

IN THE HIGH COURT OF UGANDA

AT KAMPALA

CIVIL APPEAL NO 75 OF 1970

[Original Civil Appeal No.190 of 1970 of the Chief Magistrate's Court of Mbale at Mbale Before - Mr. M. Saied, Chief Magistrate) At the Session holden at Mbale on the 31st day of May, 1971]

ZABLON OPIOAPPELLANT

V E R S U S

AGNES NYANGEKIRESPONDENT

BEFORE: - THE HONOURABLE MR. JUSTICE P.AP.J. ALLEN

J U D G M E N T:

This is an appeal in a civil suit which has a long history. Because there have been several appeals I shall refer to the appellant as defendant and the respondent as plaintiff. The plaint was filed in August, 1966, nearly eleven years ago in the Grade III magistrate's Court at Iyolwa and the hearing commenced on 13th December, 1966 before that magistrate.

It was a simple land boundary dispute. After hearing the plaintiff and one witness the hearing was adjourned. Eventually, on 10th March, 1967, it was continued, but this time before a magistrate grade II who completed the hearing and gave judgment in favour of the plaintiff on that same day.

The defendant appealed to the Chief Magistrate at Mbale who gave judgment on 14th August, 1968. He ordered a retrial because the hearing in the trial court had been in parts before two magistrates of different grades.

The suit started once again before a different magistrate grade III in 1968 and he gave judgment in favour of the plaintiff on 29th January, 1969. The defendant appealed to the magistrate grade II at Kisoko who reversed the trial court decision in favour of the defendant on 16th June, 1969.

The plaintiff appealed to the Chief Magistrate at Mbale who, in his judgment on 22nd July, 1970, reversed the decision of the first appeal magistrate grade 11 and restored the decision of the trial Magistrate in favour of the plaintiff. Now, after this matter has been before six different magistrates it has come before this court on a third appeal.

At the second trial the plaintiff called six villagers as witnesses including a chief who supported her claim that the boundary between the land of the land was marked by a bulungi bwansi path.

The defendant called two witnesses who said that the land was his. However, he claimed that the two of his sons were living on the disputed land but they did not come to testify.

The trial magistrate carefully considered all the evidence before him and visited the land and drew a clear sketch plan of the area. He believed the plaintiff and her witnesses and he did not accept the evidence of the defendant who was not supported by the immediate neighbours nor by his sons.

The magistrate grade two on the first appeal appeared to have mis-understood the evidence and seriously misdirected himself at least twice.

Once was when the appeal magistrate apparently thought that the plaintiff has said that the defendants son had a shop on his land, whereas she actually said that it was her husband who said that he had built the shop. The second misdirection was when the Magistrate held that there was no evidence that the defendant had instructed his son to build a house on the disputed land where as there was ample evidence of this. I do not think that that the first appeal magistrate read the record of the trial with much understanding.

The chief magistrate, in his long judgment, very carefully reconsidered all the evidence and he agreed with the conclusions reached by the trial Magistrate. I can find no signs of miscarriage of justice in the proceedings and judgment of the trial Magistrate and I agree with the chief Magistrate and that the trial Magistrate clearly misdirected himself and probably and probably he misunderstood the evidence.

Accordingly this appeal is dismissed with costs and the judgment of the trial magistrate in favour of the plaintiff/ respondent is to stand.