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THE REPUBLIC OF UGANDA,

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO 121 OF 2012

(ARISING FROM CIVIL APPEAL NO 42 OF 2008 HIGH COURT OF UGANDA AT MASAKA)

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(ARISING FROM LAND CLAIM NO. 10 OF 2004 OF THE CHIEF MAGISTRATES COURT OF MASAKA AT SSEMBABULE)

(CORAM KIRYABWIRE, MUHANGUZI AND MADRAMA JJA)

BENON BURORA}..... APPELLANT

VERSUS

15

RUBAHAMYA STEPHEN}..... RESPONDENT

JUDGMENT OF COURT

The appellant lodged a second appeal from the decision of the High Court sitting as a first appellate court delivered by her Lordship Lady Justice Jane Kiggundu at Masaka on 14th of March 2012. The High Court dismissed the appeal with costs and ordered that the registration of land comprised in ranch numbers 26B2 Mawogoola Ranching Scheme LRV 3297 Folio 9 registered in the names of the appellant be cancelled. Secondly, it issued an order for the names of Earnest Katsinde (deceased) to be registered.

The grounds of appeal are:

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1. The learned trial judge erred in law when she did not find and hold that a Magistrate Grade 1 did not have jurisdiction to hear and try a matter in respect of land registered under the Registration of Titles Act thereby perpetrating an illegality.

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2. The learned trial judge erred in law when she did not find that the Magistrate Grade 1 lacked pecuniary jurisdiction to try the matter and when she did not hold that the trial was a nullity.

5 **3. The learned trial judge erred in law when she tried and determined a matter under the Registration of Titles Act whereas the lease to the suit property had long expired.**

10 The appellant prays to have the judgment and decree of the High Court set aside and substituted with an order allowing the appeal with costs both in this court and in the courts below.

At the hearing of the appeal counsel Kandebe Ntambirweki represented the appellant while Counsel Dr Ben Tushabe represented the respondents. The court was addressed by way of written submissions.

15 The gist of the written submissions is that this is a second appeal from the decision of the High Court in its appellate jurisdiction delivered at Masaka on 14th March, 2012 wherein the High Court heard the appeal and dismissed it with costs. Secondly, the High Court ordered for cancellation of title in the names of the appellant and the registration of Earnest Katsinde. The second respondent passed away and the name was struck off the record at the request of the appellants counsel.

20 The background to the appeal is that the original plaintiff had filed a claim in the land tribunal at Sembabule district on 2nd December, 2004. The respondents filed their written statement of defence and counterclaim on 23rd December, 2004. The answer to the counterclaim was filed on 2nd January, 2005. The matter was partly heard by the land tribunal up to 13th November, 2006. Between 2nd February, 2007 and 12th July, 2007 it was heard by Magistrate Grade 1 His Worship Gimungu K.K. At the trial 2 exhibits were admitted namely a sale agreement and a certificate of title as well as a transfer of land form.

25 Learned counsel for the appellant argued grounds 1 and 2 of the appeal together since it concerns the jurisdiction of the Magistrate Grade 1 to try a matter in respect of land and whether the trial was a nullity.

30 The appellants counsel argued that the jurisdiction to hear and determine the suit is granted by statute and the High Court perpetuated an illegality when it failed to hold that the Magistrate Grade 1 had no jurisdiction to hear and determine the suit from which this appeal arises. Secondly, the Magistrate Grade 1 lacked pecuniary jurisdiction to try the matters hence the trial by such a Magistrate Grade 1 is a nullity.

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5 It was in the respondent's counterclaim in paragraph 14 (c) that the appellant purchased
the suit property at a lower price well knowing that the suit property is of a higher value.
PW3 testified that he bought the suit property at Uganda shillings 6,000,000/= and they
made an agreement of sale. The appellants counsel submitted that the High Court
perpetuated an illegality and did not address itself on the issue of jurisdiction and
10 illegality which was apparent on the face of the record. The trial was a nullity because a
Magistrate Grade 1 by 2nd February, 2007 to July 2008 could not hear and determine the
matter particularly the counterclaim which he allowed because it sought general
damages and orders of cancellation of the certificate of title whose value from the
counterclaimants own pleadings was more than Uganda shillings 6,000,000/=. By that
15 time the pecuniary jurisdiction of the Magistrate Grade 1 under section 207 (b) of the
Magistrates' Court Act was Uganda shillings 2,000,000/=. He submitted that according
to the decision of the High Court in **Mubiru & 21 Others v Kayuwa and 5 others
(1975) HCB CA No 1** such a trial was a nullity. Counsel further contended that even
where none of the parties or their counsel raised the issue of jurisdiction, the High Court
20 had the duty to deal with it (see Nshiiemye J.A decision in **Uganda railways Corporation
versus Ekwaru D.O and others (2008) HCB**. Furthermore, under section 39 of the Land
Amendment Act 2004 which amended section 95 of the Land Act 1998 by substituting
section 95 (7), in each district until a District Land Tribunal is established and
commences to operate, Magistrates Courts shall continue to have jurisdiction in land
25 matters as they had immediately before the commencement of the that Act. Secondly,
under Practice Direction No. 1 of 2006 it is provided that until land tribunals are
established and commence to operate, magistrates should continue to have jurisdiction
they had immediately before 2nd July, 2000. It follows that a Magistrate Grade 1 did not
have jurisdiction to entertain the suit. Furthermore, learned counsel pointed out that the
30 amendment of a Magistrates' Court Act to increase the pecuniary jurisdiction of the
magistrates courts came into force on 17th August, 2007 when it increased the pecuniary
jurisdiction of a Magistrate Grade 1 to Uganda shillings 20,000,000/= but this did not
have retrospective effect. In any case the purported trial took place before the
amendment to the Magistrates' Court Act and the trial ought to have been set aside by
35 the appellate High Court judge.

Furthermore, the appellant's counsel submitted that under section 207 (2) of the
Magistrates' Court Act, where the cause or matter of a civil nature is governed only by
Civil customary law, the jurisdiction of a Chief Magistrate and a Magistrate Grade 1 shall



5 be unlimited. Learned counsel pointed out that the land in question was registered land and therefore not under customary tenure.

10 Last but not least, the learned High Court judge cancelled the registration on the title deed yet the record was clear that Earnest Katsinde had long died and the lease agreement appearing in the certificate of title had been registered in the names of Catherine Katsinde, the administrator of the estate who was registered on 29th October, 2004 under instrument number 348104. Accordingly, the deceased was not a party in person. The basis of the reason of the High Court in coming to the conclusion was wrong in that the High Court held that there was no holder of letters of administration in whose names the certificate of title would be registered. Accordingly, the court did not ask itself whether there was an administrator of the estate and who executed the lease on behalf of the estate. There was no lease of title to be registered in the names of the deceased as the deceased had long died before it was allegedly executed by the non-existent administrator. In the premises he prayed that the grounds 1 and 2 of the appeal should be answered in the affirmative on the ground that the learned appellate court judge failed to address the issues of illegality on the ground of lack of jurisdiction.

15 Ground 3 is whether the learned trial judge erred in law when she tried and determined the matter under the Registration of Titles Act whereas the lease to the suit property had long expired.

25 Learned counsel for the appellant submitted that the order for cancellation of title and registration of another person was untenable in law because Earnest Katsinde was dead long before the lease was executed and as such only the administrator (Catherine Katsinde) would appear on the certificate of title. Secondly LRV 329 7429 was a lease of five years with effect from 1st July, 2000 and accordingly the lease had expired on 30th of June, 2005 long before the decision of the Magistrate Grade 1 was made and much longer before the judgment of the High Court was made on 14th, March 2012. Had the appellate judge considered the evidence on record particularly the lease agreement, she would not have made the order being challenged in this appeal. The lease in issue had long expired by effluxion of time before the learned appellate judge allowed the appeal against the cross appeal with costs. In the premises the appellants counsel prays that the appeal is allowed with costs in this court and the courts below.

35 **In reply, learned counsel for the respondent** submitted that the appellant was the complainant/plaintiff in the original claim before the land tribunal. The defendants were

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5 three in number but before the trial ended defendant number 2 Geoffrey Gumaho
passed away before the magistrate determined the matter and was struck of and the
matter proceeded against the remaining two defendants. Unfortunately, the second
respondent was murdered in the middle of the night at her home in late 2017 and this
court struck out her name as a party. The respondent's counsel agreed with the facts as
10 summarised by the appellant's counsel. The appellants sued the respondent jointly and
severally seeking vacant possession, a permanent injunction for trespass, costs and
interest thereon. The respondent who is the defendant pleaded that the appellant
obtained the registration of the suit property through fraud. The defendants prayed that
the suit should be dismissed and further counterclaimed for eviction of the claimant
15 from the land, general damages and costs of the counterclaim and cancellation of the
certificate of title. Three issues were agreed before the learned magistrate namely:

1. Whether the claimant/appellant was fraudulently registered as proprietor of the
suit land.
2. Who is the rightful owner of the suit property?
- 20 3. What remedies?

In considering the question of fraud, the magistrate considered several exhibits listed in
the submissions of the respondent's counsel that we do not need to refer to at this
stage. What is material is that the magistrate delivered judgment in favour of the
defendants/respondents. The trial magistrate established as a fact that the
25 claimant/appellant had been fraudulently registered as a transferee and referred the
matter to the High Court at Masaka for the necessary consequential orders to deregister
claimant/appellant. He further dismissed the claim with costs to the respondents and
allowed the respondents as beneficiaries to stay on the suit property.

The claimant who is the appellant herein appealed against the magistrate's judgment in
30 the High Court at Masaka and the appeal was dismissed and affirmed and upheld the
decision of the Magistrates' Court hence the appeal to this court.

As far as grounds 1 and 2 is concerned, the issue is whether the learned trial judge erred
in law and fact when she did not find and hold that a Magistrate Grade 1 lacked
jurisdiction to hear and try a matter in respect of the land registered under the
35 Registration of Titles Act, thereby perpetrating an illegality. Secondly, the issue is
whether the learned trial judge erred in law and fact when she did not find that the



5 Magistrate Grade 1 lacked pecuniary jurisdiction to try the matter and when she did not hold that the trial was a nullity.

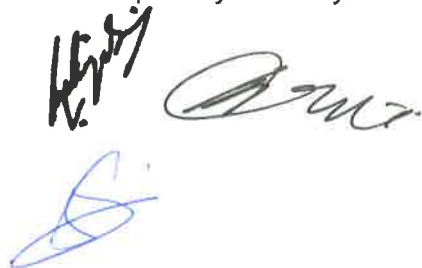
Counsel for the respondent pointed out that the magistrate clearly dealt with the evidence and so did the High Court. The appellant concedes to the evidence but is not satisfied on the grounds of law. The appellant sought to contest the jurisdiction of the
10 Magistrate Grade 1 by arguing that he purchased the suit land for Uganda shillings 6,000,000/=. By courts findings that the appellant committed fraud to acquire the suit property, it follows that it never paid any consideration and therefore, to that extent, the Uganda shillings 6,000,000/= was a fictitious figure meant to mislead this court. As such the respondents counsel contended that seeking refuge by the appellant under section
15 207 (b) or section 207 (2) of the Magistrates' Court Act is irrelevant.

Learned counsel for the respondent pointed out that the Magistrate Grade 1 on the issue of remedies stated that the claimant cannot remain the registered owner of the suit land and declared that he fraudulently secured his registration as a transferee. The matter was referred to the High Court for the necessary consequential orders under
20 section 76 (1) (c) of the Land Act (cap 227) as amended in 2004.

The respondents counsel contended that the learned trial Magistrate Grade 1 was right to refer the matter to the High Court for consequential orders. He contended that both the Magistrate Grade 1 and the High Court of Masaka evaluated the evidence and found that the appellant had fraudulently acquired the suit property and this leads to the
25 inevitable conclusion that the appellant never paid any consideration at all for the suit property. On that basis, the respondent's counsel contended that the question of pecuniary jurisdiction should collapse on its face.

With reference to section 39 of the Land Amendment Act 2004, counsel submitted that Ssembabule District Land Tribunal ceased to exist in 2007 and the case was transferred
30 to the Magistrate Grade 1 within the import of the Practice Direction "... until a District Land Tribunal is established and commences to operate under this act, Magistrates' Court shall continue to have jurisdiction in land matters".

This meant that the Magistrates' Court would retain jurisdiction in the absence of a district land tribunal. Counsel further submitted that under the Land Act 1998 and rules and regulations made thereunder, land tribunals had jurisdiction to hear matters of the
35 nature referred to. This can be discerned from rule 6 (1) (a) (c) and (g), rule 31 of the Land Tribunals (Procedure) Rules 2002. The suit was subsequently lawfully transferred to



5 the grade 1 magistrate upon the District Land Tribunal ceasing to function or operate.
To that extent the Magistrate Grade 1 had jurisdiction to hear and determine the matter.
Secondly, that the jurisdictions in respect of land registered under the Registration of
Titles Act in as far as it is about a right to possession, question of trespass, fraud and
10 declarations and moreover the appellant has not cited any provision of that Act which
prohibits a Magistrate Grade 1 from adjudicating such disputes.

The respondents counsel further relied on section 216 of the Magistrates' Court Act
which provides that no objection as to the place of suing shall be allowed on appeal
unless the objection was taken in the court of first instance and unless there has been a
consequent failure of justice. The appellant was the plaintiff before the District Land
15 Tribunal and Magistrate Grade 1 but never raised the issue of pecuniary jurisdiction at
all. The appellant/plaintiff had legal counsel at all material times and consciously sued in
a forum of his choice. Moreover, the appellant never raised the question of the
jurisdiction of the Magistrate Grade 1 before the High Court at Masaka. To that extent
the High Court could not read or guess the appellant's legal mind. The judgment of the
20 Magistrate Grade 1 was delivered on 9th September, 2008. It was not until 14th
September, 2012, about four years later that the appellant drafted his memorandum of
appeal and filed it in this court on 27th September, 2012. He remembered the question
of jurisdiction of the Magistrates' Court at that time. The respondents counsel
contended that this was purely an afterthought and a fishing expedition amounting to
25 abuse of court process. The question of raising a matter for the first time on appeal was
considered by the Supreme Court in the case of **Christine Bitarabeho v Edward
Kakonge Civil Appeal No. 4 of 2000**. A matter not in the pleadings ought not to be
raised on appeal. Following that decision, learned counsel for the appellant maintained
that the appellant omitted to take steps to place the issue of jurisdiction and expiry of
30 the lease before the Magistrates' Court and High Court and to that extent needed leave
to raise a new issue at a later stage and which leave ought to be refused.

Furthermore, the respondents counsel argued that the appellant's objection on the
ground of jurisdiction should not be entertained because he is the one who availed
himself and dragged the respondent to the same court which he now claims had no
35 jurisdiction. Counsel relied on the case of **Car and General Ltd v AFS Construction (U)
Ltd Miscellaneous Application No. 371 of 2018 arising from Civil Appeal Number
371 of 2017** for the proposition that no person can be allowed to take up a position

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5 inconsistent with one another or as it is commonly expressed to blow hot and cold or to
approbate and reprobate.

In the summary learned counsel for the respondent urged the court take into account
the following points namely:

- 10 • The claimant/plaintiff/appellant on his own volition is the one who filed a suit
against the respondents in the court exercising original jurisdiction after receiving
legal counsel.
- The onus was on the appellant to pick a court of requisite jurisdiction and he
went into the lower court without any duress or coercion from the respondents.
- 15 • The appellant never presented any valuation report or a sale agreement on the
question of the value of the subject matter save for an action in trespass seeking
eviction and vacant possession of the suit land.
- The appellant never raised a preliminary point regarding jurisdiction of the land
tribunal.
- The appellant never raised a preliminary point of law challenging the jurisdiction
20 of the Magistrate Grade 1.
- The appellant never raised jurisdictional issues in the first appellate court.
- The appellant has for the first time raised the issue of lack of jurisdiction in the
second appellate court.
- The appellant's argument is fallacious because he argues that there was no
25 jurisdiction to dismiss thereby implying that the magistrate only had jurisdiction
to determine the matter in his favour.
- The appellant was at all times represented by counsel who is presumed to have
advised him and he never brought any complaint against his counsel for any
professional malpractices.
- 30 • The appellant never sought any pecuniary remedy but rather eviction orders and
vacant possession and the issue of pecuniary jurisdiction never arose.
- The learned trial magistrate upon establishing fraud on the part of the appellant
never made any order but referred the matter to the High Court for
consequential orders.
- 35 • The order of cancellation of title did not occasion any miscarriage of justice
against the appellant. Before making the order the court evaluated the evidence
about how the appellant acquired the land and found that it was acquired
through fraudulent means.

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5 With reference to the grade 1 magistrate, the respondent's counsel submitted that it is true that he could not make an order for cancellation of the certificate of title and that is why he referred it to the High Court. No provision of the RTA was cited by the appellant that had been violated by the Magistrate Grade 1. Last but not least the appellant did not come to the court with clean hands and therefore the first and second grounds of
10 appeal ought to fail.

With reference to the second ground of appeal as to determination of the matter under the Registration of Titles Act whereas the lease had long expired, learned counsel for the respondent reiterated arguments that this ground had never been raised.

15 The respondent's counsel submitted that the lease expired about 12 months after the appellant filed the claim on 2nd December, 2014 with the District Land Tribunal and approximately 3 years before the magistrate's judgment on 9th June, 2008.

Regarding the order of the first appellate court, it is the appellant who preferred an appeal to the High Court. He wanted the respondents to be declared trespassers thereon and for him to be declared the owner. It is the appellant who again chose to
20 appeal to the High Court of Masaka well knowing that his fraudulent lease had expired. The appellant is seeking to declare proceedings and judgment of the High Court a nullity to have allowed him to prosecute his appeal at the High Court after expiration of the lease. Counsel contended that the appellant cannot approbate and reprobate. He doubted whether the appellant would have appealed the decision if it had gone in his
25 favour. The High Court had appellate jurisdiction prescribed by article 139 (2) of the Constitution of the Republic of Uganda. The respondent's counsel contended that all decisions of a subordinate court are appealable to the High Court. The same jurisdiction is conferred by section 16 of the Judicature Act. Furthermore article 139 (1) of the Constitution confers unlimited original jurisdiction on the High Court in all matters and
30 causes which include land disputes whether brought under the Registration of Titles Act or not. Similarly section 14 of the Judicature Act confers on the High Court unlimited original jurisdiction. Furthermore, section 33 of the Judicature Act empowers the High Court to give such remedies as any of the parties is entitled to in respect of any legal or equitable claim properly brought before it to avoid multiplicity of proceedings.

35 The respondent's counsel argued that if the expiry of the lease had rendered the suit property worthless, the appellant would not have appealed and he did, to the High Court and subsequently to the Court of Appeal. He submitted that though the litigants

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5 had a legal title, it was the equitable interest which was sufficient to warrant the High Court to adjudicate upon the matter and resolve the dispute.

Resolution of the appeal:

We have carefully considered the grounds of appeal, the submissions of counsel as well as the law applicable. The grounds of appeal are that:

- 10 **1 The learned trial judge erred in law when she did not find and hold that a Magistrate Grade 1 did not have jurisdiction to hear and try a matter in respect of land registered under the Registration of Titles Act thereby perpetrating an illegality.**
- 15 **2. The learned trial judge erred in law when she did not find that the Magistrate Grade 1 lacked pecuniary jurisdiction to try the matter and when she did not hold that the trial was a nullity.**
- 20 **3. The learned trial judge erred in law when she tried and determined a matter under the Registration of Titles Act whereas the lease to the suit property had long expired.**

It is clear from the submissions and the first and second grounds of appeal that the matter for consideration in this appeal only relates to the jurisdiction of the Magistrate Grade 1 Court and the subsequent jurisdiction of the High Court to make the impugned
25 orders it issued after dismissal of the first appeal from that decision. The third ground of appeal is whether there was jurisdiction to issue the order of cancellation of title as the High Court did. Secondly, the question is whether the question or issue of jurisdiction can be raised in a second appeal when it was neither pleaded nor argued in the lower courts. The appellant was the plaintiff/claimant in the lower court/tribunal.

30 This is a second appeal and as such is governed by section 72 of the Civil Procedure Act which provides that a second appeal this court can only be on a point of law. Section 72 of the Civil Procedure Act provides that:

"72. Second appeal.

35 (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

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5 decree passed in appeal by the High Court, on any of the following grounds, namely that—

(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;

10 (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 passed ex parte."

15 Section 72 is entrenched by section 74 which provides that no second appeal shall lie on any ground other than that provided for in section 72 and provides as follows:

"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."

20 There is no controversy as to the fact that the issue of jurisdiction was not raised both at trial and on first appeal and therefore on technical grounds it cannot be argued that this appeal is from a decision made on the issue of jurisdiction. There is no such decision. Learned counsel for the appellant argued that the High Court ought to have considered the issue of jurisdiction even if the matter had not been pleaded or raised by counsel
25 before it.

As a second appellate court, we are required to consider errors of law made by the lower court only. **Rule 32 (2) of the Judicature (Court of Appeal Rules) Directions** allows this court in the exercise of its jurisdiction as a second appeal court to appraise the inferences of fact drawn by the trial court.

30 Rule 32 (2) of the Rules of this court provides that:

"(2) On any second appeal from the decision of the High Court acting the exercise of its appellate jurisdiction, the court shall have power to appraise the

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5 inferences of fact drawn by the trial court, but shall not have discretion to hear additional evidence."

10 It provides that we have jurisdiction to appraise inferences of fact drawn by the trial court. The word "trial court" is not defined by the Rules of this court. Under section 2 (b) of the Civil Procedure Act, the word "court" means: "any court exercising civil jurisdiction." The term "trial court" is not defined. Similarly section 1 of the Judicature Act Cap 13 does not define the word "court" or "trial court." The word "trial court" by necessary implication means the court exercising original jurisdiction. This appeal arises from a decision of the High Court in the exercise of its appellate jurisdiction and for that reason when read in context of the law conferring jurisdiction, the expression "trial court" under rule 32 (2) of the Rules of this court means the court which exercised original jurisdiction. The inferences of fact to be drawn are therefore from the court exercising original jurisdiction. We are fortified in this conclusion by section 16 of the Judicature Act which confers on the High Court appellate jurisdiction and which reads as follows:

20 "16. Appellate jurisdiction of the High Court.

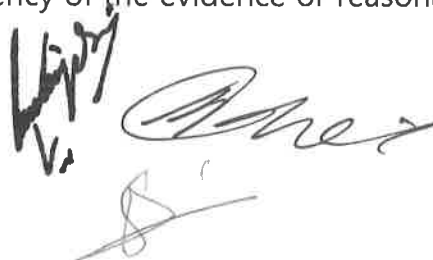
(1) Subject to the Constitution, this Act and any other law, the High Court shall have jurisdiction to hear and determine appeals which lie to it by virtue of any enactment from decisions of magistrates' courts and other subordinate courts in the exercise of their original or appellate jurisdiction.

25 (2) The High Court shall determine any questions of law referred to it by way of case stated by a magistrate in accordance with any enactment."

The High Court in this case heard an appeal arising from the decision of a Magistrates Court which court had assumed the role of a District Land Tribunal established under section 76 of the Land Act cap 227.

30 What were the inferences of fact drawn by the trial court and the first appellate court? It is necessary in determining any point of law raised in the appeal, to get the background facts right provided the facts are not controversial. What inferences of fact can be drawn from the uncontested evidence?

35 In the case of **Kifamunte Henry v Uganda S.C.C.A. No 10 of 1997** the Supreme Court of Uganda held that once there is evidence in support of a finding of fact, it is not open to a second appellate court to go into the sufficiency of the evidence or reasonableness

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5 of the finding. The second appellate court will not interfere with concurrent findings of fact of the trial and first appellate courts. Questions of fact are therefore not for trial in this appeal. We are only concerned with questions of law.

The appellant raised for the first time the issue of jurisdiction of the Magistrates Court and the first question for resolution is whether we should entertain that point of law at all. It is trite law that the decision of a court without jurisdiction is a nullity. According to 10 the **Oxford Dictionary of Law 5th Edition**, the word jurisdiction means:

“The power of a court to hear and decide a case or make a certain order.”

Obviously where a court has no power to hear or decide a case or make any authorised order, its decision is without jurisdiction and therefore a nullity. Article 129 of the 15 Constitution establishes courts of judicature which include the Supreme Court of Uganda; the Court of Appeal of Uganda; the High Court of Uganda; and such subordinate courts as Parliament may by law establish. It is further provided under article 129 (2) and (3) of the Constitution as follows:

20 “(2) The Supreme Court, the Court of Appeal and the High Court of Uganda shall be superior courts of record and shall each have all the powers of such a court.

(3) Subject to the provisions of this Constitution, Parliament may make provision for the jurisdiction and procedure of the courts.”

Subject to the Constitution, the jurisdiction and procedure of the courts is established by Acts of Parliament and any subsidiary legislation. As far as the appellate jurisdiction 25 of the High Court is concerned, it is also a creature of statute. In the case of **Attorney-General v Shah (No 4) [1971] 1 EA 50**, the Court of Appeal for East Africa sitting at Kampala considered whether an appeal could lie from the exercise of powers by the High Court under section 34 of the Judicature Act, Act 11 of 1967 to issue orders of mandamus and Spry VP who read the judgment of court said:

30 “It has long been established and we think there is ample authority for saying that appellate jurisdiction springs only from statute. There is no such thing as inherent appellate jurisdiction. ...”

Jurisdiction, whether original or appellate, is generally conferred by statute. In this appeal, the appellant is raising the issue of whether the trial court and the appellate 35 court had jurisdiction for the first time in a second appellate court. The appeal does not



5 arise from a ground of appeal argued in the first appellate court or from a decision of
the trial court. That notwithstanding, we can consider the issue of the ground being
raised for the first time in a second appellate court. The Court of Appeal for East Africa
in the case of **Tanganyika Farmers Association Ltd v Unyamwezi Development**
Corporation Ltd [1960] 1 EA 620 considered the issue of whether a new ground of
10 appeal can be raised for the first time in a second appeal. There was objection by the
Respondent to the appeal on the ground that the point raised was being raised for the
first time and was not in the contemplation of the parties because it was not in the
pleadings or argued. The East African Court of Appeal held that an appeal court has
discretion to allow a new point to be taken on appeal but it will permit such a course
15 only when it is assured that full justice can be done to the parties.

In **Ndawula and Kiwanuka Willy v Juliet Babirye; Court of Appeal Civil Appeal No**
171 of 2017 (arising from High Court Civil Suit No 11 of 2012) this court allowed a
point of law to be argued for the first time in a second appeal on the ground that the
facts for resolving the point of law were not in controversy and it was in the interest of
20 upholding the law. The court further relied on its decision in **Makula International v**
Cardinal Nsubuga and Another (1982) HCB 11 for the proposition that an illegality
cannot be sanctioned by a court order and once raised overrides all matters of
pleadings and admissions made. Furthermore, the Privy Council in **Warehousing &**
Forwarding Co of East Africa Ltd v Jafferli & Sons Ltd [1963] 1 EA 385 (PC)
25 approved its earlier decision in **Connecticut Fire Insurance Company v Kavanagh**
[1892] A.C. 473 Lord Watson at page 480 on the same issue stated that:

30 "When a question of law is raised for the first time in a court of last resort, upon
the construction of a document, or upon facts either admitted or proved beyond
controversy, it is not only competent but expedient, in the interests of justice to
entertain the plea. The expediency of adopting that course may be doubted,
when the plea cannot be disposed of without deciding nice questions of fact, in
considering which the court of ultimate review is placed in a much less
advantageous position than the courts below."

35 In this case the issue of whether the lower courts had jurisdiction relates to the subject
matter pleaded and the statutory powers conferred on the court and the question can
be considered on appeal on a point of law that a decision without jurisdiction is a nullity
and should not be sanctioned by this court or any other court. The point can be taken
notwithstanding that it was neither pleaded nor raised in the lower courts by any of the



5 parties. The issue can be raised by any party or even the court notwithstanding that the plaintiff filed a suit or claim before a District Land Tribunal. For that reason we shall consider the basis of the suit and the powers of the lower court and the appellate court with regard to jurisdiction.

10 The appellant who was the claimant lodged a claim in the District Land Tribunal of Ssembabule District in Claim Number SEMB 10 of 2004. The claim was for vacant possession, permanent injunction against trespass, costs and interest. In the claim, the appellant is presented as the registered proprietor of LRV ULC 158/668 Volume 3297 Folio 9. In the suit, it is alleged that in November 2004, the defendants forcefully entered into part of the suit land. The claimant then sought for orders of eviction, permanent
15 injunction, declaration that the defendants were trespassers, costs of the claim and other relief the tribunal court may grant. A copy of the registered title was attached to the claim. The claimant's claim in the trial court was filed against Stephen Rubahamya, Geoffrey Gumaho and Gertrude Barwatehi.

20 Eventually the second and third defendant's names were struck out because they had passed away. It is only the first defendant/respondent who is left in the matter.

The written statement of the defendants/respondents at the Land Tribunal was that the appellant is not the rightful owner of LRV ULC 153/668 Vol 3297 Folio 9 Ssembabule District and that it was the claimant who forcefully entered on the land. The defendants claimed interest as beneficiaries of the estate of Erenisto Katsinde and further averred
25 that the widow had no right to sell the land. The defendants/respondents counterclaimed in their capacities as beneficiaries to the estate of Erenisto Katsinde. In the counterclaim, they averred that after the death of Erenisto Katsinde, his widow absconded and abandoned the land. Secondly, the widow illegally obtained letters of administration to deprive them. Thirdly they alleged that the claimant/appellant
30 fraudulently acquired and got registered on the suit land and forcefully entered thereon.

In the particulars of fraud, the counterclaimants averred that the appellant purchased and procured the certificate of title from the widow Catherine Katsinde with knowledge that she had no valid letters of administration. Second, he purchased the suit property when he knew that it did not belong to the widow alone. He further purchased the suit
35 property at a lower price well knowing that it had a higher value. The counterclaimants prayed for orders of cancelation of title, eviction of the appellant, general damages and costs.

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5 We have carefully considered the ground of appeal and particularly the challenge to the
Jurisdiction of the Magistrates Court. We have read the written submissions of counsel
and both counsel addressed court extensively on the powers of a Magistrate Grade 1
Court under the law. The appellant's counsel contended that they had no pecuniary
jurisdiction over the subject matter of the suit which was over Uganda shillings
10 6,000,000/- only. It is a contention that the pecuniary jurisdiction of a Magistrate Grade
1 was Uganda shillings 2,000,000/- under section 207 (b) of the Magistrates Court Act at
the time of the trial. Secondly, the appellant contended that the Magistrate lacked
jurisdiction even pursuant to section 39 of the Land Amendment Act 2004 which
amended section 95 of the Land Act Cap 227 by substituting section 95 (7) therefore as
15 well as Practice Direction No. 1 of 2006. The import of the provisions is that until land
Tribunals are established Magistrates would continue to have the jurisdiction they had
immediately before the commencement of the Land Act or before the 2nd of July, 2000.

With regard to ground 1 of the appeal, the appellant contends that a Magistrate Grade
1 did not have jurisdiction to hear and try matters in respect of land registered under
20 the Registration of Titles Act. Secondly, on the second ground of appeal, the appellant
attacks the jurisdiction of a grade 1 magistrate for lacking pecuniary jurisdiction. We
shall consider these two grounds of appeal together.

First of all, we agree with the respondent's counsel that the appellant's premises are that
the jurisdiction exercised by the Magistrate Grade 1 was found under the Magistrates'
25 Court Act. This is an erroneous and false premises on which to proceed in the matter
before court as a matter of fact. The Magistrate Grade 1 did not exercise the jurisdiction
of the Magistrates' Court under the Magistrates' Court Act but it did exercise jurisdiction
of the District Land Tribunal under section 76 of the Land Act Cap 227. This is apparent
from the record of proceedings which indicate that the matter was filed before the
30 District Land Tribunal by the appellant himself. The District Land Tribunal partially heard
the matter and at page 134 of the record of proceedings it is indicated that they issued
an interim order restraining the respondents or their agents from committing any
further trespass, grazing or carrying out any other activity whatsoever in any way on the
suit land described as LRV ULC 153/668 volume 3297 folio 9 until the disposal of the
35 temporary injunction pending before the District Land Tribunal on 7th December, 2004.
The order was signed by the Chairman District Land Tribunal Sembabule District. The
pleadings were filed before the District Land Tribunal. The claim was acknowledged at
page 173 of the record of appeal on 2 December 2004 by the appellant. The issue of the

The page concludes with three handwritten signatures or initials in black ink. The top signature is a cursive name, the middle one is a more stylized signature, and the bottom one consists of a few large, sweeping strokes.

5 pecuniary jurisdiction was never raised in the lower courts. It however arose as a
question in the counterclaim filed by the defendants wherein they sought cancellation
of the certificate of title comprised in the LRV ULC 153/668 volume 3297 folio 9
Sembabule District. They also sought an order of eviction of the claimants from the land,
10 general damages and costs of the counterclaim. The proceedings before the District
Land Tribunal are between pages 101 and 133 of the record of appeal and the claim had
been adjourned for oral submissions but was never completed before the district land
tribunal. It was finally adjourned on 26th October, 2007.

Subsequently, the claim was transferred for hearing to the Magistrates' Court and the
judgment of the Magistrate Grade 1 can be found between pages 78 – 87 of the record
15 of appeal. The proceedings at pages 88 – 100 of the record of appeal are before the
Magistrates' Court. No fresh pleadings were filed. The issue is therefore whether a
Magistrate Grade 1 had jurisdiction to entertain a pending matter which had
commenced and proceeded before the district land tribunal.

On the question of jurisdiction, reference was made to section 6 of the Land Tribunal's
20 (Procedure) Rules 2002 that provides as follows:

"6. (1) A dispute in land shall be commenced by filing a statement of claim either
orally or in writing to the tribunal for –

(a) determination of any dispute relating to a land transaction, transfer,
acquisition, repossession, lease or grant;

25 (b) determination of the amount of compensation or value of land;

(c) cancellation of any entry on the certificate of title, occupancy of customary
ownership or cancellation of title or certificate of customary ownership or
occupancy in the case handled by a lower land tribunal;

30 (d) review of the decision of the Commission, board, committee, district land
office, recorder or Registrar of Titles;

(e)..."

Secondly, the Land (Amendment) Act, 2001 was enacted to specifically extend the time
limited within which magistrates courts and local council courts are authorised continue
handling land disputes pending commencement of the Land Act 1998. The preamble
35 provides as follows:

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5 "An Act to amend subsection (6) of section 98 of the Land Act, 1998 to extend the time limit in which Magistrates Courts and Local Council Courts are authorised to continue dealing with land disputes pending before them prior to the commencement of the Land Act, 1998, so as to enable them to continue to deal with them until completion."

10 Particularly section 2 of the amendment provides that section 98 (6) and (7) of the Land Act is amended to read:

15 "(6) Where any case relating to a land dispute was pending before a Magistrates' Court or a local Council court prior to the coming into force of this Act, the case shall continue to be heard by the Magistrates' Court or the Local Council Court until completion".

(7) Until the land Tribunals are established and commence to operate under this Act, Magistrates Courts and the Local Council Courts shall continue to have jurisdiction they had immediately before the commencement of this Act."

20 Section 39 of the Land Amendment Act 2004 further specifies the role of Magistrates' Courts in the following words:

39. Amendment to section 95 of the Act.

Section 95 of the Act is amended—

(a) by substituting for subsection (7) the following—

25 "(7) In each district, until a District Land Tribunal is established and commences to operate under this Act, magistrates' courts shall continue to have jurisdiction in land matters as they had immediately before the commencement of this Act.";

(b) by inserting the following new subsection after subsection (8)—

30 "(9) Pending the survey and registration of land used or set aside for use by the Government or by any other public body before the coming into force of this Act by or to the orders of the Commission, the land occupied or used by the Government or any other public body together with the reasonable curtilage to that land shall remain vested in the Commission for the same estate or interest as immediately before the enactment of this Act."

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5 What was envisaged by the Land Act as amended is clearly for Magistrates' Courts to handle disputes they used to handle before the commencement of the Land Act until District Land Tribunals or Land Tribunals are established under the Land Act 1998. The law does not envisage the reverse which is for a magistrate to handle a case which commenced in a District Land Tribunal after they were established and is transferred to
10 a Magistrates' Court after the land tribunal ceased to handle the matter by reason of administrative bottlenecks and not the law. For that reason, the Land (Amendment) Act, 2001 only serves to give the history of the power exercised by the Magistrates' Courts before establishment of the land tribunals under the Land Act 1998. The appellant filed his claim after District Land Tribunals had been established in the District whose
15 jurisdiction is stipulated by section 76 of the Land Act before amendment in 2004 as follows:

"76. Jurisdiction of district land tribunals.

(1) The jurisdiction of a District Land Tribunal shall be to—

20 (a) determine disputes relating to the grant, lease, repossession, transfer or acquisition of land by individuals, the commission or other authority with responsibility relating to land;

(b) determine any dispute relating to the amount of compensation to be paid for land acquired under section 42;

25 (c) determine disputes in respect of land the value of which exceeds the amount stipulated under section 84;

(d) make consequential orders relating to cancellation of entries on certificates of title or cancellation of title and vesting of title in cases handled by the lower land tribunals; and (e) determine any other dispute relating to land under this Act.

30 (2) In the exercise of jurisdiction over land matters provided for by this section, a District Land Tribunal shall have all the powers of a Magistrates' Court grade I granted under the Magistrates Courts Act and shall, in addition and insofar as it is not provided for in that Act, have the power to grant decrees of specific performance and issue injunctions and generally shall have the power to grant such relief, make such orders and give such decisions against the operation of
35 any action, notice, order, decree or declaration made by any official or any board



- 5 or any committee or any association or the commission, as the circumstances of the case require, and without limiting the generality of that power, may—
- (a) cancel any action, notice, order, decree or declaration;
 - (b) vary the operation of any action, notice, order, decree or declaration;
 - (c) postpone the operation of any action, notice, order, decree or declaration;
 - 10 (d) substitute a different decision for the one determined by any official, board, committee, association or the commission;
 - (e) confirm any action, notice, order, decree or declaration made, notwithstanding that some procedural errors took place during the making of that action, notice, order, decree or declaration if the District Land Tribunal is satisfied that—
 - 15 (i) the person applying for relief was made fully aware of the substance of the action, notice, order, decree or declaration; and
 - (ii) no injustice will be done by confirming that action, notice, order, decree or declaration, and may grant that relief and all other orders made and decisions given on such conditions if any, as to expenses, damages, compensation or any
 - 20 other relevant matter as the District Land Tribunal considers fit.
- (3) On receipt of a case referred to in section 84 (2), the District Land Tribunal shall after satisfying itself make an appropriate order."

The Land Amendment Act 2004 further amended section 76 as follows:

"31. Amendment to section 76 of the Act.

25 Section 76 of the Act is amended—

(a) by substituting for paragraph (c) of subsection (1), the following—

"(c) determine disputes as the court of first instance in all land matters where the subject matter does not exceed two thousand five hundred currency points;"

(b) by deleting paragraph (d) of subsection (1);

20

The image shows three handwritten signatures or initials. On the left is a vertical signature in black ink. In the center is a signature in black ink that appears to read 'D. M. C.'. Below it is a signature in blue ink that appears to be a stylized 'S'.

5 (c) in subsection (2), by deleting the words "all the powers of a Magistrates' Court Grade I granted under the Magistrates' Courts Act and shall, in addition and in so far as it is not provided for in that Act, have"; and

(d) by substituting for subsection (3) the following—

10 "(3) Notwithstanding subsection (1) of this section, a District Land Tribunal shall not make an order for cancellation of entries in a certificate of title and vesting title, but shall refer such cases to the High Court for the necessary consequential orders."

The amended section 76 for ease of reference should read as follows:

"76. Jurisdiction of district land tribunals.

15 (1) The jurisdiction of a District Land Tribunal shall be to—

(a) determine disputes relating to the grant, lease, repossession, transfer or acquisition of land by individuals, the commission or other authority with responsibility relating to land;

20 (b) determine any dispute relating to the amount of compensation to be paid for land acquired under section 42;

(c) **""(c) determine disputes as the court of first instance in all land matters where the subject matter does not exceed two thousand five hundred currency points;""**

25 (d) ~~(deleted) make consequential orders relating to cancellation of entries on certificates of title or cancellation of title and vesting of title in cases handled by the lower land tribunals; and (e) determine any other dispute relating to land under this Act.~~

30 (2) In the exercise of jurisdiction over land matters provided for by this section, a District Land Tribunal shall have ~~all the powers of a Magistrates' Court grade I granted under the Magistrates Courts Act and shall, in addition and insofar as it is not provided for in that Act, have~~ (deleted) the power to grant decrees of specific performance and issue injunctions and generally shall have the power to grant such relief, make such orders and give such decisions against the operation of any action, notice, order, decree or declaration made by any official or any board

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5 or any committee or any association or the commission, as the circumstances of the case require, and without limiting the generality of that power, may—

(a) cancel any action, notice, order, decree or declaration;

(b) vary the operation of any action, notice, order, decree or declaration;

(c) postpone the operation of any action, notice, order, decree or declaration;

10 (d) substitute a different decision for the one determined by any official, board, committee, association or the commission;

(e) confirm any action, notice, order, decree or declaration made, notwithstanding that some procedural errors took place during the making of that action, notice, order, decree or declaration if the District Land Tribunal is satisfied that—

15 (i) the person applying for relief was made fully aware of the substance of the action, notice, order, decree or declaration; and

(ii) no injustice will be done by confirming that action, notice, order, decree or declaration, and may grant that relief and all other orders made and decisions given on such conditions if any, as to expenses, damages, compensation or any other relevant matter as the District Land Tribunal considers fit.

20 **(3) “(3) Notwithstanding subsection (1) of this section, a District Land Tribunal shall not make an order for cancellation of entries in a certificate of title and vesting title, but shall refer such cases to the High Court for the necessary consequential orders.”**

25 The appellant’s claim had been lodged in the district land tribunal. The District Land Tribunal under section 76 (1) (d) of the Land Act Cap 227 as amended by the Land Amendment Act 2004 had no jurisdiction to make consequential orders relating to cancellation of entries on the certificates of title or cancellation of title and vesting of title in cases handled by the lower land tribunals. This is because by the Land Act
30 Amendment Act 2004, it is expressly provided by section 76 (3) that the District Land Tribunal cannot make an order for cancellation of entries in a certificate of title and vesting title but shall refer such cases to the High Court for the necessary consequential orders. Secondly, the district land tribunals had jurisdiction to determine disputes as a court of first instance in all land matters where the subject matter did not exceed 2500
35 currency points. The District Land Tribunal had power to determine disputes relating to

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5 the grant, lease, repossession, transfer or acquisition of land by individuals, the
commission or other authority with responsibility relating to land; determine any dispute
relating to the amount of compensation to be paid for land acquired under section 42;
determine disputes in respect of land the value of which did not exceed 2500 currency
10 points. What is of particular relevance is section 76 (2) which provides that in the
exercise of the jurisdiction in the land matters provided for, a District Land Tribunal shall
have the power to grant decrees of specific performance, and issue injunctions and
generally shall have the power to grant such relief and make such orders and give such
decisions against the operation of any action, notice of the decree or declaration made
15 by any official or any board or any committee or any association or the commission as
the circumstances of the case require.

The District Land Tribunal had jurisdiction to determine disputes relating to the grant,
lease, repossession, transfer or acquisition by individuals, the Commissioner or other
authority with responsibility relating to land. However the appellant filed the claim in
20 trespass for eviction, permanent injunction and declarations that the respondents were
trespassers and for costs. In the counterclaim, the respondents claimed cancellation of
title, general damages, eviction and costs of the counterclaim. Under section 76 (1) (c) of
the Land Act, the District Land Tribunal could determine the issues in respect of land
value which exceeds the amount 2500 currency points. A currency point is defined by
section 1 (k) of the Land Act Cap 227 as having the value assigned to it in the Schedule
25 to the Act which provides that a currency point represents 20,000 Uganda shillings.
2,500 currency points is Uganda shillings 50,000,000/=

A few conclusions can be drawn from the above provisions and the history of the appeal
namely:

- A District Land Tribunal was established and the appellant filed an action in the
30 District Land Tribunal of Sembabule District.
- The action was subsequently heard by a Magistrate Grade 1 after the District
Land Tribunal which had initially heard ceased to hear the matter for reasons
which are not indicated.
- A District Land Tribunal could handle in disputes whose subject matter pecuniary
35 value did not exceed Uganda shillings 50,000,000/=.
- A District Land Tribunal could not hear a dispute for cancellation of title within its
mandate of hearing or land disputes under the Land Act provided it was within
the pecuniary limits of its jurisdiction as well as the geographical limits thereof

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5 but could only refer any requirement for cancellation of title to the High Court for the exercise of such powers.

- The appellant's case was filed directly in the District Land Tribunal and the Magistrate Grade 1 who subsequently heard the dispute did not make an order for cancellation of title but referred it to the High Court when he held that the
10 appellant fraudulently secured registration as a transferee. He referred the matter to the High Court for the necessary consequential orders.

The simple question is whether the Magistrate Grade 1 could assume the powers of the district land board. First of all it is an acceptable fact pleaded by the appellant that the subject matter of this suit was Uganda shillings 6,000,000/=. A District Land Tribunal
15 could handle a subject matter of up to Uganda shillings 50,000,000/=.

Section 177 of the Registration of Titles Act gives powers to the High Court to order cancellation of title in the following words:

177. Powers of High Court to direct cancellation of certificate or entry in certain cases.

20 Upon the recovery of any land, estate or interest by any proceeding from the person registered as proprietor thereof, the High Court may in any case in which the proceeding is not herein expressly barred, direct the registrar to cancel any certificate of title or instrument, or any entry or memorial in the Register Book relating to that land, estate or interest, and to substitute such certificate of title or
25 entry as the circumstances of the case require; and the registrar shall give effect to that order.

Section 177 of the RTA expressly reserves the power in the High Court for cancellation of title where the proceedings are not expressly barred. Proceedings for recovery of land pursuant to a transfer and not expressly barred can be handled by a district land board.
30 Furthermore, cancellation of title is a consequential order to proceedings in which the remedy of cancellation is justified. This is consistent with section 189 of the RTA which provides that in any proceedings before the High Court, the High Court may refer any question to any subordinate court and the court to which any question is referred shall try the question and return its findings on the question to the High Court and finding
35 shall become part of the record in the proceedings before the High Court. Subordinate courts are not precluded from trying any matter enabled by the RTA or any other law which is not in conflict with the RTA.

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5 Secondly, the Land Act Cap 227 makes reference to the Registration of Titles Act for
instance when considering the special powers of the registrar under section 91. It makes
the special powers subject to the Registration of Titles Act. Furthermore, section 1 (aa)
of the Land Act explicitly defines the word "registrable interests" to mean interest
10 registrable under the Registration of Titles Act, namely, Mailo, Freehold, leasehold, and
sub leasehold, but includes a certificate of customary tenure and a certificate of
occupancy. In section 1 (z) of the Land Act, "registered owner" means the owner of
registered land registered in accordance with the Registration of Titles Act. It is therefore
apparent that the Registration of Titles Act should be read in harmony with the Land
Act. Section 2 (1) of the Registration of Titles Act Cap 230 laws of Uganda is still
15 applicable and provides that:

"2. Conflicting laws.

(1) Except so far as is expressly enacted to the contrary, no Act or rule so far as
inconsistent with this Act shall apply or be deemed to apply to land whether
freehold or leasehold which is under the operation of this Act."

20 This provision has never been amended by any subsequent laws and provides that
anything inconsistent with the RTA will not be deemed to apply to land whether it to be
Freehold or leasehold. It follows that the leasehold, the subject matter of the appeal is
subject to all the provisions of the Registration of Titles Act and the Land Act is only
complementary to the RTA.

25 Finally, the only issue remaining is whether the Magistrates' Court could assume the
powers of the district land tribunals after they had been established. This question can
be answered from the directions issued by the Chief Justice of Uganda who issued
Practice Direction No. 1 of 2006 being the **Jurisdiction of Magistrates' Courts in
Land Matters**. The Hon. the Chief Justice of Uganda pursuant to his powers under
30 Article 133 (1) (b) of the Constitution of Uganda enabled Magistrates' Courts to exercise
jurisdiction over land matters in accordance with section 95 (7) of the Land Act 1998
which jurisdiction is meant to be exercised by District Land Tribunals and the section
provides that:

35 "(7) Until the land tribunals are established and commence to operate under this
Act, magistrates courts and executive committee courts shall continue to have
the jurisdiction they had immediately before the 2nd July, 2000."

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5 We had already noted that district land tribunals under section 76 of the Land Act had expanded jurisdiction inclusive of an extended pecuniary jurisdiction not exceeding Uganda shillings 50,000,000/= that was higher than that of a grade 1 Magistrate. Secondly, the above provision merely resurrected the earlier jurisdiction of the Magistrates Courts' before the district land tribunals where appointed. Thirdly,
10 Magistrates Grade 1 were required to handle all pending matters before the District Land Tribunal in the same Practice Direction Number 1 of 2006 which provides in Direction 1 that:

15 "1. Following the expiry of contracts of Chairpersons and Members of the District Land Tribunals, Magistrates' Courts presided over by Magistrates of the rank of Magistrate Grade 1 and above shall exercise jurisdiction over land matters in accordance with Section 95 (7) of the Land Act which provides that in each district until a District Land Tribunal is established and commences to operate under the Act, Magistrates' Courts shall continue to have jurisdiction in Land matters as they had immediately before the commencement of the Act."

20 The problem with the Practice Direction is that Magistrate Grade 1 had a somewhat different jurisdiction in Land matters than that of the district land tribunals. However, the Practice Direction clearly indicates and it is the clear intention of the Hon the Chief Justice of Uganda that the Magistrates Grade 1 should have and were given power to handle pending matters upon expiry of contracts of district land tribunals. Finally, the
25 record of appeal clearly indicates that proceedings before the Magistrate Grade 1 commenced on 22 February 2007. Secondly, the proceedings commenced with the taking of evidence of PW5. Earlier proceedings were that before the district land tribunal. It follows that, the learned trial magistrate assumed the jurisdiction of district land tribunals in the pending cases after the expiry of the contracts of the District Land
30 Tribunal and assumed the jurisdiction therefore. The Magistrate Grade 1 stepped into the shoes of the District Land Tribunal who were no longer in office and had jurisdiction which included hearing any dispute relating to transfer or acquisition of land under section 76 (1) of the Land Act Cap 227 as amended by the Land Amendment Act 2004 where the value of the suit property did not exceed Uganda shillings 50,000,000/=.

35 In the premises the Magistrate Grade 1 exercised the jurisdiction of the District Land Tribunal on the pending claim that had been filed by the appellant before the district land tribunal, and which dispute was partly heard. Having taken over the pending matter, no objection to jurisdiction was raised by the appellant who was the originator



5 of the action. With regard to the counterclaim, we have established as written above
that the learned trial magistrate did not make any order for cancellation of title but
referred the matter to the High Court as stipulated by the law. The learned trial
magistrate and High Court did not err in law not to consider the issue of jurisdiction
10 which was neither pleaded nor raised by the appellant. Regarding the issue of property
being ordered to be registered in the names of the late Katsinde, this is an error which
does not prejudice the appellant. The widow of Erenisto Katsinde (deceased) who sold
the property purportedly acted as administrator of the estate of the deceased and dealt
with the suit property as such. She was implicated in the fraud though she was not
made a party. The property goes to the estate of the deceased and ought to be
15 registered in the names of the lawful legal representative of his estate. Grounds 1 and 2
of the appeal lack merit and are hereby disallowed.

Finally, the appellant argued grounds 3 of the appeal which is that: **"the learned trial judge erred in law when she tried and determined the matter under the Registration of Titles Act whereas the lease to the suit property had long expired.**

20 It is the appellant who commenced an action before the District Land Tribunal in which
he claimed that he was the registered owner of the suit land described as LRV ULC
153/668 volume 3297 folio 9 Sembabule District attached as annexure "A". The
appellant is estopped from raising the question of registered proprietorship which
remains on record. In any case annexure "A" indicated that the appellant was granted a
25 lease on 1st July, 2004 for a period of five years and which could be extended. He
derived his title to the property as a consequence of his registration on the title deed.
The ground of appeal is incompetent in the sense that he did not acquire any other title
other than that of a proprietorship by virtue of registration under the RTA. That is the
title he asserted before the tribunal and in the Magistrates' Court and the counterclaim
30 was filed to impeach his title and an order made by the High Court cancelling his
registration and therefore the root of any title to the property by the appellant. If the
decree for cancellation issued by the High Court is set aside assuming the appeal is
allowed, the appellant's registration would be reinstated. In the premises, ground 3 of
the appeal is an absurdity, incompetent and is hereby struck out for being an abuse of
35 the process of court.

In the premises, the appellants appeal fails on points of law and is hereby dismissed with costs. The suit property belongs to the estate of the deceased whether registered or not



5 and for now the certificate of title of the suit property shall be registered in the names of a duly appointed legal representative of the deceased.

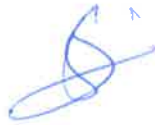
Dated at Kampala the ^{9th} day of ^{May} April 2019



10

Geoffrey Kiryabwire

Justice of Appeal



Ezekiel Muhanguzi

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Justice of Appeal



Christopher Madrama Izama

Justice of Appeal