IN THE HIGH COURT OF UGANDA AT SOROTI

CIVIL APPEAL NO. 6 OF 2012

ARISING FROM KUMI CIVIL SUIT NO. 15 OF 2009

OBWANGPUS HENRY ....APPELLANT

V

AKOL YOWANI ....RESPONDENT.

JUDGMENT

The appellant Obwapus Henry appealed the judgment of HW Belmos Ogwang Grade one Magistrate Grade one dated 7th February 2012 sitting at Kumi on three grounds of appeal that i shall revert to later in the judgment.

Mr. Echipu appeared for the appellant while the respondent appeared in person.

The duty of the appellate court is to re-evaluate the evidence adduced in the lower court and arrive at its own conclusion bearing in mind that the trial court had an opportunity to observe the demeanour of the witnesses.

The appellant sued the respondent for recovery of three gardens of land which claim is denied by the respondent in his written statement of defence.

At the trial two issues were framed for determination.

1. Who is the owner of the three gardens
2. Remedies.

The main issue for determination before the trial court was ownership of the three gardens.

The appellant's case was that the three gardens in dispute belong to him having inherited them from his late grandfather Obwapus Eriasa who according to PW2 Ocen John, died in 1972. According to PW2, the appellant inherited the land in 1995 after a clan meeting . The appellant states in his evidence that the respondent encroached on the land in 2004.

From the appellant's case, it is apparent that he states two grounds to prove that he has an interest in the land. The first ground is that he bought the land (page 6 of typed proceedings) fro m Eriasa. The second ground is that the land was given to him after a clan meeting in 1995 (page 9) .

The respondent's case on the other hand is that he inherited the suit land from his late father Opit in 1966 and that he has lived on this land since childhood. The 84 year old respondent stated that he has three grass thatched houses and a semi permanent house on the suit land. According to the respondent, the appellant lives in Ngora while the suit land is located in Kees where the respondent lives. According to DW2 Omute Henry, he shares a boundary with the respondent who has lived on the land since the witness was six years old. DW2 was 62 years when he testified.

DW2 Omute confirms that although Eriasa Obwapus from whom the appellant derives title lived in Kees at one point in time, on his death, Esau Kedi, his son inherited the land . Therefore, Esau Kedi is a neighbour to the respondent . Dw2 further testified that Kedi Esau has a dispute with the appellant over the land he occupies. The respondent confirms in his evidence that Esau Kedi is his neighbour in Kees.

What emerges from the foregoing narrative is that the respondent's claim to the land is based on long possession. The respondent was aged 84 at the time

he testified and he had lived on the land all his life, from as far back as 1966 when his father died.

It is evident that while Eriasa Obwapus from whom the appellant claims title lived in Kees , on his death, the land in Kees was inherited by his son Kedi Esau who the respondent acknowledges as a neighbour What ever land Obwapus Eriasa owned in Kees was inherited by his own son Kedi Esau .

That Kedi Esau was not involved in the dispute between the appellant and the respondent means that the appellant made false claims to the suit land which has always been under control and possession of the respondent.

In any case, the appellant's claim that he bough the land in dispute from Eriasa his grandfather and in the same breath claims to have inherited the suit land brings in an element of uncertainty in his case. This coupled with the respondent's strong case of long possession lead to the conclusion that the appellant made false claims to the suit land. I find that the trial magistrate properly evaluated the evidence and arrived at a correct conclusion.

Turning to the grounds of appeal, the first ground is that the trial magistrate erred in fact and in law when he failed to correctly record and evaluate the evidence adduced before it.

I have found that the trial magistrate properly evaluated the evidence and arrived at a correct conclusion. As for the record, counsel had an opportunity to correct any errors in the record prior to hearing the appeal. He did not have to make it a ground of appeal . in any case, i read the proceedings and i found them coherent. Ground one fails.

Ground two is that trial magistrate perfunctorily conducted the locus visit. I did not find the proceedings of the locus visit on record although the visit is referred to in the judgment.

The trial magistrate was duty bound to record the locus proceedings , therefore, he erred in not recording what transpired at the locus. The trial magistrate was duty bound to record presence of parties and witnesses who testified in court, record their confirmation of features mentioned in court, draw a sketch map of the disputed land and name owners of adjacent land. That there is no record of this was highly irregular.

Nevertheless, as the location and size of the disputed land was clear from the proceedings in court , the locus visit was not critical to the determination of the dispute.

Therefore while i agree with counsel for the appellant that the visit was conducted in a perfunctory manner, even if the visit had been done properly , the trial magistrate would have arrived at the same decision.

The third ground is that the judgment occasioned a miscarriage of justice. I find no merit in this ground.

In the premises, i dismiss the appeal, confirm the judgment and orders of lower court with costs of this appeal and lower court to the respondent.

DATED AT SOROTI THIS 17TH DAY OF OCTOBER 2014.

HON. LADY JUSTICE H. WOLAYO