

IN THE HIGH COURT OF UGANDA AT SOROTI

CIVIL APPEAL NO. 50 OF 2011

ARISING FROM BUKEDEA CIVIL SUIT NO. 37 OF 2010

ONGURA JOSEPHAPPELLANT

V

ODEKE DAVID AND OKELLO CHARLES.....RESPONDENT

BEFORE HON. LADY JUSTICE H. WOLAYO

JUDGMENT

The appellant appealed the judgment of HW Felix Omalla Senior Principal Magistrate Grade one dated 6th December 2011 sitting at Bukedea on six grounds of appeal that i will revert to later in the judgment.

The appellant was represented by Mr. Echipu while Mr. Isodo appeared for the respondent. Both counsel made oral submissions that i have given due consideration.

The duty of an appellate court is to re-evaluate the evidence adduced in the lower court and arrive at its own conclusion bearing in mind that the lower court had an opportunity to observe the demeanour of witnesses.

The respondent sued the appellant Ongura Joseph as 1st defendant and the second respondent Okello Charles as 2nd defendant for recovery of three gardens of land sold by the appellant to the 2nd respondent Okello Charles. The facts of this case were not in dispute right from the pleadings to the trial.

I have examined the proceedings and found that the following facts are not in dispute.

The 1st respondent Odeke David was brought up by his maternal relatives and on reaching the age of majority in 2007, his maternal uncles and paternal uncles

held a meeting at which it was resolved that Odeke be handed his late father's land comprising 14 gardens. It was at this point that Okello Charles admitted to selling three gardens to Ongura Joseph while Odeke was still young.

PW3 Noah Aisu, clan chairman of Odeke's clan testified that he was the caretaker of the 14 gardens but he delegated the physical caretaking of these gardens to Okello who then sold to Ongura three gardens but that Okello was not authorised to sell.

From the defense case, it is evident that Ongura puts across the defense that he was a bona fide purchaser for value without notice. He bought the land in 1999 and states that he made inquiries from the LC 1 chairman. However, Okello in his evidence admits to selling land that did not belong to him.

In light of Okello's admission that he sold land that did not belong to him, Ongura's defense that he was a bona fide purchaser for value without notice cannot stand. Had he done due diligence as to the true ownership of the land, he would have found that Okello had no authority to sell the land.

Indeed, it can be said that Okello intermeddled in the estate of Odeke's late father because he was not an entitled beneficiary.

I therefore find that the trial magistrate correctly evaluated the evidence and arrived at a correct conclusion.

Turning to the grounds of appeal, the first ground is that the trial magistrate erred in pronouncing judgment on an interview of the 2nd defendant who had not filed a written statement of defense. I find no merit in this ground because although there is no written defense on record, the 2nd defendant was present throughout the proceedings and gave sworn evidence.

The key defendant in the case was Okello 2nd defendant who sold land to the 1st defendant. I note that the 1st defendant Ongura was represented by Mr. Echipu who is still his counsel on appeal but the 2nd defendant was not represented. In any case, no miscarriage of justice was occasioned by the omission to file defences except that it is good practice for parties to file pleadings as a basis for their respective cases. In fact, Order 6 rule 27 permits suits in magistrates courts to be tried on a plaint without further pleadings unless the court otherwise directs.

Ground one fails.

Ground two is that the trial magistrate erred when he ignored the fact that the 2nd defendant had authority to sell the land to the 1st defendant. I have found that the 2st defendant had no authority to sell the land and instead, he intermeddled in the estate of the deceased owner.

Ground two fails.

The gist of Grounds three and four is that the trial magistrate did not give the defendants a chance to explain that the land was sold with authority of the clan.

I find no merit in these two grounds as it is evident from the plaintiff's case that the clan did not give authority to sell the land.

The fifth ground is that the orders of the trial magistrate are uncertain.

The orders of the trial court were:

1. The disputed land belongs to the plaintiff (Odeke)
2. The plaintiff to get vacant possession.
3. Permanent injunction to issue restraining the defendants(Ongura and Okello) from laying claim to the land.

4. Without prejudice, the 2nd defendant (Okello) to pass his own garden to the 1st defendant (Ongura) to avoid the 2nd defendant from benefitting from his own wrong.
5. Costs to the plaintiff.

I find no uncertainty in these orders that i hereby confirm. To avoid protracted litigation, the trial magistrate ordered the second defendant now second respondent , to compensate the 1st defendant now appellant with one garden in light of his conduct in selling land that he had no authority to sell.

In the premises, i dismiss the appeal, and confirm the orders of the trial court with costs of this court and court below to the 1st respondent.

Before i take leave of this appeal, i have had occasion to look at the taxed bill of costs taxed by the trial court and i find that the items on disbursements were taxed at very high amounts. The number of attendances by the respondent does not correspond with appearances in court. I direct that this bill be ignored and one bill be filed for costs in the High court and trial court to be taxed by the Deputy Registrar.

DATED AT SOROTI THIS 17TH DAY OF OCTOBER 2014.

HON. LADY JUSTICE H. WOLAYO