THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA
AT MBALE
HCT-04-CV-CA-0012/2007
CHEPTAI HABIBU…….APPELLANT
VERSUS
SAMA ISMAIL…….RESPONDENT

BEFORE: THE HONOURABLE MR. JUSTICE STEPHEN MUSOTA

JUDGMENT

This is an appeal from the judgment of the Magistrate Grade one Kapchorwa dismissing land tribunal claim No 016 of 2003. The appellant **Cheptai Habibu** is represented by M/S **Magellan F Olubwe** & Co. Advocates while the respondent is represented by M/S Owori & co. advocates.

The background to this appeal is that the appellant sued the respondent in defunct Kapchorwa District Land Tribunal in 2003. The matter was partly heard before tribunals stopped working. The appellant had given his evidence and produced Exhibits in form of a Certificate of allocation. After taking that evidence, the tribunals adjourned proceedings to diverse dates but the record does not indicate what transpired on those dates. On the 5th July 2006 the parties appeared in court and the suit was given a last adjournment to 30.8.2006. Failure of the claimant bringing witnesses the case was to be closed.

It is not indicated what transpired on 30.8.2006. However on 24.1.2006 the matter was adjourned to 2.1.2007 by the Ag. Secretary of the Tribunal. Unfortunately on 16.12.2006 ceased to exist vide practice Direction 2 of 2006 of the Hon. The C.J.. This direction ordered that all cases previously handled by the tribunal reverted to the ordinary courts of law.

When the suit appeared before the magistrate Grade I on 13th march 2007 the claimant informed court that he was ready to conclude his case but due to changes in the Tribunal he had not brought any witnesses

On the other hand, the respondent prayed for the dismissal of the case because the matter had been given a last adjournment. The learned trial magistrate obliged and dismissed the suit because it had been given a last adjournment and cases cannot drag on indefinitely. Further that this 2003 claim had the claimant testify but his testimony was incomplete and that the claimant had not produced the Register of land Allocation of1983 for zone F.

The appellant was dissatisfied with the decision of the learned Magistrate hence this appeal.

In the memorandum of appeal the appellant complained that:

1 ***The learned trial Magistrate misdirected himself in dismissing the suit on 13.3.2007 and thereby occasioned an injustice***

2 ***The learned trial magistrate erred in law and fact in ordering the dismissal of the suit***

3 ***It was against natural justice and the constitution for the learned trial magistrate to dismiss the suit.***

Both learned counsel were allowed to file written submissions.

I have studied the lower courts record. I have considered the submissions by both learned counsel . As proposed by learned counsel for the appellant the three grounds of appeal can be dealt with together. The contention is whether the learned trial Magistrate acted properly when he dismissed the appellant's suit which was partly heard by the tribunal but was transferred to the Magistrate's court.

It is not clear under what law the learned trial Magistrate acted.
The appellant assumed he did act under O. 15 r 5 Civil Procedure Rules or O. 15 r.6 Civil Procedure Rules (Not a correct order).

On the other hand, learned counsel for the respondent assumed the trial magistrate acted under O. 17 r. 6 C.P.R because the matter had taken four years with no action.

I am of the considered view that non of learned counsel is correct. O 15 r 15 C.P.R. deals with Power to amend or strike out issues. And rule 6 thereof deals with questions of law or fact stated by agreement.

On the other hand 0 17 r 6 C.P.R allows dismissal of suits if no step is taken for two years.

The instant matter does not fall under any of the above provisions. It is apparent from the record that the appellant was keen at having his suit determined on merit.

This, however, was not facilitated by the defunct land tribunal. The suit was part heard and the appellant was to produce further evidence. This was not possible because land tribunals, ceased to have jurisdiction. Clearly the delay in finalizing the hearing of the suit cannot be blamed on the appellant . infact when he appeared before learned trial magistrate, he endeavoured to outline the history of the suit and why he had not produced his witnesses. He informed court that he was ready to conclude his case but due to changes in the tribunal he had not produced his witnesses.

In other words, the appellant was seeking for a hearing date from court to enable him continue prosecuting his case.

I therefore agree with the submission by learned counsel for the appellant that the decision by the trial magistrate to dismiss the suit in a summary manner without according the appellant a hearing was in error. It contravened the principle of natural justice and violated the appellants rights to be heard. The last adjournment the trial magistrate alluded to was not given by his court. The record does not show what transpired on that day either.

Since this is a land dispute and the case was partly heard then if the trial magistrate was compelled to act, he ought to have acted under O. 17 r. 4 Civil procedure rules although given the circumstances of this case it was not a proper step to take under the said rule, where any party to a suit is given time but fails to produce his or her evidence or perform any further act necessary to the further progress of the suit, court may proceed to decide the suit immediately.

The proper course therefore would have been to grant the appellant an adjournment to bring his witnesses. The decision by the learned magistrate occasioned a miscarriage of justice.

Consequently, I will allow this appeal. The orders of the trial magistrate are set aside. Let the suit be proceeded with by another magistrate. The appellant shall get a half the costs here and in the court below.

Stephen Musota

Judge

29.11.2012