THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE

HCT-04-CV-CA-0145-2014
(FROM PALLISA SUIT NO. 10/2013)

1. **KIROR MARGARET**
2. **OLINGA JOHN ::::::::::::::::::::::::::::::::::: APPELLANTS**

VERSUS

OKWAJJA OMUNYALI ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

This is an appeal from the decision of the Chief Magistrate's Court of Pallisa presided over by **His Worship Kintu Imoran Isaac**, Magistrate Grade I delivered on the 24.6.2014 wherein the respondent (plaintiff) sued the appellants (defendant) for trespass and recovery of land measuring approximately 3 acres situate at Omatakojo village and judgment was given in his favour.

The facts giving raise to the appeal are that the respondent (plaintiff filed Civil Suit No. 10 in the Chief Magistrate's Court of Pallisa against the appellants (respondents) seeking recovery of land measuring approximately 3 acres situate at Omatakojo village in Pallisa. The plaintiff contended that he bought 1 acre from **Odongo Otto**, 1 acre from **Olinga John** and 1 acre from **Kadapao** (all deceased) who were related to the defendants. This was in 1970. The defendants contended that there was no sale but the said land was merely mortgaged to the plaintiff.

During the trial, the plaintiff (respondent) adduced evidence of three witnesses who testified in his favour. The defendants on the other side led evidence of 5 witnesses in proof of their case.

A locus visit was also conducted. The plaintiff averred that he had been on the suit land since 1970 undisturbed until 2013 when the defendants began to lay claims against the suit land.

After the hearing of the case, the trial Magistrate found that the plaintiff had proved his case against the defendants (appellants) and gave judgment in his favour hence the defendants being dissatisfied appealed to this Honourable Court against the whole judgment of the trial Magistrate.

Four grounds of appeal were raised and written submissions filed. Grounds 1 and 2 were argued together, and 3 and 4 were also argued together. Therefore, to accommodate all grounds as argued, and for purposes of determination of this appeal, consideration shall be made on two grounds of appeal namely;

1. That the trial Magistrate erred in law and fact when he failed to properly evaluate the evidence on record hence reaching a wrong conclusion (covers ground 1 and ground 2).
2. That the trial Magistrate manifested bias in favour of the plaintiff to the chagrin and peril of the defence hence occasioning a miscarriage of justice. (Covers ground 3 and 4).

It is the duty of this court as a first appellate court to re-evaluate the evidence on record and to come to its own conclusion. See: *Father Nansensio Begumisa & Others versus Eric Tibebaga SCCA No. 17/2002*.

Looking at the evidence of both sides, the plaintiff (respondent) adduced evidence to show that he was the rightful owner of the suit land. He stated in his testimony that he had bought the suit land in 1970 and had been in occupation of the same. When asked to tender the sale agreements, the plaintiff (respondent) said the same had been confiscated by **Otule**, a worker in Human Rights Concern that they were a forgery. The plaintiff was so consistent in his evidence to the extent that the trial Magistrate was impressed by his testimony.

On page 99 of the proceedings, the trial Magistrate stated,

> "*this witness is very consistent, he has great knowledge of his case, he has good memory despite his age*."

Also his evidence was properly corroborated by that of PW.2 and PW.3 who were also consistent in their testimony.

On the other hand, the evidence of the defendants (appellants) was full of contradictions and some of it was merely hearsay evidence. For instance DW.1 stated that she got married in 1980 yet the plaintiff bought the suit land in 1970 a possibility that at the time of the sale, she wasn't around and could not give viable evidence to that effect. DW.2 in re-examination said that the land had been mortgaged to the plaintiff 5 years ago (that is in 2008). DW.3 in cross-examination said he had recently been convicted of extortion yet he was the same person who confiscated the said sale agreement that it was a forgery. DW.5's evidence was merely hearsay as he said that he was told that there was a mortgage. He did not have a proper knowledge of the disputed land hence he was not a viable witness to that effect.

So with all these inconsistencies on the defendant's testimony, the trial Magistrate was right in holding that the plaintiff had proved his case against the defendants and that the suit land for the plaintiff. (See sections 101 and 103 of the Evidence Act). See also *Igamu Joanita vrs Uganda SCCA No. 107/2013*.

It is also trite law that where there are material inconsistencies, in witness' testimony, the evidence of such a witness ought to be rejected. Minor inconsistencies will not have the same effect unless they point to deliberate falsehood.

In this particular case, the evidence of the defendants was full of major contradictions and inconsistencies and the same had to be taken into account in reaching a final decision, thus the trial Magistrate was right in reaching his decision.

Also S.5 of the Limitation Act bars a person from bringing claims for recovery of land after a period of 12 years. In this particular case, all the person who had sold the land to the plaintiff were still living and died one by one until the last one died in 2012 when the respondents began to lay claims on the suit land. The sale had taken place in 1970 and the defendants came to claim in 2013 thus they are barred by limitation from pursuing their claim.

The plaintiff is also an adverse possessor of the land in that he had been on the suit land since 1970 undisturbed by anyone, he even settled his son on the suit land who constructed there a house. For all this period, there was no one to challenge his possession of the land.
See *Nambala Kintu v. Ephraim Kamuntu (1975) HCB 221*.

According to the case of *Asher v. Whitlock (1865) LRA QBI*, possession of land is the root to title thus a person who is in possession has title which is good against the whole world except a person with a better claim.

Thus having re-evaluated the evidence, I find that there was no mortgage and that the transaction was a sale and therefore the trial Magistrate was right in his decision. Thus these grounds fail and the decision of the trial Magistrate is upheld.

Ground 3 and 4:
That the trial Magistrate, failed to evaluate evidence and was biased in favour of the plaintiff hence occasioning a miscarriage of justice.
A decision is said to have occasioned a miscarriage of justice if there has been misdirection by the trial court on matters of facts and law relating to the Evidence tendered or where there has been unfairness in the conduct of the trial resulting to an error being made.
See: *Matayo Okumu v Fransiko Amudhe & 2 Others (1979) HCB 229*.

In this particular case, as already discussed, there was no misdirection on the side of the trial Magistrate, he properly evaluated the evidence on record weighing the plaintiff's side against that of the defendants before reaching a final conclusion. Thus there was no bias whatsoever and no miscarriage of justice was caused.

For the above reasons this appeal is dismissed with costs to the respondent and the decision of the trial Magistrate upheld. Costs to Respondents.
Right of appeal explained.

Henry I. Kawesa

JUDGE

08.12.2015