

UGANDA / JUDGMENT

Palam Sub-County & 2 Others v Akareut (Civil Appeal 5 of 2023) [2024] UGHC 188 (9 April 2024) [2024] UGHC 188

COURT

High Court of Uganda

BEFORE

Adonyo, J

CASE / FILE NUMBER

Civil Appeal 5 of 2023

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The Republic of Uganda

In the High Court of Uganda at Soroti

Civil Appeal No. 0005 of 2023

(Arising from Katakwi Civil Suit No. 0029 of 2018)

1. Palam Sub County 10 2. Ocole Robert **Appellants** 3. Angiro George William

Versus

Akareut Jennifer Anukur :::::::::::::::::::: 15

(Appeal from the judgement and orders of the Chief Magistrates Court of Katakwi at Katakwi delivered on the 6th of December 2022 by Her Worship Abalo Agnes Oneka Magistrate Grade One)

Before: Hon. Justice Dr Henry Peter Adonyo

Judgement on appeal

1. Introduction:

This appeal arises from the judgement and orders of the Chief Magistrates Court of Katakwi at Katakwi delivered on the 6th of December 2022 by Her Worship 25 Abalo Agnes Oneka Magistrate Grade One.

\$5\$

2. Background: \$5\$

Akareut Jennifer Anukur, the respondent filed Civil Suit No. 29 of 2018 against Palam Subcounty, Ocole Robert and Angiuro George William, the appellants for a declaration that eighty (80) gardens situated in Amoruongora village, Ngariam parish, Palam sub county in Katakwi District belongs to her, a permanent injunction and costs of the suit.

Her claim was that the late Eria Anukur her father in his lifetime had land measuring about eighty (80) gardens situated in Amoruongora village which he acquired in the 1930s as a gift inter vivos from the elders in the area.

That the late Eria Anukur utilised the suit land undisturbed save for around 1966 when he litigated with the late Osele in Ngariam Magistrates Court and 15 judgement was entered in favour of late Eria Anukur.

That Osele was not satisfied with the said judgment and thus then appealed to the Soroti Chief Magistrates Court but judgment was still entered in Eria Anukur's favour.

That subsequently the late Eria Anukur occupied the suit land undisturbed until 20 his death in 1990.

That after the death of the late Eria Anukur, the respondent's eldest brother called Hosea Olupot was elected by their clan as heir to Eria Anukur's estate and he was later issued letters of administration on the 16th day of November 2000.

That during this process Hosea Olupot was introduced to the Chief Magistrate by 25 Ocole Robert, the 2nd appellant who was then the Parish LC II chairperson of the area.

That around in January 2013, the 2nd appellant turned and convened a meeting on the respondent's family land attended by over 100 people and purported that

the respondent and her family members should vacate the suit land because the $\$$ same allegedly belongs to Palam subcounty, the 1st appellant.

That also in February 2017, Ocole Robert, the 2nd appellant mediated a misunderstanding over a cattle path between the respondent's brother Anukur Denis and one Ekeu Michael over the suit land.

- That similarly, Angiuro George William, the 3rd appellant on his own volition 10 attacked the respondent claiming the suit land in May 2018 was his whereas not. The appellants in their written statements of defence denied the above allegations contending that the suit land was government land which was given/donated to the government by Late Saulo Omerileng, Late Ekuba, Ogwang
- Stephen, Late Yokana Ikara and Angiro Enock and the 1st appellant's predecessors 15 who through their agents had been in occupation and or use of the suit land from the time it was lawfully given or obtained.

That the suit land was the property of the 1st appellant and it was lawfully given to it.

That the late Anukur Eria came to the suit land as a government worker (parish 20 chief) only but never owned the suit land.

The trial magistrate heard the matter to its conclusion and thereafter entered judgement in favour of the plaintiff, now respondent and issued the following declarations and orders;

- a) The plaintiff is declared the lawful owner of the suit land located in 25 Amoruongora village, Ngariam parish, Palam Sub county in Katakwi District.
- b) A permanent injunction is issued restraining the defendants, and their assignees/legal representatives or anyone claiming through them from trespassing on the suit land forthwith.

- c) The plaintiff is awarded general damages of Ugshs. 7,000,000/= (Seven \$ S \$ Million shillings).
- d) Costs of the suit awarded to the plaintiff.

The appellants dissatisfied with the above judgment and orders appealed to this court on the following grounds:

- 10 1. The Trial Magistrate erred in law and fact when she failed to properly evaluate the evidence on the record thus arriving at an erroneous decision that the suit land is property of the Respondent.
- 2. The Trial Magistrate erred in law and fact when she misdirected herself on the law on contradiction in evidence.
- 3. The Trial Magistrate erred in law and fact when she ruled that the appellants' 15 witnesses during the locus visit failed to show court the Parish and sub parish land and the land for the \$1\$st appellant.
- 4. That the Trial Magistrate erred in law and fact when she treated the evidence of the respondent (plaintiff) in isolation of that of the appellants (defendants).
- 5. The Trial Magistrate erred in law and fact when she awarded exorbitant sum of money to the respondent in form of General damages though not proved.
- 6. The Trial Magistrate erred in law and fact by granting/making orders not pleaded for by the respondent.
- 3. Duty of the \$1^{\text{st}}\$ appellate court: 25

This Honourable Court is the first appellate court in respect of the dispute between the parties herein and is obligated by law to re-hear the case which was before the lower trial court by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and to re-appraise the same before

coming to its own conclusion as was held in *Father Nanensio Begumisa and Three Others v. Eric Tiberaga* scca 17 of 2000; [2004] KALR 236.

In rehearing afresh, a case which was before a lower trial court, this appellate court is required to make due allowance for the fact that it has neither seen nor heard the witnesses and where it finds conflicting evidence, then it must weigh

such evidence accordingly, draw its inferences and make its own conclusions. 10 See: *Lovinsa Nakya vs. Nsibambi* [1980] HCB 81.

The duty of the first appellate court was well stated by the Supreme Court of Uganda in its milestone decision in *Kifamunte Henry Vs Uganda, SC, (Cr) Appeal No. 10 of 2007* where it held that;

"...the first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate Court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it"

In resolving this appeal, the above legal provisions are taken into account.

4. Representation: 20

The appellants were represented by the Attorney General's Chambers Soroti while the respondent was represented by M/s Obore & Co. Advocates.

This matter proceeded by way of written submissions. Counsel for the respondent in his submissions, however, pointed out that the appellants never served him with their submissions. Indeed, there is no proof of service by way of affidavit of service on record.

For this reason, the respondent's submissions are not in reply to the appellants' submissions rather Counsel's own perception of the grounds of appeal. I have

- thus decided to consider only the submissions of counsel for the appellants given \$ \mathsf{S} \$ this situation.

- 5. Determination of Appeal:

Ground 1:

The Trial Magistrate erred in law and fact when she failed to properly evaluate the evidence on the record thus arriving at an erroneous decision that the suit 10 land is property of the Respondent.

a) Submissions by Counsel for the Appellants:

Counsel for the appellant submitted that there was no evidence which the trial magistrate based on to declare that the respondent is the owner of the suit land.

That the respondent sued the appellants in her personal capacity as the owner 15 of the suit land and did not sue as a beneficiary or administrator of the estate of the late Eria Anukur.

That since the respondent pleaded for a declaration that 80 gardens belonged to her she was supposed to bring evidence showing she acquired the suit land or

had proof of ownership of the same as pleaded but she did not do so. Though 20 her evidence and those of her witnesses indicated that the suit land was for the late Eria Anukur.

Counsel further submitted that even if the respondent was to claim that the suit land was the late Eria Anukur, the law on inheritance of property of a deceased person was clear and must be followed for a person to claim ownership by inheritance.

That section 191 of the Succession Act is clear on the devolution of the estate upon the death of its owner making the claim of ownership of the suit land by the respondent questionable.

Counsel additionally submitted that the respondent did not lead any evidence to $\$ \{S\} \$$ show how Eria Anukur acquired the suit land in 1930s. That she also did not show how she acquired the suit land from her late father and as such section 191 of the Succession Act was not adhered with.

That the respondent's claim of ownership depended on proof of title in customary inheritance which she failed to establish. 10

Counsel submitted that the appellant led evidence showing that the suit land was for the 1st appellant, which evidence pointed to the persons who gave the Government land.

That the appellants also led evidence that the late Anukur was just a neighbour to the suit land and when he passed on, the respondent without any right started 15 cultivating government land claiming it as her own.

b) Evidence on record:

The respondent testifying as PW1 testified that her father the late Eria Anukur moved to the suit land in 1930s, his mother died in 1950 and was buried on the

- suit land. That the late Anukur moved to the suit land when he was a veterinary 20 officer and he retired in 1952, he then became a parish chief of Paakwi parish in Ngariam sub county. That she was born on the suit land in 1954 and her father stayed on the land in dispute. That her father was later transferred to Ngariam as parish chief in 1963.
- That in 1966 he had a problem on the suit land on the eastern side and he sued 25 in Ngariam court and won and the matter was appealed to the court in Soroti and her father still won and in 1968 the land was handed over to her father and its where they are digging up to today.

That they were not disturbed and enjoyed quiet possession until around 1979 to 1982 when her father fled the suit land due to insurgency and the land became a camp for IDPs, even government troops stayed on the same.

That her father later opted to go back to his home which was on the suit land where he died in 1990 and was buried on the same.

Her brother Olupot Kosia took over from her late father as he was chosen by the 10 clan and got letters of administration on the 16th November 2000. Olupot Kosia passed on in December 2000 after acquiring letters and she took over after Olupot's death.

During cross-examination she stated that her father acquired the suit land in 1930 from his uncle Ikar Oduchu and a friend. She was not present but was told. 15 She stated that she does not have Letters of administration but she is a beneficiary and daughter of the late Eria Anukur. That there is no parish chief who stayed on the suit land and she does not know whether Ngariam parish had land, she does not share a boundary with parish land.

- PW2 Remegius I. S Oyoit testified that the respondent is the daughter of the late 20 Anukur Eria. In 1964 he was appointed as Magistrate G. III and posted at Katakwi, in 1966 and there was a civil suit between the late Anukur Eria and Osele Esekia over land in Amoruongora village which he presided over with the Eria Anukur winning the same. That Osele appealed to the Chief Magistrate Soroti (H/w Zaid)
- but still Anukur Eria won the appeal in 1967 or 1968 and he continued to occupy 25 his land.

That later his law firm helped Olupot Kosia the brother of the respondent to get Letters of administration for the estate of the late Eria Anukur without any problem at all.

During cross-examination he stated that the suit before him was between Eria Anukur and Osele Esekia with Ngariam sub county not a party.

He confirmed that the land in dispute belonged to Eria Anukur who was given the suit land by some elders which facts he came to know while hearing a case between Anukur Eria and Osele Esekia which Anukur won.

PW3 Okedi Nelson testified that in 1950-1951 he studied in Ngariam Vernacular Primary School and he could move with the late Ekude to Anukur's home which was in Amoruongora and which was situated on the disputed land.

That Anukur Eria told him that he was given the land by one Yokana Ikar and that After the later Anukur's death, his daughter utilised the suit land. He does not

recall the year his sister married the late Anukur but he used to visit them on the 15 suit land.

During cross-examination he stated that Eria Anukur was his in-law and not a friend who informed him on how he acquired the suit land through Yokana Ikar though he was not present when it happened.

That the parish was given land at Oliangoi which a place between old Ngariam 20 and new Ngariam and that Oliangoi was not near Amoruongora.

PW4 Gaster Amaikori testified that the disputed land belonged to Eria Anukur. That Eria Anukur received him in his home in situated on the suit land in 1954 and he had seen Eria's children cultivating the suit land for over 68 years.

He has also seen Anukur's family on the land since 1954 during which the sub 25 county had never claimed any ownership of the same.

During cross-examination he stated that he came to know Eria Anukur in 1954 when he was taken to study Ngariam and he was living in Anukur's home. That when he joined Anukur's home, Anukur was a veterinary officer. He further told

court that he heard that Anukur was once taken to Paakwi as a parish chief but \$5\$ the suit land was in Palam.

That he stayed in Anukur's home for six years and Osauro was a neighbour. He has never seen any parish chief utilising the suit land as a public land.

PW5 Akiteng Margaret testified that the suit land belonged to Yokana Ikar her grandfather who occupied the suit land. That Yokana Ikar was an uncle to Anukur 10 and it was Anukur utilising the land.

That the respondent has been utilising the suit land by cultivating it and it does not belong to Palam sub county.

During cross-examination she stated that Anukur got the suit land from her grandfather Yokana Ikar and that she got married on the suit land in 1950 and by 15 this time Yokana Ikar had already given Eria Anukur the suit land and no parish chief has lived in Amoruongora and that the suit land did not belong to Osauro and he never donated it to Palam sub county.

DW1 Angiro George William testified that the respondent is claiming government land to be her property. That he heard from his two late fathers that the land 20 belongs to the government and he grew up knowing that.

That Mzee Osauro Omerile gave government the suit land in 1951 as it was first given to the sub-parish then to the parish in 1952 and the parish chiefs Anukur and Ogogoro utilised the same as government land.

That there was no activity done on the government land apart from cultivation. 25 He stated that he knew Eria Anukur as a veterinary officer staying in Ngariam centre and he got transferred to Amoruongora where he was received and settled.

During cross-examination he stated that he sold the respondent land in 2013. He \$\mathsf{S}\$ stated that the documents for the suit land were given to the parish chief not him an ordinary person in the community and there are no government structures on the suit land.

DW2 Amongin Silista testified that the suit land belonged to her husband Saulo Omerileng who gave it to the government and that he even showed her the 10 boundaries but she does not remember the year when.

She added that it was only Saulo Omerileng who gave land to the government. That the suit land was free and not being used till later when the respondent brought prisoners to dig it and that she used to plough the land near the sub county and no one was using it.

That Anukur's ancestral home was Palam which was 4 miles from the suit land. During cross-examination she stated that Anukur Eria was not on government land but on his own land and this is where he was buried and he was neighbouring government land. That when she got married she found Eria Anukur on his portion but did not know the size of Anukur's and that of the government's land. She added that her husband did not show her any document to show that land was given to the government. She also stated that there are no structures on the said government land.

DW3 Ocole Robert testified that the suit land was for the government and was given to it by Osauro Omerileng, Onagu Amos and Ekuba. That he was told this fact by his father the late Odeke Samson.

During cross-examination he stated that there are old homesteads and jinga trees on the suit land and when he was born he found Eria Anukur settled on the suit

land. That he found a document to that effect with LC III and had even moved $\$$ around the boundary.

He admitted to authoring the letter introducing the respondent's brother to the Chief Magistrate court when he was processing letters of administration (PExh3) and settling a dispute between the respondent's brother and Ekeu.

He claimed that in 2001 the Anukur family was living where Anukur died and not $\$10$ on parish land.

During re-examination he stated that the sub-parish had never raised any complaint and the respondent's family had stayed on the suit land for long.

DW4 Koluo Filbert testified that the suit land belonged to the government and that he heard from Osauro that he gave government the suit land.

That he was a parish chief between 1992 to 1995 and he used the suit land to plant ground nuts and cassava. He stated that he knew Eria Anukur who was a parish chief of Ngariam and that he had built his home on the suit land and that his home was still there.

That when Eria Anukur was transferred as a parish chief is when he came to stay 20 on the land and the Anukur family have been on the suit land for almost 20 years. During cross-examination he stated that he first saw Anukur in 1958 on the suit land and he was not a parish chief. He does not have any document showing that the suit land was government land and there were no visible government structures on the suit land. He has never visited the suit land. 25

DW5 Operemo Yafesi testified that he knows that respondent, she got the suit land from her father Eria Anukur who was its owner. He also states that the land was for government and Eria Anukur only used it in 1955 while he was a parish chief for more than 10 years and that is where he was buried.

That the parish divided the land between the parish and sub-parish and there was $\$$ a boundary between the two with Eria Anukur occupying the parish side and the current dispute is on the sub-parish part where Anukur did not occupy.

During cross-examination he stated that he knew of the 80 gardens in dispute and that it was Eria Anukur's family which was using them and that the sub county

was not using any portion of the suit land. That the parish land was also 80 10 gardens and sub-parish land 12 gardens with a boundary separating the two.

DW6 Abwalamere Gusberito testified that the suit land is government land which it acquired in 1952 from Osauro Omerileng and he was present at the age of 15 and government used the land.

- That the respondent began using the land in 1988 though Anukur Eria was a 15 parish chief in the area in 1962 and used the suit land up to 1967 which government land and was buried there though his ancestral home is about 3 kilometres away from the suit land. That he came to that the respondent had begun using the suit land in 2004.
- During cross-examination he stated that he does not know about 80 gardens, he 20 knows Eria and he saw him in 1961, came to the suit land in 1962 and that is where he is buried together with his wives and children. He added that the documents of the suit land are at the sub-county.

DW7 Akwi Sofia the sub county parish chief of Palam Sub county testified that the suit land belongs to the government and it was handed over to her as part of 25 the properties of Ngariam sub county. That she learnt that the sub county acquired the land from the late Osauro but she did not get any document to prove the fact.

During cross-examination she testified that she has not estimated the size of the $\$$ suit land and that she did not find any title showing that the suit land is government land and she does not know the history surrounding the land.

She further stated that it is the respondent using the land and not the sub county and that she was not taken to inspect the suit land.

The trial court visited locus on the 16th of September 2022 and court observed 7 \$10\$ homesteads with 5 permanent houses and 14 grass thatched houses. There were also 34 graves on the suit land. There were gardens of food crops and the land was indeed 80 gardens.

The court further found that it was the family of the late Eria Anukur which was in occupation and not the sub county.

The Court also noted that the representative for the 1st appellant as well as the 2nd and 3rd appellant did not attend the *locus in quo* visit.

In fact, the attendance sheet indicates further that none of the appellants' witnesses appeared at the *locus in quo*.

- The records further indicate that another locus in quo visit was conducted on the 20th of October 2022 with all parties being present. Two grave yards were found on the suit land and a sketch map of the suit land was drawn indicating the two graves yards with the 1st graveyard having 20 cemented graves, the 2nd graveyard having 17 graves.
- Both the graveyards were found to be for the respondent's relatives. There were 25 also old permanent structures belonging to the respondent's family with the respondent's brother having a homestead there as well as gardens belonging to the respondent.

The suit land was neighboured by Soroti-Moroto highway to the north, old cattle $\$$ path to the east, Ikara Yokana, Ocakan and Onyait to the south and Acucu-Atira road to the west.

The sketch map drawn at locus indicated that the suit land was neighboured to the south by Ikar Oduc, Opeitum, Ocakani John to the north a road, to the east was the Moroto-Soroti road and the west the Atiira-Peder road.

PExh1 was exhibited being a copy of letters of administration given to Hosea Olupot in respect of the late Eria's estate on the 16th day of November 2000.

PExh3 is a copy of the letter authored by the 2nd appellant in his capacity as LC I chairman Amoruongora village to the Chief Magistrates Court Soroti dated 2nd

October 2000 introducing Hosea Olupot, the eldest son of Eria Anukur, who was 15 seeking for letters of administration in court. Therein Hosea is recommended to be granted letters of administration over his father's estate.

PExh4 dated 28th February 2017 is a document regarding the settling of a boundary of a cattle path between Anukur Denis and Ekeu Michael authored by the 2nd appellant in his capacity as LCII Chairperson Ngariam parish.

The locus map indicated that this cattle path as the neighbour to the suit land to the east, meaning when the 2nd appellant settled the dispute over the cattle path between the respondent's brother and Ekeu and it was still the same suit land in this matter.

From the evidence above I find that Eria's presence on the suit land for a very 25 long time is not in dispute.

It is also not in dispute that there are no government structures on the suit land and no proof was led that the government was ever in possession of the suit land

or that it ever contested Eria's long possession of the suit land prior to 2013 when S the respondent claimed they asked them to vacate the same.

The respondent claimed her father was given the suit land as far back as the 1930s and settled thereon peacefully till 1966 when he got involved in a dispute with one Osele which dispute was resolved in his favour.

Thereafter, there is no other claims laid on the suit land till after his death when 10 the sub-county then began claiming the land.

The granddaughter of the late Yokana testifying as PW5 stated that her grandfather who was an uncle to Eria gave him the suit land and by the time she got married in 1950, Eria was already on the suit land, utilising the same.

PW2 handled the dispute between Eria and Osele. He also stated that during the 15 hearing it was made known that Eria was given the land by elders.

PW3 an in-law to the late Eria stated that he used to visit the late Eria on the suit land and by 1950 he was already established on the suit land.

The same testimony is made by PW4 who told court that he stayed in Eria's home which was on the suit land for six years starting from 1954. 20

The appellants also admitted Eria's long possession of the suit land with DW2 the wife to Osauro who was 80 at the time of hearing stated that when she got married the late Eria was already on the suit land.

DW3 who was 56 at the time of hearing said when he was born he found Eria on the suit land. DW4 claimed he first saw Eria on the suit land in 1958. 25

All the above evidence clearly proves that the late Eria was on the suit land at least by 1950 when he had settled on the suit land.

More so, this occupation was never challenged by the sub county authorities and S this could only be because they fully aware the suit land was not government land.

The appellants and their witnesses tried to pin this settlement to the late Eria being a parish chief, however, I find no evidence attached to this claim and so that assertion cannot stand.

The respondent and her witnesses in the lower trial court all stated that the late Eria was first a veterinary officer and by the time he was a veterinary officer he was already settled on the suit land and that it was after his retirement in 1952 that he became a parish chief.

This evidence was not rebutted by the appellants. Further, the evidence on 15 record show that when the late Eria became a parish chief his first posting was to Paakwi which is different from Ngariam.

That he was later then transferred to Ngariam as parish chief in 1963. This piece of evidence was not also not rebutted by the appellants.

The appellants claimed that Eria only came to the land as parish chief and other 20 parish chiefs before and after him had used the suit land as well. This assertion was not substantiated by any evidence on record.

Firstly, as noted above the late Eria was on the suit land before he became a parish chief.

Secondly, if indeed the land was occupied by parish chiefs why is it that none of 25 the respondent's witnesses ever saw any parish chief staying in Amoruongora village where the suit land is located?

Thirdly, if indeed the land was for parish chiefs why was the late Eria left to stay $\$$ on the land undisturbed and even buried his relatives on the same undisturbed yet there were other parish chiefs after him?

The only truthful answer to all this is that the suit land was never for the sub county as is being alleged.

The next question raised by the appellants' pleadings and evidence is whether 10 the suit land was government land.

The appellants in their pleadings stated that the suit land was government land which was given/donated to the government by Late Saulo Omerileng, Late Ekuba, Ogwang Stephen, Late Yokana Ikara and Angiro Enock and the 1st

appellant's predecessors through their agents have been in occupation and or 15 use of the suit land from the time it was lawfully given or obtained.

First as noted above it was not proved that any of the 1st appellant's agents ever used the suit land.

The evidence on record shows that only Eria and his family utilised the suit land

and that there were no government structures there on meaning the 1st appellant 20 has never been in occupation of the suit land.

Regarding the donation, the appellants in their pleadings stated that the land was donated by Late Saulo Omerileng, Late Ekuba, Ogwang Stephen, Late Yokana Ikara and Angiro Enock.

25 In evidence this changed with DW1, DW2, DW4 and DW6 all stating that it was only Osauro who gave government this land.

While DW3 stated that the land was given to government by Osauro, Onagu Amos and Ekuba, DW5 stated that it was given by Osauro, Amos Onagu and Opeitum Zurubaberi.

Their statements clearly had latent contradictions as to who gave government $\$$ the suit land and these contradictions were never explained to court clearly pointing to misrepresentations in the appellants' case.

On the other hand, DW2 who was the wife to Osauro stated that her husband alone donated the land to the government and he even showed her the boundaries but she could not remember when.

She even never saw any document indicating that her husband had given the government land and she was even not knowledgeable on the size of the suit land or whether it was different from government land. She did not indicate anywhere in her testimony that she witnessed this transaction.

- It is worth noting that all the appellants' witnesses save for the DW6 claimed they 15 learnt of this donation through elders whose names were never mentioned and others claimed that it was Osauro himself that told them he donated the land. DW6 claimed he was present in 1952 aged 15 when land was given to the government by Osauro.
- DW6 was 75 at the time he testified in court in 2022 making his year of birth 20 1947. This would mean that by 1952 when the land was allegedly donated he was approximately 5 years old and not 15 as claimed.

That DW6 was merely 5 years old and yet he tried to is falsely up his age to 15 makes his testimony untrue and false.

Furthermore, the untruthfulness of the appellants' witnesses' testimonies is 25 found to be further exacerbated by their testifying to varying sizes of the suit land.

While DW1 stated that the land was 55 gardens. DW2 did not know its size. DW3 on the other hand said it was 20 gardens while DW4 stated that it was between

25 to 30 gardens. DW5 stated it was 12 gardens. DW6 that it was 18 to 20 gardens $\$$ and DW7 that it was 20 gardens. There was no consensus among these witnesses as to the size of the suit land making their testimonies in this regard contradictory.

This contradiction cannot be taken lightly given the fact that the appellants were claiming land on which they allege was theirs yet the evidence show that late Eria 10 and his family had settled on it for over 60 years but they could not even identify the land they claim same by its size alone.

This is because if indeed the land was donated to Palam sub county then its details would not vary and would be clear to not only the sub county officials but to all persons within the community.

The appellants and their witnesses further were also not clear on the neighbours to the suit land. While DW1 stated the neighbours to the suit land were Osauro, Olede and Ilakit, DW2 told court that it was Angiro, Amos, Ocom to the west, Ilakit, Ekuba to the east, Yokana Ikar, Opeitum, Anguria to the north and Osauro.

- DW3 on the other hand said it was in the west Angiro and Oduc George, in the 20 east Ekuba, Otim, Okwi, Ocakan and DW2. On the other hand, DW4 told court that in the east was Ogwang Stephen, the west was Amos Onangu, in the south Osauro and in the north, the road from Katakwi to Moroto while DW5 told court that the land had in the west Amos Onangu, in the south Zurubaberi Opeitum, in the north Moroto-Soroti road. Finally, DW6 told court that Soroti-Moroto road
- 25 was to the north of the suit land while in the south was Osauro and in the west was Angiro.

These assertions would not be in issue if at locus in quo court had seen all these persons as neighbours to the suit land regardless of direction they were in,

however, the drawn locus map on record shows that the suit land is neighboured $\$ \backslash \mathrm{mathsf{S}} \$$ by a road to the north, Atiira-Peder road to the west, Ikar, Oduc, Opeitum and Ocakani to the north and Soroti-Moroto road to the east.

This means that all the other alleged neighbours, save for those seen at locus were simply the imaginations of the appellants' witnesses with no proof that their

neighbouring the land. This poses more suspicions on the appellants claim to the 10 suit land.

Also the second locus visit also found similar boundaries; to wit; Soroti-Moroto highway to the north, old cattle path to the east, Ikara Yokana, Ocakan and Onyait to the south and Acucu-Atira road to the west.

- Given the fact that none of the maps drawn at locus indicated the neighbours as 15 claimed by the defendants; especially the presence of Osauro, Aringo and Ekuda who the appellants claimed gave the suit land to the government, then it is my conclusion that the claim of the appellants to the suit land was defeated by their own lies.
- 20 The appellants thus failed to prove that the land was government's and that it was donated to it by the named persons as no witness to that transaction was brought in court to prove the same and none of the people they named were found to be neighbours to the suit land. Thus in absence of any concrete evidence to that fact, the appellants' claims jointly fail.

- 25 Also the appellants' claims were further defeated by their failure to agree to the size of the alleged land donated, by whom it was donated and its location. All these were not proved and are questionable.

It also did not escape my attention that the appellants in their pleadings neglected to plead the year when the land was allegedly given to them and only

two witnesses tried to bring this year in their evidence of which I have already $\$ \backslash \mathrm{mathsf{S}} \}$ found that of DW6's to be untruthful while that of DW1 was also not substantiated or corroborated by any other witness since he failed to mention who informed him that the suit land was donated in 1951.

In conclusion, therefore, I find that there is clear un rebutted evidence on record that the late Eria Anukur utilised the suit land free from any contention with the \$10\$ sub county making any claim that the sub county of Palam acquired the suit land as a donation failing for want of proof as the evidence on record show on a balance of probability that the suit land was occupied and owned by the late Eria Anukur without any contention at all.

Counsel for the appellant focused his submissions on the fact that the respondent 15 is not a holder of letters of administration to the estate of the late Eria and as such could not make a claim for the suit land.

I do take note of this assertion, however, the most telling fact is that the appellants and their witnesses did not dispute that the respondent was a daughter to the late Eria and its from him that she got the suit land. The respondent clearly acted as a beneficiary to her father's estate and stated as much in her evidence.

Section 191 of the Succession Act provides for the right to intestate's property, when established, it states that;

Except as hereafter provided, but subject to section 4 of the Administrator 25 General's Act, no right to any part of the property of a person who has died intestate shall be established in any court of justice, unless letters of administration have first been granted by a court of competent jurisdiction.

It is trite law that property of a deceased person cannot be dealt with or $\$ \backslash \overline{\{5\}} \}$ otherwise transferred without the grant of letters of administration.

However, as noted in *Dr Diana Kazira v Rwanchwende and Another* (Civil Appeal 81 of 2020) 2023 UGCA 298, while the above assertion is true but does not vitiate the rights of the beneficiaries of an estate.

The respondent being a daughter to the late Eria had the right as a beneficiary to 10 his estate to the suit land.

I note that she did not use the term beneficiary in her pleadings and this is what Counsel for the appellant has focused his submissions on, however, she did state in her evidence and the appellants and their witnesses also stated that she is the

daughter of Eria and that it is through him that she got the land. 15

The respondent's equitable interest in the suit land as a beneficiary to the estate of the late Eria cannot be ignored by court especially given the evidence above that the suit land belonged to him.

This court having analysed the evidence on record has clearly found that the trial court rightly found that the suit land to belong to the late Eria Anukur on a 20 balance of probabilities with the absence of letters of administration by the respondent not diminishing the respondent's interest in the suit land that would magically turn ownership of the suit land to the appellants. Ground 1 accordingly fails.

Having found the above thus, I would vary the trial court's declaration in its 25 judgment to read that the suit land is declared to form part of the estate of the late *Eria Anukur father to the respondent.* The respondent is advised to acquire letters of administration so as to rightfully deal in the suit land.

- I will not further delve into grounds 2 to 5 which have been covered in the S determination of ground 1 and as such they similarly fail.
- c) Ground 6: $\frac{1}{2}$

The Trial Magistrate erred in law and fact by granting/making orders not pleaded for by the respondent.

Counsel for the appellants submitted that the award of 7 million shillings to the 10 respondent by the trial magistrate was not only excessive but erroneous as it was not proved by the respondent during trial and there was no formula to justify how the award was calculated.

The trial magistrate in her judgment cited Kibimba Rice Co. Ltd vs Umar Salim

[1992] V KALR 17 wherein it was found that a party is entitled to general damages 15 without proof of the same as they are presumed to have naturally resulted from the breach of duty.

She then stated that considering the circumstances of the case, it is not unreasonable to say that the plaintiff naturally suffered a loss owing to the appellants' actions.

That the period the respondent had spent in court and the expenses of prosecuting the suit, the respondent must have suffered pain, inconvenience and thus should be awarded general damages. It was upon the above assumptions that the trial magistrate awarded the respondent general damages of 7 million

shillings. 25

It is trite law that damages are the direct probable consequences of the act complained of.

An appellate court, however, may interfere with the award of damages where the trial court in assessing the damages took into consideration an irrelevant

factor, failed to take into account relevant factors, or otherwise applied the $\$S$ wrong principle of law.

The appellate court may also interfere where the amount awarded is inordinately low or high that it is a wholly erroneous estimate of damage suffered.

The fundamental principle for award of damages is **restitutio integrum** which means that the plaintiff is to be restored as nearly as possible to a position she 10 would have been at had the injury not occurred.

The general rule regarding the measure of general damages is that the award is such a sum of money that will put the party who has been injured or who has suffered as adjudged by Court in the same position as he or she would have been

15 had he or she not sustained the wrong for which he or she is getting the compensation. (Kabandize & 21 Ors v Kampala Capital City Authority (Civil Appeal No. 36 of 2016) [2019] UGCA 48)

In the present case while the respondent family had been on the suit land for many years within the knowledge of the sub county only for the same to turn around and claim the land as their own asking the respondent and her family to

vacate the same. These actions resulted into the civil suit before the lower court and now this appeal.

I find that the appellants did not largely inconvenience the respondent and her family who are beneficiaries to the estate of the late Eria wherein the suit land falls.

The appellants only sought to uproot the late Eria's family from the suit land which they had known and used as home as far back as 1950 without any proper claim to the same, especially given the fact the late Eria's occupation of the suit land was within their knowledge and they never once disputed the same.

This trying to assert interests in the land is not the same as having made the $\$S$ respondent to suffer given the fact that the late Eria's family continued to be in possession of the suit land throughout even if there was the threat of eviction by the appellants which hanged over their heads.

Given the circumstances I would find that the award of general damages of Ug. shs. 7,000,000/= (Seven million Uganda shillings) by the trial court was uncalled 10 for and as such I would set it aside as not being necessary. This ground thus succeeds.

6. Conclusion:

This appeal fails in large part and succeeds only in the area of the award of general damages. 15

Since it largely fails, it is dismissed for lack of merit with costs to the respondent. The judgement and orders of the lower court are upheld with the following variation orders given.

7. Orders:

- a) This appeal fails on grounds 1 to 5 and succeeds only on ground 6. 20
- b) The suit land located in Amoruongora village, Nagariam parish, Palam Sub county in Katakwi District is declared to form part of the estate of the Late Eria Anukur father to the respondent.
- c) The respondent is ordered to seek for letters of administration into the estate of the Late Eria Anukur if she is to lawfully handle the said estate.
- d) A permanent injunction is issued restraining the defendants, and their assignees/legal representatives or anyone claiming through them from trespassing on the suit land which form part of the estate of the late Eria Anukur; forthwith.
- e) The plaintiff's award of general damages of Ug. shs. 7,000,000/= (Seven $\$$ *Million shillings)* as against the appellants by the trial court is set aside.
- f) The respondent is only awarded the costs of this appeal and the cost in the lower trial court.

I so order.

\$10\$

Hon. Justice Dr Henry Peter Adonyo

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Judge

9th April 2024

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Prepared on 14 October 2026 · Esheria