

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MASINDI  
CIVIL APPEAL NO. 0051 OF 2015  
[ARISING FROM CIVIL SUIT NO. 0011 OF 2012]

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1. KIDAGA RONALD
2. GODFREY OKWAI ..... APPELLANTS

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VERSUS

OKWONGA DUKA DIINA ..... RESPONDENT

BEFORE: Hon. Justice Isah Serunkuma.

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JUDGEMENT

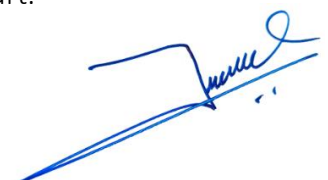
This is an appeal from the Judgment of the Magistrate Grade One, Masindi, Her Worship Niwaha Shallon delivered on 21<sup>st</sup> May 2015 in *Civil Suit No. 0011 of 2012; Okwanga Duka Diina v Kidaga Ronald & 4 Others*.

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The respondent sued the appellants and 3 others for recovery of land, a declaration of ownership of land, and trespass to the suit land measuring approximately 12 acres situated at Kyesimbwa village, Kyamukande Parish, Kiryandongo Town Council, Kibanda County in Masindi District. The respondent claimed to have acquired the suit land in 1998 from her late husband, Okwanga Duka, who bought the same from Magara Erukana in 1981. The respondent averred that she possessed the suit land with her late husband from 1981 to 1984 when she moved to Nebbi leaving the land under the custody of the late John Onen as care taker. When the respondent lost her husband in 1998, she returned to demand for the suit land only to find that John Onen had given out the land to Oketch Francisco and Ruphina Auma for temporary use. In 2010, the respondent learnt that the late John Onen had sold the suit land to the 2<sup>nd</sup> defendant -Night Acibu hence the suit at the trial court.

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The 1<sup>st</sup> appellant is the son and Administrator of the estate of the late John Onen who died in March 2011, while the 2<sup>nd</sup> appellant was the 5<sup>th</sup> defendant at the trial court.



On the other hand, the 2<sup>nd</sup> defendant, Night Acibu, claimed to have purchased the suit land from the late John Onen and sold it to the 3<sup>rd</sup> defendant, Toni Awenga, who in turn sold it to the 4<sup>th</sup> defendant and the 5<sup>th</sup> defendant (now the 2<sup>nd</sup> appellant) Godfrey Okwai. The Appellants claimed that the late John Onen bought the suit land from Erukana Magara in 1978.

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The learned trial Magistrate found in favour of the respondent as the rightful owner of the suit land. She awarded general damages of Ush. 8,000,000/= and the costs of the suit to the respondent. The Appellants being dissatisfied with the decision and orders of the trial Magistrate appealed against the whole decision on three grounds;

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- 1) The learned Magistrate Grade 1 erred in law and fact where she failed to properly evaluate evidence thereby arriving at a wrong decision occasioning the appellants to suffer injustice.
  - 2) The learned Magistrate Grade 1 erred in law and fact when she failed to properly conduct Locus proceedings thereby arriving at a wrong decision.
  - 3) The learned Magistrate Grade 1 erred in law and fact when she failed to take into account
- 15 the whelming customary evidence of 11 graves, old structures among others thereby arriving at a wrong decision.

The appellants pray that the judgment of the lower court be set aside with costs of the appeal.

At the hearing of the appeal, learned counsel Simon Kasangaki represented the respondent while the appellants were unrepresented.

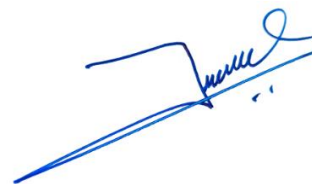
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### ***Appellants' submissions***

The 1<sup>st</sup> appellant denied having any interest or claim over the suit land. He contended that he did not have possession of the suit land and had no knowledge of how it was acquired.

25 The 2<sup>nd</sup> appellant averred that he entered the suit land with his grandparents in 1985 and subsequently bought 4 acres of the land in 2000 through John Onen, the 1<sup>st</sup> appellant's father. He contended that he has possession of the suit land having built a house on it and planted eucalyptus trees. He also contended that 11 of his folks have been buried on the suit land.

### ***Respondent's submissions***



With regard to ground one and three of the appeal, learned counsel for the respondent submitted that the trial Magistrate properly evaluated the evidence on record and arrived at the right conclusion that the suit land belonged to the respondent. Counsel contended that the evidence on record revealed that the appellants acquired the suit land from John Onen who did not have title to the suit land. He submitted that the appellants did not qualify as bonafide purchasers for value without notice because they did not consult the neighbours before purchasing the suit land from John Onen.

On ground two, counsel submitted that the learned trial Magistrate properly conducted the proceedings at the locus in quo. He referred to the testimonies of the witnesses at the locus visit to the effect that the respondent's spouse acquired the suit land from Erukana Magara. In the premises, counsel invited this court to dismiss the appeal with costs awarded to the respondent.

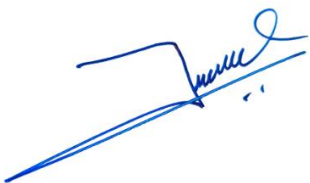
***Court's Analysis***

The duty of this court as a first appellate court is to re-appraise the evidence on record and draw its own inferences of fact and law. In doing so, the court ought to give due regard to the observations made by the trial court because it did not have the opportunity to observe the witnesses. (See; *Fr. Narsensio Begumisa & 3 others v Eric Tiberaga; SCCA No. 017 of 2002 [2004] KALR 236*).

***Ground one and three***

The appellants raised three grounds of appeal. Learned counsel submitted on grounds one and three concurrently, and ground two separately. I will adopt the same approach since grounds 1 & 3 raise the same grievance, namely, that the learned trial magistrate erred in law and fact when she failed to properly evaluate the evidence on record, including the customary evidence of 11 graves and old structures on the suit land, thereby arriving at a wrong decision.

The respondent sued the appellants and three others in Civil Suit No. 11 of 2012 for trespass to the suit land which she claimed to have acquired from her late husband, Okwonga Duka, who purchased it from a one Erukana Magara in 1981. She averred that she possessed the suit land



from 1981 to 1984 when she left the suit land to the care of the late John Onen who unlawfully sold the land to the appellants. To prove her claim, the respondent relied on three witnesses; PW1 Erukana Magara, PW2 Pankalasiyo Ovoya, and PW3 Okwonga Diina Duuka.

5 PW1 testified that he sold the suit land to the respondent's late husband, Okwonga Duuka, in 1981 at Ush. 4,000/=. The parties executed a sale agreement where John Onen was a witness. PW1 denied selling the suit land to the late John Onen in 1978. He also denied having signed the sale agreement dated 4<sup>th</sup> April 1978 allegedly executed between him and the late John Onen.

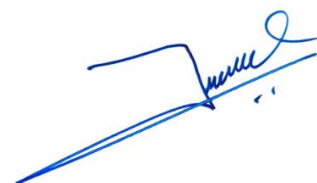
PW1's testimony was corroborated by PW2, Pankalasiyo Ovoya who stated that the respondent's  
10 husband purchased the suit land from PW1 in 1981 at 4,000/= and constructed 4 grass thatched houses on the land. PW2 further stated that when the respondent and her husband left for Pakwach in 1984, the suit land was left under the care of John Onen.

On the other hand, the appellants relied on the testimonies of four witnesses including the 1<sup>st</sup>  
15 appellant who testified as DW1, the 2<sup>nd</sup> appellant who testified as DW2, Toni Awenga as DW3, and Onyutu Kago as DW4.

DW1 testified that the suit land belonged to his father, the late John Onen, who bought it from Erukana Magara, and sold it to the 2<sup>nd</sup> defendant. At the hearing of the appeal on 18/11/2017,  
20 DW1, now the 1<sup>st</sup> appellant, submitted that he did not know how the suit land was acquired and how his father got to sell the suit land to the defendants.

DW2 (the 2<sup>nd</sup> appellant) stated that he bought 4 acres of the suit land from John Onen in 2000. He further claimed to have stayed on the suit land since 1983 with his grandparents; Oketch Fransisco  
25 and Ruphine Auma.

From the weight of evidence adduced by both parties at the trial court, this court is unable to fault the learned trial Magistrate's finding that the suit land belongs to the respondent. The respondent's evidence appeared consistent and more credible than the appellants' evidence. For




instance, whereas the appellants claimed that John Onen purchased the suit land from Erukana Magara in 1978, Erukana Magara who testified as PW1 denied having sold the suit land to John Onen. To rebut the burden of proof, the appellants ought to have adduced evidence by way of a hand writing expert to prove that the signature on the sale agreement of 4<sup>th</sup> April 1978, purportedly executed between Magara and John Onen, indeed belongs to Erukana Magara. In the alternative, the appellants ought to have produced any of the witnesses to the said sale agreement to attest to the truthfulness of its contents. The appellants failed in this regard thereby failing to discharge the onus to prove their claim. The appellants could not have acquired a better title to the suit land than John Onen, their seller or initial transferor possessed. (See; *Were Fred v Kaga Limited (HCT-00-CC-CS-530 of 2004) [2005] UGCOMMC 79*). In the result, Grounds One and Three of the appeal fail.

The appellants did not address this court on ground two, namely, how the learned Magistrate Grade 1 failed to properly conduct locus proceedings thereby arriving at a wrong decision. Ground Two, therefore, also fails.

In the final result, this appeal has no merit and it is accordingly dismissed with costs here and below to the respondent.

I so order.

Dated and delivered on this 13<sup>th</sup> day of October 2023.

  
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Isah Serunkuma  
JUDGE