THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: ODOKI, J.S.C., ODER, J.S.C., AND TSEKOOKO, J.S.C.)

CIVIL APPEAL NO. 52/1995

BETWEEN

ISRAEL KABWA. ……APPELLANT

AND

MARTIN BANOBA MUSIGA ……RESPONDENT

(Appeal from the judgment of the High Court of Uganda at Fort Portal (Rajasingham, J.) dated 17th July, 1995

in

Civil Suit No. DR. MFP 20/1990

JUDGMENT OF TSEKOOKO. J. S.C.

This appeal is against the judgment and decree of Rajasingham, J., given at port Portal by which he gave judgment in favour of the respondent (as plaintiff) and against the appellant (defendant) in respect of a disputed piece of land measuring about ten acres situated at Makanda village, Bwabya Kiburara, Hakibale sub-county, Burahya, Kabarole district. I refer to the disputed land as the suit land hereinafter.

It is clear that the suit land was originally part of land of which one Erikanjero Kalyebara was the registered proprietor. There is evidence that the father of the respondent (called Yosefu Banoba) purchased some land from the said Kalyebara for which he paid the purchase price in instalments between 1958 to 1967. According to the respondent, his father, Banoba, was unable to have the suit land registered in his (Banoba's) name before he (Banoba) died. Kalyebara himself had died earlier probably in 1976 though evidence about the death is conflicting. The testimony of the appellant is that he purchased the suit land from the same Kalyebara. between 1960 and 1965 but could not be registered proprietor until 1977 when the son and executor of Kalyebara Mukidi signed necessary papers to enable the appellant to be registered as proprietor of some

32 acre of land part of which the suit land. The appellant claims to have bought the undisputed portions of the 32 acres of land at intervals.

Undisputed evidence in the case is to the effect that the respondents parents built a semi-permanent house on a portion o the suit land about 1967. It is also agreed that the appellant an the parents of the respondent were neighbours for some time. A some point in time the house of the parents of the respondent was burnt down. By then Banoba had died but the house was under the charge of a worker called Apolonari Mulefu. Evidence from both sides established that active or live dispute about the suit lane erupted about 1985, the time the respondent attempted to survey the H suit land so that he could be registered as proprietor. By that time the appellant was a District Administrator (D.A) in Hoima District a neighbouring District to Kabarole District in which the suit land is located. Thereafter the appellant processed the registration of Mukidi (deceased) and his own application for registration. Mukidi and the appellant were on 30/10/1987 registered as successive proprietors of 32 acres of land including the suit land. It will be remembered that Mukidi died about 10 years previously. The evidence of both sides shows very clearly that the appellant acquired the Certificate of Title (Exh.D.4) to his land (inclusive of the suit land) when there was a dispute on the suit land.

The learned trial Judge framed six issues during the writing of his judgement, none having been framed before. These are:

1) Has the plaintiff any locus standi to seek to recover this (sic) suit land?

2.) If issue 1 is answered in the affirmative has the plaintiff proved that the suit land was purchased by his late father Yosefu Banoba in 1958?

3) If issues (1) and (2) are answered in the affirmative, is the defendant nevertheless entitled to the land by virtue of his having been a bonafide purchaser for value without notice?

4) If issues (1) and (2) are answered in the affirmative and issue (3) in the negative, is the plaintiff entitled to some or all of the remedies prayed for in plaint?

5) If issues (1) or (2) or both are answered in the negative and issue (3) in the affirmative, is the defendant entitled to some or all of the remedies prayed for in the written statement of defence?

6) If issues (1), (2) and (3) are answered in the affirmative, is the defendant entitled to some or all of the remedies prayed for in the written statement of defence?

The Judge resolved these issues in favour of the respondent and consequently decreed that the respondent was the lawful owner of ten acres from Block 48, Plot 44 situated at Bwabya. Hence this appeal.

Six grounds of appeal were raised in objection to the judgment of the trial Judge.

In the first ground the complaint is that the trial Judge erred in law and fact when he held that the respondent had sufficient locus standi to bring and maintain the suit against the appellant.

Mr. Tibaijuka, Counsel for the appellant, submitted in respect of the first ground that since at the inception of the suit t respondent had not obtained letters of administration to the estate of his late father, the respondent had no locus standi to institute the suit to recover the suit land because of the provisions of Section 190 of the Succession Act as amended, by the Succession amendment decree 1972 (Decree No. 22/1972).

Learned Counsel criticised the trial Judge for his failure to rule on the Issue as preliminary objection had been raised challenging the locus standi of the respondent in the suit. Hi cited a passage in the Kenyan case of Kothari Vs. Qureshi (1967 E.A. 564 (at page 566) to support the view that an administrator; of the estate of an intestate does not have rights over the estate until after he had obtained letters of administration. Counsel contended that by virtue of S. 143 of the Registration of Titles Act, the Judge erred in decreeing that the respondent be registered as owner of the suit land. I think that this last argument has no merit on the facts available because as the father of the respondent had not been registered as proprietor before he died, letters of administration were not prerequisite to the registration of the respondent as proprietor to the suit land.

Although Mr. Akampurira argued grounds 1 to 5 together, I Will here refer to portions of his arguments which relate to the first ground of appeal. He submitted that Section 190 of the

Succession Act was inapplicable to the respondent who did not sue as representative of the estate of his late father. Rather the respondent who had his own crops, fruit trees and Kibanja which held under customary system, he was entitled to defend his rights in his own right.

Learned Counsel further submitted in effect that as customary heir, the respondent could prosecute the suit in his right and also on behalf of the intestate because of Section 28 of the Succession Act as amended by Decree No.22 of 1972. understand Mr. Akampurira's contention to mean that as Son Banoba, the respondent was entitled to his shares as heir, lineal descendant and dependant. This would give the respondent the bulk of the estate.

Towards the end of his submissions, Mr. Akampurira submitted that after the judgement had been delivered by the trial Judge, the respondent on 19/4/1996 obtained Letters of Administration to the estate of his father.

Mr. Tibaijuka objected to this point on grounds that the respondent did not serve notice of affirming the judgement on this ground Mr. Tibaijuka did not however challenge the statement as being correct. Obviously Mr. Tibaijuka had in mind the requirements of Rule 91 of the Rules of the Court.

Section 191 of the Succession Act states that-

> "Letters of administration entitle the administrator to all the rights belonging to the intestate as effectually as if the administration has been granted at the moment after his death."

This Section shows that the moment Letters of Administration are granted, the rights of the holder of the Letters of Administration relate back to the moment after the death of the deceased. This is reinforced by the provisions of the subsequent Section 192. S.192 states that:

> "Letters of Administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate."

The acts of the administrator which are rendered invalid ax only those which diminish or damage the estate. Even if it was assumed for the sake of argument that the Respondent couldn't sue, his acts in preserving or protecting .he estate are valid. The Editors of Williams

And Mortimer on Executors Administrators and Probate (being 15th Edition of Williams on Executors and 3rd Edition of Mortimer on Probate) at page 84 and 454 et seq. Show that an intending applicant for Letters of Administration can institute a suit to stop trespass to the deceased's land. Although the case of Ingall Vs. Moran (1944) K.B 160 shows that such a Suit would be incompetent yet the editors of the book I have just cited and the case of in the Goods of Pryse (1904) p.301, a Court of Appeal decision, support the respondents case. In Pryse's case at page 304, Stirling L.J. quoted with approval the passage that-

> "It is clear that the title of an administrator, though it does not exist until the grant of administration, relates back to the time of death of the intestate; and that he may recover against a wrongdoer who has seized or converted the goods of the intestate after his death in an action of trespass or trover……."

The learned Judge further observed on the same page in Pryse case that "law is stated with reference to an action of trespass o trover with regard to goods. But in the case of Rex v inhabitant of Horsley Lord Ellenborough treats the same law as being applicable to the case of leasehold property."

Back to the main arguments, With respect, I do not accept Mr. Tibaijuka's submission that the learned trial judge did not make ruling on the preliminary Objection raised about the capacity the Respondent to sue the appellant or when the Letter of Objection (exh.D.1) from the Administrator-General was introduced in evidence.

In the prayers of the plaint the respondent asked for a decree that he was owner of the suit land. In response the appellant averred in paragraph 3 of his defence that-

> "3 The defendant shall contend that the plaintiff has no locus and legal standi in this suit as he has never obtained legal authority to manage and administer the estate of late Banoba."

The record of the beginning of the proceedings in the trial Court reflects the following:-

> "Mr. Kaganda states that he has preliminary issue to argue. Can the plaintiff have and maintain this action when he has no legal authority to represent the estate of the late Banoba?
>
> Mr. Musana says his client's evidence will show that his client is claiming the property as owner and not as the legal representative of Banoba's estate.
>
> Order:
>
> In view of this I cannot see how the preliminary objection can be dealt with without first ascertaining whether and if so what the plaintiff's position is in relation to this action.
>
> Therefore, this issue will be dealt with at a later stage."

This is surely a ruling. Maybe Mr. Tibaijuka's wish is that the trial Judge should have struck out the plaint.

In his evidence, the respondent in effect proved that he had inherited his father's land as the customary heir. There was evidence to contract him on this (heirship) point. In his judgment, the learned trial Judge made the locus standi of respondent the first issue which he answered in the affirmative in favour of the respondent. The Judge stated (page 3 of judgement)-

> "Plaintiff appeared to base his locus standi on a certificate of no objection granted by the Administrator-General. He is a lay man and appeared to believe that was sufficient authority. Counsel for the defendant quite rightly pointed out that that was merely a step towards obtaining letters of administration. But both learned Counsel and the plaintiff, a lay man, overlooked the fact that as the heir of Yosufu Banoba and hence a person entitled under the Succession Decree No. 22 of 1972 to one percent of the estate he has a sufficient interest to give him locus in this case. In fact he could be a 50% owner if no other than his mother survived the deceased."

The Judge ought to have been aware that the plaint was drafted for the respondent by lawyers (Kulubya & Co. Advocates) and that the respondent was represented till D.W.3 testified when Counsel withdrew. So the question of being a layman did not arise. But PW2 did not

challenge the respondents claim to the suit land. I do accept the Judges view that the respondents locus standi is founded on his being the heir and son of his late father.

In terms of S.28(1) (a) and 28 (2) of the Succession Act a amended, the respondent could very well be entitled to 76% or more of the estate of his father. He is thus defending his interest.

His position as heir has been enhanced by the belated grant of letters of Administration. In that way, Kothari's case is irrelevant. Therefore I think that ground one should fail. I would still fail in my view even if no letters of administration had been obtained because the respondent's rights to the land an his developments thereon do not depend on letters of administration.

Mr. Tibaijuka next argued 2nd, 3rd and 5th grounds together. These objections are:

> "2 The learned trial Judge erred in law and fact in holding that the respondent was entitled to ten acres of land and that all that land was included in the appellant's Certificate of Title.
>
> 3. The learned trial Judge erred in law and fact when he held that there had been fraud on the part of the appellant and that that fraud extended to the registration of the appellant's title and that the appellant was not a bonafide purchaser. *
>
> 5. The learned trial Judge erred in law and fact in that he failed to properly scrutinise (Sic) and evaluate the evidence thereby coming to wrong conclusions on the facts and issues Before him."

In amplification of these grounds, Mr. Tibaijuka referred to exhs. P.1 and P1A. These are, respectively, the original vernacular - Sale agreement and its English translation in respect of the sale of 10 acres of land by Arikanjero Kalyebara to Yosefu Banoba. The original (exh.P.l) was tendered in evidence by PW2 during her re-examination. There was no objection by the appellant or his counsel about the admissibility of exh.P.1.

Next Mr. Tibaijuka contended that the size of the land is, in actual fact, different in exh.P.1 which mentions ten acres whereas; exhs.P.2 and P.3 refer to 5 hectares. Exh. P.2 is a caveat lodged by PW2 while exh.P.3 is a letter which the lawyer for PW2 wrote to the appellant about the suit land.

It is true that viewed from the point of exactness 5 hectare are more than 10 acres by about 2.4711 acres. But as there is r evidence that prior to writing exhs, P.2 and P.3 or indeed P.1 measurements of the suit land were taken, this argument has no merit.

The Point is the disputed land is in the same location referred to in the various documents. Just like exh. D.2 and D refers to 12.37 hectares as the land comprised in Plot 44 where exh.D.3 refers to the same land as measuring 33.5 acres. Since a hectare is equivalent to about 2.4711 acres, 12.37 hectares is less than 33.5 acres by about one hectare. In my considered vie therefore these differences are minor and do not affect the merit of the claim in as much as the respondent was denied virtually al the suit land. Moreover PW1's affidavit in support of the caveat (exh.P.2) referred to exh.P.1 and to 10 acres of land and it location at Bwabya.

Furthermore some of the documentary exhibits tendered b appellant clearly lacked authenticity. Plot No. 40 was altered t read 44 in exh. D.2 which exhibit (D2)is vital because it purport to have been signed by Mukidi. Exhibits (D.5 to D.10 were tendered by D.W.3 who testified when the lawyers for the respondent had withdrawn from the case. Much of D.W.3's evidence was really hearsay and therefore open to challenge yet Mr. Tibaijuka contend that D.W.3 verified the signature of Mukidi.

Verification was based on exh.D.5 and D.6. When these documents were produced by D.W.3, the Judge accepted them on 19/6/1995 subject to production of certified copies.

I have been unable to see on the record a note indicating that in fact certified copies of exh.D5 and D.6 were subsequently produced or that these are the ones which were certified. As regards exhs.D.2 and D.3, D.W.3 stated this when these were shown to him (page 23):-

> "D3 is similar to the transfer on record except that it does not have the endorsed seal. But the document "D.2" is not the form of application which is in my record. What is

in my record is an application for consent form that came into use later and not the old form “D2”

The application on my file is signed by Counsel, Mr. Kagaba and not by Mukidi as in “D2”.

I have read a copy of exh. D.7 which is on the original Court file. There is some stamp showing it was received in some office on 7/6/1986 after the chief Government Valuer had signed it on 27/5/1986. There is nothing to snow when Kagaba signed it. Presumably Kagaba signed it in 1986. Clearly therefore exhibit D.2 and D.3 on which Mr. Tibaijuka relies in confirmation of Mukidi’s signature are unreliable. That may explain why Kagaba, a Advocate signed exh.D. 7 presumably in 1986 nearly 9 years after Mukidi’s death which in itself raises suspicion because it was signed by Advocate Kagaba long after Mukidi’s death. If Mukidi had signed exh. D.2 and lodged it in the Land Office in Fort Portal in 1977, why was it necessary for Kagaba to sign exh.D.7? Was it meant to minimize the effect of alteration of figure 40 to 44 on exh.D.2? Did officials in the Land Office doubt exh.D.2 Which is similar to exh.D.7?

Appellant claimed in his evidence that he “registered the transfers in 1977 - middle or beginning of July 1977”. So even if his own copies of the consent had transfer forms were looted I should have been able to obtain certificate any time aft Juiy,1977. What happened after is not satisfactorily explained

Subdivision of Block 48 Plot 44 or any other Plots is based hearsay evidence of the appellant and DW3 none of whom witnessed the subdivision.

Sale agreements between appellant and Kalyebira and Mukidi were allegedly looted in early l980s according to appellant.

Absence of these sale agreement creates a missing link in t evidence about which Plots were sold to the appellant especial since the vital exh.D.2 appears to have been doctored because t figure “Plot 44” was crudely altered from Plot 40. Thus during Cross-examination the appellant was quite properly taken to task about the genuiness of these exhibits.

Mr. Tibaijuka's submission that Block 48 encompassed many Plots and that Block 48 and Plot 44 were subdivided does not destroy the evidence of P.W.1 to the effect that the suit land is in fact the same land which was purchased by Banoba and his wife PW2. The appellant called Thomas Tamasire (D.W.2) aged 90 years. In his evidence D.W.2 testified, in part, that-

> "I Know Yosefu Banoba…….. Mrs. Banoba used to stay on our land. She stayed with her children. She requested Erikanjeru for a piece of land and he gave her. It was reasonably big and she had even planted tea on that piece of land……."

The learned Judge accepted this evidence as reference to the size of the suit land and to the land itself. With respect, think that he was right in so inferring. The explanations given b D.W.3 about exh, D.9 and Plot 42 does not necessary destroy the evidence of the respondent.

In his evidence in-chief the applicant in effect stated that the respondents father had some land which previously belonged to Tinkamanyire and was not part of Plot 44. However, in the course of cross-examination, the appellant stated that-

> "I know PW2 very well. She has been my neighbour. I do not know the date...I cannot remember when she became my neighbor.
>
> It has been for a good time but not a very long time. I know her son, the plaintiff.
>
> He used to come and visit his mother but he was not a neighbor. He was still schooling, They had a house.
>
> Q. where?
>
> a. In that area.
>
> They had a little cultivation. They are not in that area now. They went away. The area where they used to be is now vacant. The house was burnt and they are no longer there. The area where they used to be, a part of it belongs to Block 48. <u>It now forms</u>

part of my land the small piece of land which they occupied and from which they ran away is within my plot."

He made further acknowledgements of the presence of t Banobas later. This evidence was considered by the learnt trial Judge. In my opinion the appellant deliberately understated t size of the land which was formerly occupied by the respondent family.

In his affidavit (exh.D.10) in para 3, the respondent cites receipt No.Y 170440 as proof of the fact that before his fat died, the father was in process of having the suit land surveyed off for purposes of registration as proprietor. The affidavit itself was produced as evidence for the appellant. Para 2 of the affidavit states that the father of the respondent purchased acres of land from Block 48, Plot 44. This in my opinion destroys the appellant's claim that the land which Banoba occupied was only one acre.

Bearing in mind that the sale Agreement (exh.p.1) shows Banoba purchased 10 acres and there is admission by the appellant t Banoba had some land in the locality now in dispute, I have reason whatsoever to make conclusions different from those of trial Judge. In fact the suit land is the land which was purchased and occupied by Banoba's family and that it measures ten acres or thereabouts).

Neither the case of Figueiredo…….vs.……Kassamali Naji (1962) E.A. 756 nor Section 51 of RTA cited by Mr. Tibaijuka advance the appellants case in regard to the size of the disputed land.

Figueiredos case is relevant to the issue of fraud.

Mr. Tibaijuka contended that the trial Judge should ha visited the suit land partly because the respondent wanted it an partly to establish whether or not the land purchased by Banoba was within Plot 44. The invitation to visit land was made as a the way when the respondent, a lay litigant, was making his submissions. On the facts I don't think it was necessary for the judge to visit the suit land. Vendor and Purchaser of the suit land were dead. The respondent and PW2 who knew their own land testified . None of the witnesses to the purchase testified to contradict PW1 and PW2.

There are two passages in the judgment of the Court below which provided a source of criticism by Mr. Tibaijuka. Learned Counsel submitted that the trial Judge did not evaluate the evidence properly because, by stating that the appellant: "attached an application for consent to transfer and a transfer form both signed by the said Mukidi or purportedly signed by the said George William Mukidi because there was no independent confirmation of the signature, the Judge had in effect omitted I consider the evidence of DW3 (Mpaka George Kwirikager) the Registrar of Titles, Fort Portal, who testified that Mukidi signatures were verified by the fact that his (Mukidi's) signature had been earlier varied as executor of the estate of his father Kalyebara.

I have already referred to exhs.D.2, D.3, D.5, D.6 and D.7 respect of this witness (DW3). Moreover the evidence of DW3 shows that he is not a handwriting expert.

DW3 never saw Mukidi sign any document, having joined the Land Office only in 1984 long after the death of Mukidi. DW3 based his verification of Mukidi's signature by viewing documents purporting to have been signed by Mukidi or issued to him.

In these circumstance the learned Judge cannot be criticised when he rightly cautioned himself about lack of independent confirmation of Mukidi's signature. There was no reliable evidence of a witness who was familiar with Mukidi's signature to confirm it, I think.

Mr. Tibaijuka contended in effect that before considering the evidence the trial Judge assumed that appellant had been guilty of fraud when the Judge expressed himself as follows:-

> "Although it may be of little consequence, the defendant has not, except in general denial of the allegations in the plaint, denied the allegations of fraud."

I think that the criticism is based on a misunderstanding or misinterpretation of what the Judge was dealing with. As I understand the judgment, the above passage was a reference by the Judge to the averments in the written statement of defence and the counterclaim but not a finding of fact or an assumption by the Judge that the appellant was guilty of fraud before other relevant evidence was evaluated. As a matter of fact the findings on fraud were made much later after the Judge had evaluated the evidence of the appellant and the respondent.

As pointed out by the trial Judge the respondent alleged fraud in his plaint (para 5 and 7) without giving in any detail the particulars of the fraud.

Apparently the Advocates did not ask the Judge to make fraud an issue. So the trial Judge, who framed the issues on his own, did not make fraud expressly one of the issues for his decision. But in the course of his judgment, he concluded that there was fraud. This he did when he considered the third issue, namely, whether the appellant was a bona fide purchaser for value and without notice This of course, is an unusual way of dealing with such fundamental issue as fraud.

The only justification for the course adopted by the learned Judge in this case is that Mr. Kagaba, Counsel who represented the appellant at the trial, made fraud an issue by canvassing it in his submissions.

Since the respondent had testified about fraud without objection from the appellant's Counsel and since the appellant himself testified about fraud, both in his evidence in-chief and during cross-examination, in these circumstances the appellant was no prejudiced because of consideration of the issue of fraud by the trial Judge.

Mr. Tibaijuka contended that the respondent failed to prove fraud or that there was no evidence to support fraud. That the appellant was a bona fide purchaser without notice. With respect I am not persuaded that those contentions are valid. There is evidence from the appellant's mouth that the respondent's parent lived and or had a semi-permanent house on part of the suit land. The appellant understated the size of the area occupied by the Banobas but he accepted their presence. The appellant accepted that the Banobas were in the area for some time. According to the appellant PW2 was his neighbour "for a good time but not very long time." P.W.2 confirmed this in her evidence. This surely support the respondent .and PW2 to the effect that the family had owned the land since 1960s and that the appellant was aware of their presence on the suit land.

Further, the appellant, stated that the respondent "started fencing my land in the 1970s. I did not bother to ascertain his title. He should have produced it to me but he never showed it to me." This passage of the appellant's evidence shows that there had been dispute over the land since the 1970s. The land which he purchased from Mukidi includes the suit land.

From the evidence of the appellants and the respondent I accept the submissions of Mr. Akampurira, and I cannot but agree with the trial Judge in his conclusions, that the appellant had notice of the interest of the respondent when the appellant purchased the same land from Mukidi. Of interest in this connection is that between 1985 and 1987, there was a live dispute between the appellant and respondent over the suit land.

The respondent attempted to survey off his portion of the land so that he could be registered as proprietor.

His surveyors were chased way by the appellant who was then in the influential position of a District Administrator (D.A.) though in a neighboring district. Yet in spite of the dispute over the land the appellant proceeded to have himself registered a proprietor as if the dispute never existed. Moreover final processing of the registration was made in Kampala, clearly out of sight of the respondent.

The appellant claimed that he could not be registered a proprietor during 1970s and 1980s because he was a wanted person during the Amin and Obote II regimes. Yet there is no explanation why he could not be registered during UNLF regime from April i97 to December 1980 as he had already put his papers in the land office. He must have been free from persecution because he participated in politics as a member of UPM party in 1980. This1 therefore, makes it suspicious that the appellant was able to be registered as proprietor in 1987 when he was a D.A. (District Administrator), in a neighboring District of Hoima, but not at an other time. Therefore, the claim by the respondent that the appellant used this position as D.A. to secure title to the land is not imaginary. It is equally remarkable, as submitted by Mr. Akampurira, that Mukidi who died in 1977 was registered a proprietor of the suit land posthumously, ten years later or 30/10/87 as executor of his father on the same day (30/10/87) and at the same time when the appellant was registered as proprietor.

On exh.D.4, the certificate of title, the first figures 30/10/87 and 6829 are over printed which is improper for a title deed. The instruments of registration bear the same date and are consecutive (FP.6829 for Mukidi and 6830 for the appellant). The appellant claims he explained to the Land officials the anomalies that caused delayed registration. Yet he also claims that he registered the transfer at the beginning or mid July 1977.

This must be false because the application for consent to transfer Exh.D.2 and the Transfer itself (exh.D.3) were signed by Mukidi on 21/7/77.

Further there is unchallenged evidence that Mukidi died three months soon after the death of his father. Yet though Mukidi became executor of his father on 22/12/1976, he was still alive by 21/7/1977 to sign forms? The learned trial Judge was fully justified on the facts to find fraud and to conclude that the appellant was not a bona fide purchaser for value. I agree with Akampurira that S.184 and 189 of the registration titles act cannot protect the appellant. Consequently I think that grounds 2, 3 and must fail.

With regard to ground 4 I think that the period of limitation had not run out. This is clear from the pleading and from the evidence on the record. The question of abandonment raised by Tibaijuka does not rise in this case. Even if it is accepted that the respondent's worker was chased away during 1979 I still believe that this being a land dispute, the suit was not time barred when it was instituted in 1990 by virtue of Section 6 of the Limitation Act. Ground four must fail.

Ground six complains that the trial Judge erred in law and fact in that he wrongly awarded costs to the respondent and dismissed the appellants counterclaim with costs when there was sufficient evidence to support it.

Normally the trial court awards costs to a successful part unless there are reasons to justify no award of costs to the winning party. See S.26 of the Civil Procedure Act. As there are not any good reasons to show that the respondent was not entitle to costs as a successful party, think that ground six as it relates to costs must fail.

As regards the counterclaim, Mr. Tibaijuka relied on his earlier submissions and contended that on the evidence available the counterclaim should have been allowed with costs. Mr. Akampurira contended to the contrary.

In view of the conclusions I have arrived at when considering grounds 2, 3, and 5 ground six as it relates to counterclaim must also fail.

In the result I would dismiss this appeal with costs.

Delivered at Mengo this 27th day of September 1996.

J.W.N. TSEKOOKO,
JUSTICE OF SUPREME COURT

JUDGMENT OF ODOKI, J.S.C.

I had the benefit of reading in draft the judgment of Tsekooko J.S.C., and I agree with him that this appeal must fail. As oder J.S.C., also agrees, this appeal is dismissed with costs.

Delivered at Mango this 27th day of September, 1996.

B.J.ODOKI,
JUSTICEOF THE SUPREME COURT

I CERTIFY THAT THIS IS A
TRUE COPY OF THE ORIGINAL

MASALU MUSENE
REGISTRAR SUPREME COURT.

JUDGMENT OF ODER J.S.C

I have had the benefit of reading in draft the judgment Of Tsekooko, .J.S.C. I agree with his reasons and the conclusion that the appeal should be dismissed with costs to the respondent.

I have nothing useful to add.

Dated at Mengo this 27th day of September 1996.

A.H.O. ODER,
JUSTICE OF THE SUPREME COURT

I CERTIFY THAT THIS IS A
TRUE COPY OF THE ORIGINAL

MASALU MUSENE
REGISTRAR SUPREME COURT.