

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT GULU
HCT – 02 – CV – CA – 0022 OF 2005
(Arising from Apac Land Tribunal claim No. 0022/2005)

ODYEK PETER ::::::::::::::::::::APPELLANT

VERSUS

1. **OCEN CELESTINO**
2. **CONG FRANCIS**
3. **HELLEN OGUDI**
4. **OKELLO FUSTINO**
5. **LEO DOKORI**
6. **OTILE WALTER::::::::::::::::::RESPONDENTS**

BEFORE: HON. JUSTICE REMMY K. KASULE

JUDGMENT

The appellant appealed to this court against a decision of Apac District land Tribunal of 20th July, 2005 in claim No. 005 of 2003.

In the Land Tribunal, Odyek Peter, herein the appellant, was the claimant, and the respondents herein, were the defendants.

The appellant claimed that the respondents had unlawfully encroached on his land at Abongorwot village, Abedi Parish, measuring about 13 acres, and unregistered.

The Land Tribunal was prayed to issue a declaration that the land belonged to the appellant, and issue a permanent injunction evicting and preventing respondents from using the same.

Each party to the dispute adduced evidence before the Tribunal, the locus in quo was visited and at end of trial, the Tribunal held that the appellant was not the owner of the land, the same was communal grazing land and ordered that each party bears its own costs.

There are three grounds of appeal.

The first and third grounds were argued together. They will also be considered together in this judgment.

The first ground complains that the tribunal erred in law and fact in reaching its judgment and orders that both parties to the dispute continue using the suit land, in total disregard of the evidence adduced by the appellant and his witnesses, thus occasioning a miscarriage of justice. In the third ground the complaint is that the Tribunal failed to evaluate the evidence on record, causing a miscarriage of justice.

The burden was on the appellant to prove on a balance of probabilities that he was the owner of the suit land. one who alleges has the duty to provide the proof: see section 101 Evidence Act, Cap. 6: see also *IMMACULATE NTUJA VS SSERUNJOGI & OTHERS* (200-2005) HCB 121

An evaluation of the evidence before the Land Tribunal shows that the appellant's evidence before the Tribunal was an assertion that he was the owner of the land having acquired the same by succeeding to his father Siperino Oyengo who in turn had succeeded to the land from Omara Juma the appellant's grandfather.

The appellant did not describe any boundaries as being those of his land, did not name any features on the land showing that the land was his, he did not name or show any structures of his or those of the previous owners from whom he obtained title to the land. Though, through a question to DW2, Walter Otile, claimant tended to suggest that there were remains of a grandchild on this land, he did not point out and show to the Tribunal this grave; let alone did he testify as to the particulars of who this grandchild was.

The evidence of the appellant's witnesses, PW2, Nakol Okidi, PW3, Salim Bwana, PW4 Leon Oculi, PW5, Alex Oming, PW6, Onapa Margaret, PW7, Lenison Owiny, and PW8, Ben Okunyu, is devoid of any specifics as to the exact borders, existence of any features, or any evidence of use by the appellant, or the appellant's stated successors-in-title of the suit land to establish ownership thereof.

Indeed the evidence of PW2, PW3, PW5, PW6 and PW7 is more consistent with the assertion of the respondents that the land in question did not belong to the exclusive use of one individual, but rather to the communal use for grazing of a number of kraals whose heads included Omara Juma, the grandfather of the appellant, Yusuto Ogwang, Terencio Ayeke, and Edward Poro, amongst others. The names mentioned by the appellant's witnesses, as having been the ones using the land are very much similar to those mentioned by DW8, Lawrence Okwir, as having been the kraal leaders, when the land was being used communally for grazing purposes.

The fact that the appellant, and his witnesses, did not adduce evidence or show to the Tribunal any evidence of what the appellant or his predecessors-in-title had put on the land by way of development as owner and occupier of the suit land, let alone to show any boundaries of the suit land, is consistent with the version of the respondents that the land was communal and for grazing with no permanent features for permanent and continuous stay by any particular owner.

The appellant also failed to offer any plausible explanation, why, since the death of his father, when, he assert, he became the owner of the land, up to 2003, he never stopped the respondents from using the land, by way of cultivation and yet they started doing so since 1985. By failing to take action against the respondents, is consistent with the respondents', assertion that there was no single owner of this land, the same being communal.

It also follows, that even if it were to be held as proved, which is not the case, that the appellant had proved that he is the owner of the suit land, by having let the respondents on the land to settle and use the same undisturbed from 1985 to 2003, or there about, such along period, then the respondents became bonafide occupants of the suit land in terms of the then section 29 of the Land Act, cap. 227.

It is the holding of this court, on re-evaluating the evidence, that the appellant did not discharge the burden of proving that he was the owner of the suit land to the exclusive ownership, use and occupation of others as communal land. Both grounds 1 and 3 of the appeal fail.

The second ground complains that the Land Tribunal erred in ordering that each party bears its own costs of the proceedings before the Land Tribunal.

Section 27(1) of the Civil Procedure Act provides that, in normal circumstances, costs should be awarded to the successful party. The section however also provides for discretion to be exercised, when court finds it appropriate, by court ordering with reasons, which party is to receive costs of the suit. **See ELECTORAL COMMISSION VS SEBASTIAN SSEBAGALA: ELECTION PETITION NO. 1 OF 2003 (HCB) 2001-2005)84.**

In this particular case the Land Tribunal ordered each party to bear its won costs. No reasons were given for such order. The Land Tribunal ought too have given reasons for ordering each party to bear its own costs.

This court on reconsideration of the circumstances of the case, which are that the suit land was communal land, that the parties to the suit belong to the community using the land, to the non exclusion of any one of them, the order that each party bears its own costs of the proceedings in the Land Tribunal was fair and appropriate. This court maintains the same order, regardless of the outcome of this appeal. The second ground of appeal also fails.

The three grounds of appeal having failed, this appeal stands dismissed.

The respondents being successful in resisting the appeal, are awarded the costs of the dismissed appeal. As already held, each party is to bear its own costs of the proceedings before the Apac District Land Tribunal.

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Remmy K.Kasule

Judge

31st October, 2008