THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT MBALE

HCT-04-CV-CA-0002-2009

(from Original Pallisa Civil Suit No. 21 of 2004)

OONYU LAWRENCE…..…..……...APPELLANT

VERSUS

OKOODI GERESON……..…..…….…… ……..RESPONDENT

BEFORE: THE HON. MR. JUSTICE MUSOTA STEPHEN

JUDGMENT

This is an appeal from the judgment and orders of the Magistrate Grade I Pallisa in which he decreed the suit land to the Respondent.

The appellant is represented by M/s Wesamoyo & Co. Advocates. The respondent is represented by M/s Mutembuli & Co. Advocates.

According to the lower court's record, the claim by the appellant was that he bought the suit land comprising 3 acres from the respondent in 1985 for 4 cows, 3 goats and 200000/=. That an agreement to that effect was made and was exhibited as Exh.P.I. The respondent is said to have thumb printed the agreement. The appellant further contends that by the time of trial he had used the suit land for 20 years before the respondent evicted him.

PW.2 and PW.3 supported the appellant in his claim. They said they witnessed the transaction between these parties.

On the other hand, the respondent denied selling the suit land to the appellant. He however contends that he only hired the suit land to the appellant for 15,000/= an acre in 1985. The respondent contested the authenticity of the sale agreement alleging that it is a forgery because him being a teacher could not thumb print it instead of signing it. The defence witnesses supported the respondent.

In his judgment, the learned trial Magistrate Grade I believed the respondent's evidence as against the appellant's. He was satisfied with the evidence that since the respondent is a trained teacher, there is no way he could execute an agreement by thumb printing instead of signing.

Dissatisfied with the above decision, the appellant filed this appeal. In his memorandum of appeal, the appellant complained that:

(1) The trial Magistrate did not evaluate the evidence properly and wrongly disregarded the agreement between the appellant and respondent.
(2) Finding that the agreement was a forgery was a misdirection.
(3) That the respondent's evidence were lies.
(4) The trial Magistrate did not visit the *locus in quo*.
(5) The evidence of the trial Magistrate has occasioned a miscarriage of justice.

Both learned counsel were allowed to file written submissions in support of their respective cases.

As a first appellate court, I have studied the lower court's record. I have re-evaluated the evidence. I have considered the decision of the trial Magistrate, and I am in total agreement with his finding.

Proof of claims in civil matters is on a balance of probabilities.

The appellant tried to prove purchase of the suit land basing on Exh.P.I which was disputed by the respondent. The respondent pleaded that being a teacher he could not thumb print the agreement as the appellant contends. The appellant did not dispute the fact that the respondent is a teacher/educated. I therefore agree with the finding of the trial Magistrate that the respondent could not thumb print the agreement instead of signing it.

CW.2 Ibrahim Angodia does not remember who wrote the agreement.

Comparing the two versions of the evidence, the evidence by the respondent is more believable than that of the appellant. The appellant went to him in 1985 and begged him for a garden to cultivate. The respondent rented it to him for 15,000/= per year. In all the appellant paid 60,000/=. The appellant did not pay any coin but paid in kind. He gave the respondent a calf as an equivalent of shs.60,000/=. The appellant was supposed to use the land for 3 years – 1985-1988. He was however given an extra one year. That the respondent sold two mvule trees on the land to one Okurut in 1990 which were split after two months. After splitting the timber was kept with the respondent for two months. In 1993 the appellant again gave the respondent two "small animals" for which he mortgaged to him 4 acres. When the respondent took back the two animals to redeem the land the appellant refused arguing that if one stays on the land for six years one does not leave the land. Later the appellant came up with Exh.P.I purporting to have bought the suit land.

Clearly the appellant was a mortgagee and not a purchaser. It is trite law that a mortgagee is a mortgagee all the time regardless of how long one stays on the land. The equity of redemption by the mortgagor can never be defeated. The respondent was right to redeem his land. The appellant was not using the land for housing or as his home but for cultivation. At the time of filling the suit it was the respondent on the suit land todate. Since I have found that the appellant did not buy the land but is a mortgagee the issue of limitation does not arise.

I agree with the submission by learned counsel for the respondent that in the circumstances, non-visit of the court to the *locus in quo* was not prejudicial to the parties hereto.

The appellant failed to prove the authenticity of the alleged sale agreement. I therefore find no compelling reason to interfere with the findings of the trial Magistrate who had the opportunity to observe the demeanour of the witnesses and the parties and critically evaluated the evidence.

I will order that this appeal be dismissed with costs here and in the court below.

Musota Stephen

JUDGE

22.12.2010

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Both parties absent.

Mutembuli for Respondent.

Majanga on brief for Angura.

Kimono Interpreter.

Mutembuli: Matter for judgment.

Court: Judgment delivered.

Musota Stephen

JUDGE

22.12.2010