IN THE HIGH COURT OF UGANDA
HOLDEN AT MBARARA

CIVIL APPEAL NO 12 OF 1971

[*ORIGINAL Civil Appeal No MMB 91 of 1966 of the Chief Magistrate's Court of Mbarara Before: P,A.P.J. Allen, Esq., Chief Magistrate.]*

M.MADUKA…….APPELLANT

V E R S U S

D. RUPIYAZITA……..…….RESPONDENT

BEFORE: THE HON. MR. AG. JUSTICE F. M. SSEKANDI

JUDGMENT

The appellant in this case, Moses Maduka was the plaintiff at the trial before a Magistrate Grade III sitting at Bisheshe. The appellant instituted the suit to prevent the respondent from trespassing on his land. The Magistrate Grade III heard the case and visited the locus in quo. He gave judgment for the plaintiff/appellant. The respondent has never appealed against that judgment.
The appellant complains that after getting judgment in his favour, the trial magistrate went to the land and planted a boundary which was contrary to his judgment.

The two parties were contesting a piece of land situated on the side of the watershed of a hill nearest to the appellant's home. Both of them had land on the slopes of the hill but the respondent had crossed the watershed and dug holes to plant barbed wire. When the Magistrate planted the boundary it confirmed the respondent's expansion across the watershed of the hill and part of the appellant's land was given away to the respondent.

It would appear that the appellant instituted this appeal after he had been unsuccessful twice; before a Magistrate Grade II and before the Chief Magistrate. The Magistrate Grade II failed to re-hear and

re-adjudicate the case as he was bound to on first Appeal and his judgment is of no assistance to this Court. The judgment of the Grade II Magistrate is in the following terms:

> "From the evidence given in the court of first instance there is no justification at all that the land belongs to the appellant. The evidence of P. Baki who was brought by the appellant who was the original plaintiff showed that the land in question does not belong to the appellant. The evidence of Kamihando who is the witness of the respondent showed that the land in question belonged to the respondent.
>
> As the lower court erected boundaries to separate the two parties, I do not see the reason why the appellant was not satisfied when he was the successful party in the lower court.
>
> I dismiss the appeal. Fees lost. Appellant to refund shs 35/-. Costs to respondent."

It is obvious that the Grade II Magistrate was not satisfied from the evidence that the appellant had established his claim. In such circumstances, the correct decision should have been to set aside the judgment of the trial Magistrate. But, this he did not do, presumably, because the judgment in favour of the appellant, did for all purposes remain a decision on paper when the boundaries drawn in fact meant that the respondent had been the successful party.

Be that as it may, the Magistrate Grade II had a duty to adjudicate the issues before him which were that there was a disparity between the judgment of the trial Magistrate and the execution of it in the form of the drawn boundaries. This he failed to do.

The appellant appealed to the Chief Magistrate against the judgment of the magistrate Grade II. His memorandum of Appeal stated that he had appealed to the Magistrate Grade II to put right the boundaries so that they are in accord with the judgment of the trial court.

But, he contended, that the court failed to visit the land and re-adjudicate the case. The Chief Magistrate heard the appellant and the Advocate for the Respondent.

The appellant, in his address mentioned that the respondent had sold the land to a third party.But, this fact was not in the evidence at all.

The Chief Magistrate dismissed the appeal as incompetent. He said inter alia;

> "From all this, it is clear that the appellant has no right of appeal against two lower court decisions given in his favour, and, in any case, he appears to have: sued the wrong person."

It is from this judgment and order that the appellant has appealed to this court.

The original suit was instituted in 1966 and presumably, the appeals were lodged in accordance with the Magistrates' Courts Act, 1964 [Cap. 36]. That Act continues to apply to proceedings instituted before the Repeal of the Act by the Magistrates' Courts Act, 1970: see Section. 4, Reg. 2 of Act 13 of 1970.

The right of appeal in Civil cases was governed by s. 32 of the Act Cap. 36 and the relevant parts of that section read:

S. 32

1) unless otherwise expressly provided by this or any other enactment, an appeal shall lie as of right from a decree or any part of a decree and from any order of
    a) ……..
    b) a Magistrate's Court presided over by
        i) a Magistrate Grade II in the exercise of its original or appellate civil jurisdiction; or
        ii) .....to the Magistrate's Court presided over by a Chief Magistrate.
    (c)……

2) An appeal under this section may be on a matter of fact, or law or an a matter of mixed fact and law."

It is clear from this section quoted above that the appellant had a right of appeal against the judgment of the Magistrate Grade II if he was aggrieved by it. He had secured judgment in his favour on paper only when his action was to recover the land in dispute with the respondent.

The demarcation of boundaries was part of the decree of the trial Magistrate from which he was clearly entitled to lodge an appeal. It may appear odd for a successful party to lodge an appeal

against a judgment ostensibly in his favour but, it is permissible in law if the party appealing shows that he is aggrieved by such judgment or any part of it. In the instant case, the appellant had valid grounds to appeal against the demarcation effected by the trial Magistrate in execution of his own judgment. The demarcation had been carried out contrary to the effect of the judgment.

The appellant was properly aggrieved by its effect and the Chief Magistrate ought to have heard the appeal and decided the case on its merits.

In the course of all the appeals lodged by the appellant the respondent did not cross-appeal against the judgment of the trial Magistrate which was, on the face of it, against him. Before the Chief Magistrate, he was content to ask for the appeal to be dismissed. The Chief Magistrate appears to have been surprised by this course of action.

He commented:

> "The respondent merely asks for the appeal to be dismissed. This seems odd in view of the fact that the judgments of the Courts below are against him and, from the record, he has good grounds of appeal available to him."

I think that the action of the respondent is quite consistent with the result of the case.

If the appellant's allegations are true, the respondent lost the suit in court but, retained the land. In those circumstances, he could not see any purpose in disturbing the status quo.

This Court has inherent jurisdiction to give a remedy where justice so requires. S. 101 of the Civil Procedure Rules. In fact, it sometimes becomes a duty to do so to correct a blatant error committed by an inferior tribunal. Here is a clear case of a person whose rights have been infringed but, he has been denied a remedy because of some difficulties as regards the procedure to follow in seeking correction of the injustice committed against him.

I have given my most anxious attention to this case and perused the records below.

I take into account that the parties have not adduced evidence on the issues in this appeal. However, I

am satisfied that the judgment of the trial Magistrate was correct. He had the opportunity to hear the parties and visit the locus in quo. He then decided the case in favour of the plaintiff. What remains is to give effect to that judgment.

It would appear to me that the best way out at this case is to appoint the Magistrate Grade II and the local chiefs of the area to ascertain the boundaries of the land in dispute before the suit was filed in this case.

Once the disputed boundaries are ascertained and the land in dispute identified, fresh boundaries should be erected so that the land in dispute is in c1uded in the land belonging to the appellant in accordance with the judgment of the trial Magistrate given on 17.6.66.
Accordingly this appeal is allowed with costs in this court and courts below.