IN THE HIGH COURT OF UGANDA SITTING AT GULU

Reportable
Civil Appeal No. 061 of 2017

In the matter between

1. LAWINO VERONIKA }
2. OKOT MICHAEL } ……APPELLANTS

VERSUS

LABONG MARTHA …… RESPONDENT

Heard: 9 May, 2019.
Delivered: 30 May, 2019.

Land law *— Proprietary estoppel—* equity *will prevent a person from insisting on his strict legal rights, whether arising under a contract, or on his title deeds, or by statute, when it would be inequitable for him to do so having regard to the dealings which have taken place between the parties.*

JUDGMENT

STEPHEN MUBIRU, J.

Introduction:

[1] The respondent sued the appellants jointly and severally for a declaration of ownership of land measuring approximately 7 hectares (approximately fifteen acres), situate at Boroboro village, Gojani Parish, Atanga sub-county in Pader District. She sought a declaration that she is the rightful owner of the land, an order of vacant possession, a permanent injunction restraining the appellants from further acts of trespass to the land, general damages for trespass to land, and the costs of the suit. Her claim was that she inherited the land in dispute from her late father, Okot Constantino.

[2] In their joint written statement of defence, the appellants averred that the land in dispute measures approximately ten acres ant it belonged to the father of the first appellant, Obu Lukobo, who is the grandfather of the second appellant. They prayed that the suit should therefore be dismissed with costs.

The respondent's evidence;

[3] The respondent Labong Martha testified as P.W.1 and stated that she was born in the 1930s on this land and was raised on it. She constructed huts on the land during the 1970s and lived there until the insurgency when she fled into an IDP Camp. In 2009 she returned to the land and restored her huts. She resumed cultivation until the year 2011 when the first appellant instead of re-occupying land that belonged to her late uncle, Obur Lukodo situated about 120 meters North of the land in dispute, she occupied part of the respondent's land by construction of a hut thereon and planting a banana plantation, mango and orange trees. The first appellant has since refused to vacate the land despite directives by the local leaders and clan chiefs. The respondent is now left with only five acres. P.W.2 Abonga Erokulano testified that the first appellant's uncle's land was to the North of that of the respondent. The boundary between the two was the Atanya - Boroboro Road. The land in dispute was given to the respondent in 1957 by her late father Okot Constantino. It is during the year 2012 that the appellants forcefully encroached onto the land and constructed two huts thereon.

[4] P.W.3 Ayella Joseph testified that the respondent's father gave her the land in 1970. She constructed four huts thereon, planted orange trees, a banana plantation, mango trees and grew crops on the land. The respondent vacated the land during the insurgency but retuned and re-occupied it after the insurgency. The appellants have since trespassed onto the land, constructed four huts, established a banana plantation and seasonal crops. The first appellant's uncle Obur Lukobo had land neighbouring that of the respondent and the boundary

was marked by mango trees. P.W.4 Kibwota Santo testified that following the failure of her marriage, the respondent returned to her father's home in 1970 and he gave her the land in dispute to live on. The first appellant's uncle had land adjacent to that of the respondent. The appellants have instead occupied part of the respondent's land claiming that it belonged to the late Lukobo.

The appellants' evidence;

[5] In her defence as D.W.1, the first respondent Lawino Veronica testified that she was born on the land in dispute with his father and uncle Obur Lokobo. When her marriage failed she returned to the land. It is her father who gave the respondent's father a piece of land temporarily after his had flooded and when the respondent's marriage failed too, she returned to live with her father. The second respondent, Okot Michael, testified as D.W.2 and stated that the respondent's father had land across Abora Stream. Floods forced him to re-settle temporarily on the first appellant's father's side of the stream. Later he left two of his wives on the land in dispute until they fled into the IDP camp. The dispute began in 2011 upon return from the IDP Camp.

[6] D.W.3 Olanya Lamson testified that around 1962, the respondent's father, Constantino Okor was given land to live on temporarily by the first appellant's father Obur Lukobo, following the flooding of his land. Two of his wives left the land in dispute but one died thereon in 2014. D.W.4 Oyo Dick testified that a flood forced the respondent's father to seek refuge on the first appellant's father's land. The respondent remained on the land.

The Court's visit to the *locus in quo* and judgment;

[7] The Court then visited the *locus in quo* where the parties demonstrated the area in dispute. The court then prepared a sketch map of the area. In his judgment, the trial Magistrate declared the respondent the lawful owner of the land in

dispute. The appellants were declared as trespassers on the land. The court issued order of vacant possession and a permanent injunction restraining the appellants from further acts of trespass on the land. The costs of the suit were awarded to the respondent.

The grounds of appeal;

[8] The appellants were dissatisfied with the decision and appealed to this court on the following grounds, namely;

1. The learned trial magistrate erred in law and fact in failing to properly evaluate the evidence on record thereby arriving at a wrong conclusion, hence occasioning a miscarriage of justice.
2. The learned trial magistrate erred in law and fact when he failed to properly conduct the *locus in quo* of the disputed land.

[9] All parties were unrepresented at the hearing of the appeal. The appellants were unable to file any submissions. In her brief written submissions, the respondent argued that she acquired the land in dispute from her late father in 1970. It is in the year 2013 that the appellants trespassed onto the land. She prayed that the appeal be dismissed.

The duties of this court;

[10] It is the duty of this court as a first appellate court to re-hear the case by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion (see *Father Nanensio Begumisa and three Others v. Eric Tiberaga SCCA 17of 2000*; *[2004] KALR 236*). In a case of conflicting evidence the appeal court has to make due allowance for the fact that it has neither seen nor heard the witnesses, it must weigh the conflicting evidence and draw its own inference and conclusions (see *Lovinsa Nankya v. Nsibambi [1980] HCB 81*).

[11] This court may interfere with a finding of fact if the trial court is shown to have overlooked any material feature in the evidence of a witness or if the balance of probabilities as to the credibility of the witness is inclined against the opinion of the trial court. In particular this court is not bound necessarily to follow the trial magistrate's findings of fact if it appears either that he or she has clearly failed on some point to take account of particular circumstances or probabilities materially to estimate the evidence or if the impression based on demeanour of a witness is inconsistent with the evidence in the case generally.

The general ground of appeal is struck out;

[12] The first ground of appeal presented in this appeal is too general that it offends the provisions of Order 43 rules (1) and (2) of *The Civil Procedure Rules* which require a memorandum of appeal to set forth concisely the grounds of the objection to the decision appealed against. Every memorandum of appeal is required to set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative, and the grounds should be numbered consecutively. Properly framed grounds of appeal should specifically point out errors observed in the course of the trial, including the decision, which the appellant believes occasioned a miscarriage of justice. Appellate courts frown upon the practice of advocates setting out general grounds of appeal that allow them to go on a general fishing expedition at the hearing of the appeal hoping to get something they themselves do not know. Such grounds have been struck out numerous times (see for example *Katumba Byaruhanga v. Edward Kyewalabye Musoke, C.A. Civil Appeal No. 2 of 1998; (1999) KALR 621*; *Attorney General v. Florence Baliraine, CA. Civil Appeal No. 79 of 2003*). The ground is accordingly struck out.

Title to land may be acquired by proprietary estoppel;

[13] The second ground of appeal faults the trial Magistrate regarding the manner in which he conducted proceedings at the *locus in quo*. The purpose of a visit to the *locus in quo* has been the subject of numerous decisions among which are; *Fernandes v. Noroniha [1969] EA 506, De Souza v. Uganda [1967] EA 784, Yeseri Waibi v. Edisa Byandala [1982] HCB 28* and *Nsibambi v. Nankya [1980] HCB 81,* in all of which cases the principle has been restated over and over again that the practice of visiting the *locus in quo* is to check on the evidence by the witnesses, and not to fill gaps in their evidence. Since the adjudication and final decision of suits should be made on basis of evidence taken in Court, visits to a *locus in quo* must be limited to an inspection of the specific aspects of the case as canvassed during the oral testimony in court and to testing the evidence on those points only.

[14] The appellants did not advance any specific procedural error that manifested itself during the proceedings conducted at the *locus in quo*. I have re-appraised the proceedings and have not found any. Such a visit is m*eant to verify, convey* and enhance the meaning of the testimony given by the witnesses in court. The record shows that the trial court did exactly that. The court was able to verify the oral testimony of the witnesses and made its observations accordingly. Its findings and the conclusions drawn are supported by the evidence on record. That ground of appeal therefore fails on that account.

[15] That aside, I note that the trial Magistrate did not explain the reasons behind his decision when he wrote his judgment. Giving of reasons is one of the cornerstones of the judicial function and a central aspect of the rule of law (see *Breen v. Amalgamated Engineering Union [1971] 2 QB 175 at 191*). In *Stefan v. General Medical Council [1999] 1 WLR 1293*, Lord Clyde stated as follows: “the advantages of the provision of reasons have often been rehearsed. They relate to the decision making process, in strengthening that process itself, in increasing

the public confidence in it and in the desirability of the disclosure of error where error exists. They relate also to the parties immediately affected by the decision, in enabling them to know the strengths and weaknesses of their respective cases and to facilitate appeal where that course is appropriate." Therefore, parties are entitled to know on what grounds for the decision.

[16] Where no reasons are given it is impossible to tell whether the trial has gone wrong on the law or the facts. The unsuccessful party would be altogether deprived of his or her chance of an appeal unless the appellate Court entertains the appeal based on the lack of reasons itself. Furthermore, the requirement to give reasons concentrates the mind; the resulting decision is much more likely to be soundly based on the material before court than if it is not. The court must enter into the issues canvassed before it and explain why it has preferred one case over the other.

[17] Nevertheless I find that the decision is supported by the evidence adduced before court. It was the appellants' defence that the respondent's father, Constantino Okor was given land to live on temporarily by the first appellant's father Obur Lukobo, following the flooding of his land and that he later vacated the land. But D.W.3 Olanya Lamson testified that respondent's father left behind two of his wives one of whom died thereon in 2014. D.W.4 Oyo Dick too testified that although it is a flood that forced the respondent's father to seek refuge on the first appellant's father's land, the respondent remained on the land even after her father vacated. P.W.2 Abonga Erokulano too testified that the land in dispute was given to the respondent in 1957 by her late father Okot Constantino. This ties in with the testimony of the respondent to the effect that she constructed huts on the land during the 1970s and lived there until the insurgency when she fled into an IDP Camp.

[18] The respondent's long period occupancy is inconsistent with the appellants' argument that her father was given only temporary use of the land. I find that the

evidence on record established that the respondent has been in occupation of the land for over fifty years, interrupted only by the period of insurgency. Her occupation and user for that long is inconsistent with a temporary user of land. It is apparent that the appellants are attempting to deprive her of the land, only because it originally belonged to the first appellant's father who, in her view, gave it to the respondent's only temporarily.

[19] However, in the circumstances of the case, the common law doctrine of proprietary estoppel favours' the respondent's claim. This doctrine has been used to found a claim for a person who is unable to rely on the normal rules concerning the creation or transfer of interest in land, and sometimes enforcement of an interest in land. In *Crabb v. Arun District Council [1976] 1 Ch.183,* Lord Denning explained the basis for the claim as follows: “the basis of this proprietary estoppel, as indeed of promissory estoppel, is the interposition of equity. Equity comes in, true to form, to mitigate the rigours of strict law.” It will prevent a person from insisting on his strict legal rights, whether arising under a contract, or on his title deeds, or by statute, when it would be inequitable for him to do so having regard to the dealings which have taken place between the parties (see *Ramsden v. Dyson (1866) L.R. 1 H.L. 129; Shaw v. Applegate [1977] 1 WLR* 970 and *Taylors Fashions Limited v. Liverpool Victoria Trustees Company Limited [1982] 1 QB 133*).

[20] The equity arising from expenditure on land does not fail merely on the ground that the interest to be secured has not been expressly indicated. The Court must look at the circumstances in each case to decide in what way the equity can be satisfied. The appellants looked on for over fifty years as the respondent established her entire existence on this land as her only home. They acquiesced in standing by and not objecting to her conduct, while knowing of the belief or expectation in which she acted. This is, in my judgment, a case of passive acquiescence by the appellants rather than positive representation, encouragement or promise.

[21] If the owner of land allows another to expend money on the land under an expectation created or encouraged by the landlord that he or she will be able to remain there, that raises an equity in the licensee such as to entitle him or her to stay (see *Inwards v. Baker [1965] 2 QB 29* and *Re Basham [1986] 1 WLR 498*). The occupant acquires a licence coupled with an equity. The equity arising from proprietary estoppel prevents the appellants from asserting their title and attempting to deprive the respondent of the land. Equity protects the respondent in this case so that an injustice may not be perpetrated.

Order :

[22] I find that although he did not give reasons, the trial Magistrate came to the right conclusion. I find no merit in the appeal and it is accordingly dismissed with the costs of the appeal and of the court below being awarded to the respondent.

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Stephen Mubiru

Resident Judge, Gulu

Appearances:

For the appellants : unrepresented.

For the respondent : unrepresented.