



**IN THE HIGH COURT OF UGANDA SITTING AT GULU**

Reportable  
Civil Appeal No. 008 of 2018

In the matter between

**UHURU WILSON**

**APPELLANT**

And

**LUKWIYA BASIL**

**RESPONDENT**

**Heard: 23 September, 2019.**

**Delivered: 27 November, 2019.**

*Land law — Adverse possession — Limitation in actions for recovery of land — Continuous possession requires that the adverse possessor exercises acts of possession over the land throughout the entire requisite time period. Breaks in the possessor's activities stop the running of the clock — Abandonment of land— Physical separation must coincide with the requisite intent to sever ties of ownership — Boundary dispute — A long occupation authorised by the original owner, and acquiesced in throughout the period by the surrounding owners, is evidence of a convincing nature that the land so occupied is that which was conveyed to the occupant — In the absence of survey marks, there can be no better indication of the land to which ownership relates than long and unchallenged occupation within a visible line on the ground marked by monuments, fences, buildings, or natural features -*

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**JUDGMENT**

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**STEPHEN MUBIRU, J.**

Introduction:

[1] The appellant sued the respondent seeking recovery of land measuring approximately 50 acres situated at Te Store village, Parwech Parish, Lalogi sub-

county, Omoro County in Omoro District, a declaration that he is the rightful owner of the land in dispute, general damages for trespass to land, mesne profits, an order of vacant possession, a permanent injunction restraining the respondent from further acts of trespass onto the land, and the costs of the suit.

[2] The appellant's claim was that the land in dispute originally belonged to his grandfather Ali Ocuru who acquired it during the 1950s. Upon his death it was inherited by the appellant's father Toona Bazilo Lapii who lived on the land until his death in 1989. It is during the year 2012 that the respondent began trespassing onto the land. He constructed two corrugated iron sheets roofed houses, four grass-thatched houses and established gardens on approximately forty acres of the land. He allowed multiple other persons to occupy other parts of the land without the appellant's consent.

[3] In his written statement of defence, the respondent refuted the respondent's claim. He contended that the land in dispute originally belonged to his grandfather Odongo Lapare who acquired it in 1925. The land was henceforth occupied by the descendants of Odongo Lapare, who include the respondent. It is during or around the year 1925 that the late Odongo Lapare gave the appellant's grandfather Ali Ocuru part of the land near the road to Moroto. Later Ali Ocuru abandoned that land and settled on land near the current Lukwii primary School. Ali Ocuru was subsequently evicted from there and returned to Odongo Lapare who offered him temporary refuge by allowing him to occupy a house that belonged to a one Aguca where he lived until his death in 1998. Upon his death that property reverted to the descendants of Odongo Lapare now headed by Naphthali Olwoch Odongo. It is after the insurgency that the respondent and the rest of the descendants of Odongo Lapare returned to the land in the year 2012 but the appellant began to interfere with their occupation. He prayed that the suit be dismissed.

The appellant's evidence in the court below:

- [4] Testifying as P.W.1, the appellant, Uhuru Wilson, stated that the land was first occupied by his grandfather Ali Ocuru as virgin vacant land. It was later inherited by his late father Bazilio Toona. The appellant is the last born and was only ten years old when the family during 1988 vacated the land to escape reprisal attacks from the family of a deceased member of the Parwech Clan alleged to have been killed by one of his brothers, Ocaya Richard. His father and brother who did not flee were killed. The respondent and his family occupied the land to the East of the Gulu-Moroto Road. P.W.2 Onoria Ker Odiya testified that the appellant's late father late father Bazilio Toona Lapii occupied the land in dispute as way back as 1955. The appellant's father planted the mango trees existing on the land. The appellant left the land during the 1980s because of insurgency and returned thereon in 2008. On return from the Opit IDP Camp, the respondent instead of returning to his side of the land across the Moroto road, crossed over to the appellant's land. The respondent and his family used to and continue to occupy the land across the Moroto- Awere Road.
- [5] P.W.3 Okello John Bosco, a neighbour, testified that the appellant's late father late father Bazilio Toona Lapii occupied the land in dispute. He and his wife were buried on that land when they died. The witness fled to Opit IDP Camp in 1989. Returned in 2006. The appellant left the land around 1987 because of insurgency. He returned to the land between 1988-1989. The respondent and his family used to occupy the land across the Moroto- Awere Road. On return from the camps, the respondent occupied the appellant's land claiming the appellant was Langi and had no right to utilise the land.
- [6] P.W.4 Odong Jackson, another neighbour to the land in dispute, testified that the land was first occupied by the appellant's grandfather Ali Ocuru as virgin vacant land. It was later inherited by his late father Bazilio Toona. The respondent and his family occupied the land to the East of the Gulu-Moroto Road. Many of the

relatives of the respondent were buried on the land in dispute between 2008 - 2010. The appellant vacated the land in 1988 following a feud between his family and the Parwech Clan. His father is the only one who was left behind. They returned after the disbanding of the IDP Camps at the time people were returning to their homesteads. The appellant was about 15 years old in 1988. During the year 2012, the respondent attacked the appellant and nearly strangled him to death, demolished all his house on the land claiming the appellant was Langi and had no right to utilise the land which he had abandoned and to which the respondent had been caretaker for all these years. The respondent and his family occupied the land to the East of the Gulu-Moroto Road.

The respondent's evidence in the court below:

- [7] In his defence as D.W.1, the respondent, Lukwiya Basil, testified that his grandfather Odongo Lapare acquired the land in dispute in 1925 from Rwot Olal Andrew and on his death it was inherited by the respondent's father Napttali Olwoch. He does not live on the land save that it is occupied by his mother and his brother Kilara Joseph. He planted bananas and eucalyptus trees on the land in 1993. Several of his relatives have been buried on that land since the year 1998. Before migrating to the IDP Camp as a result of insurgency, his family used to live on that land. It is during the year 2009 that he constructed his mother's house on the land in dispute. He lives on a separate piece of land separated from the land in dispute by the Gulu-Moroto Road, on the Eastern side of that road. Upon his return from Opit IDP Camp, the appellant had during the year 2009 requested him for temporary refuge on the land but in 2011 began to construct permanent structures, hence the dispute.
- [8] D.W.2 Ojok Maliko testified that he was displaced to an IDP Camp in 2002 by insurgency. During the same year he asked the respondent for some land for cultivation and was allowed to do so until 2008. During all that time he never saw the appellant on that land. He came to know the appellant only in 2012 at the

time he was using part of the land. He was given only three acres to cultivate and he has since left the land. D.W.3 Ojera George testified that the respondent's father Olwoch Naptali in 1991 sued a one Otto George over the same piece of land and a decision was delivered in Olwoch's favour. He neither knew the appellant nor the father of the appellant.

- [9] D.W.4 Ocieng Livingstone testified that the L.CII Court in 1991 entertained a suit filed by the appellant's father Olwoch Naptali against a one Otto George in respect of the same land and a decision was delivered in Olwoch's favour. By that time the area had not yet been affected by insurgency but the appellant was not resident on the land. The L.CII Court decided in favour of the respondent when a dispute erupted between him and the appellant over the same land. During the hearing of the suit the L.CII Court visited the locus in quo but did not find any old homestead of the appellant on the land. They instead found graves, planted trees, old houses and gardens that belonged to the respondent. At the moment it is the respondent's mother and brother that live on the land. D.W.5 Lamunu Pauline testified that the land in dispute belonged to the respondent's father, Naphtali Olwoch. The respondent's mother and brother live on the land in dispute and so does the appellant.

Proceedings at the *locus in quo*:

- [10] The court then visited the *locus in quo* on 5<sup>th</sup> November, 2018 where it formed the opinion that the land in dispute is over fifty acres and is occupied by both the appellant and the relatives of the respondent. The respondent cultivates part of the land and uses the other for grazing cattle. Each of the parties claimed to have planted the mature eucalyptus trees found on the land. Old mango trees and a disputed grave are located at a spot where the appellant claimed his father homestead once stood. The respondent does not have a home on the land in dispute. A sketch map was prepared showing the location of the features observed.

Judgment of the court below:

[11] In his judgment delivered on 30<sup>th</sup> November, 2018 the trial Magistrate found that the spot in the middle of his compound that the appellant during the court's visit to the *locus in quo* claimed was the grave of his late father Toona Bazilo Lapii was not clearly marked with stones contrary to Acholi custom. Having fled from the land in 1988 as a child only to return 2011 implies the appellant never participated in the burial of his father and therefore would not be in position to locate his grave. Although P.W.3 Okello John Bosco testified that the land in dispute belonged to the late Toona Bazilo Lapii, that as children they used to collect mangos there from and indeed the court observed the presence of multiple old mango trees, banana plants, eucalyptus and other trees that indicate previous human settlement, this is not inconsistent with the temporary occupancy of the late Toona Bazilo Lapii. The land was abandoned for a long time and there are no clear demarcation of that part which was previously occupied by Toona Bazilo Lapii. The land is now in actual possession of the respondent and his relatives. The respondent's father's though has no homestead on the land in dispute but rather his homestead is East of Moroto - Gulu Road, half a kilometre away.

[12] The inference is the respondent's family lived across that road and only used the land in dispute for cultivation. It is they who allowed Toona Bazilo Lapii to occupy it. Toona Bazilo Lapii and his entire family eventually left the land in fear of reprisal attacks and the appellant had nothing on the ground on basis of which he could lay claim to the land in 2011. When the appellant returned to the land, he found the respondent and his extended family in occupation. They nevertheless allowed him to construct a house and occupy part of the land as the established gardens on the rest of the land. "It is clear the plaintiff is abusing the hospitality his father was offered having come from Lango and not Acholi as deduced from the evidence. This is purely greed..It is clear Bazilio Tonna vacated the land he was allowed to stay on with no intentions of ever coming back." The plaintiff

could not single out the respondent as a defendant when the rest of the land is occupied by adults who should have been sued in their respective capacities. "It is clear according to the plaintiff that he left the land in 1988 and only returned to claim the land in 2011 when the defendants were in possession. This court agrees that the suit is time barred..." The appellant's claim was accordingly dismissed and the respondent's family members were declared the customary owners of the land they occupy and cultivate. The respondent was awarded the costs of the suit.

The grounds of appeal:

[13] The appellant was dissatisfied with the decision and appealed to this court on the following grounds, namely;

1. The learned trial Magistrate erred in law and fact when he failed to properly evaluate the evidence thereby reaching a wrong declaration that the plaintiff's father left the disputed land without intention of ever coming back.
2. The learned trial Magistrate erred in law and fact when he held that the plaintiff's suit was barred by limitation since he had vacated the land in 1988.
3. The learned trial Magistrate erred in law and fact when he failed to determine the boundaries between the parties.

Arguments of Counsel for the appellant:

[14] In their submissions, counsel for the appellant argued that the fact that the appellant, his father and the rest of the family lived on the land in the past was manifested by physical features found on the land which included the grave of his father, planted trees and an old homestead. Evidence showed that they had been forced to vacate the land for fear of reprisal attacks by the Parwech Clan. In the year 2012, the respondent took advantage of that to cross from their land

East of the Gulu-Moroto road to occupy the appellant's land. The suit was filed in 2015, four years from the act of trespass and was therefore not time barred since the trespass did not begin in 1988 as found by the trial Magistrate. The appellant's evidence showed that the Gulu-Moroto road was the boundary between his and the respondent's land yet the trial Magistrate did not allude to that evidence at all nor make a finding in that regard. They prayed that the appeal be allowed.

Arguments of Counsel for the respondent:

[15] In response, counsel for the respondent argued that the evidence showed that the appellant's entire family left the area in 1988 shortly after which his father they had left behind died. None of the appellant's family members returned to the land thereafter. The respondent has several of his deceased relatives buried on the land. The respondent did not dispute that part of the land currently occupied by the appellant, whose boundaries are well known to the parties and therefore it was not necessary for the court to make any finding regarding the location of the boundaries. They prayed that the appeal be dismissed.

Duties of a first appellate court:

[16] As a first appellate court, this court is under an obligation to re-hear the case by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion (see *Father Nanensio Begumisa and three Others v. Eric Tiberaga* SCCA 17 of 2000; [2004] KALR 236). In a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions (see *Lovinsa Nankya v. Nsibambi* [1980] HCB 81).

[17] This court may interfere with a finding of fact if the trial court is shown to have overlooked any material feature in the evidence of a witness or if the balance of probabilities as to the credibility of the witness is inclined against the opinion of the trial court. In particular this court is not bound necessarily to follow the trial magistrate's findings of fact if it appears either that he or she has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on demeanour of a witness is inconsistent with the evidence in the case generally.

### Abandonment of land

[18] Grounds one and two of the appeal concern the issue of abandonment of land and the law of limitation in actions for the recovery of land. Abandonment is a voluntary relinquishment of all right, title, claim, and possession of land by its owner with the intention of terminating ownership, without vesting it in any other person and with no intention of reclaiming it. It was defined in the case of *Alimohammed Adamji v. Punja Gudka (1953) 20 EACA 78* to mean the ceasing of occupation without *animus revertendi*. There must be evidence of both the intention to abandon and the external act by which the intention is carried into effect. There can be no abandonment without the intention to abandon.

[19] The question of abandonment is one of fact to be determined in each case from all the evidence in the record. Two things must occur for land to be abandoned: (i) an act by the owner that clearly shows that he or she has given up rights to the property; and (ii) an intention that demonstrates that the owner has knowingly relinquished control over it. Failure to do something with the land or non-use of it is not enough to demonstrate that the owner has relinquished rights to the land, even if such non-use has gone on for a number of years. For example, the non-use of an easement for 22 years was insufficient alone, to raise the issue of intent to abandon (see *Strauch v. Coastal State Crude Gathering Co., 424 S.W. 2d 677 (1968)*; *Williams v. Sandy Lane (Chester) Limited [2006] EWCA Civ 1738*

and *Cater v. Bednarek*, N.E.2d, 462 Mass. 523 (Mass. 2012). However, evidence of long and unexplained non-use is admissible as to intent.

[20] Intention to abandon land may be established by express language to that effect or it may be implied from the circumstances surrounding the owner's vacating of the land and the manner he or she related with the land thereafter. The intention to abandon is typically accompanied by observable acts that evince that underlying desire to sever a claim of ownership. The passage of time, although not an element of abandonment, may illustrate a person's intention to abandon his or her property and form the basis of an inference of an intent to abandon from a lack of activity. The non-use of land is not sufficient in itself to show abandonment, but if the failure to use is long, continued and unexplained, it may give rise to an inference of intention to abandon. To terminate ownership, non-use must be combined with other evidence of intent to abandon. "Abandonment is not to be lightly inferred because owners of property do not normally wish to divest themselves of property unless to do so is to their advantage, even if they have no present use for the property in question" (see *CDC2020 plc v. Ferreira* [2005] EWCA Civ 611).

[21] Physical separation must coincide with the requisite intent to sever ties of ownership. The intention required for abandonment is one in which the owner disclaims any further rights in the land, including the right to determine its subsequent owner. The focus of the standard test is on the subjective intentions of the owner, and, consistent with this focus, the voluntariness of abandonment is crucial. Evidence that an owner was tricked, induced by fraud or forced to abandon land will defeat a claim by a subsequent possessor that it was abandoned.

[22] In the Tanzanian case of *Ngutsu Mwajaira v. Safari*, cited in *James R.W and Fimbo G. M Customary land law of Tanzania: a source book*, pp 568-569(1962), the father of the respondent, Omari called Safari gave land to the fathers of the

applicant and respondent respectively. The father of the applicant was not of the Nduruma tribe but the applicant had married into that tribe and had lived amongst them all his life. Omari the respondent, subsequently left the land which he had inherited and which is the land in dispute and went away to Tanganyika. The evidence showed he was away for about 12 years, and this was found to account for the fact that he did not seem to know the boundaries. Again the evidence showed that while Omari was away the brother of the applicant with his wife entered into possession of Omari's land who filed the suit to recover it from the applicant's sister in law. The questions which the court had to decide were; first whether Omari having left his land for so many years was entitled to return and claim it and second whether the applicant or his sister in law could retain Omari's land because of their undisputed possession of it for this period. The Division Court held that Omari was entitled to claim back the land which had belonged to him even though he had been away for some years. They further held that neither the applicant nor his sister in law could remain in occupation of the land which Omari claimed. That Court further held that no person who was not of the tribe could own land no matter how long they had lived there. The District Officer accepted the findings of the Divisional Court but thought it would be contrary to natural justice in this case if the applicant or his sister in law could not remain upon the land which they had occupied for so long. The case was taken to appeal where the court found that there was an established custom that the owner of the land could always claim it back again no matter how long he has been away. The court thus found that the respondent was entitled to re-assume possession of the land when he returned to it.

- [23] The same court found that in that respect the custom of the tribes differed from that in North Nyanza where the same court had held in *Yoseph Tindibale v. Stephano Munyangani (1955)* also cited in James *R.W and Fimbo G. M Customary land law of Tanzania : a source book* LR Vol. III P. 9 that a man who leaves his land with no one to protect it is deemed to have abandoned it and

therefore loses his title to it, as advised by the assessors in that case, which advice the court accepted, was correct.

- [24] Although it is trite law that all rights and interests in unregistered land may be lost by abandonment, it generally requires proof of intent to abandon; non-use of the land alone is not sufficient evidence of intent to abandon. The legal definition requires a two-part assessment; one objective, the other subjective. The objective part is the intentional relinquishment of possession without vesting ownership in another. The relinquishment may be manifested by absence over time. The subjective test requires that the owner must have no intent to return and repossess the property or exercise his or her property rights. The court ascertains the owner's intent by considering all of the facts and circumstances.
- [25] Forfeiture can result when an owner triggers a limitation inherent in his or her title, for example non user of the land under a defeasible possessory interest. According to section 37 (2) (b) of *The Land Act*, a tenant by occupancy is deemed to have voluntarily abandoned his or her occupancy where he or she leaves the whole of the land unattended to by himself or herself or a member of his or her family or his or her authorised agent for three years or more. Even in this context, abandonment connotes an intentional, voluntary relinquishment of all interests and / or rights in a definite or identifiable piece of private land.
- [26] Involuntary abandonment of a holding does not terminate one's interest therein, where such interest existed before (see *John Busuulwa v. John Kityo and others C.A. Civil Appeal No. 112 of 2000*). Abandonment requires a voluntarily relinquishment of rights to the land, with intent to give up both title and possession, and relinquishment of any intention to return. Abandonment may not be presumed. Involuntary abandonment of land, without relinquishment of an intention to return, does not terminate one's interest therein, where such interest existed before. When land is abandoned involuntarily, loss of possession is not accompanied with the requisite intent and except with clear evidence to the

contrary, relinquishment of the intention to return will not be inferred. For that reason, title to such land persists despite the fact of loss of possession.

[27] Abandonment does not arise or lie in any case where the failure of an owner of land to occupy, use or develop it was the result of involuntary conduct such as duress, armed conflict or other events of force majeure. It follows that when the appellant vacated the land, whether as a result of fear for reprisal attacks or as a result of insurgency, that did not terminate his ownership of the land. The temporary abandonment of the land by the respondent in the instant case not having been voluntary, his rights as owner were revived when he re-asserted them after the insurgency.

[28] Through the doctrine of adverse possession, the idea of statutory transfer of estate is accepted. The doctrine operates on the principle that possession of property over time can lead to its ownership. In *Corea v. Appuhamy* [1912] AC 230, adverse possession was referred to as the possession which is inconsistent with the title of the true owner. It is possession that is without the consent of the owner and the assertion of which is in conflict with the property ownership interests of the owner. Therefore, title to land can be acquired by its possession for twelve years if the true owner was present and failed to take any action against the possessor (see *JA Pye (Oxford) Ltd v. Graham* [2003] AC 419). An adverse possessor must act like an owner in his or her actual, open and notorious, continuous, and hostile possession because his or her possession should be sufficient to assure that the true owner has been provided with sufficient notice of the acts of the adverse possessor. Actual possession when the owner is absent does little to achieve the primary purpose that possession is originally intended to serve, that is to alert the true owner of a competing claim on his or her land.

[29] The adverse possessor must prove that he or she meets all of the elements of adverse possession, i.e. that she has been in actual, peaceable, continuous,

open and notorious, and hostile possession for the requisite period of time. It is not enough to be merely caring for the land temporarily until the owner reappears. The Limitation Act will not begin to run until the adverse claimant actually possesses the land in question under colour of title or claim of right. *The Limitation Act* will begin to run from the time the adverse possessor starts actual, open, hostile, notorious, and exclusive possession.

[30] Continuous possession requires that the adverse possessor exercises acts of possession over the land throughout the entire requisite time period. Breaks in the possessor's activities stop the running of the clock (see *Elyton Land Co. v. Denny*, 18 So. 561, 564–65 (Ala. 1895); and *Romans v. Nadler*, 14 N.W.2d 482, 485–86 (Minn. 1944)). The length of the interruption is insignificant as long as it disturbs continuous possession. At that time the law restores constructive possession of the land to the true owner. Secondly, for purposes of counting the continuous period required to prove adverse possession, the possession must have been gained in a peaceable manner. Possession must be peaceful. It can never begin by a violent act. Accordingly, the period of limitation only begins to run from the date on which forcible occupation ceased.

[31] It follows therefore that the possessor must peaceably assert a claim of right adverse to and exclusive of all others. Adverse possession will only arise where the true owner has discontinued his or her possession leaving the land vacant and thereby making it possible for a third person to take possession (see *Rains v. Buxton* [1880] 14 Ch D 537). Dispossession is where a person comes in and drives out the others from possession, while discontinuance is where the person in possession goes out and is followed into possession. Dispossession achieved by taking forcible possession is illegal. If the act of dispossession amounts to a crime, possession taken by force cannot serve as a basis for adverse possession, even when violence has ceased. For that reason, the duration of any non-use of the land attributable to duress, armed conflict or any force majeure should be excluded. In the instant case, the trial court ought to have taken

cognisance of the fact that the appellant was forced off the land. Moreover, the trespass complained of began during the year 2012. The suit was filed in 2015, three years from the act of trespass. It was therefore not time barred. The two ground of appeal consequently succeed.

### Ground three

- [32] The third ground of appeal faults the trial Magistrate for his finding regarding the mutual boundary between the parties respective parcels of land. In the determination of a land boundary dispute, courts will ordinarily be guided by the visible physical limits of the parcel of land as can be ascertained on the ground by natural boundaries (e.g. rivers, valleys, cliffs), monumented lines (boundaries marked by defining marks, natural or artificial), old occupations, long undisputed abuttals (e.g. a natural or artificial feature such as a street or road), statements of length, bearing or direction (metres, feet or other measurements in a described direction), or similar features as observed by court and verified by credible witnesses (see also Regulation 21 (1) of *The Land Regulations, 2004*).
- [33] The location of a boundary is primarily governed by the expressed intention of the originating party or parties or, where the intention is uncertain by the behaviour of the parties. A long occupation authorised by the original owner, and acquiesced in throughout the period by the surrounding owners, is evidence of a convincing nature that the land so occupied is that which was conveyed to the occupant. In such cases the occupier is not to be driven to rely on a mere possessory title; but has a right to assert that the land he or she holds is the very land granted (see *Equitable Building and Investment Co. v. Ross (1886) NZLR 5SC 229* often referred to as the *Lambton Quay Case*).
- [34] In the alternative, acquiescence is one method of establishing or re-establishing a boundary line. A long occupation authorised acquiesced in throughout the period by the surrounding owners creates a "boundary by acquiescence."

Boundary positions publically agreed to and observed by neighbours over long periods of time will be binding (see *South Australia v. Victoria (1914) AC 283*). In such cases, judicial adjudication of a boundary dispute does not grant title, but merely judicially recognises the title that has already vested under the law (see *Q-2 L.L.C. v. Hughes, (2016) UT 8* and *Anderson v. Fautin, (2016) UT 22*).

- [35] In the absence of survey marks, there can be no better indication of the land to which ownership relates than long and unchallenged occupation within a visible line on the ground marked by monuments, fences, buildings, or natural features, where; (i) the claimant occupies his or her side of the visible line, right up to the visible line, in a way that would give a reasonable adjoining landowner notice that the claimant is using the line as the boundary between their two parcels; (ii) there is evidence of mutual acquiescence in the line as the boundary by the adjoining landowners; and (iii) acquiescence in the line as the boundary has continued for an uninterrupted period of at least twelve years.
- [36] It was the testimony of P.W.1, the appellant, Uhuru Wilson and P.W.4 Odong Jackson that the respondent and his family occupied the land to the East of the Gulu-Moroto Road. P.W.2 Onoria Ker Odiya too testified that after the insurgency, upon return from the Opit IDP Camp, the respondent instead of returning to his side of the land across the Moroto road, crossed over to the appellant's land. P.W.3 Okello John Bosco too testified that the respondent and his family used to occupy the land across the Moroto- Awere Road. On return from the camps, the respondent occupied the appellant's land claiming the appellant was Langi and had no right to utilise the land. This evidence was not discredited by cross-examination and remained uncontroverted by other evidence. Each of the parties enjoyed long and unchallenged occupation of over twelve years on their respective sides of the road, before the respondent crossed over to the appellant's side. Had the court properly directed itself, it would have found that the respondent was a trespasser upon the appellant's land.

[37] That being the case, the trial court came to the wrong conclusion when it decided in the respondent's favour. That being the case, I find merit in the appeal and it is accordingly allowed with orders that the judgment of the court below be set aside and it is hereby set aside.

Order :

[38] In its place, judgment is entered for the appellant against the respondent in the following terms;

- a) A declaration that the appellant is the rightful customary owner of the land in dispute.
- b) A declaration that the Gulu- Moroto road is the boundary that separates the appellant's land to the West of that road from the respondent's to the East of that road.
- c) An order of vacant possession of the area within that boundary.
- d) A permanent injunction restraining the respondent, his servants, agents and persons claiming under him from any acts of trespass on the appellant's land.
- e) The costs of the appeal and of the suit are awarded to the appellant.

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Stephen Mubiru  
Resident Judge, Gulu

Appearances

For the appellant : M/s Kunihiro and Co. Advocates

For the respondent : M/s Ladwar, Oneka and Co. Advocates