

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO.4 OF 2012

(Arising from HCT-02-CV-CA-003-2000)

5 (Arising from Civil Appeal No. MC56 of 1995)

(Arising from Kangali LC3 Court No. K.049 of 1995)

ODOO SIMON PETER.....APPELLANT

VERSUS

10 **WASHINGTON OMARA ARACHA.....RESPONDENT**

(Appeal from the decision and orders of the High Court at Gulu by Hon. Justice Remmy Kasule (as he then was) dated 27th march, 2008)

Coram: Hon. Justice Kenneth Kakuru, JA

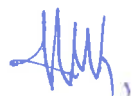
15 **Hon .Justice Ezekiel Muhanguzi, JA**

Hon. Justice Christopher Madrama, JA

JUDGEMENT OF THE COURT

Introduction

20 This is an appeal from the judgment of the High Court at Gulu wherein Justice Remmy Kasule, J (as he then was) dismissed the appellant's appeal and awarded costs to the respondent.



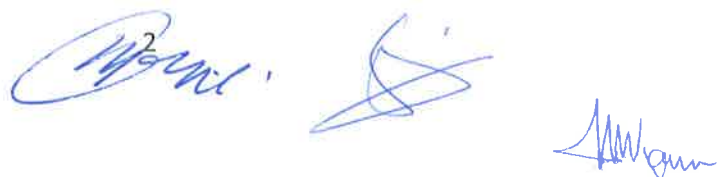
Brief background.

25 The facts of this appeal as accepted in the judgment of the appellate judge are that, on 20/10/1995 the LCIII Court, Kangali Sub-county, Lira District decided a case after hearing the evidence of the parties and their respective witnesses, in favor of the respondent against the appellant.

30 The appellant appealed the LCIII Court decision to the Chief Magistrates Court, Lira and court dismissed the appeal on merit on 27/03/1996.

The appellant appealed to the High Court on the following grounds:

- 35 • *That the learned Chief Magistrate erred in law in not holding that the respondent's suit in the LCI court of Ongei Village which was pending trial in that court could not legally have been abandoned in the said court and moved unto the LCIII court of Kangali Sub-County to be instituted a fresh on the same cause of action in which judgment was passed by the said LCIII court of Kangali Sub-County in favor of the respondent.*
- 40 • *That the learned Chief Magistrate erred in law in not holding that the court of LCIII of Kangali had no original jurisdiction to entertain and try the respondent's suit which was instituted from the LCI court of Ongei Village.*
- 45 • *That the learned Chief Magistrate erred in law in not holding that the LCIII court had no jurisdiction to hear de novo a case which had already been determined by the LCI court or alternatively to hear a case which was still pending before the LCI court and the said error caused a miscarriage of justice.*



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- *That the learned Chief Magistrate erred in law in his evaluation of the evidence on record and also erred in not disbelieving the case for respondent in preference for that of the appellants.*
- *That the learned Chief Magistrate erred in law in not holding that the respondent's suit was time barred.*
- *That the learned Chief Magistrate erred in law in not holding that by virtue of the promulgation of the Uganda constitution of 1995 the appellant was in the circumstances a bonafide occupant of the suit land whose occupation of the disputed land was with effect from the 9th of October 1995 legally protected.*

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The appellate Judge dismissed the appeal and awarded costs to the appellant.

Being dissatisfied with the decision, the appellant now appeals to this court on the following grounds;

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- *That the learned appellate Judge erred in law when he ignored time bar/requirement in instituting a land matter.*
- *That the learned appellate Judge erred when he did not properly appraise and evaluate the evidence on record thus reaching a wrong conclusion.*
- *That the learned appellate Judge erred in law when he inferred that the LCIII court of Kangali sub-county heard the matter in its appellate jurisdiction thus reaching a wrong decision.*

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The appellant asked court to allow the appeal, set aside the decision of the High court and award costs to the appellant.

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Representation

The appellant was represented by learned counsel Mr. Enoch Kugonza while Mr. James Okuku learned counsel appeared for the respondent. The appellant was absent in court.

80 Submissions by the appellant.

With regard to ground 1, Counsel submitted that, the respondent's action against the appellant was statute barred. He pointed out that the appellant had been in possession of the suit land for over 38 years before 1995 when he was brought to court by the respondent. He
85 relied on Section 5 of the Limitation Act which is to the effect that no action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or her or, if it first accrued to some person through whom he or she claims, to that person.

90 Further, counsel submitted that, the appellant has been in adverse possession because he has been in exclusive possession and had been continuously utilizing the land under customary tenure which tenure is recognized under Article 237 of the Constitution and Section 2 of the Land Act Cap 227. In support of the above argument, counsel relied on
95 an Indian case of ***Karnataka Board of Wakf V Government of India &ors, Appeal (Civil) 16899 of 1996.***

On ground 3, counsel submitted that, the LCIII court acted without jurisdiction when it heard this matter as a court of first instance. Counsel relied on the then Resistance Committee (Judicial powers)

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100 statute, 1988 and argued that, the LC III's actions were contrary to the said statute then. Further, counsel relied on *Makula International Ltd V His Eminence Cardinal Nsubuga & Anor*, civil Appeal No. 4 of 1982 and submitted that court cannot sanction what is illegal as is in this case. He asked Court to allow the appeal and award costs to the appellant.

105 **Submissions by the Respondent**

Counsel raised a preliminary objection as to whether this appeal is properly brought before this court. He relied on Section 73 of the Civil Procedure Act Cap 71, the Executive Committee (Judicial Powers) Act Cap 8 and submitted that, this appeal originated from the decision of LCI court and this court does not have jurisdiction to hear this appeal as it is not envisaged under section 73 (supra). He relied further on *Desai V Warsama*, (1967) EA 351 and *Shah V AG*, (1970) EA 523 and argued that, appellate jurisdiction is a creature of statute and that no court can confer jurisdiction on itself.

115 Counsel submitted further that, the suit was filed in the LCI court, went on first appeal to the LC II and the second appeal to the LCIII. He pointed out that, the appeal to the Chief Magistrate was a third appeal and the appeal to the High court a fourth appeal and thus this appeal is the fifth appeal. He argued that, fifth appeals are not provided for under any law in Uganda and thus this appeal should be summarily dismissed with costs.

In the alternative, Counsel submitted on grounds 1 and 2 of the appeal that, the appellate Judge properly evaluated the evidence on record, correctly applied the law to the facts and arrived at a justified conclusion. He pointed out that, the respondent's cause of action accrued in 1995 when the appellant's brother, Otia started constructing



a house on the land contrary to the conditions upon which the land was given to his father by the respondent.

130 Counsel submitted that, the appellant's father was given land on two conditions, that is, temporarily cultivate and not to construct thereon. He pointed out that, when Otia constructed a house on the land in 1995, he breached a condition upon which the land was lent as his action showed an intention to live on the land permanently. In support of the above argument, counsel relied on Sections 5, 6(1) and 9 of the
135 Limitation Act. Cap 80.

He further relied on an Indian case cited by counsel for the appellant, ***Karnataka Board of Wakf V. Government of India &ors, Appeal (Civil) 16899 of 1996*** and submitted that, the Indian Court held *inter-alia* that in considering the question of adverse possession, one of the issues
140 that must be established is the nature of the possession, which in this case is that the respondent lent the suit land to the appellant on condition which disqualifies the appellant to be in adverse possession.

On ground 3, Counsel submitted that, the LCIII court record shows that the matter was first instituted in the LCI court of the area where the
145 appellant refused to show up. He pointed out that section 30 of the Executive Committees (Judicial Powers) Act gave the LC III judicial powers to hear matters afresh in its appellate jurisdiction. He argued that the LCIII court, the Chief Magistrate's court at Lira and the High Court of Uganda at Gulu had both appellate powers and powers of the
150 lower courts when hearing this matter. He asked court to confirm the decision of the lower courts.


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Consideration by court

155 We have carefully perused the record, the authorities quoted and considered the submissions of both counsel.

This court as a third appellate court is empowered under Rule 32 (1) of the Judicature (Court of Appeal) Directions SI 13-10 to confirm, reverse or vary the decision of the High court, or remit the proceedings to the
160 High Court with such direction as may be appropriate, or order a new trial and make any necessary incidental or consequential orders, including orders as to costs. Rule 32 (1) provides as follows:-

*“On any appeal, the court may, so far as its jurisdiction permits, confirm, reverse or vary the decision of the High Court, or remit
165 the proceedings to the High Court with such directions as may be appropriate, or order a new trial, and make any necessary, incidental or consequential orders, including orders as to costs.”*

The court’s power to hear third appeals is limited to matters of law and not matters of facts or of mixed facts and law. See Rule 32 (3) of the
170 Rules of this Court which provides as follows:-

“On any third appeal, the court shall decide the question of law which is put before it.”

The respondent raised a preliminary objection as to whether this court has jurisdiction to hear this matter under a fifth appeal. In regard to this
175 objection, we wish to note that, there are no fourth or fifth appeals under the law. This court is only empowered to hear third appeals as mentioned above and as provided for under sections 73 and 74 of the Civil Procedure Act which expressly provide as follows;

“73. Third appeal.



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Where an appeal emanates from a judgment of a magistrate grade II but not including an interlocutory matter, a party aggrieved may lodge a third and final appeal to the Court of Appeal on the certificate of the High Court that the appeal concerns a matter of law of great public or general importance, or if the Court of Appeal in its overall duty to see that justice is done considers that the appeal should be heard.

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74. Second appeal on no other grounds.

Subject to section 73, no appeal to the Court of Appeal shall lie except on the grounds mentioned in section 72. Section 72 provides as follows:-

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“72. Second appeal.

(1) Except where otherwise expressly provided in this Act or by any other law for the time being in force, an appeal shall lie to the Court of Appeal from every decree passed in appeal by the High Court, on any of the following grounds, namely that—

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(a) the decision is contrary to law or to some usage having the force of law;

(b) the decision has failed to determine some material issue of law or usage having the force of law;

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(c) a substantial error or defect in the procedure provided by this Act or by any other law for the time being in force, has occurred which may possibly have produced error or defect in the decision of the case upon the merits.

(2) An appeal may lie under this section from an appellate decree



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passed ex parte."

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The record shows that this matter was first instituted in the LCI court of Kangali Village. The appellant did not appear at the hearing and this prompted the LCI Court to refer the matter to LCIII Court. The matter then went to the LCIII Court on appeal. The LCIII Court exercised its appellate jurisdiction and heard the matter afresh since there was no LCI proceedings on record.

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We, therefore find that since the matter was heard afresh by the LCIII Court. The appeal to the Chief Magistrate Court was a first appeal. It went to the High Court as a second appeal and is in this court as a third appeal.

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Further, as provided for under section 73 of the Civil Procedure Act set out above any aggrieved party may lodge a third and final appeal to this court only on a certificate of the High Court showing that the appeal concerns a matter of law of great public or general importance. In the instant case, the appellant did not fulfill this requirement and this appeal is therefore incompetent. (*emphasis added*).

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It is well settled law that an appeal is a creature of statute and not inherent. See: **AG v Shah**, (1971) EA 50. In **Baku Raphael Obudra & Obiga Kania V AG**, Supreme Court Civil Appeal No. 1 of 2005, B. J Odoki CJ (as he then was) noted that:-

"It is trite law that there is no such a thing as an inherent appellate jurisdiction. Appellate jurisdiction must be specifically created by law. It cannot be inferred or implied."

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In our view, the appellant in this appeal had no right of appeal to this court and this court had no jurisdiction to entertain this appeal.

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In light of the above cited law and authorities we would uphold the respondent's preliminary objection. We would therefore strike out this appeal for incompetence and for this court's lack of jurisdiction to entertain this appeal.

235 Having upheld the preliminary objection we would find it not necessary to consider and decide the merits of grounds number 2 and 3 of appeal.

Conclusion.

In the result, this appeal is struck out with costs to the respondent.

240 Dated at Kampala this..... 4th day of April.....2019

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Kenneth Kakuru
Justice of Appeal

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Ezekiel Muhanguzi
Justice of Appeal

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Christopher Madrama
Justice of Appeal