THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT SOROTI

CIVIL APPEAL NO. 49 OF 2010

OGAITA DAVID ……..APPELLANT

VERSUS

OPOLOT BEJAMIN…….RESPONDENT

BEFORE HON. LADY JUSTICE WOLAYO

JUDGMENT

In this appeal, the appellant through his advocate Mr. Ogire appeals the decision of the grade one magistrate at Kumi dated 22.11.2010 on the grounds that:

1. The trial magistrate erred in law and in fact when he failed to properly evaluate the evidence on record as a whole thereby arriving at a wrong decision.
2. The decision of the magistrate occasioned a miscarriage of justice.

The respondent was represented by Mr. Ewatu. Both counsel made written submissions that I have carefully read.

It is trite law that the duty of an appellate court is to re-appraise the evidence and arrive at its own conclusion bearing in mind that the trial court had an opportunity to observe the demeanor of the witnesses.

The plaintiff Opolot Benjamin (respondent) sued the defendant Ogaita David (appellant) for recovery of twelve gardens of land located at Komongomeri village, Kolir sub-county, Bukedea district.

From an examination of the record, it is not in dispute that the Opolot Benjamin was born on the land that he later inherited from his father . He used the land until 1995 when he run away due to insurgency. According to Pw2 John Asaja and brother to the respondent Opolot, the appellant moved into the land in 1996 during the absence of the respondent . The respondent returned in 2006 and a dispute began between the respondent and appellant.
It is also not in dispute that the appellant was given the responsibility of looking after some 40 acres of land by one Owatwum a paternal uncle by a document dated 6.8.1979. From the defence case, it is not clear when the appellant began using the land although respondent's witnesses mention 1996 soon after the respondent Opolot had left for Busoga to take refuge from the insurgency.

Further scrutiny of the document dated 6.8.79 is necessary . In law this would have amounted to a gift inter vivo but a closer scrutiny shows that the appellant was merely appointed heir to the homestead , to 'keep the land and other things' and not to sell the land because it belongs to the clan. In effect, he was told to oversee the property without giving him any proprietary rights.
The key issue is whether this clan land that the appellant was to oversee includes the land now in dispute.

The trial magistrate found that the respondent in fact witnessed the responsibility given to the defendant in 1979 by his uncle. The respondent in his evidence said he

was born on the land, therefore all clan members lived peacefully on the land until 2006 when disputes began after respondent returned to his land from self-exile .
My conclusion is that the appellant did not acquire any proprietary rights in the land occupied by the respondent prior to 1996 . The intention of his uncle Okwatim was not that he displaces people who had settled on the land.
I am in agreement with the conclusion arrived at by the trial magistrate.
In the result, the grounds of appeal fail and the appeal is dismissed.

I am in agreement with the orders of the trial magistrate that the appellant shall give vacant possession to the respondent all that land the respondent occupied before 1996 within three months from date of this judgment. The respondent in his evidence said he inherited originally 20 acres but now only five gardens are left. It is these five gardens that must be delivered to the respondent .

DATED AT SOROTI THIS 8TH DAY OF NOVEMBER 2013
HON. LADY JUSTICE H. WOLAYO