IN THE HIGH COURT OF UGANDA SITTING AT GULU

Reportable
Civil Appeal No. 0037 of 2019

In the matter between

1. GAODENSIO LAPIR

2. ODDIDA CAESAR

3. OKELLO S/o ODIDA CAESAR **APPELLANTS**

And

ACADONG MARY **RESPONDENT**

Heard: 20 March, 2020
Delivered: 22 May, 2020.

Civil Procedure *— Cause of Action— A plaint discloses a cause of action if its averments show that the plaintiff enjoyed a right which has been violated and the defendant is responsible for that violation. It is alternatively defined as every fact which is material to be proved to enable the plaintiff succeed or every fact which if denied, the plaintiff must prove in order to obtain judgment — The pleadings therefore must disclose that; the plaintiff enjoyed a right known to the law, the right has been violated, and the defendant is liable. In determining whether or not a plaint discloses a cause of action, the court must look only at the plaint together with anything attached so as to form part of it.*

Land Law *— Trespass—Trespass to land involves the unjustifiable interference with land which is in the immediate and exclusive possession of another. Trespass is an interference with the possession of land. It occurs when a person directly enters upon another's land without permission and remains upon the land, places or projects any object upon the land — In a suit for trespass, the person suing must be in exclusive possession or have a right to immediate exclusive possession. Once a person is entitled to immediate possession of land, he or she is deemed to have been in possession from the moment that his or her right to it is accrued. —Boundaries— The question of*

quantity is mere matter of description, if the boundaries are ascertained. The rule is bottomed on the soundest reason. When a party is estimating the size of land, he or naturally estimates its quantity, and of course its value, by the features which enclose it, or by other fixed monuments which mark its boundaries, and he or she may be mistaken as to the size but not the monuments.

***Family Law** — section 27 of The Succession Act — a wife is one of the beneficiaries to the estate of an intestate husband. — As a matter of principle, a beneficiary has standing to sue in his or her own right provided the interests which such beneficiary seeks to protect are germane to the estate and the claim or the relief sought does not require individual participation of the rest of the beneficiaries, such as the recovery, preservation and protection of the estate.*

JUDGMENT

STEPHEN MUBIRU, J.

Introduction:

[1] The respondent and another who withdrew from the suit mid-trial, sued the appellants jointly and severally for recovery of approximately forty acres of land situated at Oraa Otwilo Central Ward, Oto Parish, Pajule sub-county in Pader District, general damages and the costs of the suit. Their claim was that they respectively inherited the land in dispute from their respective husbands, that of the appellant being the late Opoka Justin, who acquired the land from his father P.W.1 Sibiriano Oroma, who in turn inherited it from his own father Owiny while it was unclaimed forest land. She has lived on the land since the late 1970s. During the insurgency, they vacated the land and settle in an IDP Camp at Pajule. After the insurgency, instead of the appellants and their father occupying their former homestead East of the land in dispute, they wrongfully settled on the respondent's land during the year 2008 when they forcefully began tilling the land massively and constructing houses thereon, hence the suit.

[2] In their joint written statement of defence, the appellants refuted the respondent's claim and contended that the land in dispute originally belonged to Ogole Clan to which both parties belong but it is their great grandfather who first occupied it

during or around the 1950s. Upon his death, it was inherited by their late father. The appellants inherited it from their late father. The land is separated from that of the respondent by a road. During or around December, 2012, the dispute between them and the respondent over that land was resolved in their favour by the clan elders. They prayed that the suit be dismissed with costs.

The appellants' evidence in the court below:

[3] D.W.1 Odida Caesar, the 2nd appellant, testified that the 1st appellant Gaodensio Lapir, is his step-brother by virtue of the 1st appellant's mother having been inherited by his father. He lives about 200 meters from the land in dispute. The land in dispute belonged to their late father, Hillario Aketch who in turn inherited it from his own father Olweny Ajong during the 1950s and before him the land belonged to Lapir Lakwor. He was born on the land in dispute in the year 1958. The 2nd appellant inherited the land during the year 2001. There is an MTN mast on the land, a *Tugu* tree, a homestead comprising five grass-thatched houses and graves of his deceased relatives. The graves are about 3 kms away from the land in dispute. The clan resolved the dispute over the land and decided the respondent should leave the garden to him. The land which belonged to the respondent's father-in-law is different from the one in dispute.

[4] D.W.2 Gaodensio Lapir, the 1st appellant, testified that the land in dispute belonged to his late father, Hillario Aketch, brother to his biological father Oburu Angello, but it is now under the stewardship of D.W.1 Odida Caesar, the 2nd appellant since the year 2004. The land is used exclusively for farming. There is an MTN mast on the land, a *Tugu* tree, a former homestead of their grandfather. The respondent began making baseless claims over the land in the year 2009. There was a failed attempt by the elders to resolve the dispute during the year 2011. The land in dispute is now occupied by his children.

[5] D.W.3, Okot Desto testified that he is neighbour to the land in dispute. The land, measuring approximately 600 - 700 acres, belonged to the Ogole Clan and was occupied by Hillario Aketch in the past but is now occupied by his descendants. The area in dispute is used exclusively for farming, there are no homesteads on it. The dispute began during the time of return from the IDP Camps. Most of the land is uncontested and occupied by the appellants. D.W.4 Erinasio Kidega, the Clan head, testified that Hillario Aketch settled on the land in dispute during the 1950s. It now belongs to D.W.1 Odida Caesar, the 2nd appellant. The respondent has garden elsewhere and has no legitimate claim over the land in dispute. The land is over 100 acres big and there are so many people cultivating it.

The respondent's evidence in the court below:

[6] P.W.1 Sibiriano Oroma, the respondent's father in law, testified that he inherited land from his father Owiny who in turn inherited it from his own father Olwoch Lakuba. The land in dispute belonged to his son Opoka and his daughter-in-law, the respondent. He gave the land to his son as a gift *inter vivos* before he married the respondent. The appellants came in 2006 from Dure during the insurgency to occupy part of that land. The appellants' father Hillario inherited the appellant's mother but they never lived on the land in dispute.

[7] P.W.2, Oponyero Roman, a neighbour to the land in dispute, testified that it was during the year 1997 when the respondent's father-in-law, P.W.1 Sibiriano Oroma permitted him to grow crops in a garden opposite the Shea nut trees. In the year 2007, the respondent too opened up a garden next to his which he helped her plough with oxen. During the year 2010, the 1st appellant's late sister, Lakot, began construction of a grass thatched hut on the land used by the respondent and himself as gardens. The appellants eventually took possession of the land. The appellants' father Hillario Aketch's land was to the North of the land in dispute, where he settled during the 1970s. He first saw the appellants during the year 2010. They had not used the land in dispute before that.

[8] P.W.3 Adong Mary, the respondent, testified that she inherited the land in dispute from her late husband, Opoka Justin who acquired the land from his father P.W.1 Sibiriano Oroma who in turn inherited it from his own father Owiny. There is a Shea nut tree near the road. She has lived on the land since the late 1970s. During the insurgency, they vacated the land and settle in an IDP Camp at Pajule. After the insurgency, instead of the appellants and their father occupying their former homestead East of the land in dispute, they instead settled on the respondent's land during the year 2010. The common boundary between her land and the appellants' is marked by a *Kworo* tree and acacia trees. The 2nd appellant Odida Caesar has since crossed the boundary and built a house on her land. The 1st appellant Gaodensio Lapir occupies approximately 25 acres; the 2nd appellant Odida Caesar occupies approximately 8 acres; and the 3rd appellant Okello S/o Odida Caesar occupies approximately 2 acres. They have let out other parts of the land.

Proceedings at the *locus in quo*:

[9] The trial court visited the *locus in quo* on 28th April, 2018, however the record of proceedings thereat is not available. What is available is a sketch map drawn thereat illustrating that the land in dispute abuts on the Kitgum - Lira Road to the West, Dok Stream to the East, Opira Francis' land to the North and the road from Oraa Otwilo Central to Oto Trading Centre road to the South. The old homestead, the respondent's home and that of the 3rd appellant Okello S/o Odida Caesar are across that road, outside the area in dispute. The homestead of D.W.2 Gaodensio Lapir, the 1st appellant comprising four huts, that of his sons Ojok David and Okot Francis, lie within the disputed area. The home of Oling G. son of the 2nd appellant Odida Caesar too lies within the disputed area. D.W.2 Gaodensio Lapir, the 1st appellant has a 750 meter wide garden on the land. There are two *tugu* trees and several mango trees on the land.

Judgment of the court below:

[10] In his judgment delivered on 11th April, 2019, the trial Magistrate found that the land in dispute did not devolve to the appellants as clan brothers of the late Opoka Justin, husband of P.W.3 Adong Mary, the respondent. Since she survives her husband, the land devolved to her as the widow. Article 32 (2) of *The Constitution of the Republic of Uganda, 1995* prohibits customs which are against the dignity, the interests and welfare of women. The Acholi custom that bars widows from inheriting land that belonged to their deceased husbands is discriminatory against women unconstitutional as it contravenes article 33 (1) of *The Constitution of the Republic of Uganda, 1995*. Accordingly, the respondent is the rightful heir to the land. The appellants are trespassers on her land. The court found it was unnecessary to issue an order of eviction since the appellants did not reside on the land. A permanent injunction was issued restraining the appellants from undertaking any further activities on that land or otherwise interfering with the respondent's peaceful enjoyment of the land. She was awarded shs. 5,000,000/= as general damages for trespass to land and the costs of the suit.

The grounds of appeal:

[11] The appellants were dissatisfied with that decision and appealed to this court on the following grounds, namely;

1. The learned trial Magistrate erred in law and fact when he held that the respondent had a cause of action against the appellants.
2. The learned trial Magistrate erred in law and fact when he declared the appellants' trespassers onto the land.
3. The learned trial Magistrate erred in law and fact when he failed to evaluate the evidence on record vis-a-vis the sketch map drawn on 28th April, 2018 thus arriving at a wrong decision

[12] The respondent too was dissatisfied with the decision and cross-appealed to this court on the following grounds, namely;

1. The learned trial Magistrate having correctly found that the land belonged to the respondent, erred in law and fact when he held that it was unnecessary to issue an order of eviction yet the 1st appellant is on the suit land.
2. The learned trial Magistrate erred in law and fact when he declared the suit land to be one acre yet the record of court and the respondent's pleadings show that the suit land is approximately 40 acres, thereby arriving at a wrong decision.

Arguments of Counsel for the appellants:

[13] In their submissions, counsel for the appellants submitted that whereas in the plaint the respondent claimed that the appellants had trespassed onto 40 acres of her land, in her testimony she indicated that it was a total of only 35 acres that had been trespassed upon. The 1st appellant Gaodensio Lapir occupies approximately 25 acres (pleaded 20 acres); the 2nd appellant Odida Caesar occupies approximately 8 acres; and the 3rd appellant Okello S/o Odida Caesar occupies approximately 2 acres (pleaded 30 acres); hence a total of 35 acres (pleaded 40 acres yet the total is 58 acres). The sketch map drawn at the *locus in quo* indicates that the 1st appellant Gaodensio Lapir has a homestead on the land comprising multiple grass-thatched houses some of which belong to his children. His son is cultivating only approximately 750 square meters contrary to the alleged 35 acres. The respondent's testimony was a departure from her pleadings. Although in her testimony she claimed to have lived on the land with her husband since the 1970s, the sketch map drawn by court on 28th April, 2018 during the visit to the *locus in quo* does not illustrate any evidence of the respondent's physical presence on the land. It illustrates the fact that neither 2nd appellant Odida Caesar nor the 3rd appellant Okello S/o Odida Caesar reside on the land, but they rather are outside its boundaries.

[14] They submitted further that the respondent was not in possession and therefore cold not maintain a suit in trespass against the appellants. The appellants have been in possession of the land since they were born on that land and therefore could not be declared trespassers. The land is owned communally for generations and so they cannot be evicted. Observations made by court during the visit to the *locus in quo* are consistent with the appellants' testimony to the effect that there is an MTN mast on the land, a *Tugu* tree, and homesteads of their children. The appellants and their forefathers have been in continuous possession of the land in dispute since the 1950s. They prayed that the appeal be allowed. In response to the counterclaim, they argued that the court erred in not addressing its mind to the legal implication of one of the plaintiffs withdrawing from the suit mid-trial. Since they claimed as joint owners, the trial court should have demanded written authority of the 2nd plaintiff permitting the appellant to proceed alone with the suit. The court erred in granting relief to the appellant on what was originally a joint claim. The plaint ought to have been struck out. They prayed that the cross-appeal be dismissed. Despite having been accorded time to do so.

Arguments of Counsel for the respondent:

[15] Counsel for the respondent, did not file submissions in response.

Duties of a first appellate court:

[16] It is the duty of this court as a first appellate court to re-hear the case by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion (see *Father Nanensio Begumisa and three Others v. Eric Tiberaga SCCA 17of 2000*; *[2004] KALR 236*). In a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must

weigh the conflicting evidence and draw its own inference and conclusions (see *Lovinsa Nankya v. Nsibambi [1980] HCB 81*).

[17] In exercise of its appellate jurisdiction, this court may interfere with a finding of fact if the trial court is shown to have overlooked any material feature in the evidence of a witness or if the balance of probabilities as to the credibility of the witness is inclined against the opinion of the trial court. In particular, this court is not bound necessarily to follow the trial magistrate's findings of fact if it appears either that he or she has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on demeanour of a witness is inconsistent with the evidence in the case generally.

Missing part of the trial record:

[18] Before addressing the grounds of appeal, it is imperative that some preliminary matters are addressed. The court has observed that the notes taken during the trial court's visit to the *locus in quo* are missing from the record of appeal. Where reconstruction of the missing record is impossible by reason of neither of the parties being in possession of the missing record, but the court forms the opinion that all the available material on record is sufficient to take the proceedings to its logical end, the court may proceed with the partial record (see *Mrs. Sudhanshu Pratap Singh v. Sh. Praveen (Son), RCA No.32/14 & RCA No. 33/14, 21 May, 2015* and *Jacob Mutabazi v. The Seventh Day Adventist Church, C.A. Civil Appeal No. 088 of 2011*).

[19] I find that considering the nature of the dispute at hand, that irregularity is not fatal since the available material on record is sufficient to take the proceedings to its logical end. According to Order 43 rule 20 of *The Civil Procedure Rules*, where the evidence upon the record is sufficient to enable the High Court to pronounce judgment, the High Court may, after resettling the issues, if

necessary, finally determine the suit, notwithstanding that the judgment of the court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the High Court proceeds.

Ground one; contention that the respondent had no cause of action against the appellants.

[20] In the first ground of appeal, it is contended that the respondent had no cause of action against the appellants. For any person to otherwise have *locus standi*, such person must have "sufficient interest" in respect of the subject matter of a suit, which is constituted by having; an adequate interest, not merely a technical one in the subject matter of the suit; the interest must not be too far removed (or remote); the interest must be actual, not abstract or academic; and the interest must be current, not hypothetical.

[21] According to section 27 of *The Succession Act*, a wife is one of the beneficiaries to the estate of an intestate husband. P.W.3 Adong Mary, the respondent having been the wife of the late Opoka Justin who died intestate, she was one of the beneficiaries. As a matter of principle, a beneficiary has standing to sue in his or her own right provided the interests which such beneficiary seeks to protect are germane to the estate and the claim or the relief sought does not require individual participation of the rest of the beneficiaries, such as the recovery, preservation and protection of the estate. For example in *Israel Kabwa v. Martin Banoba Musiga, S. C. Civil Appeal No. 52 of 1995,* the Supreme Court upheld the view that the respondent's *locus standi,* founded only on his being the heir and son of his late father, was valid. Similarly in the instant case the respondent had *locus standi*.

[22] A plaint discloses a cause of action if its averments show that the plaintiff enjoyed a right which has been violated and the defendant is responsible for that violation (see *Auto Garage v. Motokov (No3) [1971] EA 514* and *Joseph Mpamya*

v. Attorney General, [1966] II KALR 121). It is alternatively defined as every fact which is material to be proved to enable the plaintiff succeed or every fact which if denied, the plaintiff must prove in order to obtain judgment (see *Cooke v. Gull, LR 8 E.P 116* and *Read v. Brown 22 QBD 31*); in the further alternative, it is defined as a bundle of facts which if taken together with the law applicable to them give the plaintiff a right to a relief against the defendant (see *Attorney General v. Major General Tinyefuza, Constitutional Petition No.1 of 1997*). **A** cause of action arises when a right of the plaintiff is affected by the defendant's act or omissions (see *Elly B. Mugabi v. Nyanza Textile Industries Ltd [1992-93] HCB 227*). The pleadings therefore must disclose that; the plaintiff enjoyed a right known to the law, the right has been violated, and the defendant is liable (see *Auto Garage and others v. Motokov (No.3) [1971] E.A 514*).

[23] In determining whether or not a plaint discloses a cause of action, the court must look only at the plaint together with anything attached so as to form part of it (see *Onesforo Bamuwayira and two others v. Attorney General [1973] HCB 87*; *Nagoko v. Sir Charles Turyahamba and another [1976]HCB 99* and *Kebirungi v. Road Trainers Ltd and two others [2008] HCB 72*). Under Order 7 rule 11 (a) and (d) of *The Civil Procedure Rules*, a plaint that does not disclose a cause of action or where the suit appears from the statement in the plaint to be barred by any law, must be rejected.

[24] Trespass to land involves the unjustifiable interference with land which is in the immediate and exclusive possession of another. Trespass is an interference with the possession of land. It occurs when a person directly enters upon another's land without permission and remains upon the land, places or projects any object upon the land (see *Salmond and Heuston on the Law of Torts*, 19th edition (London: Sweet & Maxwell, (1987) at p. 46). It is an injury to a possessory right and therefore a person who is entitled to immediate exclusive possession of land is entitled to sue (see John Cooke, *Law of Tort*, Pearson-Longman 7th Ed at p. 293 and 296). This includes the right to physical possession which can exist

apart from both physical and legal possession, for example, that which remains to a rightful possessor immediately after he or she has been wrongfully dispossessed.

[25] In a suit for trespass, the person suing must be in exclusive possession or have a right to immediate exclusive possession. Once a person is entitled to immediate possession of land, he or she is deemed to have been in possession from the moment that his or her right to it is accrued. The right to possess, when separated from possession, is often called "constructive possession" and such a person who is entitled to possess is allowed the same remedies as if he or she had really been in possession. In the instant case, the action of trespass to land was mentioned. The respondent pleaded possession, unlawful entry and damage and constitutes an action in trespass. An action in trespass to land does not require proof of ownership of the land in question and the right to possess is sufficient. The respondent, although not in exclusive possession of the land in dispute at the time of filing the suit, nonetheless asserted a right to immediate exclusive possession and had sufficient interest to ground the suit. This ground of appeal accordingly fails.

Ground two; size of land granted to the respondent.

[26] In the second ground of the cross-appeal, the trial court is criticised for having decreed to the respondent a parcel of land smaller in size than that claimed by the respondent in the plaint. It is an established rule that where land is described by its admeasurements, and at the same time by known and visible monuments, the latter prevail. The question of quantity is mere matter of description, if the boundaries are ascertained. The rule is bottomed on the soundest reason. There may be mistakes in measuring land, but there can be none in monuments. When a party is estimating the size of land, he or naturally estimates its quantity, and of course its value, by the features which enclose it, or by other fixed monuments

which mark its boundaries, and he or she may be mistaken as to the size but not the monuments.

[27] Monuments are something tangible that the lay persons can see and understand. While anyone can comprehend and visualise that they own land at the top of the hill or to up to a stream, the size of an acre or hectare may vary in lay persons' estimations. Because of these issues and the fact that no person will measure the same thing exactly the same way, monuments must govern over bearings, acreage and distances. No matter how “accurate” a measurement is, it has a lower value than a natural or artificial monument. Any natural object, and the more prominent and permanent the object, the more controlling as locator, when distinctly called for and satisfactorily proved, becomes a landmark is not to be rejected because the certainty which it affords, excludes the probability of mistake (see the Supreme Court of Georgia case of *Margaret Riley v. Lewis L. Griffin and others, (1854) 16 Ga. 141*).

[28] When the court visited the *locus in quo* it prepared a sketch map illustrating the dimensions of the land in dispute. It abuts on the Kitgum - Lira Road to the West, Dok Stream to the East, Opira Francis' land to the North and the road from Oraa Otwilo Central to Oto Trading Centre road to the South. The respondent or the court may have been mistaken as to the size but not the monuments. The trial Court provided a description of the land decreed to the respondent by reference to the natural an monuments seen on the ground, and illustrated in the sketch map it drew. This ground of appeal accordingly fails.

Grounds two, three and one; failure of court to evaluate evidence thus coming to erroneous conclusion.

[29] In the second and thirds grounds of appeal and the first ground of the cross-appeal the trial court is criticised for the manner in which it evaluated the evidence, made findings of fact and the orders it issued. The respondent's case

in brief as stated by P.W.1 Sibiriano Oroma, the respondent's father in law, was that the land in dispute originally belonged to his grandfather Olwoch Lakuba . It was then inherited by his father Owiny. He in turn inherited it from his said father. He subsequently gave the part now in dispute to his son Opoka Justin as a gift *inter vivos* before he married his daughter-in-law, the respondent. This was corroborated by P.W.2, Oponyero Roman, a neighbour to the land in dispute, who testified that during the year 1997, P.W.1 Sibiriano Oroma permitted him to grow crops on that land. Finally as P.W.3 the respondent Adong Mary, testified that she inherited the land in dispute from her late husband, Opoka Justin.

[30] On the other hand, the appellants' case in brief as stated by both D.W.1 Odida Caesar, the 2nd appellant, and D.W.2 Gaodensio Lapir, the 1st appellant was that the land in dispute originally belonged to their great-grandfather Lapir Lakwor. It was then inherited by their grandfather Olweny Ajong during the 1950s and later by their late father, Hillario Aketch from whom the 2nd appellant inherited it during the year 2001. They were born on the land in dispute on which can be found an MTN mast, a *Tugu* tree, a homestead comprising five grass-thatched houses and graves of their deceased relatives. In contrast, D.W.3, Okot Desto, a neighbour to the land in dispute, testified that the land, measuring approximately 600 - 700 acres, belonged to the Ogole Clan and was occupied by Hillario Aketch in the past, but is now occupied by his descendants. D.W.4 Erinasio Kidega, the Clan head, testified that Hillario Aketch settled on the land in dispute during the 1950s.

[31] The respondent's claim is premised on the land having been the private property of her late husband while that of the appellants' is premised on the land having been a usufructuary of their late father forming part of land owned communally by the Ogole Clan. In essence, while the respondent asserted rights of ownership, the appellants asserted rights of use of land belonging to the Ogole Clan. Usufruct is the right of enjoying land, the property of which is vested in another, and to draw from the same all the profit, utility and advantages which it may produce, provided it be without altering the substance of the land. It was the

respondent's case that before the insurgency, she and her late husband were using the land for farming and that after the insurgency, instead of the appellants and their father occupying their former homestead East of the land in dispute, they instead settled on the respondent's land during the year 2010. This was corroborated by the observations made by court when it visited the *locus in quo*. The sketch map shows that the old homestead is outside the land in dispute. The current settlements of the 1st appellant and his sons were not described as such. The respondent's version was accordingly more plausible.

[32] Even when considered from the perspective of the appellants' version, family communal ownership arises in situations where descendants of a common ancestor, usually in an extended family setup, have well defined, exclusive rights to jointly own and/or manage a particular parcel of land. Family communal ownership of land confers on each member of the family a right to use the land or a portion of it, but these rights cannot be bestowed to an outsider. A possessor of a usufruct has a right to be respected in his or her possession and should he or she be disturbed therein, to be protected in or restored to the said possession. The usufruct holder has the right to exclusive possession of a part of the land but not as owner. Exclusive possession of the land gives the person in such possession the right to retain it and to undisturbed enjoyment of it against all wrong doers except a person who can establish a better title.

[33] A usufruct is considered to be a legal right, meaning that it confers direct or immediate authority over the land and therefore the usufructuary can transfer the right of using the land through inheritance. A usufructuary has the right to use, possess, and administer the land, as well as collect the income, utility, profits, and other advantages produced from the land. Members of Ogole Clan may not create any new servitude on the property unless it be done in such a manner as to be of no injury to the usufructuary of the respondent. Rights of persons claiming under the Ogole Clan may not be exercised in a manner detrimental to the usufructuary's right of possession and use. They must neither interrupt nor in

any way impede the respondent in the enjoyment of the property or impair her usufructuary rights. For different reasons, this court comes to the same conclusion as the trial court did that the land in dispute forms part of the estate of the late Opoka Justin, the deceased husband of the respondent.

[34] An order of eviction or vacant possession is a relief granted to a successful party upon recovery of land, whom the court finds was unlawfully deprived of the land yet he or she is at the time of judgment entitled to exclusive possession or an immediate right to possession of the land in question (see *Swordheath Properties Ltd v. Floyd [1978] 1 WLR 550, [1978] 1 All ER 721* and *McPhail v. Persons Unknown [1973] Ch 447*). The jurisdiction to make a possession order extends to the whole of the owner's property in respect of which his or her right of occupation has been interfered with, where there is a real danger of actual violation of all the areas in question by those actually trespassing on at least one of the areas (see *University of Essex v. Djemal and others [1980] 1 WLR 1301*).

[35] Where a trespass to the claimant's property is threatened, and particularly where a trespass is being committed, and has been committed in the past, by the defendant, an injunction to restrain the threatened trespass would, in the absence of good reasons to the contrary, appear to be appropriate (see *Secretary of State for Environment, Food, and Rural Affairs v. Meier and Others [2009] 1 WLR 2780*). The trial court was therefore justified in issuing a permanent injunction and awarding general damages for the trespass.

Order:

[36] In the final result, the appeal fails and is dismissed with costs to the respondent. The cross-appeal succeeds on one ground and is accordingly allowed. Consequently;

a) In addition to the orders and reliefs granted in the judgment of the court below, the respondent is granted an order of vacant possession of the land in dispute as illustrated in the sketch map showing its dimensions, thus; abutting on the Kitgum - Lira Road to the West, Dok Stream to the East, Opira Francis' land to the North and the road from Oraa Otwilo Central to Oto Trading Centre road to the South.
b) The costs of the cross-appeal and of the court below are awarded to the respondent.

Delivered electronically this 22nd day of May, 2020 ……Stephen Mubiru……..

Stephen Mubiru

Resident Judge, Gulu

Appearances

For the appellants : M/s Owor Abuga and Co. Advocates.

For the respondent : M/s Egaru and Co. Advocates.