

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

**HCT-04-CV-CA-0074-2014  
(ARISING FROM KAPCHORWA CIVIL SUIT NO. 0047 OF 2010)**

**CHEMAK CHRISTOPHER** ..... **APPELLANT**  
**VERSUS**

- 1. CHEMUTAI JAMES LAZARO**
- 2. DR. CHEPKURUI ALFRED LAZARO**
- 3. CHESANG ROGERS LAZARO**
- 4. CHEROP MWENGE LAZARO**
- 5. BOSEL LAZARO**
- 6. HEREMIALI CHEROTICH LAZARO**
- 7. MUSOBO PATRICK LAZARO**
- 8. MZEE MWENGE LAZARO** ..... **RESPONDENTS**

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

**JUDGMENT**

Appellants were aggrieved and dissatisfied with the Judgment and orders of Magistrate Grade I-Kapchorwa of 8<sup>th</sup> May 2014. They appealed on three grounds namely:

- 1) The learned trial Magistrate erred in disregarding the decisions of LC.I Court.
- 2) Learned trial Magistrate wrongly and lopsidedly evaluated the evidence on record.
- 3) Learned trial Magistrate reached wrong conclusions at locus.

This is a first appellate court. This court is enjoined to re-appraise the evidence and make its own conclusions, bearing in mind that it did not hear or observe the witnesses. (See: ***Pandya v. R (1957) EA 336***).

I have gone through the entire record, and also internalized the submissions by counsel for both appellants and respondents. I now proceed to determine the issues as herebelow:

**Ground 1:**

The arguments raised under this ground were responded to by Counsel for Respondents in his submissions. The trials of cases by LC.I and LC.II Courts is not legally sustainable in law. This

was discussed at length in the case of *Rubaramira Ruranga v. Electoral Commission and A.G. Const. Pet. 21/2006*.

The above decision was quoted with approval in *Nalongo Burashe v. Kekitibwa Mangadalena CA.89/2011*; in that decision it was held that:

*“by 2009, the LC I, LC.II and LC.III, courts were not legally constituted and decisions made by such courts were “no decisions having been made by a court not legally constituted. The decisions are devoid of any force of law.”*

From the record the decisions by the LC.I and LC.III were in June 2009 and May 2007 respectively- periods which were under the case found to be covered by the provisions of the amendments of the 2005 constitution regarding elections held under the 2006 multiparty system. The decisions made by the LC courts therefore were of No legal consequence. It is **PW.1 Chemak Christopher** is evidence that the land was his by virtue of winning defendants at LC.I, LC.II and LC.III Courts. He further claimed that the land was given to him by his grandfather but he left it between 1973-1983 due to being chased away by the Karimajong. He stated that when he returned by 2007 he put up a grass thatched house thereon.

**PW.2 Steven Musani** said that he presided over the case at the parish LC Court. He told court that he knew that land belongs to **PW.1 Chemak**.

**PW.3 Erukari Lomini** said that plaintiff’s father was a neighbor to his father, and that the Plaintiff got the land from his father Paul. The land is 100 acres.

**PW.4 Seleman Mika** stated that his parents told him that defendants had no land there. His evidence was hearsay.

**PW.5 Bukose William** said he was a councilor at LC.II as well as defence secretary; and was part of the trial panel. His evidence consisted of the court proceedings and hence was irrelevant to the issues in court. The case for the defence was through DW.1- Chemutai James who said the land used to be for his father and its 50 acres. He named the neighbours as **Michael Cherop**.

**Kamuganga, Kapchekwek** and River Ngenge. Plaintiff occupied the land in 1974 after begging the defendant's father **Lazaro Chemonges**. He stayed for 4 years and left in the 5<sup>th</sup> year due to insecurity. He denied having ever been sued by the plaintiff.

**DW.2 Chepkurui** said the land belongs to their father. He named the neighbours as did DW.1.

**DW.3 Chesang Rodgers** said the land belongs to their father and their ancestors. He confirmed that sometime in 1974 plaintiff's mother went and asked for land from their father, and the father allowed them to begin staying with them. he said their brother died and was buried there.

**DW.4 Cherop Mwangi** said the land belonged to their father, who also acquired from their grandfather. He also stated the plaintiff came on their land owing to insecurity.

**DW.5 Bosei Lazaro** confirmed that the land was in occupation of the defendants. **Chesang** (15 acres), **Cherop** (20 acres) and **Chemutai** (15 acres).

**DW.6 Jeremiah Cherotic** also confirmed the occupation as per DW.5's testimony above.

**DW.7 Masobo Patrick**- said he is not on the land but it is occupied by his brothers who also got it from their father.

**DW.8 Muzee Mwangi Lazaro** said land is for them customarily; but he does not occupy it.

**DW.9 Augustino Chelimo** said plaintiff is his brother. He said their land is on the upper side and the plaintiff is telling lies because they do not own land in Kabrobotwo. He confirmed that plaintiff settled in **Lazaro's** land in 1974 because of insecurity. He said he knew that land was for defendant's father, and they should not grab his land yet they had their own land.

**DW.10 Cheptegei Augustine**, said he is a neighbor to the defendant's father (**Lazaro's** land). He knew plaintiff very well as a resident of Ngenge. He confirmed that during time of insecurity

the plaintiff went and lived on the suit land with other people and the land owners between 1973-1974. He told court that defendants (sons of **Lazaro**) were the true owners of the suit land. Court visited locus and recorded its impressions at the locus including boundaries, broken bricks, and patches of old houses which were removed or destroyed.

Having the evidence as above the burden in civil suits is upon the plaintiff to prove the case on a balance of probabilities. The burden of proof is contained in sections 101, 102, 103 of the Evidence Act, is on he who alleges a fact.

In this case the plaintiff had by plaint under paragraph 10 sued defendants “for vacant possession and interference on his 100 acres of land at Kaplobotwo.

The plaintiff had to lead enough evidence to establish the above.

However defendants denied the above in their Written Statement of Defence and put up a counter claim that they are joint owners of the land, and that plaintiffs were trespassers thereon. The evidence on record when evaluated shows that apart from the plaintiff’s own word of mouth, he led no independent evidence to prove his claims. The evidence of PW.2 was of the LC Chairman which basically is not able to establish ownership. PW.4 gave hearsay evidence. PW.5 also was an LC Court member whose evidence could not establish ownership. There was only PW.3 who attempted to show that plaintiff’s father was his neighbor.

However the defendants led consistent evidence that their father **Lazaro**- owned the land and he also inherited it from his grandfather. Evidence consistently showed that the plaintiff came on their land as a refugee and later fled due to insecurity. Evidence of DW.9 categorically corroborates this fact as it was evidence of a brother to the plaintiff.

The learned trial Magistrate evaluated the evidence at the locus and correctly found it to be consistent with what defendants testified in court.

I find that the reasonings and findings of the learned trial Magistrate were thorough. I am of the opinion that the plaintiff did not lead enough evidence to prove the plaint. The learned trial Magistrate was justified to find that the tilt of evidence weighed in favour of the defendants.

After having freshly evaluated the evidence as above, I do also come to the same conclusion as did the learned trial Magistrate. I therefore find that:

**Ground 2:**

The learned trial Magistrate did wrongly or lopsidedly evaluate the evidence on record, and the decision reached was neither wrong or erroneous. This ground fails.

**Ground 3:**

The learned trial Magistrate did not error in her conclusions based on the evidence at the locus, and her findings did not occasion a miscarriage of justice.

In conclusion, none of the grounds of appeal are proved. The appeal fails and is accordingly dismissed with costs to the Respondents. I so order.

**Henry I. Kawesa**

**JUDGE**

**04.11.2016**