THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA; AT FORT PORTAL

CIVIL APPEAL No. 0055 OF 2008

[Appeal from the judgment and decree of His Worship Karemani Jamson Karemera - Magistrate Grade 1, in Fort Portal Civil Suit No. 0022 of 2007, delivered on the 6th of November, 2008]

MUNYAMBABAZI STEVEN ……………………………………………… APPELLANT

VERSUS

SEEZI WAAKO ……………………………………………………......... RESPONDENT

BEFORE: - THE HON. MR. JUSTICE ALFONSE CHIGAMOY OWINY – DOLLO

JUDGMENT

In the suit from which this appeal arises, the Respondent herein was the Plaintiff, and the Appellant was the Defendant. The Plaintiff had sought a declaratory order that the he was the rightful owner of land comprised in LRV 989 Folio 2 Plot 9 Mwenge County, as well as an adjacent piece of unregistered land, both located at Ijumanyanja Village, Kyabaranga Parish, Bugaaki Sub–County, Kyenjojo District. He also sought a finding by Court that the Defendant was a trespasser on both pieces of land; hence, he sought an order of eviction, permanent injunction, and general damages as well as costs of the suit. At the end of a full trial, the Court found for the Plaintiff, and granted the orders sought; hence this appeal, whose grounds as stated in the memorandum of appeal, are that:–

1. The trial Magistrate erred in law and fact, when he failed to consider that the Appellant's father was a bona fide occupant of the land in dispute; and this resulted into a miscarriage of justice.
2. The decision of the trial Magistrate was not borne out of evidence which led to a wrong conclusion.
3. The trial Magistrate erred in law and fact when he relied heavily on the Respondent's evidence leading to a wrong conclusion.
4. The trial Magistrate erred in law and fact when he ignored to take evidence at the locus of the Appellant's witnesses.

The Appellant was not represented by Counsel at the trial; and formulated the grounds of appeal himself. However, he engaged Counsel who filed submissions in support of the grounds of appeal. The grounds of appeal formulated can conveniently be grouped into two. The first, in effect, accuses the trial Magistrate of failure to properly evaluate the evidence adduced before him. This, the Appellant has raised under two different grounds of appeal in which he accuses the trial Magistrate of having ignored evidence adduced in support of his (Appellant's) case while on the other hand relying heavily on that adduced for the Respondent, in his evaluation of the evidence adduced at the trial.

The second, accuses the trial Magistrate of failing to take evidence for the Appellant at the proceedings conducted at the locus in quo. This would amount to judicial bias, as a trial Court is under duty to take whatever permissible evidence that is adduced before it in support of the respective parties' case, and then afterwards subject all such evidence to sufficient evaluation to determine their respective worth. Sitting as a first appellate Court in the matter, this Court is enjoined to subject the proceedings to fresh and elaborate scrutiny; and to come to its own findings after such scrutiny. Such findings may either confirm those of the trial Court, or differ there from.

In this regard, I have carefully reviewed the learned trial Magistrate's evaluation of evidence in his judgment now under attack. The record is clear. The trial Magistrate did subject all the relevant evidence on record to proper evaluation. He has considered the evidence of the Defendant, that of DW2, and DW3, and D4, inclusive of the cross examinations, and the worth or otherwise of such evidence. He pointed out the contradiction in the defence case. The document, which the Defendant relies on, in proof of ownership, and that should have settled this, however suffers from a grave inexplicable alteration on it. There is a crossing of a material part, and an unfamiliar handwriting inserted thereon, thereby bringing to question the nature of claim, if any, the Defendant's father had on the suit land.

The Defendant relied on an illiterate witness in support of the document. He could not offer any corroboration of the validity of the document or explanation on the alteration thereon. The Defendant's witnesses were either ambivalent or seriously contradicted themselves on whether Defendant's father bought the land, or it was a gift to him. This rendered the document of little worth if any. The learned trial Magistrate also considered the evidence adduced by and for the Plaintiff. This included a former Parish Chief who claimed to have allocated the suit land to the Plaintiff for tea growing, that of the Plaintiff's neighbour that the Plaintiff's land extended to the swamp, thus

including the unregistered part, and as well that of the surveyor, that the Defendant had also trespassed onto the Plaintiff's registered land. Indeed the trial Magistrate considered all the relevant pieces of evidence before him.

With regard to the alleged failure of the trial magistrate to take evidence from the Defendant's witnesses while at the locus in quo, the record shows that the Defendant and his witness DW2 testified at the locus. There is no evidence from the record to suggest that the Defendant had other witnesses, which however the trial Magistrate declined to allow to testify at the locus. In any case, the dispute before Court was not about a boundary, but the ownership of the entire suit land. To my mind, it would matter little whether to prove ownership of the land the witnesses testified at the locus or away from it as long as evidence of ownership was clear. The matter before the trial court turned on whether the land belonged to the Defendant by inheritance or to the Plaintiff.

It is my considered finding that the learned trial Magistrate did justice to the matter before him in that he properly evaluated all the material evidence before him. He came to the considered conclusion that on the balance of probabilities, the Plaintiff had proved his claim of proprietorship of the suit lands, and the trespass thereon, and rejected the Defendant's adverse claim of proprietorship thereto. After my own evaluation of the same evidence, I am unable to come to a different finding or conclusion from his; hence, I will not disturb his decision. In the result, I find this appeal devoid of merit; and must dismiss it with costs to the Respondent, as I hereby do.

Alfonse Chigamoy Owiny – Dollo

JUDGE

02 – 04 – 2015