

THE REPUBLIC OF UGANDA

6

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(Appeal from the judgment/decree of the Court of Appeal of Uganda at Kampala before Hon. Lady Justice Faith Mwendha,, Hon. Justice Richard Buteera, Hon. Justice Geoffrey Kiryabwire, JA DATED 24TH June 2015 in Civil Appeal No. 80 of 2012).

CIVIL APPEAL NO. 12 OF 2015

THE ATTORNEY GENERAL }APPELLANTS
12 APAC DISTRICT ADMINISTRATION }

VERSUS

RUTAAMA GEOFFREY }RESPONDENTS
MISANGO ABEL }

18 (Coram: Hon. Justice Bart M. Katureebe, CJ; Hon. Justice Arach-Amoko; Hon. Justice A.S. Nshimye, Hon. Justice Eldad Mwangusya; Hon. Justice Opio-Aweri, JSC).

JUDGMENT OF JUSTICE OPIO-AWERI, JSC

Introduction.

This is a second appeal from the decision of the High Court (Elizabeth Musoke, J., as she then was). The appellants were
24 defendants in the **HCCS No 43 of 2005**. They were sued in the High Court by the respondents for special, aggravated and general damages for property allegedly wrongfully taken over/converted, loss of earnings, interest and costs.

Background:

The respondents' case was that at the material time, June to
30 August 2004, they were occupying part of Maruzi Ranch in Akokoro Sub-County, Apac District. They had moved their cattle from Mubende to Akokoro through Masindi because of the drought. They thought they would graze their cattle in Akokoro until such a time when the rains would come back and then return to Mubende. At one time or another during

the above period, they were ordered by the RDC's Office and
6 Apac District Local Government to vacate the Ranch.
However, because of the outbreak of cattle disease in the
Ranch, they could not vacate.

On the 30th June 2004, they got permission from the
Government of Uganda through Dr. N. Kauta, Commissioner
Livestock Health and Entomology to keep their 500 (five
12 hundred) heads of cattle at Maruzi Ranch in Akokoro Sub-
County , Apac District, until when the quarantine would be
lifted.

On the 9th August 2004, at around 5:00pm, the Resident
District Commissioner, with her escorts all of whom were
government security officials in the company of the District
18 Councilor of Akokoro Sub-County, Mr. Charles Ogwang who
was an employee/servant of Apac District Local
Administration, mobilized local people armed with knives,
pangas and sticks. They attacked, slaughtered and took
away the respondents' 300 (three hundred) heads of cattle
and other 200 were left to wonder in the wilderness. The
24 group took away all the respondents' household items as
well as all the equipments which they were using for looking
after the cattle.

The particulars of special damages which were listed
included the 500 heads of cattle valued at shs
150,000,000/=; 10 bicycles valued at shs. 1,500,000/=, 64
30 mattresses at 30,000/= each.

There were 29 household items listed together with the value
6 of 500 heads of cattle. The total of special damages claimed
was shs. 189,297,000/=.

It was alleged further that the respondents' monthly income
was about 2,160,000/= from selling sixty jerrycans of milk
every day and that this was lost as a result of the acts of the
agents/employees/servants of the appellants/defendants of
12 which they were liable.

The appellants/defendants denied the claims. They
contended that the respondents/plaintiffs had illegally
occupied Maruzi Ranch and did not obtain the necessary
authority to occupy the same. The respondents were given
sufficient notice to vacate the ranch but resisted even after
18 the last warning was issued by the office of the Resident
District Commissioner. In their illegal occupation, the
Respondents/plaintiffs were grazing their cattle in the
gardens of the local community. As a result, the
plaintiffs/Respondents were arrested and charged with
forceful entry into Maruzi Government Ranch in the Chief
24 Magistrate's Court, Apac.

The appellants/defendants further contended that the acts
complained of by the respondents/plaintiffs were not
committed at all and if they were committed, the servants of
the defendants never authorized or condoned the same. The
appellants/defendants also denied mobilizing armed local
30 people against the respondents/plaintiffs. They concluded
that the occupants of the ranch were peacefully evacuated
from the Ranch with the help of the local people.

The trial in the High Court proceeded on the following agreed
6 issues.

1. *Whether the plaintiffs' occupancy and continued occupancy of Maruzi Ranch was illegal.*
2. *Whether the order for evacuation was proper under the governing laws.*
- 12 3. *Whether the defendants carried out the evacuation of Maruzi Ranch.*
4. *Whether the plaintiffs lost their animals and household items and equipments as pleaded.*
5. *Whether the defendants are liable for the loss.*
6. *Remedies available.*

The learned trial Judge heard the suit and dismissed it with
18 costs.

The plaintiffs/Respondents were not satisfied with the decision and order of the trial Judge and appealed to the Court of Appeal which upheld the appeal and set aside the decision of the lower court and made the following orders:-

- 24 a) *Awarding special damages of shs. 100,000,000/= in lieu of their 500 heads of cattle they lost.*
- b) *Awarding general damages to the tune of the 50,000,000/=.*
- c) *Awarding aggravated damages of shs. 10,000,000/=.*
- d) *Costs of the suit.*

The appellants/defendants were not satisfied with the
30 above decision and orders and appealed to this court on the following grounds:

6 1) *That the learned Justices of Appeal erred in law and in fact in finding that there was no written statement of defence by the 2nd respondent and that they were unrepresented, whereas not.*

12 2) *That the learned Justices of Appeal erred in law and in fact when they failed to properly evaluate the evidence on record as a whole and arrived at wrong conclusions.*

18 3) *That the learned Justices of Appeal misdirected themselves in holding that the respondents acted in high handed manner towards the appellants and their property and that the appellants were condemned unheard.*

24 4) *That the learned Justices of Appeal erred in law and in fact when they failed to evaluate properly the evidence on record and found that the respondents took charge of the appellants' animals and failed and or never handed them over to them.*

5) *That the learned Justices of Appeal erred in fact and in law when they found that the respondents violated the appellants' right to ownership of property.*

30 The respondents filed a cross appeal contending that the decision of the Court of Appeal be varied and /or reversed to the extent and in the manner and on the following grounds:-

6 1) That the justices of Appeal erred in law and fact in awarding inordinately low special damages of ushs. 100,000,000/= in lieu of their 500 heads of cattle which they lost;

12 2) That the learned justices of Appeal erred in law, and fact in awarding inordinately low general damages to the tune of ushs. 50,000,000/=.

18 3) That the learned Justices of Appeal erred in law and fact in awarding inordinately low aggravated damages of ushs. 10,000,000/= for the high handedness, oppressive and arbitrary treatment of the respondents.

4) That the learned Justices of Appeal erred in law and fact in awarding inordinately low interest on [NO. 1] special damages at the rate of 20% per annum.

The respondents proposed the following declarations/orders:-

24 a) An order allowing the cross appeal and setting aside the awards of the Learned Justices of Appeal.

b) An order substituting the respective awards as hereunder;

30 i. Ushs. 187,297,000/= inclusive of a claim for the 500 heads of cattle, ushs. 150,000,000/= or ushs. 300,000/= per head of cattle, and the rest being personal belongings;

ii. General damages to the tune of ushs. 2,500,000,000/=.

- 6
- iii. *Aggravated damages to the tune of ushs. 100,000,000/=.*
 - iv. *Interest on No. 1 at the rate of 35% per annum from the date of filing suit till payment in full.*
 - v. *Costs of this appeal and the courts below.*

Representation.

12 During the hearing of this appeal, the appellants were represented by M/S Margret Nabakooza, Principal State Attorney in the Attorney General's Chambers. The respondents were represented by Mr. John Mary Mugisha of M/S Mugisha & Co. Advocates.

Submissions of counsel

18 Counsel for the appellants argued ground 1 separately and grounds 2, 3, 4 and 5 together.

Ground 1

The gist of ground 1 was that the 2nd appellant did not file a written statement of defence and was not represented.

24 Learned counsel for the appellants submitted that during the trial, an application was made to join the 2nd appellant to the defence of the 1st appellant and that there was a joint representation for both appellants by the Attorney General all the way up to the Court of Appeal, and that representation remained so by Attorney General for both appellants.

30 In reply counsel for the respondents conceded that indeed an amendment was sought to join the 2nd appellant to the defence of the 1st appellant.

Resolution:

6 I have perused the record of proceedings and confirmed that an oral application was indeed made under order 6 rule 19 of the Civil Procedure Rules for amendment of the heading of the 1st appellant's written statement of defence to refer to both 1st and 2nd appellant. The record of proceedings further show that the appellants' case were presented jointly. The written submissions
12 were drawn and filed by the Attorney General's Chambers as counsel for both appellants.

There was joint representation all the way from the High Court to the Court of Appeal. I accordingly find that the concession by counsel for the respondents was based on facts on record. Ground 1 is accordingly allowed.

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Ground 2, 3, 4 and 5.

Counsel for the appellants contended that the Justices of the Court of Appeal did not properly evaluate and ignored the credible, and consistent evidence of the appellants. The
24 appellants' 5 witnesses included Olinga Otolu Robert, the LC3 Chairperson Akokoro Sub-County, Apac District (DW1); Ogang Charles, the District Councilor representing Akokoro Sub-County (DW2); Mary Frances Owor, the Resident District Commissioner Apac District (DW3); Orech Kenneth, the District Veterinary officer, Apac District (DW4); and Adoko Geoffrey, the
30 Ferry operator (DW5).

The learned counsel submitted that the circumstances
6 surrounding the arrest of the respondents did not point in any
way to high handedness by the appellants towards the
respondents and their property, including cattle. The evidence
on record indicated that by the time the respondents were
arrested, the animals had been taken for grazing by their
workers.

12 The respondents requested for and were granted time
extensions within which to vacate the government Ranch but
they refused to vacate. Counsel submitted that the respondents
were not condemned unheard and that the appellants did not
violate the respondents' right to ownership of property.

The respondents' workers remained in-charge of their animals
18 at all material times upto the time they peacefully crossed over
to Masindi District with the animals.

Learned counsel attacked the evidence of the respondents as a
whole for being unreliable, marred with lies, hearsay,
inconsistent and without merit, and that the said evidence had
been successfully rebutted by the appellants. Counsel
24 concluded that the learned trial Judge was right to find that
none of the respondents' properties or cattle were taken or
destroyed by the appellants and that the respondents were not
entitled to any remedies sought.

In reply, the learned counsel for the respondents submitted that
the learned Justices of the Court of Appeal were alive to their
30 role as the first appellate court and were right to fault the lower
court for having improperly evaluated the evidence on record.
The learned counsel contended that the respondents were

granted permit to drive 500 heads of cattle within 11 days from
6 Masindi to Apac via Masindi port.

Upon reaching Maruzi Ranch, the agents of the appellants
arrested the respondents and ordered the evacuation of their
animals from the Ranch. In the process of evacuation, the
respondents lost their animals and other properties. The
learned counsel submitted that after arresting the respondents,
12 the agents of the appellants took over the respondents' cattle
and became bailees with legal obligation to return the cattle to
the respondents in the same number, which they did not do.
Counsel contended that the burden of proof was on the
appellants to prove that they had carried out the duties of a
bailee. Counsel concluded that the Justices of the Court of
18 Appeal should not be faulted on grounds 2, 3, 4 and 5 because
their conclusion were supported by evidence which they re-
evaluated as 1st appellate court.

In her rejoinder, m/s Nabakooza reiterated that the Justices of
the Court of Appeal were not fully alive to the principles and
missed out vital pieces of evidence which would have changed
24 their conclusion. She submitted that there was no evidence of
foot and mouth disease in the area. She reiterated that there
was no need to handover the animals because the agents of the
appellants did not at any one time take charge of the animals
because they were not bailees. She concluded that the evidence
adduced by the respondents in the trial failed to prove their
30 case and accordingly prayed that the appeal be allowed.

Resolution.

This being an appeal against the decision of the Court of Appeal
6 as a first appellate court, it is pertinent to restate the duty of
the court as a first appellate court. The duty of the Court of
Appeal as a first appellate court is provided under Rule 30 (1) of
the Court of Appeal Rules. Under the above rule the Court of
Appeal is empowered to reappraise the evidence on record and
draw its own inferences of fact. The above duty was reiterated in
12 the case of **Kifamunte VS Uganda, Criminal Appeal No. 10 of
1997 (SC)**.

**“The first appellate court has a duty to review the evidence
and reconsider the materials before the trial Judge. The
appellate court must then make up its own mind
disregarding the judgment appealed against but carefully
18 weighing and considering It.”** see also **Bogere Moses VS
Uganda**.

In performing the above duty, the 1st appellate Court should
always bear in mind the fact that if neither saw nor heard the
witnesses and should make allowance in that respect: see **Watt
or Thomas VS Thomas [1947] AC 484**. As a second appellate
24 court this Court is not required to re-evaluate the whole
evidence unless it is found that the 1st appellate court did not
re-evaluate the evidence to draw its own conclusion.

In the above case, (Thomas) **LORD VISCOUNT**; explained the
subject in the following words:-

***“Apart from the classes of cases in which the powers of the
30 Court of Appeal limited to deciding a question of law, an
appellate Court has of course jurisdiction to review the record
of the evidence in order to determine whether the conclusion***

originally reached upon that evidence should stand; but this
6 jurisdiction has to be exercised with caution. If there is no
evidence to support a particular conclusion (and this is really a
question of law), the appellate Court will not hesitate so to
decide. But if evidence as a whole can reasonably be regarded
as justifying testimony by a tribunal which saw and heard the
witnesses, the appellate Court will bear in mind that it has not
12 enjoyed the opportunity and that the view of the trial judge as
to where credibility lies is entitled to great weight. This is not
to say that the judges of 1st instance can be treated as
infallible in determining which side is telling the truth or is
refraining from exaggeration. Like other tribunals, he may go
wrong on a question of fact, but it is a cogent circumstance
18 that a judge of 1st instance, when estimating the value of
verbal testimony, has the advantage (which is denied to Court
of Appeal) of having the witness before him and observing the
manner in which their evidence is given”.

In **Kifamnute (supra)** the Supreme Court stated the above principles vividly:-

24 “It is the Court of Appeal as a first appellate court which has a
duty to re-evaluate the evidence of the trial court. This Court will
no doubt consider the facts of the appeal to the extent of
considering the relevant point of law or mixed law and fact raised
in any appeal. If we re-evaluate the facts of each case whole sale
we will assume the duty of the first appellate court and create
unnecessary uncertainty. We can interfere with the conclusions
30 of the Court of Appeal if it appears that in consideration of the
appeal as a first appellate court, the Court of Appeal misapplied
or failed to apply the Principles set out in such decisions as
Pandya.....” (emphasis mine)

After pursuing the judgment of the Court of Appeal, it is very
6 clear that the Court of Appeal properly directed itself as to its
duty as a first appellate court. The Court of Appeal referred to
Rule 30 (1) of the Court of Appeal Rules which empowers it to
reappraise the evidence on record and draw its own conclusion.
The Court also referred to the case of **Bogere Moses VS
Uganda, Criminal Appeal No. 01 of 1997.**

12 The question arising is whether the Court of Appeal did in fact
evaluate the evidence in arriving at the conclusion that the trial
judge was wrong. The contention of the appellants is that, the
learned Justices of the Court of Appeal did not properly
evaluate and ignored credible, and consistent evidence of the
appellants which included the evidence of Olinga Otololo DW1,
18 Ogang Charles DW2, Mary Frances Owor DW3, Orech Kenneth
DW4 and Adoko Geoffrey DW5.

In answering the above question, it is important to understand
the substance of the above evidence.

Dw1 Olinga Robert who was LC3 chairperson, Akokoro Sub-
County, testified inter alia that he received communication from
24 the Chairperson LCII Kungu Parish, Akokoro , detailing that on
25/06/2004 he received complaints from the local community
that there were unknown groups of people that had come with
large heads of cattle and their animals were destroying crops in
the area especially in two villages of Acalal and Abudama. The
same complaints had also been forwarded to the office of the
30 Resident District Commissioner, Apac.

It was then resolved that there should be an inter-district
meeting to be scheduled between Apac District and Masindi

District Local Administration. Prior to the meeting, he had
6 earlier invited the pastoralists to his office but they never
turned up. The inter-district meeting was held on 5/7/2004
involving the RDC, DISO, Chief Administrative Officer (CAO)
Secretary for Finance, DPC, LCIII and opinion leaders from both
Apac and Masindi. In that meeting it was resolved that the
pastoralists should vacate the Ranch within two weeks. Upon
12 the request of the pastoralists, the period of two weeks was
extended to a month whereby the deadline was fixed to 5th
August 2004. On 29/07/2004 Radio communication by the
RDC was issued requiring the pastoralists to honour the said
deadline. The Minister of State for Animal Industry directed the
RDC to ensure that the resolution was observed. He stated that
18 on 30/07/2004, he wrote a letter to the LCII Chairperson
Kungu telling him that the above deadline of 5th August 2004
still stood and should be implemented. On 04/04/2004 he
received a letter from LCII Chairperson Kungu stating that some
pastoralists had left and that those who had refused to vacate
were led by Abel Misango, the 2nd respondent. In a meeting held
24 on 19/8/2004, it was resolved that the pastoralists who had
not observed the resolution of the security committee should be
arrested and charged with forceful entry into the Ranch. After
that meeting, the Security team comprising RDC, DPC, DISO,
LCV Councilors of Ibuje and Akokoro, LCIII Chairpersons of
Ibuje and Akokoro, and opinion leaders went to the Ranch and
30 arrested the respondents. Dw1 denied the existence of animal
diseases in the area.

Dw2 Charles Ogang, the District Councilor representing
Akokoro Sub-County confirmed the testimony of DW1. He

stated that he was aware of the invasion of pastoralists in
6 Maruzi Ranch and the complaints raised against them of
destroying crops belonging to the local communities. A meeting
was arranged but the pastoralists failed to attend.

As complaints grew stronger concerning the level of destruction
of crops, the local leaders notified the District leaders for a
possible joint District Security meeting between Masindi District
12 and Apac District. That meeting took place on 5/7/2004. The
purpose of the meeting was:-

1. Confirm whether the pastoralists had genuine movement
permits
2. Confirm whether they had authority to settle in Maruzi
Ranch.
- 18 3. Listen to wanainchi's complaints.

It was established that the pastoralists had movement permit
allowing them to move to Soroti but they decided to settle in
Maruzi Ranch illegally. It was discovered that the pastoralists
were mobilized by the respondents who claimed that they had
land where they could settle the pastoralists. The pastoralists
24 started complaining because they had paid money to the
respondents to graze their animals there.

The meeting resolved that the pastoralists should vacate the
Ranch and were given two weeks to do so. However, they
pleaded for more time and it was extended by one month from
5th July 2004 to 5th August 2004. After the deadline, it was
30 discovered that some pastoralists had moved away from the
Ranch but others led by the respondents had not moved.

Another meeting was held where it was resolved that the respondents be arrested and charged with forceful entry on to the Ranch. Dw2 clarified that he remained behind to ensure that the animals that remained were driven to the ferry landing site and evacuated peacefully to Masindi Port. He denied ever instructing anybody to destroy the respondents' property.

Dw3 Mary Frances Owor, the RDC confirmed the testimonies of DW1 and DW2 and added that the pastoralists who crossed through the ferry with their animals had indicated that they were going to Soroti District and that she did not allow them to settle at the Ranch. She confirmed that the pastoralists destroyed the people's crops. She stated that they held a series of meetings in the presence of the respondents where it was resolved that they should vacate the Ranch in a stipulated time frame but the respondents defied the resolutions and continued their illegal occupation of the Ranch.

She stated that she was authorized by the Minister of State for Animal Husbandry to order the Respondents to vacate the Ranch. She accordingly issued a press release directing all the pastoralists to vacate the Ranch. Even after the press release, the respondents and their group refused to vacate. As a result, the security Team and other authorities resolved to forcefully evict the pastoralists from the Ranch and subsequently the respondents were arrested and charged in court. That was followed by peaceful evacuation of the pastoralists from the Ranch. She concluded that no property of the respondents were lost or destroyed.

Orech Kenneth DW4, the District Veterinary Officer, Apac confirmed the testimonies of DW1, DW2, and Dw3 regarding the

invasion by pastoralists and the meetings that were held to
6 resolve it. He stated that there was no disease outbreak in Apac
in 2004 and that in case of any outbreak, he would be the first
one to inform the commissioner of the same and not the other
way round as in the instant case. He stated that he never
received a copy of movement permit from the pastoralists as
procedure demands. He stated that the pastoralists also needed
12 a letter of no objection from Apac District allowing them to bring
their cattle into the District which was not done, hence the
occupation of the pastoralists were illegal.

Dw5 Adoko Geoffrey, a Ferry operator confirmed the testimony
of DW1, Dw2, Dw3 and DW4 and added that on 19/09/2004,
he found a large number of cattle crowded on Apac side. A team
18 from Apac headed by DW1 with some policemen told him that
the animals were supposed to be ferried to Masindi side. They
could not start ferrying the animals that day due to high traffic
but started ferrying the animals the following day on 20th
August 2004 and ended on 21/08/2004.

They ferried over 500 heads of cattle as indicated in the ferry
24 traffic register (exhibit D10). He concluded that only the
movement of 20/08/2004 was supervised by the policemen and
the local leaders but that of 22/8/2004 was not supervised.

Court's analysis and findings.

From the above evidence, it is clear that the influx of
pastoralists to Apac District in 2004 was not the first time.
30 According to Dw2, the first invasion started way back in 1998
when the 1st batch of pastoralists entered Apac through
Akokoro Sub-County with about 300 heads of cattle. Another

group entered in 2002 with between 500 to 700 heads of cattle.

6 In 2003 yet another lot entered covering two other Sub-counties of Chawente and Nambyeso.

According to DW2 in all the entries, there were complaints from the Wanainchi regarding the destruction of their crops by the pastoralists and their cattle. Later on, there were peaceful evacuation of the pastoralists who entered the three above Sub-

12 Countries of Apac.

In June 2004, there was this entry into the Maruzi Ranch. It is clear from the evidence on record that the respondents were forced to move from Mubende to Apac, after being brutally exposed to the effects of climate change. They were suffering from water and pasture stress. Their understanding was that

18 they were to stay in Apac until the rains would come back and then return to Mubende through Masindi. On the face of the constitution, the pastoralists were right to mitigate the effects of the climate change by moving their animals to Apac which is part of Uganda. Moreover, the cattle the pastoralists were keeping contribute to the economy of the country in terms of

24 domestic and foreign revenues.

Although the intention of the respondents were noble, their entry and stay on the Ranch was unlawful in that they did not seek authority from the District. Worse still, the manner in which the respondents conducted themselves when they allowed their animals to destroy the crops and properties of the

30 local community with impunity was the reason why they were forced to vacate the Ranch. It is clear from the evidence on record that a number of meetings were called to resolve the impasse but the respondents were adamant. It is apparent that

they did not want to listen to anybody from the District. The
6 evidence above shows that other law abiding pastoralists
respected official resolutions to vacate the Ranch but the
respondents were adamant and instead went round the
resolution by purporting that there was a disease outbreak in
the Ranch. That was proved to be untrue. The arrest of the
respondents was because they had defied lawful orders to
12 vacate the Ranch which they were occupying illegally. It is
therefore not true that the respondents were condemned
unheard.

It was alleged that the respondents were denied their right to
own property. With due respect, the above contention is not
backed by evidence on record. The evidence on record is to the
18 effect that the appellants with the relevant authorities lawfully
evacuated the respondents from the Ranch. The respondents'
properties were neither destroyed nor lost. I agree with the trial
Judge that the respondents could not have moved with 10
bicycles, 64 mattresses, 64 blankets, 64 pairs of bed sheets, 90
women suits, 70 pairs of children shoes, 80 children dresses,
24 60 suit cases, 32 pumps among other things, These were a few
pastoralists who were moving in search of pasture and had
temporary shelters in the Ranch.

It would clearly be strange to move with the above items let
alone keep them in the two tiny temporary grass thatched
houses which the respondents had erected in the Ranch.

30 It is trite law that to succeed on any issue, the party bearing the
legal burden of proof must satisfy the Court of the likelihood of
the truth of his or her case by adducing a greater weight of
evidence than his or her opponent and adduce evidence

sufficient to the required standard or degree of proof. That
6 standard in Civil Cases is on the balance of probabilities: - see:
Halsbury's Laws of England 4th Edition Volume 17 page 18.

In the instant case, I find that the respondents did not adduce
any credible evidence in support of their case. The respondents'
evidence was unreliable, marred with lies, hearsay, inconsistent
and without merit. The evidence of PW1, PW2, PW3, PW4, and
12 PW5 which the respondents relied upon clearly failed to
discharge the burden of proof cast upon the respondents. The
evidence of PW1 Abel Misango lacked substance. The 60
pastoralists he talked of must have been the ones who
evacuated the animals back to Masindi.

The evidence of PW2 Geoffrey Rutaama also lacked substance.
18 His evidence was to the effect that he did not see anyone
destroying or taking his property. He was merely told that
houses were burnt. PW3 Luutu Mukasa Moses, a political
mobiliser, did not witness the alleged destruction and looting of
the animals and property. His evidence was mainly hearsay. He
appeared in the area three days after the incident. His evidence
24 to say the least, could not be credible. PW4 Mbabazi who was
one of the 60 workers did not mention the vast house-hold
properties that were alleged to have been destroyed. She did not
see the cattle being taken away or killed.

The evidence of PW5 Vincent Kasaija was hearsay. He testified
that he went to the area between 2 to 4 days after the incident
30 and took one photograph at the Ranch. He photographed only
one dead cow.

6 Lastly, the evidence of PW6 Dr. Nicholas Kauta lacked
credibility. He issued an order for a quarantine before
requesting for verification from the disease outbreak contrary to
the protocol he had alluded to. His evidence was thrashed for
being unreliable, speculative and based on hearsay. There was
greater weight of evidence that there was no outbreak of cattle
disease in Apac District. The evidence of PW6 Dr. Kauta was
12 merely intended to justify illegal occupation of the Ranch by the
respondent.

From the above analysis, I agree with the trial Judge in her
conclusion that the respondent entered the Ranch illegally and
were lawfully evacuated from the Ranch. There was no credible
evidence adduced to prove that any of the alleged properties of
18 the respondents/plaintiffs or cows were taken or destroyed by
the appellants/defendants or any other person. Had the Court
of Appeal properly evaluated the evidence on record as a whole,
they would have agreed with the trial Judge that the
respondents had not lost any property and so were not entitled
to the reliefs claimed.

24 In the result I find that the appeal has merit and it is allowed
with costs here and below and the cross appeal dismissed with
costs.

Dated at Kampala this...^{5th}...day of...^{July}...2017

30


**Hon. Justice Opio-Aweri,
Justice of the Supreme Court**

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA

(CORAM: KATUREEBE, CJ; ARACH -AMOKO; NSHIMYE; MWANGUSYA; OPIO-AWERI, JJSC).

CIVIL APPEAL NO.12 OF 2015

BETWEEN

THE ATTORNEY GENERAL

APAC DISTRICT ADMINISTRATION } ::::::::::::::::::::::::::::::: APPELLANTS

AND

RUTAAMA GEOFFREY }

MISANGO ABEL } ::::::::::::::::::::::::::::::: RESPONDENTS

[Appeal from the judgment/decree of the Court of Appeal of Uganda at Kampala (Mwondha; Buteera; Kiryabwire, JJA Dated 24th June, 2015 in Civil Appeal No. 80 of 2012].

I have read in draft the judgment of my brother Opio-Aweri, JSC and I concur with it, and also agree with the orders he has proposed.

As the other members of the Court agree, the appeal is allowed with costs in this court and courts below. The cross-appeal is dismissed with costs.

The judgment of the court of Appeal is set aside.

Dated at Kampala this^{5th} day of ^{July}.....2017


Bart M. Katureebe
CHIEF JUSTICE

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA

(CORAM: Katureebe, CJ, Arach-Amoko, Nshimye,
Mwangusya, Opio-Aweri, JJSC;)

CIVIL APPEAL NO. 12 OF 2015.

BETWEEN

1. ATTORNEY GENERAL }
2. APAC DISTRICT ADMINISTRATION }APPELLANTS

AND


1. RUTAAMA GEOFFREY }
2. MISANGO ABEL }RESPONDENTS

{Appeal from the decision of the Court of Appeal at Kampala (Mwondha, Buteera, Kiryabwire, JJA). Dated 24th June, 2015 in Civil Appeal No. 80 of 2012}

JUDGMENT OF M.S.ARACH-AMOKO, JSC

I have had the benefit of reading in draft the Judgment of my learned brother, Hon. Justice. Opio-Aweri, JSC, and I concur with his decision that this Appeal should be allowed with costs. I also agree that the Cross Appeal should be dismissed with costs.

Dated at Kampala this ^{5th}.....day of.....^{July}.....2017


.....
M.S. ARACH-AMOKO
JUSTICE OF THE SUPREME COURT

**THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA**

**[CORAM: Katureebe CJ, Arach-Amoko, Augustine Nshimye,
Mwangusya, Opio-Aweri, JJSC]**

CIVIL APPEAL NO.012 OF 2015

BETWEEN

1. ATTORNEY GENERAL
2. APAC DISTRICT ADMINISTRATION } APPELLANTS

AND

1. RUTAAMA GEOFFREY }
2. MISANGO ABEL } RESPONDENTS

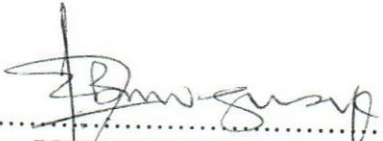
(Appeal from the decision of the Court of Appeal at Kampala (Mwondha, Buteera, Kiryabwire, JJA) Dated 24th June, 2015 in Civil Appeal No. 80 of 2012)

JUDGMENT OF ELDAD MWANGUSYA, JSC

I have had the benefit of reading in draft the Judgment of Hon. Justice Opio-Aweri, JSC, and I agree with his decision that this appeal should be allowed with costs.

I also agree that the Cross Appeal should be dismissed with costs.

Dated this.....5th.....day of.....July.....2017


.....
**MWANGUSYA ELDAD
JUSTICE OF THE SUPREME COURT**