming from him from trespassing on the plaintiff's land.
- d. The defendant to give vacant possession of the plaintiff's land.

The defendant/appellant was dissatisfied with this decision of the learned trial magistrate and appealed to this court on the following grounds: -

1. *The learned trial Magistrate erred in law when held that the suit was not time barred;*
2. *The learned trial Magistrate erred in law and fact when he failed to properly evaluate the evidence thereby arriving at a wrong decision and orders;*

3. *The learned trial Magistrate erred in law and fact when he failed to consider the issue as to whether the allocation of suit land by the Municipal Council/Land Board was lawfully done;*
4. *The learned trial Magistrate erred in law and fact when he held that the sale agreement between Twaha Ali Maneno and Amuge Mary was illegal;*
5. *The learned trial Magistrate erred in law and fact when he held that plot 55 was not part of the original plot 10.*
6. *The learned trial Magistrate erred in law and fact when he held that the Defendant was a trespasser on the suit land.*
7. *The learned trial Magistrate erred in law and fact when he held that Besula Imalingat was the original owner of the whole land including the suit land whereas not;*
8. *The learned trial Magistrate erred in law and fact when he failed to consider the evidence that was given when court visited locus;*
9. *The learned trial Magistrate erred in law and fact when he relied on evidence of PW1, PW2, PW3 and PW4 in proof of ownership of the suit land which was not based on the pleadings.*
2. Duty of the first appellate court:

This court is the first appellate court in respect of the dispute between Otim Ogira and Onyait Stephen.

An appellate court is a higher court that reviews the decision of a lower court. It does so by hearing an appeal from a lower court. The primary function of an appellate court is to review and correct errors made by a trial court.

In carrying out its duty, the appellate court can do one of the following:

- a. Review decisions made by lower trial court;

- b. Affirm the decision of the trial court, in which case the verdict at trial stands;
- c. Reverse the decision to the trial court, in which case a new trial may be ordered;
- d. Modify an order or a decree;
- e. Remand the case back to the lower court for further proceedings;
- f. Dismiss the case.

This Honourable Court is the first appellate court in respect of the dispute between the parties herein and is obligated to re-hear the case which was before the lower trial court by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and to re-appraise the same before coming to its own conclusion as was held in *Father Nanensio Begumisa and Three Others v. Eric Tiberaga SCCA 17 of 2000; [2004] KALR 236*.

The duty of the first appellate court was well stated by the Supreme Court of Uganda in its landmark decision of *Kifamunte Henry Vs Uganda, SC, (Cr) Appeal No. 10 of 2007* where it held that;

"...the first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate Court must then make up its own mind not disregarding the judgement appealed from but carefully weighing and considering it"

In rehearing afresh, a case which was before a lower trial court, an appellate court is required to make due allowance for the fact that it has neither seen nor heard the witnesses and where it finds conflicting evidence, then it must weigh such evidence accordingly, draw its inferences and make its own conclusions. See: *Lovinsa Nakya vs. Nsibambi [1980] HCB 81*.

In considering this appeal, the above legal requirements are taken into account.

3. Representation:

The appellant was represented by Mukiibi Namanya Advocates while the respondent was represented by M/s Legal Aid Project of the Uganda Law Society. Both counsels filed submissions which have been considered together with the proceedings, decisions in the lower trial court and the proposed grounds of appeal in resolving this appeal.

4. Resolution of appeal:

Counsel for the appellant submitted on the grounds in clusters of 1 and 6, 2,3 and 8, 5 and 7 but with ground 4 on its own.

However, after having perused the lower court record and the submissions on appeal, I have found it necessary to start with grounds 2,3,4,5,7 and 8 which primarily relate to the evidence adduced in the lower court as re-evaluation of all evidence adduced in the lower will resolve all grounds raised in this appeal.

a. Grounds 2, 3, 4, 5, 7 and 8:

2. The learned trial Magistrate erred in law and fact when he failed to properly evaluate the evidence thereby arriving at a wrong decision and orders;

3. The learned trial Magistrate erred in law and fact when he failed to consider the issue as to whether the allocation of suit land by the Municipal Council/Land Board was lawfully done;

4. The learned trial Magistrate erred in law and fact when he held that the sale agreement between Twaha Ali Maneno and Amuge Mary was illegal;

5. The learned trial Magistrate erred in law and fact when he held that plot 55 was not part of the original plot 10.

7. The learned trial Magistrate erred in law and fact when he held that Besula Imalingat was the original owner of the whole land including the suit land whereas not;

8. The learned trial Magistrate erred in law and fact when he failed to consider the evidence that was given when court visited locus;

The evidence adduced in the lower court are as follows;

PW1 Onyait Stephen testified that his mother acquired the suit land in 1960 and she was using it for cultivation. She later gave him two plots that is 5 and 55, she gave him the lease, allocation letter and paid premium in his names in respect of plot 55. Soroti District Land Board allocated him the suit land and he has been paying ground rent for it. That this plot 55 does not include the house being occupied Amuge Mary. During cross-examination he stated that his mother sent someone called Odeke to make the application in his names and the application, lease offer and premium were made in his name in his absence. He maintained that the appellant's house is not on the suit land.

PW2 Wilson Boy Latura testified that he stayed near the suit land for many years as a neighbour on the opposite side, that the land was for Besula who had a house on the land built in 1960 and it still exists. He further testified that the appellant came as a tenant of Maneno's house which was for Mustafa and was neighbouring Besula's land. During cross-examination he stated that he knew Mustafa well and that he had nothing on the suit land, he handed over the land to Asuman and they were in the same line with Besula and neighbours.

He admitted that Asuman sold to Twaha Ali, however they were not called to witness. That there is a corridor where Mustafa's house is.



PW3, John Malinga testified the respondent was a neighbour and he stayed with him up to 1998 and he was not present when both houses were constructed on the suit land. That he bought a house that was on Onyait's land from Asuman who was a brother to Besula's boyfriend and by this time Amuge was not there. That its Asuman who sold to Amuge and he refunded his money after he sold to the Appellant's wife.

PW4 Iberut Christopher, testified that he knew the respondent as his neighbour since 1991 and he got to know to the appellant during constitution assembly time in 1994. He stated that plot 55 belongs to the respondent who got it from his mother.

That the appellant's wife has no land in the area and she does not stay on the suit land but in some corridor. During cross-examination he stated that Besula was a land lady who had about five plots and she sold off some land to George Aupal and Etonu's daughter.

That he came to know the appellant as a tenant who came to rent and they are tenants where they stay, to his knowledge they have never purchased the place they are staying. That there are two structures next to the suit property.

DW1 Otim Robert Ogira testified that the suit land was bought in 1995 by his wife Amuge and there was a sale agreement executed at Kakembo and Co. Advocates, this land measures approximately 22 ft. length and 75 ft. width and he stayed on the land since 1995 and this land originally belonged to Mustafa Juma who acquired it in 1969.

That in 2004 the respondent brought surveyors, he informed them that that part did not belong to the respondent and he was only entitled to Besula's part and to his knowledge there was no prior notice of allocation or survey.

That the late Besula died around 2003 and he did not have any issues with her, boundaries of the land were there, there was a ***kabaka njagala*** tree but it was cut by the respondent, it has a semi-permanent houses about 3, a tap, mango tree in the compound and also on Besula's side there was a mango tree.

During cross-examination he stated that he did not execute the sale agreement and he was not present at the sale of the land, everything he said he was told but he saw the agreement.

That they immediately settled on the land after buying it and they are there to date, that he got to know Besula's land through his wife as Besula showed his wife her land.

That none of the neighbours witnessed the sale agreement and his wife did not reveal why.

He told court that he was not aware if the land was surveyed at the time of purchase and the particulars of the land plot 10 Oliya road which particulars were got from Mustafa Juma's plot.

He further stated that the district has never allocated him land yet the land is within the municipality.

He further stated that from the time he bought the land it took the respondent about 6-7 years to start claiming the same and that the respondent used to stay in Kampala but would stay with Besula when he came to Soroti.

He further stated that his wife had a case with one Iberut Christopher (PW4) in respect of the same piece of land and she is relying on the same documents in this matter.

DW2 Amuge Mary testified that it is not true that her husband has trespassed on plot 55, by the time they bought the plot from Twaha Maneno in 1995 it was plot

10 Aliabu road before Municipal Council came up with a map and at the time of the purchase they were given title to plot 10.

During cross-examination she stated that she used both the appellant's and her name when purchasing the suit land.

That when the Municipal map came up, that is when the plaintiff came up and wanted to be allocated the same piece.

She further stated that plot 10 was allocated to the respondent and she only got to know when he ferried construction materials, when the map came up 3 plots had been created one of which was plot 53 which was allocated to the respondent and the other plots were plot 5 and 55.

That they are currently occupying plots 5,53 and 55 previously plot 10 but the respondent has occupied part of plot 5 and 53.

During re-examination she stated that at the time of purchasing the land, Besula was present and she did not raise any complainant.

She also stated that the respondent has entered on the land about 2 meters' width and 40-50 meters.

DW3 Mustapha Bin Juma testified that he got to know the respondent through his mother Besula between 1968-1969.

That the suit land was his since 1969 when he got it from Asuman Bin Saidi his in-law at 300/- and before this he was tenant at Besula's home.

That he used this land till 1979 when the war broke out and everyone ran away but that after the war he came back and sold the land to Maneno but that before he sold to Maneno he went to Besula and told her he was going to do so and after

the sale he even gave her some money and there was no complaint from the respondent at that time.

During cross-examination he stated that he sold plot No. 10 and at that time Besula was on her own land and he does not know about plot 55.

That he went to the land and they were in a meeting, he took people, except the respondent who was not present, around the land and that the land in dispute was formerly his.

During re-examination he stated that the house he sold together with the plot is still there, and that the respondent came and built in the corridor and he had entered into some part of his land.

DW4 Mukasa Muhamoud, testified that the disputed land originally belonged to Mustafa who sold it to Twaha who in turn sold it to the appellant. He told court that he was a neighbour to Mustafa when he owned the land and even when the appellant's wife bought the land.

That Besula sold part of her land to Ages Millers and Etonu's daughter and that the part that remained is occupied by the respondent and his brothers.

That during the time when Soroti was still a township/board people used to get land from the Town Board who would give you a big portion to clear and use and after it became a district they started creating smaller plots.

That his which was Plot No. 4 Aliabu road became 6 plots, that is Plot Nos. 2,4,6,8,10 and 12 Aliabu Road. That at the time the land was sold to the appellant's wife, Besula was alive and did not raise any complaint and the appellant and his wife utilised the land for residential purposes and at the time the plaintiff started claiming the land Besula was still alive but she knew that the place was not hers.

He told court that the appellant had not trespassed on the respondent's land because the house was built in 1970s when Besula was alive and the land was sold to Maneno in the 1990's and it was only 2004 when complaints arose made by the respondent.

He further stated that of the four plots, the two in front were sold while the two behind are for the respondent and the respondent is currently occupying Besula's land.

That the respondent's land has to date not yet been plotted so they are still on plot 10, he was not aware that the parties are litigating over plot 55.

That Besula was the first to come to the area where the said land is located and he does not know who is paying ground rent for the land in dispute, he also was not aware that the two plots where the respondent is staying with his brother is the disputed land.

During re-examination he stated that the appellant's land was plot 10 under town board system and at the time Besula sold her land she had plotted it under Municipal system but the appellant did not change his land to the municipal system. He further stated that plot 55 does not exist under the new system because plot 10 has not been converted to the new system.

That the respondent and his brothers are staying on land different from the appellant's wife, that plot was almost the same size as his but his was bigger.

The trial magistrate in determining who the rightful owner of the suit land was considered the evidence given in court and those given at locus.

In his consideration, the trial magistrate noted that the defendant who is now the appellant failed in his evidence to prove the existence of plot 10 and that its

history of acquisition left a lot to be desired coupled with documents that did not fully describe the land sold.

I find that it is important to first deal with the existence of plot 10, then plot 55 before proper determination of ownership can be made.

As seen above the appellant and his wife DW2 all claim that the suit land described as plot 55 Aliabu road by the respondent was plot 10 Aliabu road.

From the appellant's evidence Plot 10 Aliabu road belonged to Asuman bin Saidi who sold to Mustafa Bin Juma his in-law in 1969, Mustafa then sold the land to Twaha Maneno Ali in 1993 who finally sold to the appellant's wife in 1995.

To prove this the appellant through DW2 Amuge and DW3 Mustafa tendered in the sale agreement between Amuge and Twaha as well as the sale agreement between Mustafa and Twaha.

The originals of these documents were never seen in the trial court because according to the DW2 Amuge their late Lawyer Elayu misplaced them and they could not trace them.

DEX1 was the typed sale agreement between Twaha Maneno Ali(vendor) and Ms. Mary Otim Amuge(purchaser) dated 1st July 1995, this date is not clear in heading of the document but can be seen in on the stamp of M/s Kakembo and Co. Advocates.

In this agreement the vendor sells his residential semi-permanent residential house situate at plot 10 Moruapesur together with all fixtures and developments thereto to the purchaser.

The words Aliabu Road were added above plot 10 Moruapesur in handwriting, this land was sold at shs. 500,000/=.

This agreement was witnessed by a one Bernard Ekiru who was never called as a witness nor named as a neighbour to the suit land by any of the parties.

DEX2 was the typed sale agreement between Mustafa Juma and Twaha Maneno Ali and Razia Maneno(Mrs.) as joint purchasers for plot 10 Aliabu road. This agreement was also drafted by M/s Kakembo and Co. Advocates.

These two agreements plus the testimony of the appellant and his witnesses was all that was tendered in court to prove the existence of plot 10.

DW2 Amuge attempted to tender in the general receipts of payments made by Mustafa Juma to the municipal council, however, these as pointed out by her advocate were photocopies which Municipal council stated they could not trace. Court admitted these receipts as 1D2(a-d) pending identification by Mustafa however this was never done.

I find that the testimonies of these witnesses plus two sale agreements not sufficient to prove the existence of plot 10 Aliabu road.

If indeed as testified by DW4 this plot number was created under the town board system, its records would be traceable but the appellant and his witnesses were not able to do this.

It should be noted that DW2 claimed that at the time of purchase, they were give title to plot 10, interestingly this was never adduced in evidence.

The next issue is whether plot 55 Aliabu road was mutated from plot 10 Aliabu road as claimed by the appellant and DW2.

Mustafa Bin Juma (DW3) did not know of plot 55 and DW4 claimed he also did not know about it because plot 10 was never plotted under the municipal system and he did not even know that plot 55 was the sole subject of the suit.

The appellant and DW2 being the advancers of this theory failed to prove it since the appellant himself was not present at the time of the sale of the land and all information he had pertaining to the land were hearsay from his wife DW2.

DW2 claimed plot 10 was allocated to the respondent and plotted into plots 5, 53 and 55 and she maintained that the respondent is occupying plot 5 and 53 but she adduced to no proof in this regard.

No evidence of this mutation was ever adduced, it is impossible for the land board to mutate plots and titles thereto without leaving a trace of the same.

I agree with the trial magistrate that the appellant failed to prove the existence of plot 10 Aliabu road and furthermore he failed to prove that plot 55 was mutated from plot 10 Aliabu road.

The respondent on the other hand gave a clear testimony supported by documents that proved his was allocated plot 55 Aliabu road by Soroti District Land Board.

The document PEX1 was an allocation letter dated 17/1/2001 from Soroti District Land Board (BLB) to the respondent and it indicates that the DLB in its sitting of 30th November to 1st December 2000 under Min 25/00 allocated plot 55 Aliabu road to the respondent.

PEX1 further includes a lease bearing the same date and it has also the application for town plots (land form 1) by the respondent dated 23rd October 2000. On top of that there are included receipts for payment of premium and a layout of the area. All these documents were found to be true copies of the originals and bear a stamp of the District Lands Officer Soroti.

At this point, it is pertinent to introduce the evidence adduced at *locus in quo*, specifically the report filed on court record by one Oluka Samuel, a staff surveyor of Soroti DLG dated 3/28/2022.

During the trial it was severally suggested by the trial magistrate that the parties open the boundaries of plot 55 and place a report on record, however, the parties failed to do so for various reasons, this prompted the trial magistrate to invite a surveyor at the *locus in quo* visit and he produced a report that was filed on court record.

This report indicates that at locus which doubled as a boundary opening exercise, both parties were instructed to show their claims on the land in relation to plot 55 Aliabu road and these were mapped out as guided by the parties.

This was followed by the actual boundary opening exercise in which the boundaries of plot 57 were opened to guide the opening of the boundaries of plot 55.

All the mark stones for plot 57 were seen, the positions of plot 55 were then staked out as per their coordinates extracted from the cadastral print.

The surveyor found that plot 55 Aliabu road had no permanent structures and the semi-permanent developments only cover approximately a quarter of the plot.

He noted that only two corner mark stones were seen and these tallied with the dimensions on the cadastral print provided by Ministry of Lands Housing and Urban Development, one cornerstone was found to be located inside one of the houses and all the neighbours consented to this.

Finally, the surveyor found that the claims of the parties stretch beyond plot 55 Aliabu road into the service lane at the back and onto plot 7 and 9 Aliabu road which was beyond their area of interest, which is plot 55 Aliabu road.

This report also indicated the size of the plot to 15.2 m by 30.4m which size was the same for plot 57 and 59.

His conclusion was that the claims of the parties stretch beyond plot 55 Aliabu road into plot 53 Aliabu road and into the service lane neighbouring the plots on Aliabu lane and he attached an approved layout of the area to this effect.

I find that these findings by the staff surveyor largely solve the issues between the parties for first he establishes that the parties claim is beyond plot 55 which answers many questions raised in evidence especially why Besula never complained and why the respondent and his witnesses were insistent that the house of the appellant is not on the suit land and this is clearly because the land claimed by the appellant and his wife was not plot 55 and as such Besula had no reason to complain because they were not tampering with her land.

This point is further proved by the size of the land as claimed by the appellant and the encroachment as testified by DW2, his wife.

DEX1 and 2 all do not mention the size of the plot 10, what we have is the testimony of the appellant and his witness, DW1 who claimed the land was approximately 22 ft. and 75 ft.

Mustafa who claimed to have moved around the land before selling it to Maneno also neglected to mention the size of the suit land and DW2 Amuge who participated in the purchase of the plot 10 also neglected to mention its size as all she stated was that the respondent has entered their land by about 2 meters' width and 40 -50 meters.

The appellant's claim is that plot 10 was 22 ft. by 75 ft. which is approximately, 6.7 meters by 22.8 meters. His wife claimed the encroachment was 2 meters' width by 40m to 50m.

The 1st the size of plot 10 which they claimed was mutated to include amongst others plot 55, is smaller than plot 55 which according to the surveyor is 15.2 m by 30.4m, 2nd the alleged encroachment is bigger in size than both the alleged plot 10 and plot 55.

This just goes to show that the appellants claim on the suit land was never clear from the word go and given that the parties claim extended to a service lane, it is no surprise that the trial magistrate found that the Twaha Maneno Ali sold a non-existent plot to the appellant and his wife and instead showed them land belonging to the respondent.

This finding of fact is strengthened by the fact that the sales agreement did not bear the description of the land sold especially as regards its size, it was not witnessed by any of the neighbours to the land and furthermore, though Twaha jointly purchased the plot 10 with his wife, he was the sole vendor to the appellant's wife.

Besides, as noted by the trial magistrate in his judgement, the defendant now appellant did not make any counter claim challenging the acquisition of plot 55 by the plaintiff now respondent. He also noted that the appellant kept changing his position as to ownership and acquisition of the land in dispute as and when it was convenient which explains why he raised a point of law that he was a wrong party to the suit yet he was also claiming ownership.

I also note that in his testimony, the appellant testified that his wife DW2 is using the same documents relied on this suit to sue Iberut Christopher.

DW2 claimed plot 10 was mutated into three plots that is plot 5, 53 and 55, and that the respondent was occupying 5 and 53.

This suit was in respect to plot 55 which the respondent and his witnesses testified to that fact and its boundaries were opened at locus.

Additionally, PW4 Iberut testified that he was in occupation of plot 53, this all shows that the appellant and his wife were never alive to the size or existence of the land they bought from Twaha and are merely making wild claims.

Following the above, I find that the trial magistrate properly evaluated the evidence on record including all evidence adduced in court and at locus and correctly found that the respondent was the rightful owner of the suit land having got the same from his mother Besula.

The respondent proved that he was allocated plot 55 and the appellant failed to prove that plot 55 was mutated from plot 10 Aliabu road. Consequently, grounds 2, 3,4,5,7 and 8 thus fail.

b. Grounds 1 and 6:

- *The learned trial Magistrate erred in law when held that the suit was not time barred;*
- *The learned trial Magistrate erred in law and fact when he held that the Defendant was a trespasser on the suit land.*

The essence of the appellant's submissions is that the respondent claims the suit land through Besula Imalingat who acquired the suit land in 1960 and the appellant claims through Mustafa who bought the land in 1969 and as such the trespass must have begun in 1969.

That since at all times Besula never raised any complaint it shows that she sat on her right and that of her successors.

Counsel further submitted that uninterrupted possession of land for more than 12 years, hostile to the rights and interests of the true owner is considered to be one of the legally recognized modes of acquisition of land and the respondent could not maintain a claim of trespass in the circumstances.

Counsel for the respondent in reply submitted that that the respondent submitted that the respondent testified that he was allocated plot 55 by Soroti DLB and the allocation letter, lease offer and application in respect of the same were tendered in court.

He continued to state that evidence showed that the appellant was trying to construct on the respondent's land. He further submitted that when court visited locus with the aid of a surveyor mark stones were identified on plot 55 Aliabu Road and it was clear that the appellant had trespassed on the respondent's land.

Counsel further submitted that trespass is the unlawful interference with possession of property and it is an invasion of the interest in the exclusive possession of his property.

Counsel submitted that the respondent had brought materials on the suit land to commence construction and he was stopped by the appellant who claimed he had bought the land.

That it was also clear at locus that the respondent had constructed semi-permanent buildings on the suit land, that the appellant claiming ownership of the suit land and occupation of the same amounts to trespass.

Regarding the suit being time barred counsel submitted that the respondent testified that the suit land belonged to his mother Besula who owned the same since 1960, he later applied for the land was allocated the same as plot 55 and in 2001 when he started construction he was stopped by the appellant.

Counsel submitted that section 5 of the Limitation Act stipulates a limitation period for recovery of land, he added that section 6 of the same Act provides that the right of action is deemed to have accrued on the date of dispossession.

This issue was raised in the lower court by the appellants, the trial Magistrate in his judgement found that the plaintiff, now respondent's claim against the defendant now appellant was for plot 55 which the appellant stopped him from surveying claiming it to be his own, he noted that this dispute took place around 2004 and the Land Claim 0049/2004 was filed in the same year.

He thus found that the claim was filed within the 12-year period for recovery of land and the same was not affected by time limitation.

I agree with the above finding by the trial magistrate as it is clear that Land Claim No. 0049/2004 was instituted by the respondent against the appellant for recovery of plot 55 Aliabu road of which the applicant was allocated by Soroti DLB.

Plot 55 was allocated to the respondent on 17/1/2001 under minute 25/00 (a) 30 of 30th Nov - 1st/12/2000, this means that by the time the respondent filed his claim in 2004 he was still within time as per the provisions of the law reproduced below.

Section 5 of the Limitation Act provides that;

No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her or, if it first accrued to some person through whom he or she claims, to that person.

Section 6(1) of the Limitation Act further provides that;

Where the person bringing an action to recover land, or some person through whom he or she claims, has been in possession of the land, and has while entitled

to it been dispossessed or discontinued his or her possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance.

It was the testimony of the appellant that his mother Besula Imalingat acquired the suit land in 1960, that she gave him 2 plots that is plot 55 Aliabu road to take care of children and plot 5 he built his house on it.

This was in 2001 and she gave him the lease, allocation letter and paid premium in his names in respect of plot 55 Aliabu road.

As noted above this allocation was proved in evidence and the discontinuance of his development plans on the suit land happened in 2004 when the respondent was stopped from developing the same and he immediately filed his claim in that same year and as such was not time barred.

The appellant is advancing a notion that since the respondent is claiming through his mother who acquired the land in 1960 and the appellant through Mustafa who acquired the land in 1969, the trespass began at that point and Besula sat on her rights as well as those of her successors.

However, having established above that the appellant or the persons from whom he acquired the land were never on Besula's land, this argument is moot.

Accordingly, I find that the suit was not time barred and the respondent having proved ownership of plot 55 Aliabu road the trial magistrate was right to find that the appellant was a trespasser. Grounds 1 and 6 accordingly fail.

Counsel for the appellant made no submissions regarding ground 9 and I take that as withdrawal of the same.

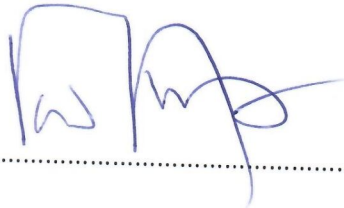
5. Conclusion:

In the final result, I find the appeal has no merit and it is accordingly dismissed with the judgement, the decree and all orders made by the trial court confirmed.

6. Orders:

- a) This appeal is dismissed for lack merits.
- b) The judgement, the decree and all the orders made by the trial court are hereby confirmed.
- c) The costs of this appeal and in the lower trial court are awarded to the respondent.

I do so order.



Hon. Justice Dr Henry Peter Adonyo

Judge

22nd August 2023