

THE REPUBLIC OF UGANDA
IN THE CHIEF MAGISTRATES COURT OF PALLISA AT PALLISA
LAND CIVIL SUIT NO. 005 OF 2022
OBOIRE JOHN JACKSON ::::::::::::::::::::::::::::::::::: PLAINTIFF
VS
OMULE CLEMENT ::::::::::::::::::::::::::::::::::: DEFENDANT

Before: His Worship Kyembe Karim ESQ

Learned Magistrate G.I

JUDGMENT



Introduction:

Obure John Jackson hereinafter referred as the plaintiff instituted this suit by way of a plaint against Omule Clement hereinafter referred as the defendant seeing orders of recovery of the suitland, vacant possession of the suitland, mesne profits and costs of the suit.

Plaintiff's case:

It is the plaintiff's case that in the year, 2000, he mortgaged the suit land to a one, Orita John as security for return of one head of cattle borrowed from the said Orita John. That with the consent of the plaintiff, the defendant redeemed the mortgaged land from the said Orita John in the year, 2005, took possession thereof and continued utilizing the same. That without the knowledge of the plaintiff, the defendant has since erected permanent structures thereon and when confronted by the plaintiff about the acts, the defendant offered to buy out the entire land

from the plaintiff by adding him 5 more heads of cattle as consideration, a promise, the defendant has reneged upon. He thus seeks recovery of the said suitland.

Defendant's case:

The defendant filed a WSD disputing the entire claim. He pleaded facts to the effect that he is the rightful owner of the suitland, having acquired the same by way of purchase from the plaintiff in the year 2001. He denied being party to the said mortgage transaction between the plaintiff and the said Orita John and that he carried out all due diligence and is currently in occupation thereof, having developed the same with a residential house whereof he resides with his family.

Representation:

The plaintiff originally filed the suit through M/S MUKWANA & CO. ADVOCATES while the defendant originally filed defence through M/S T. ODEKE & CO. ADVOCATES. However, during trial, the parties, appeared *pro se* and court exercised due leniency as regards procedure.

Scheduling:

At scheduling, court reserved framing of the issues until later since the parties were unrepresented.

Under **Order 15 Rule 5 of the CPR**, this hon. Court is empowered to amend or strike out some issues.

It provides:

"The court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for

determining the matters in controversy between the parties shall be so made or framed. “

(2) “The court may also at any time before passing a decree strike out any issues that appear to it to be wrongly framed or introduced.”

After hearing the evidence, court therefore found the following issues proper to assist it in the adjudication of this case.

Issues:

1. Who of the parties is the rightful owner of the suitland?
2. Remedies available to the parties.

Evidence adduced:

The plaintiff called a total of 4 witnesses to prove his case. He testified as his first witness and his testimony taken down as Pw1. He told court that the suit land was his inheritance from his father, a one, Olupot Ishmael. That he mortgaged the said land to a one, John Orita as security for a bull he had borrowed in the year 2000. That the said John Orita first held the suitland while utilizing it for 2 years until the defendant together with his father father (*plaintiff's uncle*) delivered up the bull to the said Orita John and redeemed the suitland and started utilizing the same, but mostly, the defendant was the one in active use of the land. That sometime later, in 2007, the plaintiff, while in Kalaki, one of his other homes, he heard that the defendant had erected a permanent house on the suitland, upon which he confronted the defendant maintaining that they only held the land a security and that they had not purchased the same.

That at that point, the plaintiff proposed to the defendants to add him extra 5 heads of cattle, if they wanted to purchase the suitland. The defendant initially agreed to the proposal but later reneged and instead started avoiding the plaintiff. Hence a complaint to the local authorities and subsequently, this suit.

While disputing the evidence of the plaintiff, the defendant called a total of 3 witnesses. He testified as his lead witness and his testimony was taken down as Dw1.

He told court that the plaintiff sold to him the suitland sometime back in August, 2001. That the land indeed originally belonged to the plaintiff's father, a one, Olupot Ishmael who gave it to the plaintiff. That the plaintiff divided the land into two portions, of which he sold the first portion to the defendant in August, 2001 for a consideration of 2 heads of cattle and later in September, 2001, the defendant purchased the remaining portion from the plaintiff at a consideration of one head of cattle and that he handed over the three cows in total satisfaction of the purchase price for both portions. To prove the said sale, he tendered a sale agreement dated 24th August, 2001 and another dated 7th September, 2001. Both agreements were collectively admitted as **PEX1**.

While under cross-examination, this court took judicial notice that Dw1 was acting evasive towards the questions asked by the plaintiff. He testified further that the clan did not have a stamp, that since they are related, they did not see any need to include witnesses on the plaintiff's side, that the person who wrote the agreement picked the National ID number and wrote it on the agreement.

Resolution:

Issue 1: who of the parties is the rightful owner of the Suitland?

This court takes note that it is not a disputed fact that the Suitland originally belonged to the plaintiff having received the same from his father, a one, Olupot Ishmael.

The contentious part is how the same came to be claimed and occupied by defendant.

The plaintiff's evidence is to the effect that:

“...I mortgaged the said land to a one, John Orita as security for a bull I had borrowed in the year 2000. The said John Orita first held the suitland while utilizing it for 2 years until the defendant together with his father father (my uncle) delivered up the bull to the said Orita John and redeemed the suitland and started utilizing the same...”

On the other hand, while the defendant altogether disputes knowledge about any mortgage transactions between Orita John, he maintains that he purchased the suitland from the plaintiff at a consideration of 3 heads of cattle. He testified as Dw1 that:

“...the plaintiff first divided the land into two portions, of which he sold the first portion to me in August, 2001 for a consideration of 2 heads of cattle and later in September, 2001, I also purchased the remaining portion from the plaintiff at a consideration of one head of cattle and I handed over the 3 cows in total satisfaction of the purchase price for both portions...”

The said agreements were collectively admitted as PEX1.

During cross-examination of Pw1, this court on its own initiative took the signature specimen of the plaintiff. I note that the same was totally different from the signature in PEX1 being attributed to the plaintiff.

Coupled with the evasive demeanor of the defendant while testifying as Dw1, this court also observed that the alleged witnesses who were listed on the sale agreement appear to have been written in the same handwriting and later, scribbled signatures appended thereto against those names.

If these witnesses were unable to write down their names, how probable is it that they knew how to sign?!

While answering a question in regard to the national ID, the defendant testifying as Dw1 told court that:

“...that the person who wrote the agreement picked the National ID number and wrote it on the agreement...”

This court takes judicial notice of the fact that by the year, 2001 when the alleged sale agreements were concluded, the registration of persons under the National ID system had not yet commenced!!

The defendant's own witness **Dw3- Omunyokol Steven** testified that he was present at the time of execution of the agreements, before the defendant uncharacteristically interrupted him stating that by that time he was in prison!!

Under **Section 2** of the Evidence Act Cap 8

*“evidence” denotes the means by which any alleged matter of fact, the truth of which is submitted to investigation, is proved or disproved and includes testimonies by accused persons, admissions, **judicial notice**, presumptions of law and ocular observation by the court in its judicial capacity. [Bolding & underlining added for emphasis]*

As it has been an undisputed fact that the land originally belonged to the plaintiff, defendant is burdened with the requirement to furnish proof under **Section 101** of the Evidence Act to the effect that he purchased the same. From the evaluation of evidence above, this court finds it difficult to agree with the defendant’s evidence of alleged purchase.

While he claimed to have buried his deceased relatives on the suitland to prove ownership, this court finds the evidence of the plaintiff more believable that he was only permitted to do so after misrepresenting that he was going to purchase the same, a purchase that eventually failed to materialize.

As for the construction of permanent structures thereon, it was the evidence of the plaintiff that the same was effected in his absence while he had gone to his other home.

Under **Section 28** of *The Evidence Act*, cap 8, Laws of Uganda, 2023 revised edition admissions are not conclusive proof but they create an *estoppel* against the party admitting the same.

Having admitted the plaintiff was the original owner, the defendant is estopped from denying the same and the plaintiff is duly discharged

under **Sections 28 and 57 of *The Evidence Act* cap 8, Laws of Uganda, 2023 revised edition** from adducing any further proof thereof.

For all those reasons above, it is the finding of this court that the plaintiff has proven on a balance of probabilities that he is the rightful owner of the suitland.

This court will re-echo the settled principle that ***“Once a mortgage, always a mortgage”***

Accordingly, **Issue 1**, is resolved in favour of the plaintiff.

Issue 2: What remedies available to the parties.

As **issue 1** has been resolved in favour of the plaintiff, I make the following orders in conclusion.


1. A declaration doth issue that the plaintiff is the rightful owner of the suitland and is entitled to recover the same.
2. The plaintiff is indebted to the defendant 1 bull paid to Orita John to redeem the suitland.
3. Vacant possession is hereby ordered against the defendant over the undeveloped portion of the Suitland.
4. No orders of eviction or demolition are granted, since, none were pleaded.
5. The peace of the deceased has to be protected by this court. In **Mpumwire Magambo Vs Amanda Magambo HCT-05-CV-MA-0293-2023**, whereof **Hon. Justice Nshimye Allan Paul M** declined exhumation for purposes of conducting a DNA test.
 - For similar reasons, it is the order of this court that the developed portion of the suitland together with the defendant’s

relatives' grave yards shall be surveyed off, valued by a government valuer and that money value be paid to the plaintiff as consideration and thereupon, he will have no further claim thereof.

6. Each party shall bear its own costs.

I so order.

Dated at PALLISA this19th....day ofJUNE.....2025

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HIS WORSHIP KYEMBE KARIM

MAGISTRATE GRADE 1