THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 89 OF 2019

1. **OLAL MARK**
2. **OLAL JIMMY**
3. **TABAN PAUL**
4. **OOLA PETER**
5. **KOMAKECH MARIO**
6. **ANJELINA ATTO** .... **APPELLANTS**

VERSUS

KAGGWA MICHAEL .... **RESPONDENT**

CORAM: **Hon. Mr. Justice Kenneth Kakuru, JA**

Hon. Mr. Justice Geoffrey Kiryabwire, JA

Hon. Mr. Justice Christopher Madrama, JA

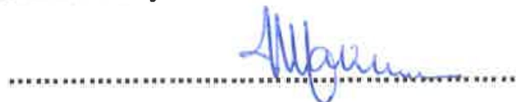
JUDGMENT OF JUSTICE KENNETH KAKURU, JA

I have had the benefit of reading in draft the Judgement of my learned brother Hon. Christopher Madrama, JA. I agree with him that, this appeal must fail for the reasons he has ably set out in his Judgment. I have nothing useful to add.

Since Kiryabwire JA also agrees, this appeal stands dismissed with costs.

It is so ordered.

Dated at Kampala this ...25th... day of ...June... 2020.



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Kenneth Kakuru

JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 89 OF 2019

OLAL MARK AND OTHERS===================================== APPELLANT

VERSUS

KAGGWA MICHEAL===RESPONDENT

(CORAM: KAKURU, KIRYABWIRE, MADRAMA)

JUDGMENT OF JUSTICE GEOFFREY KIRYABWIRE, JA

JUDGMENT

I have had the opportunity of reading the draft Judgment of my Brother Hon. Mr. Justice Christopher Madrama, JA in draft and I agree with the findings and final decisions and orders and have nothing more useful to add.

Dated at Kampala this 25th day of June 2020.

HON. MR. JUSTICE GEOFFREY KIRYABWIRE
JUSTICE OF APPEAL

5 **THE REPUBLIC OF UGANDA,**

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO 89 OF 2019

(HIGH COURT CIVIL APPEAL NO 0010 OF 2017)

(ARISING FROM CHIEF MAGISTRATES COURT OF GULU CIVIL SUIT NO
10 **051 OF 2011)**

(CORAM: KAKURU, KIRYABWIRE, MADRAMA JJA)

1. **OLAL MARK}**
2. **OLAL JIMMY}**
3. **TABAN PAUL}**
15 4. **OOLA PETER}**
5. **KOMAKECH MARIO}**
6. **OCAN CHARLES}**
7. **ANJELINA ATTO} ....APPELLANTS**

VERSUS

20 **KAGGWA MICHAEL} ....RESPONDENT**

JUDGMENT OF CHRISTOPHER MADRAMA IZAMA

This is a 2nd appeal arising from the decision of the High Court, Mubiru J, in which he allowed the Respondent's appeal with a declaratory order that the Respondent is the rightful owner of Plot 117 at Kanyogoga "A" Zone,
25 Kanyogoga "A" Parish, Bar – Dege Division in Gulu Municipality, an order for vacant possession of the land, a permanent injunction restraining the Appellant's, their agents, employees or persons claiming under them from interference with the quiet possession and enjoyment of the land, general damages of Uganda shillings 20,000,000/= with interest thereon at the rate

of 8% per annum from the date of judgment till payment in full and costs of the appeal in the High Court and in the court below.

The Appellants had sued the Respondent in the Chief Magistrates Court of Gulu for declaration that they were joint owners of the Plot (the suit property), a permanent injunction to issue against the Respondent, his servants, agents and any other person claiming interest from him, general damages for trespass, mesne profits, interests and costs of the suit. The Appellants suit was granted by the chief magistrate when a declaration that they are the lawful owners of the suit property. An eviction order was issued against the Respondent, his relatives, assigns and successors in title, agents, servants or any person acting on his behalf to evict the property within 30 calendar days from 28th of February 2017. Secondly a permanent injunction was granted against the Respondent, his assigns, agents, servants and successors in title or relatives from further trespassing on the suit property or interfering with the Appellant's enjoyment of quiet possession. The Appellants were the Plaintiffs were awarded general damages of Uganda shillings 15,000,000/= and the counterclaim of the Defendant was dismissed with costs. The suit was also granted with costs against the Respondent. The Respondent being aggrieved appealed to the High Court and his appeal was allowed as stated above. The Appellants being aggrieved, appealed to this court on 2 grounds of appeal namely:

1. The learned trial judge erred in law when he failed to re-evaluate the evidence on record hence arriving at a wrong decision that the Plots 65/91 and 117 are one and the same whereas not and thereby occasioning a miscarriage of justice.
2. The learned justice of the High Court erred in law when he awarded the remedies sought by the Respondent.

5 The Appellants pray for orders that the appeal is allowed and the judgment and orders of the High Court are set aside with costs in this court and in the High Court.

The appeal had been scheduled for hearing on 31st March, 2020 but prior to the hearing date the court issued directions to the parties that it would be 10 addressed in their written submissions on account of the Covid 19 pandemic. Subsequently, the country went into a lockdown situation and judgment was reserved on notice.

The Appellant is represented by Messieurs Okecha Baranyanga & company advocates while the Respondent Mr Kaggwa Michael represented himself 15 and filed his own written submissions.

In the skeleton arguments, the Respondents Counsel submitted that the two grounds of appeal can be summarised and consolidated into one issue which is:

Whether the learned trial judge erred in law and fact when he failed to 20 properly evaluate the evidence on record in regard to him holding that Plot 91/65 and 117 are one and the same. Secondly, the remedies available to the parties.

The Appellant's Counsel submitted that the Appellants are entitled to interest in the suit as customary owners and that they had utilised the property since 25 1935 when their grandfather Okumu Langwee occupied the property and the Plot is known as Plot 91/65 and the Plot numbers have been changing.

The Appellants Counsel submitted that the Appellant supported their assertions that they acquired occupancy of the land in 1935 through evidence of PW1, PW2 and DW1. They had inherited the suit land and even 30 some of their relatives were buried in the disputed land including their grandfather Okumu Lagwee and Moto Yuwee buried in 2011. Further, the Appellants Counsel submitted that the 4th Appellant further argued that he

5 possessed genuine documents for the suit land which included a letter from the Municipal Council issued by the land supervisor for payment of ground rent. The document presented was for ground rent of 1967. He further submitted that PW1 also doubled as the 4th Appellant further stated that Plot 117 does not neighbour the suit property and that the is Plot 91.

10 The Appellant's Counsel further submitted that the Respondent rebutted the allegations and led evidence to the effect that he had inherited the land from his father and Appellant had only been brought on the land in 2009 by the 1st Appellant. His testimony was that the suit property belonged to him and he had five grass thatched huts thereon. DW1 who is the Respondent 15 testified that he saw the grave belonging to Okumu Lagwee and that his Plot is Plot No. 117.

The Appellant's Counsel submitted that the learned judge disagreed with the Appellants and found that the land belonged to the Respondent and stated that Plot 91/65 and 117 are one and the same.

20 In the premises, the Appellant's Counsel submitted that the learned 1st appellate judge did not properly re-evaluate the evidence on record and hence reached an unjust decision. He contended that the 1st appellate court judge disregarded the findings of the trial court from the *locus in quo* visit. He submitted that at the *locus in quo* it was established that the Respondent 25 did not possess any of the huts that he claimed existed on his land. The Appellant's Counsel submitted that the Respondent had claimed the existence of 5 grass thatched houses on the land but this was found not to be true during the visit. It was also found by the trial magistrate that the land in dispute is indeed Plot 91/65 and not 117. The Appellant judge disregarded 30 the entire findings of the trial magistrate from the locus visit which should have been considerable evidence to be re-evaluated.

5 The Appellant's Counsel further submitted that the 1st appellate court failed to evaluate the evidence on record by finding that there was no evidence of occupancy by Okumu Lagwee prior to 2009. He instead found that the Appellants were trespassers on the land since 2009. He contended that the 1st appellate court judge failed to take into consideration the evidence on 10 record and most notably the statement of the Respondent made in this cross examination. He submitted that the fact that there was a group person wants the seized in 1958 was sufficient evidence of occupancy yet the learned trial judge found that there was no evidence of settlement on this property prior to 2009. Counsel submitted that the evidence of the Respondent itself in 15 cross examination brought out the fact that the Appellants had lived on the suit property prior to 2009 and it was evidenced by the number of graves.

On the duty of a first appellate court, the Appellant's Counsel relied on **Katakanya & others v Raphael Bikongoro HCT 05 – CA – 0012 of 2010** for the proposition that it is the duty of the first appellate court to reappraise 20 the evidence adduced at the trial and subject it to fresh and exhaustive scrutiny. The court should warn itself that it has neither seen nor heard the witnesses and should therefore make due allowance in that respect. He submitted that the 1st appellate court did not re-evaluate the evidence on record before it.

25 He submitted that the 1st appellate court was wrong in finding that the Appellants were trespassers on the suit property from 2009 despite the evidence on record. They had possessions on the suit property long before 2009 and were in possession of the same as customary heirs and not by way of unauthorised entry.

30 The Appellant's Counsel further submitted that had the 1st appellate court properly re-evaluated the evidence on record appreciate that the Appellant had occupied the suit land since before 2009 when the allegedly trespassed on it and that the locus visit plunged holes in the claims of the Respondent,

5 the 1st appellate court would have found that Plot 95/61 was not one and the same as 117.

The Appellant's Counsel prayed that the appeal is allowed and the judgment of the 1st appellate court set aside with costs to the Appellant in this court and in the lower courts.

10 The Respondent represented himself and in reply reproduced his evidence in the lower court and supported the finding of the first appellant court judge.

The Respondent submitted that the suit property is one and the same and is Plot 117 and not Plot 91/65. He contended that the 4th Appellant did not 15 state at the trial why the plot number of the suit land had been changing over the years. In the plaint of the Appellant it is disclosed that the Plot No. is Plot 91. However, during cross – examination the 4th Appellant stated that the Plot No. is Plot 65. However, there was no amendment of the plaint by the Appellants to replace the averment that the plot number is Plot 91 with 20 Plot 65.

The Respondent further submitted that it was the learned trial magistrate who erred in law and fact to find that the disputed land is Plot No. 91/65 and not 117. The Appellant did not sue the Respondent over Plot No. 91/65 but only in respect of Plot No. 91. In the premises, the Respondent submitted 25 that the learned magistrate wrongly declared the suit land to be Plot No. 91/65. He submitted that there was evidence in the documents that the claimed Plot 117 belonged to the Respondent's father. The Respondent further introduced evidence about proceedings in the Local Council II Court. These proceedings were attached as the Respondent's documents and do 30 not form part of the record of court submitted by the Appellant.

He submitted that the evidence shows that the Plot No. of the Appellant does not exist. The 4th Appellant had testified that the land was Plot No. 92 in 1983

5 and that it is Plot No. 65 from 1983 to 1995. The record shows that the evidence is that the proprietor of Plot No. 92 since 8 August 1967 is Mohammed Bin Bakit and not Okumu Lagwee. The proprietor of Plot 65 since 2nd September, 1963 is Kezironi Ojull and not Okumu Lagwee.

Plot No. 91/65 which the learned trial magistrate wrote in his judgment does 10 not exist in the old land register book of Gulu Town Council of 1967. The issue agreed before the trial magistrate was which was the Plot in dispute whether 91 or 117 but the learned trial magistrate falsely wrote whether the Plot of land in dispute is Plot 91, 65 or 117. He further supported the decision of the 1st appellate court judge on the issue of whether the Appellants were 15 Sudanese refugees. He submitted that the Appellants were Sudanese refugees not entitled to acquire land in Uganda by way of customary ownership.

I have carefully considered the written submissions of the Respondent which submissions go into great detail on the evidence before the court.

20 **Resolution of appeal**

According to the record, the Appellant's appeal is a second appeal though there are other earlier proceedings emanating from a Local Council 1 court that went on appeal to the Division Local Council and the Chief Magistrates Court involving the same parties and over the same suit property. A retrial 25 was ordered and proceedings commenced afresh in the Chief Magistrates Court of Gulu before a Grade 1 Magistrate, His Worship Owino Paul Abdonson who gave judgment for the Appellants. Judgment was delivered on 28th February 2017 and the Respondent appealed to the High Court. From the High Court the Appellants lost and further appealed to this court.

30 On a second appeal, the decision of the 1st appellate court may only be set aside on points of law and this is based on sections 72 and 74 of the Civil Procedure Act. Section 72 of the Civil Procedure Act stipulates that:

5 **72. Second appeal.**

(1) Except where otherwise expressly provided in this Act or by any other law for the time being in force, an appeal shall lie to the Court of Appeal from every decree passed in appeal by the High Court, on any of the following grounds, namely that—

(a) the decision is contrary to law or to some usage having the force of law;

10 (b) the decision has failed to determine some material issue of law or usage having the force of law;

(c) a substantial error or defect in the procedure provided by this Act or by any other law for the time being in force, has occurred which may possibly have produced error or defect in the decision of the case upon the merits. ...

15 The question for consideration is whether the appeal falls within any of the three categories under section 72 of the Civil Procedure Act. These categories are whether the decision of the 1st appellate court is contrary to law or some usage having the force of law. Secondly, whether the decision has failed to determine some material issue of law or usage having the force of law and 20 thirdly whether a substantial error or defect in the procedure provided by the act or any other law for the time being in force, has occurred which may possibly have produced error or defect in the decision of the case upon the merits.

Section 74 of the Civil Procedure Act further provides that no appeal to the 25 Court of Appeal shall lie except on the grounds mentioned in section 72 save for 3rd appeals under section 73. Section 74 of the Civil Procedure Act stipulates that:

74. Second appeal on no other grounds.

Subject to section 73, no appeal to the Court of Appeal shall lie except on the 30 grounds mentioned in section 72.

5 As noted above, section 73 which deals with appeals only applies where an appeal emanates from the judgment of a magistrate grade II is a 3rd appeal with the certificate of the High Court.

In **Kifamunte Henry v Uganda; Supreme Court Criminal Appeal No 10 of 1997** the Supreme Court extensively considered the powers of the second 10 appellate court and held that they could interfere with the conclusions of the Court of Appeal (first appellate court) if it appears that in its consideration of the appeal as the first appellate court; they misapplied or failed to apply the principles set out in **Pandya v R (1957) EA 336** and **Kairu v Uganda (1978) HCB** 123 among other precedents. The Supreme Court held *inter alia* that:

> 15 On second appeal it is sufficient to decide whether the first appellate court on approaching its task, applied or failed to apply such principles.
>
> …once it has been established that there was some competent evidence to support a finding of fact, it is not open, on second appeal to go into the sufficiency of that evidence or the reasonableness of the finding. Even if a court of first 20 instance has wrongly directed itself on a point and the court of first appellate court has wrongly held that the trial court correctly directed itself, yet, if the court of first appeal has correctly directed itself on the point, the second appellate court cannot take a different view R Mohamad All Hasham vs R (1941) 8 E.A.C.A. 93.
>
> On second appeal the Court of Appeal is precluded from questioning the findings 25 of fact of the trial court, provided that there was evidence to support those findings, though it may think it possible, or even probable, that it would not have itself come to the same conclusion; it can only interfere where it considers that there was no evidence to support the finding of fact, this being a question of law: R vs Hassan Bin Said (1942) 9 E.A.C.A. 62

30 Rule 32 (2) of the Rules of this court stipulates that:

> On any second appeal from the decision of the High Court acting in the exercise of its appellate jurisdiction, the court shall have power to appraise the inferences of fact drawn by the trial court, but shall not have discretion to hear additional evidence.

5 I have carefully considered section 72 (1) (a) of the Civil Procedure Act to establish whether there is any ground the substance of which is that the High Court decision as a first appellate court is contrary to law or some usage having the force of law. On another category of a right of appeal, the question would be, whether the decision appealed against failed to 10 determine some material issue of law or usage having the force of law. The grounds of appeal do not allege any error of law or some usage having the force of law. It does not allege that the learned 1st appellate court judge failed to determine some material issue of law or usage having the force of law. What is alleged is that the learned 1st appellate court judge failed to re-15 appraise the evidence on record which is the duty of a first appellate court.

Ground 1 of the appeal which is the only ground argued in this appeal and the decision on which the second ground revolves is that:

1. **The learned trial judge erred in law when he failed to re-evaluate the evidence on record and arriving at a wrong decision that the 20 Plots 65/95 and 117 are one and the same whereas not and thereby occasioning a miscarriage of justice.**

Clearly, the ground of appeal claims that the learned 1st appellate court judge failed to re-evaluate the evidence on record and this occasioned a miscarriage of justice. The miscarriage of justice stated to have been 25 occasioned is in the identity of the suit property leading to an erroneous decision. The resolution of the question of fact occasioned by the alleged error being whether the suit property is Plot 65/91 or 117.

The decision of the learned 1st appellate court judge can be found at page 17 of his judgment where he states after considering the evidence that:

30 While the Respondents claimed the land in dispute was Plot 91/65 and the Appellant on the other hand claimed it was Plot 117, at the *locus in quo*, both parties showed court the same piece of land. While PW1 Oola Peter stated that Plot 91/65 measuring approximately 2.5 acres, the Appellant stated that Plot 117

5 measures approximately 2.8 Acres. Considering that PW1 Oola Peter testified that the Plot numbers have been changing over the years, I am inclined to believe and therefore find that Plot 91/65 Plot 117 are one and the same. Although the Respondents claimed that the 1st Respondent's elder brother, Martino Oyugi paid ground rent for Plot 91/65 to Gulu Town Council and the temporary occupation 10 licence from 1967 until the year 1995 when they were abolished, they did not produce a single document to back up that claim. There is also no evidence to show that Plot 91/65 exists as such in the Municipal Council records. To the contrary, the Appellant adduced evidence (D.ID 34) indicating that for purposes of municipal Council rates, Plot 117 is registered in the names of Okum Lazaro. The 15 Respondents disputed that to be the name of the Appellant's father since to them the Appellants father is "Okumu Lazaro" (i.e. with a "u" at the end as known in Acholi as opposed to one without a "u" at the end as known in Alur tradition).

The misnomer principle would apply to this case, being the process by which a court determines the attribution of a name.···

20 The court went ahead to consider the law relating to misnomer in the writing of a name.

I have carefully considered the law. The error was stated to be in failure to evaluate or reappraise the evidence on record leading to an erroneous conclusion that the Plot in question is plot 117 and not 91/65. It is however 25 clear that the learned first appellate court judge reappraised the evidence on record and came to a finding that even though the parties referred to different plot numbers, the land that they had testified about despite having different plot numbers with regard to the testimony of the Appellants vis-a-vis the testimony of the Respondent was the same land. That means that 30 despite having different plot numbers or names according to the testimony of the different parties, the land in dispute was the same piece of land.

The record shows that the Appellants who were the Plaintiffs had filed a suit for a declaration of ownership of land located/situated at Kanyagoga "A" Parish, Gulu municipality comprised in Plot No. 91 and measuring

5 approximately 2 ½ acres. Further it is noticeable that in paragraph 3 of the plaint, the Plaintiffs who are the Appellants to this appeal averred that:

> The Plaintiffs jointly and severally bring this suit for among others a declaration of ownership of land located/situated at Kanyagoga "A" Parish, Gulu Municipality comprised in Plot No. 91 and measuring approximately 2 ½ acres. General and
10 punitive damages for trespass, an eviction order, a permanent injunction against the Defendant, his agents and any person authorised or claiming interest from him, mesne profits, interest and costs of the suit.

It is averred *inter alia* that the Plaintiffs are aggrieved by the trespass of the Respondent who was the Defendant in the trial court. I will particularly quote
15 paragraph 4 (ix) – (xi) which clearly indicates that the Defendant was alleged to have trespassed on the same piece of property that the Appellants were claiming in the lower court.

> (ix) That the Defendant is laying claim on the suit land and has continued to come upon the land to cause confusion, intimidation and annoyance to the Plaintiffs.
>
20 > (x) The Defendant is claiming land belonging to all the Plaintiffs and the matter was the subject of a dispute before the local council courts.
>
> (xi) that a retrial was however ordered by the chief magistrate his worship and Joseph Omodo Nyanga, hence this suit. A copy of the Decree ordering a retrial is attached and marked Annexure "A".

25 The prayers in the plaint are also glaringly clear that the Appellant sought an eviction order against the Defendant or his servants and agents or any person claiming interest from him. They also sought general and punitive damages for trespass as well as mesne profits. Mesne profits are awarded for illegal occupation.

30 In the written statement of defence which is not in the record of appeal but attached to the documents filed by the respondent in this appeal, the respondent denied the claims and claimed to have inherited the suit property plot number 117 at Kanyagongo "A" Zone measuring approximately 3 and

5 18 acres from his late father in 1996. Inter alia this is what the defendant who is the respondent to this appeal averred in paragraphs 13 – 16 of the amended written statement of defence and particularly the counterclaim that:

> 13. The defendant contend that is further register the suit land at Gulu Town
> 10 Council then plotted the suit land for him on 18th of January 1967 as the proprietor of plot 117.
>
> 14. The defendant contend that is further started paying ground rent tax for the plot 117 in 1967 to Gulu Town Council until 1995 when it was abolished.
>
> 15. The defendant further aver and contend that his father's name is available in
> 15 the older register book of Gulu Town Council 1967 now Gulu Municipal Council.
>
> 16. The defendant shall contend that the 3rd, 4th, 6th, and 60 plaintiffs were/are refugees and nephews and sister-in-law to Olal Mark whom his father educated.

In the counterclaim the respondent sought *inter alia* a declaration that he is the rightful owner of plot 117 Kanyagonga "A" Zone and also for an order of
20 the vacant possession, a permanent injunction, general damages for trespass and costs of the suit.

The pleadings of the appellants who were the plaintiffs in the trial court strongly lead to the proposition of fact that the Respondent was in possession of the suit property. Secondly, it confirms the finding of the
25 learned trial judge that the *locus in quo* visit established that the parties to the suit where contesting the same piece of property.

The learned first appellate court judge was alive to the proceedings in the criminal court in which the respondent had been charged with forgery and this appears at page 19 of the judgement of the High Court. The proceedings
30 related to the issue of whether the documents relating to plot 117 were in the names of Okum Lazaro and the name "Okumu" was amended through forgery by adding a "u" at the end of it.

I have accordingly considered the judgment of the High Court in the criminal proceedings. What is evident from the record is that the parties were the same and the criminal proceedings which were commenced on complaint of the appellants terminated on appeal in favour of the respondent. The documents availed by the respondent in this appeal as a supplementary record indicate that **Criminal Case Number 0856 of 2011; Uganda versus Kaggwa Michael** has a decision in which the respondent was convicted by the magistrate's court and he appealed to the High Court. The appeal was heard by Keitirima J, judge of the High Court in which the judge noted in the judgment on appeal in **High Court Criminal Appeal Number 0028 of 2013 Kaggwa Michael versus Uganda** that it is the appellants to this appeal who were the complainants in the allegation of forgery of the register book of Gulu Municipal Council but there was no complaint from the Municipal Council or any officials called to testify about the record. In the criminal proceedings the learned 1st appellate court judge noted that the photocopied page of the old land register of Gulu Municipal Council shows one Lazalo Okumu as the proprietor of Plot 117. The record clearly reveals the learned the judge on appeal in the criminal proceedings noted as follows:

> One wonders how the appellant could have accessed the register book if it were not with the help or assistance of one of the employees in the land office. He singles out PW2. With regard to this court, the particulars of the offence revealed that the appellant showed the photocopied page of the old land register of Gulu Municipal Council showing one Lazalo Okumu as the proprietor of Plot Number 117. So are there two people by the names of Lazalo Okumu and Lazalo Okum or is it a spelling mistake which does not substantially make the information therein false? No evidence was led to show that there is a Lazalo Okumu and Lazalo Okum who are distinct people. The appellant maintains it was simply a spelling mistake but the person mentioned was the same. The burden was on the prosecution to prove otherwise.

The above is part of the background material that was available to the learned 1st appellate court judge in this appeal. What is material is that that

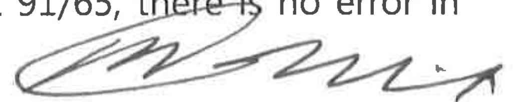
5 in the proceedings on appeal in the civil matter that is before this court, this is what the learned first appellate court judge held:

> Whatever the case may be, whoever made that alteration did not seek to add or substitute a wholly new and different name but made a mere inconsequential correction since "Okum Lazaro" was in the circumstances of the background facts
> 10 of this case, a misnomer of what should have been "Okumu Lazaro," the father of the appellant. The misnomer doctrine is applicable when it is obvious, as it is in this case, that the author made a mistake and misspelled the name. That aside, and a cross examination the 4th respondents, PW1 Oola Peter, admitted that Okumu Lazaro is the owner of plot 117 only that he did not know him.

15 It is very clear from earlier criminal proceedings that the Appellants had a dispute over Plot No 117. That is why they complained about the Respondent having added the letter "u" to the name of the proprietor of Plot 117 namely Okum Lazaro.

It could have been argued that the name of the plot or the number of the
20 plot could establish who was the rightful owner of the property. However, no officials from the municipal authority were called to testify. Perhaps the matter required a surveyor. It is however evident that the conclusion of the first appellate court judge had something to do with the finding that it was the same piece of property that the parties were in dispute about.

25 The learned first appellate court judge evaluated the evidence and came to the conclusion that the parties were contesting the same piece of property and that the documentary evidence of the Respondent that the plot number is Plot 117 was more credible. On the other hand, the learned first appellate court judge held that the Appellants did not have a single document to back
30 up their claims while the Respondent had. In any case, the appeal is on a question of law that the learned first appellate court judge did not reappraise the evidence. Clearly on the central issue which is the bone of contention in this appeal as to whether the learned first appellate court judge erred to find that the plot number was Plot No 117 and not 91/65, there is no error in



5 evaluation of the evidence because the learned first appellate court judge did reappraise the evidence on record and came to his own conclusions. Moreover, the conclusion is supported by the pleadings and the evidence he considered.

This being a second appeal, the findings of the 1st appellate court cannot be 10 faulted on the ground that the learned judge did not carry out his duty of reappraising the evidence and coming to his own conclusion. Secondly, the pleadings of the Appellants clearly indicated that they were contesting Plot No. 91 and the learned first appellate court judge reappraised the evidence in respect of that issue.

15 Last but not least, the learned 1st appellate court judge also reappraised the evidence with regard to the legal rights of some of the Appellants to own customary land in Uganda. On a point of law, the learned first appellate court judge held that that the Appellants were refugees and there was no evidence that they had lost their refugee status and could not hold land under 20 customary tenure in Uganda. At page 16 of his judgment he stated as follows:

> Being refugees and hence non-citizens of Uganda, the 3rd to the 7th Respondents are precluded by article 237 (2) (c) of the Constitution of the Republic of Uganda, 1995 and section 40 of the Land Act, from holding land in Uganda under customary tenure. They are restricted to holding land under leasehold tenure only. It was 25 therefore erroneous of the court below to have decided in their favour when the land in dispute is held under customary tenure.

In this appeal, the stated Appellants have not challenged the holding of the learned first appellate court judge that they were not entitled to judgment because they are refugees who had not lost their status and are in law 30 incapable of owning customary land in Uganda under Article 237 of the Constitution of the Republic of Uganda. Without challenging the holding that the Appellants are refugees, ground 1 of the appeal can lead to no possible good. Last but not least with regard to the 1st and 2nd Appellants, the first

5 appellate court judge re-appraised the evidence *inter alia* at page 17 of his judgment and came to the conclusion that the Plot was eventually assigned Plot No. 117 where the Respondents father paid ground tax for the Plot from 1967 until the abolition of ground tax in 1995. He also found that it was in 2009 that the Appellants brought the rest of the Appellants on the suit
10 property to force the Respondent and his family off the land.

In the premises, the Appellants appeal lacks merit and is barred by section 72 of the Civil Procedure Act because it does not disclose that the decision of the first appellate court is contrary to law or to some usage having the force of law. Secondly, it does not disclose that the decision failed to
15 determine some material issue of law or usage having the force of law. Thirdly, it failed to disclose a substantial error or defect in the procedure provided by the Civil Procedure Act or any other law for the time being in force has occurred and which could have possibly produced an error or defect in the decision of the case upon the merits.

20 In the premises, the Appellant only argued ground 1 of the appeal and is taken to have abandoned ground 2 on the question of remedies.

In any case, ground 2 of the appeal depends on the finding in ground 1.

I hold that the Appellants' appeal lacks merit and is accordingly dismissed with costs.

25 Dated at Kampala 25th day of June 2020

Christopher Madrama Izama

Justice of Appeal