THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[LAND DIVISION]

CIVIL APPEAL NO. 80 OF 2022

[ARISING FROM MISC. APPLICATION NO. 052 OF 2022 ALSO ARISING FROM CIVIL SUIT NO. 26 OF 2020 IN THE CHIEF MAGISTRATE'S COURT OF KAJJANSI]

MAYINJA SHAFIQ ..... APPELLANT

VERSUS

NAMUTETE HENRY MUGWANYA ..... RESPONDENT

BEFORE HON. LADY JUSTICE ELIZABETH JANE ALIVIDZA

JUDGMENT

Introduction and Background

This comes as a first Appeal against the judgment and orders of Her Worship Nakitende Juliet Chief Magistrate, given on the 11th day of December, 2020 at the Chief Magistrate's Court of Kajjansi at Kajjansi vide Land Civil Suit No. 026 of 2020 and still thereafter Misc. Application no 52 of 2022.

The Respondent/Plaintiff sued a one Haawa Siam for trespass on his land comprised in Busiro Block 542 plots 24/25 at Bukwe measuring approximately 8,944 hectares. That the Respondent/Plaintiff bought the suit land in 2016 from a one Wagaba Samuel and he admits that there were some squatters on the land but the Defendant [Haawa Siam] was not among them yet he was surprised to find her cultivating part of the land. Every effort to evict her was futile until the Respondent/Plaintiff sued in the lower Court and the case was held against the Defendant (Haawa Siam).

Then Appellant/Applicant Mayanja Shafiq sued vide MISC. APPLICATION NO. 052 OF 2022 seeking for Review and setting aside of the main suit but the Application was dismissed hence the chronology of this Appeal.

The Plaintiff's case [Lower court}.

The Plaintiff in the lower Court now the Respondent asserted that when he bought land in 2016, he registered it under his names. In April 2020, he discovered that the Defendant had illegally entered onto the land and began growing seasonal crops in the Plaintiffs banana plantation. The Defendant ignored all warnings to vacate the suit land and it culminated into a case of trespass against her at the police station vide SD: 11/22/04/2020 Kasanje Police station and police ordered them to maintain the status quo but the Defendant didn't heed to the instruction.

That this happened during the Covid 19 period where movements were limited. That the Plaintiff could not do much. The Defendant's encroachment was even furthered thus the Plaintiff suing in Court for a declaration that the Defendant is a trespasser, a permanent injunction, an eviction order, General damages, mesne profits and costs to the suit.

The Defendant was served but she didn't file a written statement of defence. The mediation report indicates that the Defendant attended the mediation session unrepresented and that it was the Defendant who insisted that the case be sent for trial. However, she never filed a defence and the Court went ahead to conduct the trial and visited locus.

Lower Court Judgment

The learned Chief Magistrate NAKITENDE JULIET gave a brief of the Plaintiff's facts and captured the fact that although the Defendant was served, she didn't file a defence. That on 20th August 2020, Court directed that the hearing proceeds exparte under Order 9 Rule 10 of the Civil Procedure Rules. She noted that when Court visited Locus in Quo, the Defendant was in attendance.

In her judgment, Her Worship defined trespass and gave a background of how the' Plaintiff came to own the land and also the fact that he was a holder of a certificate of title registered in his names. That he was introduced to the

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squatters that were on the land by the time he bought but the Defendant was not among them. That he negotiated with the squatters who were on the land and once they left, he started cultivating the land and planted bananas until 2020 when he realized that the Defendant was cultivating seasonal crops in the banana plantation.

On locus, Court found that there were two plots being occupied by the Defendant who told Court that she doesn't want the bananas on her land though she doesn't know who planted them. That all she knew was that her brother bought the same Kibanja from a one Nsubuga Peter on 30th June 2012 and that Mayinja Shafik [brother to Defendant] was out of the country by that time.

Her Worship found that the Plaintiff was the registered proprietor of the suit land who can only be impeached by fraud. She observed that exhibit P3A and P3B purported that Mayinja bought land from Nsubuga Peter, Sserunjoji, Kasuli, Zinda and Ms. Amina at a consideration of UGX 2,000,000.

That the Defendant opted not to come to Court leaving the evidence of the Plaintiff undisputed and Court found that the Defendant was a trespasser on the suit land belonging to the Plaintiff. She ordered a permanent injunction against the Defendant and her agents, an eviction order, mesne profits of 3,000,000/=, general damages of 5,000,000/= and costs. She found in favour of the Plaintiff and made orders against the Defendant.

Namutete Henry Mugwanya Vs Haawa Siama & Kayemba Henry Kizza: Misc. App. No 99 *of 2020*

The Appellant/ Respondent in the instant Appeal was the Applicant in this Misc. Application seeking Court for orders that the Respondents there in [Haawa Siam and Kayemba Henry] be arrested and committed to a civil prison for contempt of Court vide not following Court orders in C.S NO. 26 OF 2020.

HW Karungi Doreen Olga found that the 1st Respondent had already been arrested. She didn't find satisfying evidence that the Respondents had still

uprooted bananas or denied the Applicant access to the suit land so she dismissed the Application with costs and advised the Applicant to go ahead and enjoy the fruits of justice in C.S no. 26 of 2020.

Mayinja Shafik Vs Namutete Henry: Misc. Application No. 52 *of 2022*

The Appeal emanates from here. In this Application, the Applicant [now Appellant] was seeking for the judgment and orders of CS NO. 26 of 2020 to be reviewed and set aside. The Applicant claimed Kibanja interest in same suit land having bought it from Nsubuga Peter and his siblings at UGX 2,000,000 on 3rd June 2012 and he took possession. That he then travelled to South Africa leaving his biological sister Haawa Siam to be the caretaker with instructions to grow seasonal crops thereon.

In response, the Respondent Namutete Henry swore an Affidavit in reply that the Application has been over taken by events. That the deponent of the Affidavit in support had no authority to swear it which makes it incurable and defective, untenable.

That the Applicant has no locus standi and the Application is barred by law. That the so called purchase agreement of the Applicant lacked signatures and a consent from the land lord. That the Applicant has never been in possession and has not attached any proof to show that the Defendant Haawa is his care taker under a payment arrangement or that he resides in South Africa. That the Applicants [Haawa and the deponent] had the capability to represent him in Court just like the Defendant Haawa did up to mediation level. The Applicant is a stranger to C.S 26 of 2020 and therefore not entitled to any compensation.

In his submissions, the Applicant emphasized that he was seeking for orders that the judgment and orders of CS 26/2020 be reviewed and set aside. That the Applicant is an aggrieved person by virtue of Section 82 of the CPA Cap 71 and Order 46 Rules 1(a) and (b) of the CPR so hearing and determining of the main suit without adding him as a party constituted an error apparent to the face of the record.

In response, the Respondent submitted that the Applicant filed Misc. App no. 109 of 2020, 103 of 2021 seeking to stay execution of CS 26 of 2020 and Misc. App 103 of 2020 seeking to set aside the same judgement and decree through his lawful attorney HAA WA SIAM his apparent sister but they were all dismissed with costs for being brought by a non-party to the main suit among other reasons.

Counsel added that the Application has been brought through another sister of his with claims that she is well conversant with the facts of the suit land. The Respondent's Counsel considered her Affidavit an incurable illegality since it was deponed by a stranger to the matter and had no written authority to represent the Applicant.

Secondly that the Application had been overtaken by events. Having lost Applications for stay of the main suit, the Applicant brought this Application to review and set aside the same suit. He submitted that one can't seek review of a matter on execution without obtaining stay of the same and by the time of this Application, the Bailiff has already filed returns and a certifying manner of execution. That there is no decree to review as it was already executed.

That even if the Application was granted, the Respondent would be prejudiced because the judgement creditor is not party to this Application. Also that the High court had already pronounced itself on declarations in the main suit and now is only bound to follow decisions from a higher Court. That the Applicant under Order 46 rule 3(2) had to bring strict proof for the grounds of review but he didn't.

In her ruling, HW Nakitende Juliet found that the Affidavit in reply filed in Court showed that it was signed by a commissioner for oaths at Kampala on the 25th day of May 2022 and so the preliminary objection in this regard was overruled.

The second preliminary objection by the Respondent that Nalubwama Hasifah's deponed Affidavit is incurably illegal and defective as she was a stranger to the matter and didn't attach any authority to act in that capacity as required by the

law, she found that per Order 19 Rule 3(1) didn't need any authorization to depone on behalf of the Applicant.

On review and setting aside, HW Nakitende found that the Applicant considers himself aggrieved for reasons that he was denied the right to be heard as a Kibanja owner yet the person whom he authorized to utilize the land was served but opted not to attend Court or even the Applicant or deponent of the Affidavit.

The learned Magistrate noted that this therefore meant that the Applicant put himself out of Court and denied himself the right to be heard as per Article 28(1) of the Constitution.

That the judgment in the main suit was passed against Haawa Siam who was in possession and occupation of the land and she remains the only one as a Defendant to apply for review of the judgment entered into by the Court.

That also basing on the fact that the attached sales agreement doesn't even state the details of the area where the land is situate. By virtue of Order 46 Rule 3 (1) of the CPR, she dismissed the Application with costs to the Respondent.

The Applicant was not satisfied with the ruling hence this Appeal.

Grounds of Appeal.

1. The trial Magistrate erred both in law and fact when she overruled the Appellant's preliminary objection by holding that the Respondent's affidavit in reply dated 25th May 2022 and filed in court on 27th May 2022 was signed by a commissioner for oaths at Kampala on the 25th day of May 2022 thus occasioning a miscarriage of justice.
2. The learned trial magistrate erred both in law and fact when she did not make a finding that the Respondent's Affidavit in reply dated 25th May 2022, filed in Court on 27th May 2022 and subsequently served upon the Appellant was not commissioned in accordance with the commissioner for Oaths (Advocates) Act Cap. 5.

4. The learned trial Magistrate erred both in law and fact when she held that Haawa Siam (Defendant in respect of civil suit No. 026 of 2020, Namutete Henry Mugwanya Vs Haawa Siam alias Namusisi) was an agent of th Appellant and hence occasioning a miscarriage of justice.

4. The learned trial Magistrate erred both in law and fact when she did not make a finding that the Appellant's interests in the suit land (Kibanja) had been affected by the judgment, decree and orders delivered in respect of Civil Suit No. 026 of 2020 (Namutete Henry Mugwanya Vs Haawa Siam alias Namusisi).

5. The learned trial Magistrate erred in law and fact when she held that the Appellant had intentionally denied himself a right to be heard in respect of Civil Suit No. 026 of 2020 (Namutete Henly Mugwanya Vs Haawa Siam alias Namusisi).

6. The learned trial Magistrate erred both in law and fact when she held that it was only Haawa Siam (the defendant in respect of Civil Suit No. 026 of 2020, Namutete Henry Mugwanya V Haawa Siam alias Namusisi) who could apply for review of the judgment decree and orders therefrom and not the Appellant.

7. The learned trial Magistrate erred in both law and fact when she disqualified the Appellant's attached agreement dated 3rd June 2012 for the purchase of the suit Kibanja on grounds that the same did not state the village, parish sub-county, Block and plot number where the kibanja is situate and hence occasioning a miscarriage justice

Representation

The Appellant is represented by *MIS* SAM KIWANUKA & CO. Advocates while the Respondent is represented by *MIS* John F Ssengooba & Co. Advocates. Both Counsel filed written submissions which I have considered in reaching a decision.

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Appellants submission

Counsel for the Appellant submitted that on ground 1 and 2, that the learned trial magistrate only considered the affidavit in reply on court record yet it was the one served on the applicant on 27th May 2022 that was defectivejun-commissioned.

That the trial Magistrate didn't pronounce herself on the objection pertaining the Affidavit in reply that was served unto the Applicant which was not commissioned and ought to have been struck out. That mere signing on the Affidavit as a commissioner without disclosing the identity is not enough due to issues of impersonation.

On ground 3 and 5 in regard to the trial Magistrate holding that the Defendant in CS 26-2022 was an agent of the Applicant, the Appellant's Counsel submitted that the trial Magistrate erred when she held that the Appellant intentionally put himself out of Court and denied himself a right to be heard yet he was not party to CS 26-2022.

That in accordance with Order 3 rule 2 of the CPR, the Defendant in that main suit doesn't amount to an agent since the Appellant just authorized her to use the land. However Counsel submitted that by not filing a written statement of defence, this did not put the Appellant out of court ambit and or deny him a right to be heard which right is non-derogable.

That the Appellant was not a party in the main suit so there is no way he could have denied himself a right to be heard. That he had no knowledge about the existence of the suit until its determination.

On ground 4 on finding that the Appellant's interest on land had been affected, Counsel for the Appellant submitted that its undisputable that the Appellant purchased Kibanja interest before the Respondent acquired his legal interests.

That as per S. 35(6) of the Land Act, legal interests are subject to unregistered interests.

That the vendor is always caught up by the equities found on the land. Therefore, the Appellant is vested with security for tenure which the judgment vide CS 26/2020 affected.

Ground 6 about who could apply for review. The trial Magistrate held that it was only Haawa Siam who could apply and the Appellant's Counsel submitted that that was an error for the Magistrate to find that since Haawa was in occupation and possession, then she was the rightful person to bring an Appeal. That the Magistrate found that the Appellant's purchase agreement was invalid simply because it didn't have a village or parish or sub county where the Kibanja was situate. That the Appellant is an aggrieved person and has a right to apply for review per Order 46 Rule 1 (a) and (b) of the CPR and Section 82 of the CPA.

Ground 7 about the validity of the Kibanja purchase agreement. The trial Magistrate disqualified it for failure to entail the village, parish or sub county, block number and plot number where the Kibanja is found.

Respondent's submission

That the Affidavits in reply were commissioned by Kibuuka Moses on 20/06/2022 and filed on 23/06/2022 and served on the Appellant's Counsel the following day so the allegations by Counsel that the Affidavits in reply were not commissioned is a lie.

He responded on points of law making mention that the Appeal is incompetent for having been commenced without leave of Court. That no Appeal should lie as of right from orders under Section 76 of the CPA without leave of court. That an order of dismissal of Application for review is not one of the orders mentioned implying it would have been appealable as of right as the Appellant did. That however he had to first seek leave of court of either the Court that passed the order or to the High court.

Secondly that the grounds of Appeal are narrative and argumentative offending Order 43 Rule 2 CPR and prayed that the Appeal be struck out on that basis.

He also submitted on the third point of law that the Appellant had no right to appeal against the judgement and decree vide CS 26 of 2020 as clearly stipulated in the memorandum of Appeal. The Appeal came in more than 30 days within which the Respondent had to lodge their Appeal.

Also that the Appeal is against the whole judgement and decree which was delivered on the 11th December 2020 and the decree was signed on the same day which is more than two years later. That even if the Appellant had a right to Appeal, it was all done out time and without leave to file out of time.

The Role of the Appellate Court.

This Court is under an obligation during first Appeals 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. This duty is well explained in *Father Nanensio Begumisa and three Others v. Eric Tiberaga SCCA 170(2000; [20041 KALR* 236as thus;

"It is *a well-settled principle that on a first appeal, the parties are entitled* to *obtain from the appeal court its own decision on issues offact as well as of law. Although 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."*

In the first Appeal, the parties are entitled to obtain from the Appellate Court its own decision on issues of fact as well as of law [See *Pandya v. R* [19571 *EA. 336.* It is incumbent on this Court therefore to weigh the conflicting evidence and draw its own inferences and conclusions in order to come to its own decision on issues of fact as well as of law and remembering to make due allowance for the fact that it has neither seen nor heard the witnesses.

The Appellate Court is confined to the evidence on record. Accordingly, the view of the trial Court as to where credibility lies is entitled to great weight. However, the Appellate 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.

Right now, Court is not bound necessarily to follow the trial Magistrate's findings of fact if it appears either that he 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 demeanor of a witness is inconsistent with the evidence in the case generally. It is on this basis that I will go to resolve the grounds as stipulated by the appellant.

Resolution of grounds

I shall comment generally on the nature of this Appeal. I agree with Counsel for the Respondent that the framing of the grounds of Appeal was irregular. However, I shall not hold it against the Appellant since that is the role of Counsel.

I find the Appellant's grounds too elaborate and too general that they offend the provisions of *Order* 43 *r* (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.

This Appeal should have had a maximum of three grounds tackling the three major areas from whence the Appeal arises.

It is important to note that 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 d<:> not know. Such grounds have been struck out numerous times. See *Lanyero Vs Okene Civil Appeal No. 290(2018*

I also find that the Appellant's grounds were more as a disguised Appeal of the main suit rather than an Appeal against the review Application. The Appellant raised grounds of Appeal that had nothing to do with the Application. The gist of the learned Chief Magistrate was that the Applicant/Appellant in this Appeal had not advanced sufficient grounds under Order 46 Rule 3 (1) of CPR to warrant a review of the decisions made in the main suit.

I will however go ahead and resolve grounds land 2 concurrently then 3, 4, 5 and together and finally 7.

Ground 1 and 2

I will resolve ground 1 and 2 concurrently

1. The trial magistrate erred both in law and fact when she overruled the Appellant's preliminary objection by holding that the Respondent's Affidavit in reply dated 25th May 2022 and filed in court on 27th May 2022 was signed by a Commissioner for oaths at Kampala on the 25th day of May 2022 thus occasioning a miscarriage of justice.

2. The leamed trial Magistrate erred both in law and fact when she did not make a finding that the Respondent's Affidavit in reply dated 25th May 2022, filed in Court on 27th May 2022 and subsequently served upon the Appellant was not commissioned in accordance with the Commissioner for Oaths (Advocates) Act Cap. 5.

The Appellant submitted that the Respondent's Affidavit in Reply ought to be struck out because it was not commissioned by a Commissioner for oaths. On record, the Respondent filed an Affidavit in Reply on 25th May 2022 and served the same on the Appellant two days later. The trial Magistrate in her ruling simply stated that the Affidavit in reply filed in Court on 27th May 2022 shows that it was signed by a Commissioner for oaths at Kampala on the 25th day of May 2022 so she overruled the objection.

I have perused the record and found that all other Affidavits on record are commissioned save for the one attached on the Appellant's documents or which was served on the Appellant. It only bears a signature but no stamp of the Commissioner which entails the names and details of the Commissioner for oaths.

It is my finding that this would not be a point to necessitate further evidence to prove that the same person signed on all the documents save for the mishap that one document wasn't stamped. This would not warrant a whole Affidavit in reply to be expunged and have the Application uncontested.

If none of the Affidavits was commissioned, there would be a fatal error and strangulation of *Section* 5 *and* 6 *of the Oaths Act Cap* 19 because without information from the Commissioner for oath in regards to the place and date of the oath taken would leave the Court in doubt. This is because all this goes to the root of the Affidavit and the gist of its truthfulness.

It is now judicial notice that an un- commissioned Affidavit is fatally defective without a doubt as an Affidavit in reply is a creature of law. This is why I could fault the Respondent's Counsel for not ensuring that all Affidavits had been commissioned after presenting the Respondent to a Commissioner for oath to take his oath.

Notably, perusal of documents before filing and serving is entirely in the docket of the lawyer under instructions. However, the copies on the Court record are duly commissioned save for the copy that was attached on the pleading as one served onto the Appellant that only bears a signature of the commissioner without a seal.

Striking out all the affidavits in reply on this basis will be prejudice so I will consider it a slip. An affidavit not being stamped moreover just one leaflet has nothing to do with the quality of the Affidavit evidence so affected.

I note that the Appellant's concern is not majorly directed to the substance of the evidence in the Affidavit but is a side show intended to disqualify evidence without delving into its value. This is a procedural error that cannot be let to deter substantive justice which ought to be delivered without undue regard to technicalities.

In conclusion these grounds therefore fail.

Ground 3, 4, 5, & 6

I will resolve grounds 3, 4, 5 and 6 concurrently because on ground 3 which pertains under which docket the Defendant [Haawa Siam] in the main suit falls, then ground 4 which is about the interest in land and ground 5 and 6 which seek to ascertain if the Appellant is an aggrieved party will automatically be resolved.

3. *The learned trial Magistrate erred both in law and fact when she held that Haawa Siam (Defendant in respect of civil suit No. 026 of 2020, Namutete Henry Mugwanya Vs Haawa Siam alias Namusisi) was an agent of the Appellant and hence occasioning a miscarriage of justice*.

4. The learned trial Magistrate erred both in law and fact when she did not make a finding that the Appellant's interests in the suit land (Kibanja) had been affected by the judgment, decree and orders delivered in respect of Civil Suit No. 026 of 2020 (Namutete Henry Mugwanya Vs Haawa Siam alias Namusisi).

5. The learned trial magistrate erred in law and fact when she held that the Appellant had intentionally denied himself a right to be heard in respect of Civil Suit No. 026 of 2020 (Namutete Henly Mugwanya Vs Haawa Siam alias Namusisi).

6. The learned trial Magistrate erred both in law and fact when she held that it was only Haawa Siam (the Defendant in respect of Civil Suit No. 026 of 2020, Namutete Henry Mugwanya V Haawa Siam alias Namusisi) who

could apply for review of the judgment decree and orders therefrom and not the appellant.

Relationship between the parties.

Verbatim, I see nowhere in her ruling where the learned trial Magistrate referred to Haawa Siam as an agent of the Appellant but impliedly made her one by ruling that her failure to respond to the civil suit directly put out the Appellant since she acted for and on his behalf.

Agency may be defined as the relationship which exists when one person acts on behalf of the other and has power to affect the principal's legal position in regard to third parties. In whatever, they do with third parties, they do so on behalf of the principal. *See Justice Wanqutsi in Twonqyeire Vs Muhumza Civil Appeal No. 330[2017.*

Agency arises under three major circumstances;

a. By consent.
b. By operation
c. By doctrine of apparent authority.

Out rightly in the instant case the first two are lacking and what needs further analysis could be Agency by apparent authority to rule out if Haawa Siam is an agent of the Appellant or not.

The Appellant in the lower court vide Misc. App. No. 52 of 2022 under paragraphs c and d of the Notice in Motion stated that upon purchase of the Kibanja, he was immediately granted vacant possession but subsequently travelled to South Africa and he instructed his young sister Haawa Siam to be the care taker of the same as well as growing seasonal crops solely for his benefit.

By virtue of that, the trial Magistrate ruled that the Appellant put himself out of CS-no. 26 of 2022 when the Defendant refused to enter appearance implying she regarded her as the Appellant's agent.

It is clear that agency by doctrine of apparent authority emanates from observing the behavior between the principal and the agent like instances where the principal ratifies the activities of the agent either by word of mouth, conduct or in writing.

I find no implication that the Appellant intended the Defendant in C.S no. 26 of 2022 to bind him as an agent or carry out legal works on his behalf. That is why in his evidence, he makes mention that the Defendant did everything possible to locate him but due to the Covid 19 pandemic, communication became a hurdle and that is how the case was heard without his notice. He further adds that it was after it came to his notice that he commenced the court processes until this Appeal.

I am also not persuaded by the conduct of the Defendant. She neglected to file a defence. She attends mediation sessions. She also was at the locus in quo court proceedings. Court was not made aware that she as acting as an agent for the Appellant.

I note that in the case of *Pole Vs Leask* [1863133 *L.J.C.H* 155, His Lordship Webb CJ observed in *Alexander Logios Vs AG Nigeria [1970[NCLR pg 130* that *"it was settled that an agent may be appointed or his authority conferred by word of mouth save where only he* is *appointed to execute an instrument under seal on behalf of his principal"*

There was no proven fact that warrant the Defendant in the main suit to be considered an agent of the Appellant. Rather she was just a mere licensee of the suit land with permission from the Appellant to just plant seasonal crops. It is not clear why she never introduced herself to the registered owners of the disputed land if she was an agent. It is also not clear why the Defendant without filing a defence, took part in the mediation of the suit and also the locus visit.

Also according to the Civil Procedure Rules under Order 3 especially Rule 2, it gives only two criteria where one can come before Court in the ambit of an agent and that's by;

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a. Persons holding powers of attorney to make such appearances.
b. Jurisdiction. That's persons carrying on trade or business for and in the names of the parties not resident within the local jurisdiction of court within which limits the appearance ...

Therefore, an agent must satisfy the principal by making contracts on his behalf and by dealing with the principal's property. In short an agent brings his principal in to a relationship with a third party. So legally an agent is a person who acts on behalf of another in his dealing with third parties which Haawa Saim didn't have.

Licensee.

In the lower Court record, at the locus visit the Defendant was found on the suit land and she told Court that the suit land belonged to her brother and she was just given permission to cultivate thereon. This doesn't confer any legal interest unto the Defendant but rather be regarded as a licensee without interest.

A licensee with interest is one who goes on the land with a purpose and the license cannot be revoked during its existence. The licensee therefore has only a right to execute the purpose for which the license was granted.

In the instant case, the Defendant in the main suit was allowed to only cultivate seasonal crops and not to obtain objects or erect property thereon. She was therefore at most a licensee who used the land for cultivation with permission from her big brother the Appellant. Being a licensee, the Defendant had no interest in the suit property that would warrant her to be made party or act on behalf of the Appellant.

It is not clear why the Appellant did not give power of attorney to the Defendant in the main suit to handle the matter. The Appellant would have been lawfully been included in the main suit. I also noticed that the Appellant Mayinja Shafiq did not file an Affidavit in support of the Application in MA 52 of 2022. Even the Defendant Siam Allias Namusisi did not file an Affidavit in reply. Instead

Nalubwama Hasifah who filed the Affidavit stating that she is a sister of the Appellant and knows all the facts of the matter. More so there is no power of attorney filed to indicate whether she is acting on behalf of the Defendant.

Therefore there was no proof of agency of whatever form since the Defendant never subjected herself to the jurisdiction of the curt.

Competing interest [Registered/ title and Kibanja interests]

This brings us to the 4th, 5th and 6th grounds about the Appellant's interest. I think this ground belongs more to an Appeal than a review. The problem was that the Defendant did not submit to the jurisdiction of the lower Court otherwise this issue would have been resolved at trial.

I also note that the lower Court ought to have taken into consideration the fact that the Defendant while at locus made mention that the land belonged to her brother. Procedural justice requires the Court after encountering a Defendant who never entered appearance in Court but participates in the Locus proceedings to reopen the trial to allow the case to proceeded interparty. Though this may inconvenience the Plaintiff, the Defendant may be penalized by way of costs where applicable.

However the circumstances in this case are unique. The record indicates that in an Affidavit of service dated 7/7/2020, the Defendant was served and indicated she would consult her lawyer. However she never filed a defence. She also participated in the locus in quo proceedings. There are pictures on record to confirm her presence. Unfortunately she opted not to file a defence for the trial to proceed interparty. Therefore the Court cannot be faulted to proceeding with the trial and making the orders that were made.

Ev~ry opportunity was made to ensure that the Defendant had her day in Court. She would have indicated how the suit property was in possession of the Appellant as a Kibanja Holder.

I am aware that *Section* 35 (8) *of the Land Act* is to the effect that legal rights in land are subject to unregistered/ equitable interests. However the Defendant and the Appellant had opportunity to present their case during trial but opted not to do so. Bringing an application for review is not justified since the Appellant does not qualified to be an aggrieved person. He can still bring a suit against the Respondent to prove his ownership of the Kibanja.

In conclusion I see no merits in the above grounds.

Ground 7

The learned trial magistrate erred in both law and fact when she disqualified the appellant's attached agreement dated 3rd June 2012 for the purchase of the suit Kibanja on grounds that the same did not state the village, parish' sub-county, Block and plot number where the kibanja is *situate and hence occasioning a miscarriage justice.*

As earlier mentioned this was an Issue that needed adducing of evidence to ascertain the validity and authenticity of the agreement on which the Appellant bought the suit land. Interestingly, the said agreement does not point out any of the neighbors or even if the consent of landlord was obtained as required under the law. The location of the Kibanja is important to establish the chain of evidence.

However these issues would have been resolved during trial and not review application.

I also find no merit in this ground.

Therefore this Appeal is dismissed with costs.

Elizabeth Jane Alividza
Judge
6th March 2024.