

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA; AT FORT PORTAL**

**CIVIL APPEAL No. 0005 OF 2004**

**(Appeal from the judgment and decree of His Worship Baker Rwatooro, Principal Magistrate Grade 1, in Kas. Civ. Suit No. 33 of 2002, delivered on the 21<sup>st</sup> of May, 2004)**

**MANAGEMENT COMMITTEE OF**

**KATOJO KATHOLHU P. SCHOOL ::: APPELLANT**

*VERSUS*

**REGISTERED TRUSTEES OF**

**SOUTH RWENZORI DIOCESE ::: RESPONDENT**

**BEFORE: - THE HON. MR. JUSTICE ALFONSE CHIGAMOY OWINY – DOLLO**

**JUDGMENT**

The Plaintiff/Appellant had sued the Defendant/Respondent in the Chief magistrate’s Court over the ownership of land situated at Katholhu village, Katholhu parish, Nyakiyumbu Sub–County, Bukonzo West County, Kasese District, which it claimed it had been in occupation of having acquired it from the Catholic Diocese; and on which it had constructed the Katojo/Katholhu P. School which was at all times regarded as a catholic founded school; but which it accused the Defendant/Appellant of having trespassed on. The Defendant, in its written statement of defence, denied the Plaintiff’s claim, contending instead that the school on the suit land was a Church of Uganda founded school; hence it had not committed the alleged trespass.

After conducting a full trial, which included a visit to the locus, the trial Magistrate delivered in which he found for the Defendant, and dismissed the suit; hence this appeal, which is founded on the following 7 grounds; namely: –

1. The learned trial Magistrate erred in law and fact in holding that the evidence of PW1, PW2, and PW3 contained grave contradictions as to the ownership and acquisition of the land.
2. The learned trial Magistrate erred in law and fact in holding that the suit property belongs to the Defendant/Respondent; and therefore the Defendant/Respondent cannot trespass on its own land.

3. The learned trial Magistrate erred in law and fact in holding and finding that the defence witnesses' evidence was credible and established true ownership of the suit land by the Defendant/Respondent.
4. The learned trial Magistrate erred in law and fact in holding that the Appellant had failed to prove and discharge the burden of proof as to the Appellant being the foundation body; and that the evidence of PW1, PW2, PW3, PW4, PW5, and PW6, as to the foundation body of the Appellant was full of major contradictions.
5. The learned trial Magistrate erred in law and fact in holding and basing his conclusions and judgment on extraneous facts not in issue, and speculative reasoning full of conjecture.
6. The learned trial Magistrate failed to properly evaluate the evidence on record thereby arriving at a wrong judgment and decision which occasioned a miscarriage of justice.
7. The learned trial Magistrate erred in law and fact in dismissing the suit and holding that the Appellant had failed to prove on a balance of probabilities the ownership, foundation and entitlement to remedy.

The counsels for the parties argued the appeal by written submissions. As a first appellate Court, I have to examine the evidence on record and make my own findings thereon; but fully aware that I was not favoured with the benefit of observing the witnesses testify at the witness stand, hence am ill-placed to appreciate their demeanour. On the first issue, I agree that the trial Magistrate misdirected himself on the law regarding contradictions and inconsistencies in evidence adduced by the Appellants' witnesses. Where contradictions or inconsistencies are minor; and, or, can be explained away for instance due to a long passage of time between the event testified about and the date of the testimony, such contradictions should be ignored.

It was therefore wrong for the learned trial Magistrate to put emphasis on inconsistencies and contradictions in the testimonies of PW1, PW2, and PW3, regarding which local chief accompanied the witnesses in 1963 (some forty years past) to be shown the boundary of the land given for the school. Similarly, the witnesses' reference to two or four acres of land was really not that material. These peasants were not speaking with mathematical precision about the acreage of the land. What was important was that the witnesses agreed that the land was given in the presence of a parish chief and PW2 (the son of the woman who gave the land) showed the

boundaries. I have been unable to discern any contradictions or inconsistencies worthy of note on the part of the Appellants' witnesses. I allow ground 1 of the appeal.

Grounds 2, 3, 4, and 7, deal with the issue of proof of ownership of the suit land; hence can be treated together. The learned trial Magistrate failed to appreciate that despite this being a religious conflict between two denominations of the Christian faith – Catholic and Protestant – the witnesses of the Appellants, unlike those of the Respondents, were of mixed faith; hence must have come to Court not on the basis of religious support. DW1's testimony that he had been the PTA Chairperson of the school from the mid 1960s up to 1982, which was clearly intended to strengthen the Respondent's case regarding foundation body of the school, was however exposed as a lie when it was contradicted by DW2 whose testimony was that he became headmaster of the school in 1980, and there was no PTA at the time.

Further, whereas DW1 would want Court to believe that the school structure was first built in 1954 by the Church of Uganda, DW3 contradicted him by testifying that in the 1960s the school was operating from the church. I therefore find the finding by the learned trial Magistrate that the defence witnesses were consistent is not borne out by the evidence on record. There are ample serious contradictions in their collective testimonies. Instead it is the evidence adduced for the Appellants which is, in the main, credible that the school commenced in 1954, was displaced and it finally relocated to the present site where it has been since.

The concluding evidence in support of the Appellants' case over the foundation body, is the official record with the District Education office. The record, as shown by PW7 and PW8, in corroboration of the Appellants' contention, is that it is the Catholic Church. The Defendant/Respondent had pleaded in their written statement of defence that they would prove that the school was founded by the Protestant Church. All they have as proof is oral evidence against cogent documentary evidence to the contrary. An attempt was made by the Respondent to blame some unnamed Catholic headmaster for allegedly altering the record regarding the foundation body of the school. The learned trial Magistrate found this to be evidence of manipulation.

This is most unfortunate. No evidence was given whatever as to the date this alleged change of record took place; and it is rather inconceivable that this headmaster could also have altered the record of foundation body already filed with the District Education office before he was posted to the school. Finally, it is strange that the management committee of the school allegedly

comprised mainly of Protestants did not protest at this manipulation; or any explanation given for their failure to register their protest at such manipulation. In the face of the written record to the contrary, I find that the Defendant/Respondent's denial that the Catholic Church is the foundation body of the school cannot be sustained. These consolidated grounds of appeal have merit. Therefore, I allow them.

On grounds 5 and 6 it is true there are many instances where the trial Magistrate delves in outright conjectures and speculation; and worse still these formed the basis of his findings and decision. The fate of the land the school was displaced from was not in issue; hence there was no point seeking to know what happened to it. It was therefore unreasonable to wonder why the Appellants obtained land from the old woman instead of going back to the land from which they had been displaced by insecurity. The school could not be expected to relocate back where people have been displaced from. Similarly, it was conjecture to suggest that the old woman could not have given the school all her land in the suit area. It was not in issue; and her own son (PW2) did not complain about this donation.

The learned trial Magistrate opines that the old woman had not been told what area of land was desired for the school; and yet she gave away all her land. This was not in issue at all and should have never featured in his judgment. On the evident contradictions between witnesses over whether or not children got injured when the wind blew off the church roof, the learned trial Magistrate seeks to attribute the denial by some of the witnesses as an attempt to hide something. I don't see how he arrives at this conclusion. It is just a matter of who might have witnessed or obtained a more accurate account of the incident. The witnesses all agreed that the school used the church premises; with the Appellants explaining that this was temporary.

Another instance of extraneous consideration is the trial magistrate's questioning of the school being located about a kilometre from the Catholic Church instead of being on the same site. He himself answers this by stating that it is only a common practice, but not invariable, for schools to be located together with the Church. Furthermore, the Appellants do not claim that the Church initiated the founding of the school; but rather that the Church only came in to support the efforts of displaced parents by buying iron sheets and paying off the school debts, for which it is recognised as the foundation body. It is equally possible that there was not enough land where the Catholic Church is located, a kilometre away. There is no rule that schools that have church backing cannot be situated away from church buildings.

The learned trial Magistrate's finding that the Appellants' witnesses were coached is not at all borne out by the evidence. True, there are many instances of hearsay evidence adduced in Court; but this is a flaw attributable to either side to the conflict, and in any case the learned trial Magistrate correctly identified these. What the learned trial Magistrate ought not to have lost sight of is that the contest between the two is borne of unfortunate religious rivalry. In this regard, the Appellants' witnesses cut across this religious divide whereas all the Respondent's witnesses are strictly Protestant. I am satisfied that the Plaintiff/Appellant had satisfactorily proved its case that the suit land belongs to the school and not to the Defendant.

Accordingly, the learned trial Magistrate ought to have found, as I hereby do, that the Defendant is a trespasser onto the land of the school neighbouring it; and should give vacant possession of the suit land to the Plaintiff. I however believe that the two parties, as neighbours, need to be afforded the opportunity to pursue reconciliation; hence I would choose not to award damages for the trespass committed by the Defendant/Respondent. I therefore set aside the whole of the judgment, orders and decision of the trial Magistrate, and substitute therefore the following: –

- (i) The Plaintiff/Appellant is the rightful owner of the suit land.
- (ii) The Defendant/Respondent must give vacant possession of the suit land to the Plaintiff/Appellant.
- (iii) An order of permanent injunction hereby issues against the Defendant/Respondent; restraining it and any person acting in its behalf from further trespass onto the suit land.
- (iv) The Plaintiff/Appellant IS entitled to the costs and of the suit below and of the appeal.
- (v) The costs shall attract interest at Court rate from the date of the respective judgments.



**Alfonse Chigamoy Owiny – Dollo**

**JUDGE**

**12 – 06 – 2012**