

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 268 OF 2016

KIBANDA SWAIBU MUGARURA ALIAS GORDON APPELLANT

VERSUS

1. ABDU AZIZ DOKA BYEKWASO

2. STEVEN MUGUME RESPONDENTS

*(An Appeal from the Judgment and orders of Hon. Justice David Matovu of the High Court
(Mbarara) in Civil Appeal No. 0033 of 2015 dated 24th of November 2015)
(Arising from Mbarara Chief Magistrates Court Civil Appeal No. 062 of 2011)*

CORAM: Hon. Mr. Justice Kenneth Kakuru, JA
Hon. Mr. Justice Geoffrey Kiryabwire, JA
Hon. Mr. Justice Christopher Madrama, JA

JUDGMENT OF JUSTICE KENNETH KAKURU, JA

I have had the benefit of reading in draft the Judgement of my learned brother Hon. Christopher Madrama, JA.

I agree with him that this appeal ought to succeed for the reasons he has ably set out in his Judgment. I also agree with the orders he has proposed.

As Kiryabwire, JA also agrees, this appeal is allowed in the terms and orders set out in the Judgment of Madrama, JA.

Dated at Kampala this 21st day of June 2020.



Kenneth Kakuru
JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO. 268 OF 2016

KIBANDA SWAIBU MUGARURA AND ANOR===== APPELLANT

VERSUS

ABDU AZIZ DOKA BYEKWASO AND ANOR=====RESPONDENT

(CORAM: KAKURU, KIRYABWIRE, MADRAMA)

JUDGMENT OF JUSTICE GEOFFREY KIRYABWIRE, JA

JUDGMENT

I have had the opportunity of reading the draft Judgment of my Brother Hon. Mr. Justice Christopher Madrama, JA in draft and I agree with the findings and final decisions and orders and have nothing more useful to add.

Dated at Kampala this.....^{29th}..... day of ^{June}.....2020.

.....
HON. MR. JUSTICE GEOFFREY KIRYABWIRE
JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA,

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO 268 OF 2016

(ARISING FROM HIGH COURT CIVIL APPEAL NO. 033 OF 2015)

(ARISING FROM MBARARA CHIEF MAGISTRATES COURT CIVIL APPEAL
NO. 062 OF 2011)

10

(CORAM: KAKURU, KIRYABWIRE, MADRAMA JJA)

KIBANDA SWAIBU MUGARURA ALIAS GORDON}APPELLANT

VERSUS

1. ABDU AZIZ DOKA BYEKWASO}

15 2. STEVEN MUGUME}RESPONDENT

JUDGMENT OF CHRISTOPHER MADRAMA IZAMA

This appeal arises from the decision of Matovu J of the High Court, in which he allowed the appeal of the Respondents. The Respondents who were the Appellants in the High Court contended that the learned Chief Magistrate who tried the suit did not have the necessary jurisdiction to hear and determine the suit.

The Respondents had appealed against the judgment of the Chief Magistrates Court Mbarara wherein the Chief Magistrate His Worship Philip Odoki, declared that the Respondents were trespassers and awarded the Plaintiff who is now the Appellant special and general damages as well as costs of the suit. The matter originated from execution proceedings in which the Appellant to this appeal was found liable to pay a total of Uganda shillings 2,000,000/= by the Human Rights Commission. The Appellant's house at Kyapotani Cell, Kakoba Division in Mbarara Municipality was

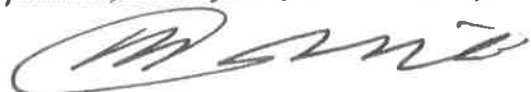
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5 attached and sold to the 1st Respondent to this appeal and he in turn sold
the suit property to the second Respondent. The Appellant challenged the
sale by filing a suit in the Chief Magistrate's Court and sought a declaration
that there was no valid sale of his property and for an order of eviction
against the 2nd Respondent to this appeal. The Appellant also sued for special
10 and general damages as well as for costs of the suit. The learned Chief
Magistrate found for the Appellant who was the plaintiff and the
Respondents to this appeal were aggrieved and appealed to the High Court.
The High Court allowed the appeal and found that the Chief Magistrate
lacked jurisdiction in the matter which ought to have been handled by the
15 court which issued the decree namely the Human Rights Tribunal. The
Appellant was aggrieved and appealed to this court on the following grounds
of appeal:

1. The learned trial judge erred in law and fact and a miscarriage of justice
was occasioned when he erroneously held that the High Court lacked
20 jurisdiction to entertain the suit thereby condoning and sanctioning
illegalities brought to the attention of the court to stand.
2. The learned trial judge erred in law and fact and a miscarriage of justice
was occasioned when he erroneously did not review the evidence on
record, subject it to a fresh scrutiny and come to his own conclusion
25 when he held that the 2nd Respondent should be put in possession of
the suit premises.
3. The learned trial judge erred in law and fact and a miscarriage of justice
was occasioned when he held that the Appellant should pay the costs
of the appeal in the High Court.

30 The Appellant prays that the appeal is allowed and the judgment of the High
Court set aside. Secondly, the Appellant prays for the costs of the appeal in
this court and in the courts below.



5 Due to the global pandemic of Covid 19, this court issued directions for the
lawyers of the Parties to address it in written submissions and judgment
would follow thereafter. The written submissions of the Appellant were
drawn and filed by Paul Byaruhanga Advocates who represented the
Appellant in this appeal. The written submissions in reply of the Respondent
10 was drawn by Okuku & Company Advocates.

Written address of the Appellant's Counsel:

The Appellant's Counsel submitted that since the year 2002, the Appellant at
all material times was the owner of the suit property in Mbarara Municipality
where he resided with his family. While serving a two-year jail term in
15 execution of the judgment of the Uganda Human Rights Tribunal, the 1st
Respondent trespassed upon the land and forcefully evicted the Appellant's
family from the suit property. Pursuant to the Appellant's release from prison
in 2007, he found that the 2nd Respondent was in occupation of his residence.
The Appellant instituted a suit in the Chief Magistrate's court of Mbarara
20 taking into consideration the location of the suit property in the magisterial
area.

The Chief Magistrate declared that the Respondents were trespassers and
awarded special and general damages as well as costs of the suit to the
Appellant. The Respondents appealed to the High Court of Uganda at
25 Mbarara. At the High Court the Respondents raised a point of law that the
learned trial magistrate entertained a suit without having the necessary
jurisdiction. The point of law was answered in the affirmative by the High
Court and the Appellant being aggrieved appealed to this court on points of
law and fact.

30 Ground 1 of appeal

The Appellants Counsel submitted that it is evident from the record that the
learned trial judge erred in law and fact and a miscarriage of justice was



5 occasioned when he erroneously held that the High Court lacked jurisdiction
to entertain the suit thereby condoning and sanctioning illegalities brought
to the attention of the court. He submitted that the error is magnified on the
record while reviewing the judgment of Hon Justice David Matovu. He
contended that the learned 1st appellate court judge was fully aware of the
10 fact that the judgment against the Respondents in the Chief Magistrates
court had essentially declared the Respondents as trespassers on the suit
property in addition to awarding special and general damages to the
Appellant. He submitted that the learned 1st appellate judge failed to
appreciate the jurisdiction conferred upon Chief Magistrates to try cases of
15 trespass. He relied on section 207 (1) (a) of the Magistrates Courts Act Cap
16 on the civil jurisdiction of magistrates. Secondly, submitted that
jurisdiction is a creature of statute as held in **Attorney General versus Shah
[1971] EA page 50**. He submitted that the Chief Magistrate had unlimited
jurisdiction in disputes pertaining to conversion, damage to property or
20 trespass. The pecuniary limits of that jurisdiction was only Uganda shillings
50,000,000/=.

Secondly, he submitted that it is trite law as held in **Makula International
versus His Eminence Cardinal Nsubuga and another [1982] HCB 11** that
a court of law cannot sanction what is illegal, and illegality once brought to
25 the attention of court, overrides all questions of pleadings, including any
admissions made therein. He submitted that it was clear from the judgment
of the trial magistrate that the occupation of the Appellant's residence was
fraught with various irregularities and illegalities. There was a sale of property
without any order of court. It was a sale by private treaty contrary to the
30 requirement to sell by public auction as advertised. There was sale of land by
unlicensed bailiffs. Taking into account the irregularities and illegalities, the
learned trial magistrate exercised his mandate as prescribed by law to grant
the plaintiff's suit. In the premises, he submitted that the learned trial judge



5 erred in law and a miscarriage of justice was occasioned when he held that the trial magistrate had no jurisdiction to hear the suit.

Ground 2

10 The Appellant's Counsel submitted that it is evident from the record that the learned 1st appellate court judge erred in law and fact and a miscarriage of justice was occasioned when he erroneously did not review the evidence on record, subject it to fresh scrutiny and come to his own conclusion when he held that the 2nd Respondent should be put in possession of the suit premises. He submitted that it is the duty of the 1st appellate court to subject the evidence to fresh scrutiny (See **Selle versus Associated Motor Boat**
15 **Company [1968] EA 123**).

The Appellant's Counsel contended that the 1st appellate court did not exercise its duty as explicitly provided for in the law by not reappraising the evidence on record and coming to an independent conclusion on the basis of it. The court failed to take stock of the manifest irregularities and illegalities
20 in essence and this accounted for its erroneous finding that as soon as issues of execution arises in any proceedings, the trial magistrate's role is limited to inquiry as to the existence of the proceedings and no more. The 1st appellate court was oblivious to the manifest irregularities on record such as the warrant of attachment which was not authentic, sale of land by private treaty
25 contrary to the sale by public auction as advertised and the sale by unlicensed bailiffs.

He submitted that the 1st appellate court in essence failed in its duty and in particular failed to weigh the conflicting evidence and draw its own inferences and conclusions. This failure led to interference with the findings
30 of law and fact of the trial magistrate and in effect resulted into a confirmation of illegalities brought to the attention of the court resulting in a miscarriage of justice. Appellant's Counsel further submitted that the error



5 of the appellate court in essence impacted on the finding that costs accrue against the Appellant that ultimately was an erroneous finding of the appellate court and essentially occasioned a miscarriage of justice against the Appellant.

In the premises he prayed that the appeal is allowed and the judgment of the High Court set aside. Secondly, the Appellant's Counsel prayed that the Respondent pays the costs of the appeal in this court and in the courts below.

Written address in reply of the Respondent

The Respondent's Counsel submitted that the Appellant was a judgment debtor pursuant to a complaint filed at the Uganda Human Rights Commission where judgment was entered against him on 4th July, 2005. The Appellants land, the subject matter of the suit, was attached to pay the judgment creditors. The land had been advertised in 2006 in a newspaper and pursuant to the advertisement, the 1st Respondent purchased the suit property from the court bailiff during the execution process. Pursuant to the purchase of the suit property, the 1st Respondent took possession of the suit land. The Appellant approached the 1st Respondent and expressed a desire to repossess the suit property and the 1st Respondent advised him to purchase it and repossess it like any other person would do. On 21st of May 2008 the Appellant in the company of the 2nd Respondent approached the 1st Respondent. The Appellant informed the 1st Respondent that the 2nd Respondent and 3 others intended to purchase the suit property. A sale agreement was accordingly executed between the 1st Respondent and the 2nd Respondent in the physical presence of the Appellant as witness.

The evidence of the Respondents in the Chief Magistrates Court as bona fide purchasers was rejected by the learned trial Magistrate who found for the Appellant. The Respondents appealed against the judgment to the High Court and the appeal was allowed.



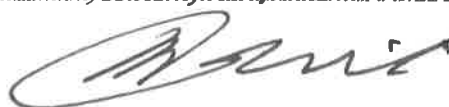
5 Ground 1

The Respondent's Counsel submitted that the appellate court did not find that the High Court did not have jurisdiction to entertain the matter as framed in ground one of the appeal. The learned 1st appellate judge relied on the authority of **Fenekansi Semakula v James Musoke & Others [1981] HCB 46** where it was held that the plaintiff and the 3rd defendant were parties in the two relevant suits in the lower courts and it was therefore clear that the matter between them could only be dealt with by the court which tried the matter. Following that precedent, the learned 1st appellate court judge held that issues to do with execution of the warrant from the Uganda Human Rights Commission involve the Respondent and could only be handled by the Uganda Human Rights Commission and not the Chief Magistrates Court of Mbarara.

The Respondent's Counsel submitted that section 14 of the Judicature Act Cap 13 confers unlimited jurisdiction on the High Court and section 16 of the same Act confers appellate jurisdiction on the High Court from decisions of the lower courts.

At 1st appellate Judge discerned the facts and evidence on record and came to a finding that the learned magistrate acted outside his jurisdiction when he set aside execution process of the Uganda Human Rights Commission. He contended that to hold otherwise would be disastrous because inferior courts would assume jurisdiction over matters that were handled by superior courts at the time of execution. He relied on **Dodhia v National & Grindlays Bank Ltd & another [1970] EA 195** where the East African Court of Appeal held that lower courts cannot depart from decisions of higher courts.

30 The Respondent's Counsel submitted that Article 51 (3) of the 1995 Constitution of the Republic of Uganda provides that the Chairperson of the Commission shall be a judge of the High Court or a person qualified to hold



5 that office. It followed that the Chief Magistrates' cannot set aside the
decision of the Human Rights Court and therefore the decision was a nullity
ab initio. He further relied on **Makula International versus His Eminence**
Cardinal Nsubuga Wamala and another [1982] HCB 11. Finally, he
submitted that the learned trial magistrate acted illegally and that was the
10 basis for setting aside his judgment by the High Court on appeal. He prayed
that ground 1 of the appeal fails.

Ground 2

The Respondent's Counsel submitted that the learned trial judge was alive to
his duty as the 1st appellate court. Secondly, section 34 (1) of the Civil
15 Procedure Act Cap 71 provides that all questions arising between the parties
to the suit in which the decree was passed and relating to the execution, shall
be determined by the court executing the decree and not by a separate suit
as was done by the Appellant in the lower court. On the question of whether
the warrant of attachment was not authentic, the learned trial judge
20 considered this a question arising between the parties to refer to the court
which executed the decree. In the premises, the learned trial judge re-
evaluated the evidence on record contrary to the submissions of the
Appellant's Counsel to the contrary.

The Respondent's Counsel prayed that this court upholds the decision of the
25 High Court with costs in this court and in the courts below.

Resolution of appeal:

I have carefully considered the grounds of appeal, the record of the appeal,
the submissions of Counsel and the law generally.

This is a second appeal on points of law only. Rule 32 (2) of the rules of this
30 court gives the general powers of this court on a second appeal in the
following words:



5 32 (2) On any second appeal from a decision of the High Court acting in the exercise of its appellate jurisdiction, the court shall have power to appraise the inferences of fact drawn by the trial court, but shall not have discretion to hear additional evidence.

10 We may appraise the inferences of fact drawn by the trial court but can also rely on the undisputed facts as far as is material. There is no controversy of material facts as far as I can see and we shall presently set out the material facts necessary to resolve the grounds of appeal.

From the address of Counsel, the appeal could be resolved on 2 grounds of appeal namely the 1st and 2nd grounds of appeal.

15 The 1st ground of appeal is that:

The learned trial judge erred in law and fact and a miscarriage of justice was occasioned when he erroneously held that the High Court lacked jurisdiction to entertain the suit thereby condoning and sanctioning illegalities brought to the attention of court to stand.

20 The 1st ground of appeal essentially is a grievance about the holding of the 1st appellate court that the Chief Magistrates Court unlawfully entertained the suit. Under this heading, it is asserted that the Chief Magistrates Court was found not to have jurisdiction in the matter. However, the question is much broader and involves the assertion that the suit arose from the execution of a decision of the Uganda Human Rights Commission which was
25 the only proper forum that could *inter alia* overturn the execution. The question looks simplistic because the outcome of an execution proceeding may not necessarily deal with the execution process but whether there was fraud in the acquisition of property. Was it a question arising out of the execution proceedings? It is therefore essential to consider the wording of
30 the High Court judgment on the issue of whether the matter was not proper to be handled by the Chief Magistrates Court. Further, I need to note that if

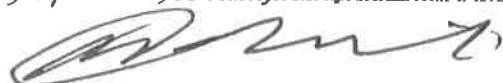


5 ground 1 of the appeal fails, there would be no need to consider the 2nd
ground of appeal which deals with the issue of whether the learned first
appellate court judge erred in law and fact and occasioned a miscarriage of
justice when he did not review the evidence on record as a 1st appellate court
or whether a matter of fact he did review the material evidence.

10 The record shows that the parties advocates were in agreement about the
fact that the Appellant failed to satisfy the award of the Uganda Human
Rights Commission and his land which has his residence was attached and
sold in execution proceedings to satisfy the award. The record indicates that
the Counsel agreed that the Appellant alleged that the execution was faulty
15 and therefore sought an order of court to repossess his property from the
Respondents. The above notwithstanding, it would be prudent to consider
the pleadings in the Chief Magistrates Court to establish the cause of action
of the Appellant in the Chief Magistrates Court for a firm foundation in the
facts.

20 The Appellant who was the plaintiff in the lower court filed a suit against the
Respondents who are also the defendants in the trial court. The plaint clearly
discloses that in the year 2006 while the plaintiff was absent from his
residence and serving a sentence of imprisonment, the 1st Respondent
trespassed upon and invaded the suit property and chased away the
25 Appellant's family. The Appellant returned in February 2007 to find his
resident occupied by the 2nd Respondent and alleged that he was a
trespasser. Before filing the suit, the Appellant averred that he did not know
how the Respondents came to be in possession of the suit property.
Paragraphs 9 and 10 of the amended plaint are pertinent and state as follows:

30 9. The required documents remained concealed until 29. 11. 2012 when the
defendants Counsel showed in court a "warrant of attachment and sale of
immovable property". Hence the leave to amend the plaint. A copy of the same is
annexed hereto and marked 'P7'.



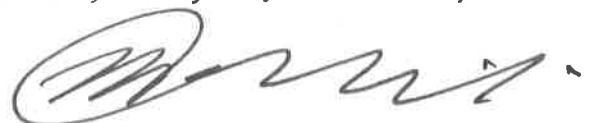
5 10. The plaintiff contends that there was no valid sale of his property as the purported sale is fraught with irregularity and fraud.

Particulars of irregularity and fraud:

- (a) The purported warrant was transferred by one bailiff (Lawrence Beyanga) to another (Atamba Naboth).
- 10 (b) Neither of the bailiffs was licensed at the unascertained date of issue of the warrant.
- (c) The warrant was not signed and sealed legally.
- (d) The alterations in dates in the warrant are unauthenticated.
- (e) By the time of the purported sale the warrant had expired.
- 15 (f) The warrant required the bailiff to hold the attached property until further order of the tribunal but the property was purportedly sold when there was no further order of the tribunal authorising such sale.
- (g) The purported sale was not by public auction.
- (h) Falsely claiming that the plaintiff participated in the purported sale of the property between the 1st defendant and the 2nd defendant's.
- 20

The Appellant sought *inter alia* a declaration that there was no valid sale of the plaintiff's property. The Appellant also prayed for an order of eviction. The other prayers are for special and general damages as well as costs of the suit. The amended plaint is dated 12th of December 2012. On the other hand, 25 the Respondents in the joint defence averred that the Appellant was a judgment debtor and this property was advertised whereupon the 1st Respondent purchased the suit property from the court at execution proceedings. Thereafter a sale agreement was executed between the 1st Respondent and the 2nd Respondent to whom the property was transferred.

30 In the judgment of the learned trial magistrate, reference is made to the proceedings before the Human Rights Commission and the submissions of



5 the defendant's Counsel wherein he stated as follows at page 4 of his Judgment:

10 However, when I read the submissions of Counsel for the defendants, he purported to prove issues which were not agreed upon and a total deviation from the pleadings and the scheduling memorandum. He proved the issues by "whether the Human Rights Commission had the legal authority to entertain the suit against the plaintiff..." And also went ahead to prove another issue whether this court has jurisdiction to set aside the execution process ordered by the commission".

15 Without much ado, I must state that this issues proved by Counsel for the defendants are diversionary; they were not reflected in the pleadings and not agreed upon in the scheduling memorandum and certainly without the blessing of the court. I will thus disregard them.

20 The learned trial magistrate went ahead to consider whether there was trespass on the suit property and in so doing he considered the warrant of attachment and whether it was authentic. He also considered the order of sale as well as the public auction and the licence of the bailiffs. He found that for all intents and purposes there was no sale to the 1st defendant and the 1st defendant was a trespasser. Secondly the 2nd defendant who is also the 2nd Respondent did not get any consent from the Appellant to enter his land and he was equally a trespasser. Finally, he found that the 2nd Respondent cannot claim to be a bona fide purchaser for value because he had notice of the documents of sale which included warrants issued to two bailiffs. The orders for payment of damages and costs were consequential orders.

25 The 1st ground of appeal to the High Court was that the learned trial magistrate entertained a suit without having the necessary jurisdiction.

30 In the 1st appellate court judge held:

I find it strange that after the learned Chief Magistrate had an opportunity of perusing the warrant of attachment and advertisement of the suit property, he went ahead to dissect these execution proceedings as though he was the one who

5 issued the warrant in this case. It was prudent for the learned Chief Magistrate to advise the parties to use lawful channels to set aside a warrant of attachment.

Using similar logic, issues to do with the execution of the warrant from Uganda Human Rights Commission involve the Respondent and Rutimbuka & Bayeka and this could only be handled by the Uganda Human Rights Commission and not the Chief Magistrates Court of Mbarara.

To hold otherwise, would open a can of worms where unsuccessful parties will wait for conclusion of execution proceedings, then challenges such execution in other courts of law which could yield disastrous results.

15 The Respondent in this case, should have challenged the execution proceedings in the Uganda Human Rights Commission and not before the Chief Magistrates Court, which was not armed with all relevant records to determine such issues.

The learned first appellate court judge allowed the 1st ground of appeal. In effect the 1st appellate court judge found that the Chief Magistrates court was not seized with jurisdiction in the matter.

I have carefully considered the powers of the Uganda Human Rights Commission (the Commission) provided for under the law. The Human Rights Commission Act Cap 24 Laws of Uganda and section 7 thereof sets out the function of the Commission and I need not refer to all the functions specifically as it is not in dispute. What is of material relevance being that section 7 (2) of the Human Rights Commission Act which provides that:

Section 7 on functions

7. Functions of the commission.

(1) The commission shall have the following functions—

30 (a) to investigate, at its own initiative or on a complaint made by any person or group of persons against the violation of any human right;



5 (b) ...

(2) Decisions of the commission under article 53(2) of the Constitution shall have effect as those of a court and shall be enforced in the same manner.

Decisions of the commission are enforceable in the same manner as a judgment of the court. Furthermore, section 20 of the Human Rights Commission Act imports the civil procedure applicable to the High Court proceedings for conduct of proceedings before the Human Rights Commission. Section 20 of the Human Rights Act provides as follows:

20. Application of High Court Rules.

Any rules of court applicable to civil or criminal proceedings in the High Court may be applied by the commission for the purposes of the exercise of its powers under article 53 of the Constitution or any other of its functions subject to such modifications as may be made by the Chief Justice by statutory instrument in consultation with the commission.

Further, Article 53 of the Constitution of the Republic of Uganda stipulates that the Commission shall have powers of court:

53. Powers of the commission.

(1) In the performance of its functions, the commission shall have the powers of a court—

(a) to issue summons or other orders requiring the attendance of any person before the commission and the production of any document or record relevant to any investigation by the commission;

(b) to question any person in respect of any subject matter under investigation before the commission;

(c) to require any person to disclose any information within his or her knowledge relevant to any investigation by the commission; and

(d) to commit persons for contempt of its orders.



- 5 (2) The commission may, if satisfied that there has been an infringement of a human right or freedom, order—
- (a) the release of a detained or restricted person;
 - (b) payment of compensation; or
 - (c) any other legal remedy or redress.
- 10 (3) A person or authority dissatisfied with an order made by the commission under clause (2) of this article has a right to appeal to the High Court.

The commission has power to order for compensation or grant any other legal remedy or redress. Upon making an order of compensation, the record indicates that execution proceedings were taken out. In the circumstances of
15 this appeal, the award of the Human Rights Commission is not in dispute and therefore there was no appeal from the decision of the Commission. The real matter in controversy in the trial court was whether there was a lawful warrant of attachment and a proper sale of the suit property in the process of
20 execution. While certain exhibits are referred to in the record of proceedings, they were not attached or included in the record of appeal. The documents were exhibited before the trial magistrate. In a joint scheduling memorandum endorsed by the plaintiff's Counsel and the defendants Counsel, certain undisputed facts were set out and are that:

1. The plaintiff was at all material times the owner of the suit property.
- 25 2. There is a judgment passed by the Human Rights Commission against the plaintiff at Kampala in July 2005.
3. In December 2006 the 1st defendant took possession of the suit property.
4. The 2nd defendant is in possession and occupation of the suit property.

30 What can further be discerned from the record is the decision of the Human Rights Commission attached as Annexure "A" to the written statement of defence of the defendants. It shows that there was a complaint number



5 UHRC/MBA/84/2002 in which one Rutimbuka & Beyaka were indicated as
complainant against Kambamu & Mugarura Gordon as the Respondents.
Apparently, the Respondent in the Human Rights Commission is also the
Appellant to this appeal and the plaintiff before the trial magistrate's court.
However, none of the Respondents were parties to the cause before the
10 Commission.

The court was invited to consider section 34 of the Civil Procedure Act by the
Respondent's Counsel. Section 34 (1) of the Civil Procedure Act provides that:

(1) All questions arising between the parties to the suit in which the decree was
passed, or their representatives, and relating to the execution, discharge, or
15 satisfaction of the decree, shall be determined by the court executing the
decree and not by a separate suit.

In this particular case, the Respondents were not parties to the suit in which
the decree was passed. They were sued in an original suit in which it was
alleged *inter alia* that the sale of the suit property was fraudulent. Order 22
20 rules 75 of the Civil Procedure Rules provides for sale of immovable property
in execution of a court decree by order of court:

75. Sale of immovable property.

Sales of immovable property in execution of decrees may be ordered by any court.

Order 22 rules 77 and 78 of the Civil Procedure Rules provide for the
25 procedure for the sale of immovable property as follows:

77. Deposit by purchaser and resale on default.

(1) On every sale of immovable property the person declared to be the purchaser
shall pay immediately after the declaration a deposit of 25 percent on the amount
of his or her purchase money to the officer or other person conducting the sale,
30 and, in default of the deposit, the property shall immediately be resold.



5 Unless otherwise the property is acquired fraudulently the purchaser acquires good title. Secondly, section 50 of the Civil Procedure Act bars a suit against the purchaser on the ground that the property was sold on behalf of the plaintiff. It provides as follows:

10 50. Suit against purchaser not maintainable on the ground of purchase being on behalf of the plaintiff.

(1) No suit shall be maintained against any person claiming title under a purchase of immovable property sold under a decree of execution on the ground that the purchase was made on behalf of the plaintiff or on behalf of someone through whom the plaintiff claims.

15 (2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against the property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real
20 owner.

It is clear that a suit can be maintained against the purchaser in only very exceptional circumstances stated in the law. A sale under a warrant of execution of the court is absolute. What is material being that the purchaser paid the full purchase price. It is clear from the wording of the statute that
25 execution was completed when the sale became absolute. Where the sale is absolute, execution is closed. In other words, the judgment creditor has obtained from the judgment debtor that which was sought in the execution proceedings. In the facts and circumstances of this appeal, the judgment creditors who are not parties to the suit or to the appeal before this court
30 got the money that was awarded by the Human Rights Commission. The process of execution is to satisfy the judgment creditor according to the decree of the court. Execution process is defined by Lord Denning in **Re Overseas Aviation Engineering (GB) Ltd [1962] 3 All ER 12** at page 16 when he held that:



5 (2) Where the decree holder is the purchaser, and is entitled to set off the purchase money under rule 67 of this Order, the court may dispense with the requirements of this rule.

78. Time for payment in full of purchase money.

10 (1) The balance, if any, of the purchase money payable under rule 77 of this Order, shall be paid by the purchaser to the officer or other person conducting the sale, or to the court within fifteen days of the date of the sale of the property; except that in calculating the amount to be so paid, the purchaser shall have the advantage of any setoff to which he or she may be entitled under rule 67(2) of this Order.

15 (2) On receipt of the balance, if any, of the purchase money or, if the decree holder is the purchaser, on the receipt of any sum not set off under rule 67(2) of this Order, the officer or other person conducting the sale shall—

(a) immediately execute any instrument of transfer required by any law for the time being in force;

20 (b) immediately inform the court of the completion of the sale; and

(c) subject to the provisions of any law for the time being in force, pay immediately to the court any money received after deducting the costs of the sale.

The law provides that the purchaser is entitled to a transfer to him or her the property upon payment of the purchase price. Thereafter, the sale shall
25 become absolute subject to exceptions stated in the law.

Generally, the law provides that a purchaser who buys pursuant to execution of a decree acquires good title. Section 49 of the Civil Procedure Act protects bona fide purchasers by providing that:

30 Subject to the provisions of any law for the time being in force relating to the registration of titles to land, where immovable property is sold in execution of a decree such sale shall become absolute on the payment of the full purchase price to the court, or to the officer appointed by the court to conduct the sale.



5 The word "execution" is not defined in the Act. It is, of course, a word familiar to lawyers. "Execution" means, quite simply, the process for enforcing or giving effect to the judgment of the court: and it is "completed" when the judgment creditor gets the money or other thing awarded to him by the judgment.

10 Where execution has been completed, the sale can only be impeached on the ground of fraud under sections 49 and 50 of the Civil Procedure Act. The question before the court should have been whether the sale was absolute. Such a proceeding is not a matter arising in execution which at the time of deposit of the final instalment became absolute. In the premises, it is my finding that the trial magistrate had jurisdiction to determine the question as
15 to whether the suit property had been acquired fraudulently. Secondly, it was a defence of the Respondents to say that they had acquired the property in a sale by the court.

I have carefully considered the question and it is not in dispute that the Human Rights Commission had jurisdiction in the human rights cause. What
20 is in dispute is not the powers of the Commission but whether execution was properly carried out. Execution having purportedly been completed, the matter was not between the parties to the human rights cause. The question of whether the sale was a nullity was a matter of execution by the bailiffs. What is being questioned is not the powers of the Human Rights Commission
25 but whether execution was lawfully carried out to the extent that what is in dispute is whether there was a fraudulent acquisition of property. The powers of the Commission in execution cannot be in dispute because execution is not carried out by the commission but by officers on behalf of the court or tribunal. Execution can be carried out by another court to whom the decree
30 is sent for execution under section 33 of the Civil Procedure Act. The testimony of DW1 who is also the 1st Respondent indicates that he saw an advertisement in Entatsi newspaper placed by auctioneers and Uganda Human Rights Commission. Certain documents were admitted and examined but are not on record. The warrant of attachment was also exhibited without



5 objection. Thereafter he sold the property to the 2nd Respondent. Certified copies of documents from the Human Rights Commission were admitted but are not on the record of appeal. Not even the newspaper in which the advertisement was made was included in the record of appeal.

10 What was in dispute was whether the sale was irregularly and unlawfully conducted. Was there a sale under a warrant of the Human Rights Commission? Such a warrant could be executed as a warrant of a court of law.

15 The above notwithstanding, the question is whether the learned Chief Magistrate had jurisdiction to consider the matter. It is my finding that ground 1 of the appeal has merit and the learned Chief Magistrate had jurisdiction to consider whether there was a warrant in execution of the decree of the Human Rights Commission pursuant to which the 1st Respondent as the purchaser bought the property. It was merely a question of evidence and not a matter of law. In the premises ground 1 of the appeal
20 is allowed.

Ground 2 of the appeal

The learned the trial judge erred in law and fact and a miscarriage of justice was occasioned when he erroneously did not review the evidence on record, subject it to a fresh scrutiny and come to his own conclusion when he held that the 2nd Respondent should be put in possession of the suit property.
25

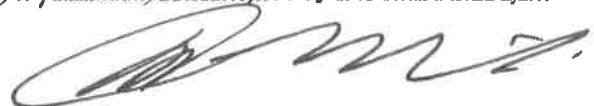
30 The learned trial judge having found that the matter was improperly before the Chief Magistrate and was not obliged to further consider other facts. His conclusion was directed by an understanding of the law that the matter had to be handled by the Human Rights Commission and not the Chief Magistrate. In any case the learned trial judge considered the material facts before coming to the conclusion on a point of law. The appeal before the 1st

5 appellate court was determined on a point of law and the question of evaluation of evidence on matters of fact were not material. What was material being whether the learned trial magistrate had jurisdiction to try the suit. Ground 2 of the appeal has no merit and is disallowed.

10 Having found that the learned Chief Magistrate had jurisdiction, the real question in controversy is whether it was adequate defence to the suit that the property was acquired by the 1st Respondent by purchase in a sale under a warrant of the court.

15 The learned trial magistrate found that there was no valid warrant of attachment and sale. He found no evidence confirming that the warrant of attachment was issued by an identifiable person. Secondly, it had originally been typed in the name of one Beyanga Lawrence which was later changed by pen to Atamba Naboth. He further found that the date of the warrant was changed from 2005 to read 2006 and the sale was not authenticated. Further that there was no order of sale because the warrant of attachment indicated
20 that the bailiff was to hold the property and seek further orders of court. This was however not done and therefore the bailiff could not have sold the property without a further order of the court. He further found that the property was supposed to be sold by public auction but ended up being sold by private treaty. Last but not least he found that the bailiffs who are alleged
25 to have sold the property were not licensed and were impostors.

It is quite unfortunate that the bailiffs were not sued after the amendment to the pleadings that introduced the question of illegal sale of the suit property. It was absolutely necessary to include the bailiffs who allegedly participated and sold the suit property, as parties. Conclusions were reached about the
30 acts of 3rd parties who were not before the court and therefore out of reach of the arm of justice. Secondly, the 3rd parties were not given a chance to defend themselves. In my judgment it is absolutely necessary to include the bailiffs who conducted the sale or the alleged sale as parties to the suit. Fraud



5 is a serious allegation and it is not acceptable to besmirch the reputation of persons not before the court without giving them a chance to defend themselves. In **Kampala Bottlers Ltd v Damanico (U) Ltd; Supreme Court Civil Appeal No. 22 of 1992** Platt JSC held at page 5 of his judgment on the issue of alleged fraud of other parties not before court that:

10 But it is not open for consideration in this case, because of another important procedural lapse. Had that been the Respondent's case, he should have brought the land office officials and Town Council officials before the court. It is important that before some one's reputation is besmirched, he has had an opportunity to defend himself. The officials here might have explained the confusion in their
15 action. Even incompetence might not have been fraudulent.

The reputation of the alleged bailiffs could not be tarnished without giving them a chance to be heard in defence of the allegations made against them.

I further need to note that in the entire proceedings, the nature of the tenure of the suit premises whether leasehold, customary tenure or freehold was
20 not disclosed.

In the premises, I would issue the following orders:

1. The Appellant's appeal partially succeeds and the judgment of the High Court is hereby set aside and substituted with this judgment.
- 25 2. Because the bailiffs were not parties to the suit before the trial magistrate, the whole decision of the learned trial magistrate as finds them imposters cannot stand and is also set aside. The sale of property to the 1st Respondent is absolute.
- 30 3. The Appellant is at liberty to institute a fresh suit against the bailiffs for damages.

5 4. The Appellant's appeal partially succeeded and the Appellant shall have half the costs of the appeal in this court and in the High Court.

Dated at Kampala the 29th day of June 2020


Christopher Madrama Izama

10 Justice of Appeal



