

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT GULU
HCT – 02 – CV – 0020 – 2004
(Arising from Civil No. GUL – 00 CV – CS- 137 – 20004)

OOALA LALOBO :::::::::::::::::::::APPELLANT

VERSUS

OKEMA JAKEO AKECH:::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE REMMY K. KASULE

JUDGMENT

This judgment is in aspect of an appeal by the appellant against the judgment of the Chief Magistrate, Gulu, dated 22.07.2004 in Original Civil Suit Number 137 of 2003.

In the court below the appellant sued the respondent for, among other claims, trespassing on a piece of land, appellant claimed to be his by customary owners situate at Koch-Goma, Layibi, Gulu District.

The respondent, defendant in the suit below, on his part, also claimed to be customary owner of the said same piece of land.

Both appellant and respondent testified and called witnesses to prove their respective cases before the trial Chief Magistrate.

In the course of his judgment the trial Chief Magistrate rightly in the view of this court, framed, on page 2 paragraph 4 of the Judgment, the question for resolution by court thus:

“ The issue before court is who in between the plaintiff and the defendant is the owner of the suit land”

However, instead of resolving the issue framed, the trial Chief Magistrate proceeded to dismiss the case, his reason for doing so, as stated on page 3 paragraph 4 of the judgment, being that:-

“ Without going into the merits of litigation to find who in between the two is the owner of the suit land, which I decline to do since it would be all over indulgence on the side of the court, by bringing this suit in court in the year 2003 when the cause of

action in between 1983 – 1986 a period that is over 17 years, this suit is therefore caught by the Limitation Act.....

In the premises therefore, I dismiss this case with costs since it is time barred by the operation of the Limitation Act as well as the rights entrenched under the provisions of the Land Act, 1998.”

Dissatisfied with the above decision the appellant appealed to this court.

There are two grounds of appeal.

1. That the learned Chief Magistrate erred in law in holding that the suit was barred by Limitation in the result dismissing the suit and occasioning a miscarriage of justice
2. That the learned Chief Magistrate erred in law and fact in failing to take judicial notice of insecurity in Northern Uganda between 1986 – 1993 specifically in Koch goma where the suit land is situate which totally crippled the appellant from pursuing the matter any further.

The appellant prays for the appeal to be allowed the judgment and orders of the learned Chief Magistrate’s to be set aside and a retrial ordered.

The two grounds were argued together by Counsel for the appellant. Court will also consider them together.

In paragraph 3 of the plaint the plaintiff averred:

“ 3. The plaintiff’s claim against the defendant is for a declaratory order of ownership, general damages for trespass, permanent injunction restraining the defendant and costs thereto”

Paragraph 4 of plaint sets out the facts constituting the cause of action and paragraphs 5, 6 and 7 aver that the plaintiff has suffered loss and damage by reason of the continuous trespass of the defendant on the suit land.

The appellant, and his witnesses, testified before the trial court to the effect that the respondent had and continued to trespass on the land, the appellant claimed to be his.

The respondent and his witnesses on the other hand testified admitting occupying the suit land, but explaining that the land was his and that he was not trespassing upon the same.

The case therefore was founded in trespass.

A trespasser is one who remains in possession of the land against the will of the owner: **see Christopher Katongole v Yusufu Ssewanyana (1990 – 1991) KALR 41 at 43.**

Trespass is a continuous tort. The case of the appellant was and still is that the respondent committing trespass on the land appellant claims to be his. The respondent on the other hand contended and still contends that he is occupying the and, not as trespasser, but as owner of the same.

Trespass being a continuous tort, there was therefore no basis for the learned Chief Magistrate to hold that the appellant's suit was time barred by reason of the Limitation Act.

As to whether or not the court should have taken judicial notice of the insecurity in Northern Uganda between 1986 – 1993, court depending on the facts of each particular case.

In this particular case, court finds it sufficient that the cause of action and the evidence adduce all centered on the continuous tort of trespass and as such the case could not have been caught by the provisions of the Limited Act, or those of the Land Act.

Court notes from the evidence adduced, that it was necessary of the trial court, and indeed the respondent specifically requested court, to visit the land in question so as to ascertain the boundaries separating the land of the appellant from that of the respondent. The trial court did not pay any attention to this aspect of the case. This court cannot on its own now reevaluate the evidence adduced at trial and reach its own decision in the absence of evidence from the Locus in quo. It was an error of the trial court not to visit the locus in quo.

This appeal is allowed. The judgment, and orders made there in, of the Chief Magistrate 22.07.2004, is hereby set aside. It is ordered that civil suit No. 137 of 2003 be tried de novo by the Chief Magistrate's Court, Gulu.

In the meantime, before the trial commences, this court orders that the current status quo as regards the suit land remains as it is until such a time as the retrial shall start. Once the retrial shall have started then this interim order is to lapse and it will be up to the trial court to make such orders, on its own, or on being moved by any of the parties to the suit, concerning the suit land.

As to costs, given the fact that there is to be a retrial, and the appeal has been successful on a matter for which the trial court is mainly to blame, it is ordered that each party bears its own costs of the original trial of the suit and of this appeal. It is so ordered.

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Remmy K. Kasule

Judge

30th September 2008