THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT ARUA

CIVIL REVISION NO. 0002 OF 2011

EDEBUA YONEMA _____ APPLICANT

=VERSUS=

BILENI MUSA _____ RESPONDENT

JUDGMENT

BEFORE JUSTICE NYANZI YASIN

This matter commenced on the 7th August 2007. When the present respondent filed a written statement of claim recorded as

CM/AR/CL/0029/2007 in the Chief Magistrate Court of Arua, the suit was heard by His Worship Barigye Said Mag. G1.

In the claim, the claimant complained about trespass on his land by the defendant. He pleaded in paragraph 4 of the WSC that he inherited the land from his father who died in 1965 in accordance with the customs and practice of the Lubgbara. That since that time he has been on the land without any claims against him.

In the written statement of defence filed in court on 11th September, 2007, the defendant denied the claimants allegations.

He disputed the claims of inheritance of land in1965 after the death of the claimant's father. He averred instead that the claimant's father died in the year 2000 and was buried at the claimant's home.

In paragraph 16 of the defence he alleged that he is the rightful owner of the land as he has lived thereon since 1960s. That he buried his mother on the land in 1960. His second wife OMUCIA was buried on the land 1963. He buried his first wife SARAH on the same land with his 3 (three) children.

On specific interest to this ruling the defendant pleaded in paragraph 15 of the defence.

Paragraph 15

> ***"That an arrangement should be made with the claimant to go back to the elders, village council and neighbours to the disputed land. This shall help to solve the land ownership issue once and for all".***

After conducting a full trial and hearing both sides' evidence the trial Magistrate delivered judgment on 20/06/2010.

In his judgment the trial Magistrate made two conclusions which I will state verbatim.

> ***"Having pronounced myself on the first and second issues and having answered them in the negative, I find that there is no remedy that accrues to either party since none of them own the suit land. I accordingly dismissed the suit and I make no orders as to costs."***

The above finding is that the parties had no remedy before the court below. Secondly that none of them owned the suit land. Then the trial learned Magistrate concluded

"I will call upon the two clans to immediately sit and resolve the matter in order to avoid any illicit conduct by any side claiming an interest in the said land".

That conclusion meant that the trial Magistrate had conferred jurisdiction to the clans to resolve a matter that was before him and no remedy had been pronounced.

It was against that back ground that on 2nd .06.2011 the applicant EDEBUA YONEMA filed in this court a Notice of motion under S.64, 83 (a) and 98 CPA Civil Procedure Act and 0.52 rr 1 S.2 of the CPR.

The application was filed through Manzi, Odama Advocates. At the hearing of the application which took place on 22/11/2011 Mr. Henry Odama represented the applicant. Mr. BILENI MUSA the respondent was not represented. He told Court he could represent him self and would not need the service of an advocate. That way the matter proceeded.

The applicant's advocate submitted that two orders were being sought from this court.

1. That the judgment and decree in CM/AR/CL/0029/2007 be revised and a fresh trial be ordered before a competent Court.

2. An injunction order that the status quo be maintained preventing the respondent from selling the land or constructing permanent structure on it.

The learned advocate argued that the trial Magistrate acted in exercise of his jurisdiction with material regularity when he surrendered his duty to resolve the issues before court to the clans which are not complete to adjudicate between the parties over the land and that the same caused a miscarriage of justice. He referred this court to page 4 of the judgment of the trial court.

The second leg of Mr. Odama's submission faulted the trial Magistrate's finding that the encroachment on the land by the respondent could not be an infringement.

I will not consider that argument as it a ground of appeal yet this is an application that the judgment be revised under S.83 CPA. I will therefore only consider the first argument.

In reply to Mr. Odama's submission Mr. Bileni Musa answered the land was his and he was not selling or using it as security to any body. He then seemed to be giving fresh evidence and did not address the issue of the judgment that never declared any one of them the owner.

That is understandable as he did not have an advocate. Nevertheless in an application of this nature that can not prejudice his interest as court examines mostly the record and decide whether or not there was evidence for consideration under S.83 C.P.A.

I have examined the learned trial Magistrate's judgment which was attached as annexture "A" to the affidavit of the applicant in support.
At page 2 the learned Magistrate framed issue for court's determination.
These issues were;

1) Whether or not the plaintiff/claimant is the rightful customary owner of the suit land.
2) Whether or not the defendant is a trespasser on the suit.
3) Whether or not the plaintiff is entitled to the remedies prayed for.

He answered the 3rd issue in the negative as a result of his answers to issue one and two. He concluded like I earlier stated that

> ***"I find there is no remedy that accrues to the parties as none of them owned the suit land***".

He then concluded by calling upon the clans to resolve the issue that he himself had not resolved.

Annexture "B2" to the affidavit in support shows that indeed the clan sat and "resolved" the matter in their way. Annexture B2 is a letter dated 19th May 2011 from the office of the Resident District Commissioner to G1 Magistrate Arua. It is interesting to quote its opening paragraph the way it was written.

> ***"Following your directive through the local council chairman Vurra sub county to settle the land dispute between the above mentioned subjects, I consequently sought the council of the following elders in resolving the same***
>
> 1. *TEFELO BILEKU 84*
> 2. *ATONIO SUA 77*
> 3. *JINIYA JESKA 71*
> 4. *ANZUKUA LUKA 82*

This meeting then resolved to give the disputed land to BILENI MUSA"

Annexture B2 shows how as a result of the trial Magistrate not deciding the matter in court and directing the clan to resolve the same, actually the clan did. This was a gross error in my view with due respect to the learned trial Magistrate.

S3 (b) C.P.A is the applicable provisions to the conduct of the court below.

The section in clause (b) allows the High Court to call for the record of the Magistrate Court and revise the same where it appears that the trial Court

(b) failed to exercise a jurisdiction so vested.

The kind of judgment and direction made by the trial Court show that he failed to exercise a jurisdiction vested in him.

According to the issues he framed especially issue ONE it required him to decide whether the plaintiff was the rightful owner of the land in accordance with customs.

The plaintiff claimed and pleaded customary ownership of the land when he inherited it from his father in accordance with the customs and practice of the Lugbara. That kind of issue and pleadings before the trial court gave it

jurisdiction to exercise and resolve the matter. That is so as provided under S. 270 (2) of the ***Magistrate Court Act*** the section reads.

> (2) Not withstanding subsections (1) where the cause or matter of a civil nature is governed only by civil customary law, the jurisdiction of a Chief Magistrate or Magistrate Grade One shall be unlimited.

Having that kind of jurisdiction, upon evidence the learned trial magistrate would have proceed upon to decide whether or not in accordance with the Lugbara customs and practice the plaintiff succeeded his father and was the owner of the suit land. A fact the defendant had denied.

By declaring that there were no remedies to the parties secondly but worse, by ordering the clan to resolve the matter, the learned trial Magistrate failed to exercise a jurisdiction vested in him.

S.5 of the CPA further gives jurisdiction to Court to try civil matters except where the suit is barred expressly or impliedly.

Annexture “A” which is the judgment of the trial court amounted to no judgment at all. This is because it was out side the definition of a judgment as provided by S.2 (c) and (1) under clause (1) “Judgment” means

“A statement given by the judge of the grounds of a decree or order”.

The result of the learned Magistrate’s judgment would have been a decree having conclusively heard the case. Under S.2 CPA, the term “decree” means

“A formal expression of an adjudication, which so far as regards the court expressing it, conclusively determines the rights of the parties with regard to any of the matters in controversy in the suit”.

Now, in the light of the above definition of a decree, if the judgment of the learned trial Magistrate is to be gone by, the decree which directs the plaintiff and the defendant to go to the clan elders to decide who owns the land would not have conclusively determined their rights with regard to the matter in controversy.

The result of the trial Magistrate’s error tempted the elders to decide the case and gave the land to one of the parties when court did not.

For those reasons I allow the application. However I will not order a retrial as the applicant asked this court.

Such a retrial would be to cause further delay to reach justice by the parties. This case was heard and every party called their witnesses. The learned trial Magistrate visited the locus before writing the judgment. The error did not relate to the procedure of the trial but the judgment itself.

Consequently I make the following orders;-

1) That the judgment of HIS WORSHIP BARIGYE SAID delivered on the 20/06/2010 is hereby revised and set aside.

2) That the file in claim No. CM/AR/CL/29/2007 be placed before another grade one magistrate who on the evidence already on record is directed to answer the issues framed by the trial Magistrate and pronounce a judgment determining the right of the parties before him.

Costs of this application shall abide the results of the judgment to be re-written as ordered above.

It is so ordered.

NYANZI YASIN

JUDGE

13.07.2012

13/07/2012

Mr. Manzi Paul for the applicant

The respondent is not in court

The respondent is not represented at the High court and in the lower court.

Mr. Manzi

The respondent is not here but I will serve the respondent with the ruling if the law allows him to appeal if he is affected by ruling of this court.

Court: That under taking is good enough. It is ordered that a certified copy of the ruling and any resulted orders be served on the respondent if the ruling affects his interest in any way.

NYANZI YASIN

13/07/2012