

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPEAL NO.124 OF 2013

OPIO DANIEL:::APPELLANT

VERSUS

1.OTAKA VINCENT

2.LIRA MUNICIPAL COUNCIL :::::::::::::::::::::::::::::::::::RESPONDENT

CORAM: HON. MR. JUSTICE BARISHAKI CHEBORION, JA

HON. MR. JUSTICE STEPHEN MUSOTA, JA

HON. MR. JUSTICE CHRISTOPHER MADRAMA, JA

JUDGMENT OF HON. JUSTICE STEPHEN MUSOTA, JA

This is an appeal against the Judgment of the High Court at Lira before the Hon. Mr. Justice Byabakama Simon Mugenyi delivered on 24th January, 2013 in Land Civil Suit No.74 of 2009.

Background of the Appeal

The Respondent/plaintiff claims he is registered proprietor of Plot No.70 Ogwanguji Road, Lira Municipality having acquired the said Plot from his father George Washington Bua. He alleges that prior to construction of his house, he obtained permission from the Lira Municipal Council to start the development on the land. He also claims that he obtained a bill of quantities and constructed his house on the suit land up to ring beam level without any interference from any person, body or authority. He further alleges that on 17th

1. The first part of the paper discusses the importance of the study of the history of the United States. It is argued that a knowledge of the past is essential for a full understanding of the present and for the development of a sound policy for the future.

2. The second part of the paper discusses the role of the government in the development of the United States. It is argued that the government has played a crucial role in the development of the country, and that its actions have been guided by a set of principles that have been passed down from generation to generation.

3. The third part of the paper discusses the role of the individual in the development of the United States. It is argued that the individual has played a crucial role in the development of the country, and that his actions have been guided by a set of principles that have been passed down from generation to generation.

4. The fourth part of the paper discusses the role of the community in the development of the United States. It is argued that the community has played a crucial role in the development of the country, and that its actions have been guided by a set of principles that have been passed down from generation to generation.

5. The fifth part of the paper discusses the role of the nation in the development of the United States. It is argued that the nation has played a crucial role in the development of the country, and that its actions have been guided by a set of principles that have been passed down from generation to generation.

6. The sixth part of the paper discusses the role of the world in the development of the United States. It is argued that the world has played a crucial role in the development of the country, and that its actions have been guided by a set of principles that have been passed down from generation to generation.

7. The seventh part of the paper discusses the role of the future in the development of the United States. It is argued that the future has played a crucial role in the development of the country, and that its actions have been guided by a set of principles that have been passed down from generation to generation.

8. The eighth part of the paper discusses the role of the past in the development of the United States. It is argued that the past has played a crucial role in the development of the country, and that its actions have been guided by a set of principles that have been passed down from generation to generation.

9. The ninth part of the paper discusses the role of the present in the development of the United States. It is argued that the present has played a crucial role in the development of the country, and that its actions have been guided by a set of principles that have been passed down from generation to generation.

10. The tenth part of the paper discusses the role of the future in the development of the United States. It is argued that the future has played a crucial role in the development of the country, and that its actions have been guided by a set of principles that have been passed down from generation to generation.

November 2008, the 1st Defendant and the 2nd Defendant's agents, servants and/or employees without his consent entered upon his suit plot and destroyed his house in the process of opening Ogwanguzi Road. That the road was opened in total disregard of the existing
5 house plan. That the Plot and the house therein were outside the planned road.

As a result of these facts the plaintiff claimed that he had suffered mental anguish, loss and inconvenience for which he is entitled to special and general damages. Accordingly, on 11th June 2009 the
10 appellant lodged plaint *vide* Civil Suit No.74 of 2009 in the Chief Magistrates Court of Lira at Lira against the respondents as defendants. The appellant's cause of action was for trespass to land situate at Plot No.70 Ogwanguji Road, Lira Municipality. In the plaint the appellant prayed as follows;

15 *"WHEREFORE, the plaintiff prays for Judgment against the Defendants for:*

a) Special Damages of UG.Shs 46,201,000/=

b) A declaration that the Plot No.70 Ogwanguzi Road in Lira Municipality belongs to the Plaintiff.

20 *c) A permanent injunction restraining the Defendants, their agents, servants and/or employees from further trespassing, damaging, wasting and/or alienating the Plaintiff's land*

d) General damages for trespass

25 *e) Interest*

f) Costs of the suit

On 22nd June 2009, the respondents filed a Written Statement of Defence stating that the plaint does not disclose a cause of action, is fatally defective and that the actions of the appellant were fraudulent as he colluded and connived with unscrupulous officials to illegally, maliciously and fraudulently deprive council of its legal Property.

The matter was heard by Chief Magistrate Gabriel O. Nyipir interparty on different dates that is; 10/9/2009, 8/10/2009, 19,11,2009, 21/12/2009, 19/2/2010, 1/4/2010, 11/6/2010, 30/9/2010, 18/12/2010, 16/2/2011, 25/3/2011, 1/11/2011, 12/11/2011.

The plaintiffs filed written submissions in the Chief Magistrates Court of Lira at Lira.

On 2/12/2011 judgment was read and explained in open court by the Chief Magistrate Gabriel O. Nyipir who noted on the court record as follows;

"2/12/2011:- Plaintiff present.

Counsel for Plaintiff absent.

Acan Stella Taking brief for Mr.Twontoo for

Defendants

Ongom Clerk

Judgment read and explained in open.

Case referred

To the High Court costs in the cause.

So Ruled.

GABRIEL O. NYIPIR
CHIEF MAGISTRATE
2/12/2011”

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In his Judgment the Chief Magistrate found that whereas the appellant had presented evidence of Certificate of Title to the suit land, the defendant raised issues of fraud praying that the Certificate of Title be disregarded for being nonexistent by reason of fraud. In
10 the final he stated thus;

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“...With all the above it has become categorically clear that this is a matter involving cancellation of land title. The intimation of the defence is that they are urging this court to consider the land title as if it is cancelled, which consideration cannot lawfully be done by this court since this court lacks jurisdiction on matter considering cancellation of land title. This would in itself only be entertained lawfully in the High Court. To resolve the issues of this case comprehensively, once and for all I do deem it appropriate that the matter be referred and handled to the High Court that may appropriately have the jurisdiction to attend to all the issues involved in the matter

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I do accordingly refer the matter to the High Court Lira for appropriate determination of the matter.

Let costs be in the cause.

So ruled.

GABRIEL O. NYIPIR
CHIEF MAGISTRATE
2/12/2011”

5 Thereafter the matter came up before Hon. Justice Byabakama
Mugenyi Simon on 24/1/2013 as Land Suit No.74 of 2009 who made
an order as follows;

“Order: -

10 *It is not in dispute the suit land has title. This was a fact
within the knowledge of the plaintiff since he is the
registered proprietor of the suit land. He was represented
by Counsel at the trial. Although it was a grave error on the
part of the trial magistrate to hear the matter up to the stage
of judgment, the Plaintiff and his Counsel ought to have
15 known they were in the wrong court.*

*In view of the apparent illegality, the entire proceedings
were a nullity and this court cannot be asked to determine
merits of the cause which is encumbered by manifest
illegality. The purported reference by the trial Magistrate
20 is therefore null and void.*

*In the result the said proceedings and the judgment are
vitiating on account of the stated illegality.*

*As for costs, I have already stated the plaintiff was in the
wrong Court. On the other hand Counsel for the defendants
25 should have raised an objection to the lack of jurisdiction on*

the part of the trial Magistrate. Although Mr. Twontoo fervently argues he raised the objection, the record does not bear him out. The defendants therefore willfully and willingly participated in the illegal trial.

5 In view of the forgoing, the defendants are awarded ½ (one half) of the taxed costs. I so order.

BYABAKAMA MUGENYI
JUDGE"

10 The appellant was dissatisfied with the decision of the High Court and lodged this appeal.

The Appeal

In the Memorandum of Appeal, the appellant raises the following grounds of appeal;

15 **1. The learned trial Judge erred in both law and fact when he failed to properly evaluate all the evidence on record and dismissed the Applicants suit on grounds that the Chief Magistrates Court had no jurisdiction to hear the case because the suit land has a Certificate of Title in the names of the Appellants.**

20 **2. The Learned Trial Judge erred both in law and fact when he failed to evaluate all the evidence on record and determine the issues framed when the case was referred to him by the then Chief Magistrate for appropriate determination of the matter.**

The Appellant proposes that this Court grants orders that;

a. The Judgment and Orders of the Lower Court be set aside.

b. A declaration that the Defendant trespassed on the plaintiff's land and should pay special damages worth Ug. Shs 46,201,000/= only plus General Damages.

c. The appellant be awarded costs of both this Honorable Court and that of the Lower Court.

Representations/appearances

At the hearing of the appeal, Mr. Samuel Ondoma appeared for the Appellant. There was no appearance made for the Respondent.

The appellant filed conferencing notes on 22nd October, 2020. The respondent filed conferencing notes on 16th November, 2020. This court allowed the prayer to adopt the Appellant's conferencing notes and decided to consider the 2nd respondent's conferencing notes on the court record in deciding this appeal.

Duty of this court as a first appellate court.

This is a first appeal arising from the decision of the High Court in exercise of its original Jurisdiction. It is therefore important for this court to remind itself of its duty as a first appellate court. The duty of a first appellate court is well settled. In the case of **Kifamunte Henry v Uganda (Supreme Court Criminal Appeal No.10 of 1997)** it was held that

5 ***“The first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate Court must then make up its own mind not disregarding the judgment appealed from but carefully weighing and considering it. When the question arises as to which witness should be believed rather than another and that question turns on manner and demeanour the appellate Court must be guided by the impressions***
10 ***made on the judge who saw the witnesses. However, there may be other circumstances quite apart from manner and demeanour, which may show whether a statement is credible or not which may warrant a court in differing from the Judge even on a question of fact turning on credibility of witness which the appellate Court has not seen. See Pandya vs. R. (1957) E.A. 336 and” Okeno vs. Republic (1972) E.A. 32 Charles B. Bitwire ys Uganda - Supreme Court Criminal Appeal No. 23 of 1985 at page 5.***

20 The duty of the Court of Appeal to re-appraise evidence on an appeal from the High Court in its original jurisdiction is set out in ***rule 29 Rules of the Court of Appeal*** as follows;

25 ***“29(1) on any appeal from a decision of a High Court acting in the exercise of its original jurisdiction, the court may;***

(a) re-appraise the evidence and draw inference of fact,

(b) in its discretion, for sufficient reason take additional evidence or direct that additional evidence be taken by the trial Court or by commissioner;

(2)

(3)”

I shall abide by this duty as I resolve the issues in this appeal.

Consideration of the Appeal

10 I have decided to determine the grounds of appeal in the order in which they have been stated in the memorandum of appeal.

Ground 1 The learned trial Judge erred in both law and fact when he failed to properly evaluate all the evidence on record and dismissed the Appellant’s suit on grounds that the Chief
15 ***Magistrates Court had no jurisdiction to hear the case because the suit land has a Certificate of Title in the names of the Appellants.***

Appellant’s Submissions

20 The appellant submitted that there is no law that stops Chief Magistrates Court from hearing cases/suits where the suit land has a certificate of title. It is only the power to order for cancellation of title that is vested in the High Court.

Further the appellant submitted that in the instant case the learned trial Magistrate heard the suit interparty, visited *locus in quo* and the appellant/plaintiff filed written submissions while the defendant/respondent did not file submissions. The learned trial
5 Magistrate did not deliver Judgment yet he had jurisdiction to do so but instead he unlawfully referred the suit to the Judge without the notice and consent of the parties. The learned trial Judge instead of legally and judiciously guiding the parties and the trial Chief magistrate to deliver his judgment to the dismay of the appellant the
10 trial Judge dismissed the suit on grounds that Chief Magistrate Court had no Jurisdiction to hear the suit because the suit had a certificate of title. The Judge observed that the plaintiff/appellant should have filed the suit in the High Court because the suit land had a certificate of title and that there was apparent illegally and the entire
15 proceedings was a nullity because the suit was filed in Chief Magistrate Court.

The above decision of the learned trial Judge in the appellant's view was erroneous because it is not supported by any law. That there was a mistrial by the Learned trial Judge considering the way he
20 conducted the suit. That the Chief Magistrate had the jurisdiction to hear the issues framed and to deliver its judgment. That if at all there was an order requiring cancellation of certificate of Title and there is no appeal then the successful party would apply for consequential orders to the High Court.

That had the learned trial Judge properly and judiciously evaluated the evidence on court record referred to him, he would have found the respondents/defendants trespassed on the suit land. That there was no fraud attributed to the appellant or proved.

- 5 That both respondents do not own the suit land and have completely no interest in it. It is Lira District Land Board which lawfully leased the suit land to the appellant and the land board has no complaint against the appellant. That there is no suit or counter claim by the respondent/defendants filed against the lessor that is Lira District
10 Land Board which is mandated by law and has powers to allocate the land. The municipality is only a planning authority and has no right of ownership and powers to allocate land.

That in a nutshell the appellant prays that judgment be delivered by this court in favor of the appellant with costs of this appeal and of
15 the lower court. That this court should find that Chief Magistrates Courts have powers to order for cancellation of Title.

Respondent's Submissions

- The 2nd respondent states in the conferencing notes that a court that has no Jurisdiction over a matter filed before it like in the instant
20 case cannot legally transfer the same. For a court to transfer a file to another Court the suit must have been filed in a court with Jurisdiction to try it. The 2nd Respondent referred to the cases of **David Kabungu vs Zikabuga & 4 Others HCMA No.39/1969** as quoted with approval in **Osuna vs Ofwono HCT 04 MA 77/2012** and
25 **Kigenyi v Misiramo & Ors 1968 EA 43** and others.

That therefore the trial Judge was right to dismiss the case.

Determination of Ground 1

I have carefully considered the submissions of the parties. It appears to me that to resolve this ground of appeal I need to answer two
5 questions; did the Magistrate have Jurisdiction to entertain the civil suit over titled land and whether the trial Judge erred in law and fact in dismissing the appellant's civil suit.

I must on the outset state that a magistrate's court can entertain a civil suit relating to land which has a certificate of Title. Section 11
10 of the Magistrates' Courts (Amendment) Act No.7 of 2007 provides as follows;

11. Amendment of section 207 of the principal Act.

Section 207 of the principal Act is amended in subsection (1) as follows—

15 *(a) in paragraph (a), by substituting for "five million shillings" the words "fifty million shillings";*

(b) in paragraph (b) by substituting for "two million shillings" the words "twenty million shillings";

(c) by repealing paragraph (d).

20 Further Section 207 of the Magistrates Courts Act Cap 16 which the above amendment Act amended stated as follows;

"207. Civil jurisdiction of magistrates.

(1) Subject to this section and any other written law, the jurisdiction of magistrates presiding over magistrates' courts for the trial and determination of causes and matters of a civil nature shall be as follows—

5 (a) a chief magistrate shall have jurisdiction where the value of the subject matter in dispute does not exceed five million shillings and shall have unlimited jurisdiction in disputes relating to conversion, damage to property or trespass;

10 (b) a magistrate grade I shall have jurisdiction where the value of the subject matter does not exceed two million shillings;

(c) a magistrate grade II shall have jurisdiction where the value of the subject matter in dispute does not exceed five hundred thousand shillings; and

15 (d) a magistrate grade III shall have jurisdiction where the value of the subject matter in dispute does not exceed two hundred and fifty thousand shillings.

20 (2) Notwithstanding subsection (1), 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 I shall be unlimited.

(3) Whenever for the purposes of jurisdiction or court fees it is necessary to estimate the value of the subject matter of a suit capable of a money valuation, the plaintiff shall in the plaint, subject to any rules of court, fix the amount at which he or she

values the subject matter of the suit; but if the court thinks the relief sought is wrongly valued, the court shall fix the value and return the plaint for amendment.

5 (4) In any suit where it is impossible to estimate the subject matter at a money value in which, by reason of any finding or order of the court, a declaration of ownership of any money or property is made, no decree shall be issued for an amount on the claim exceeding the pecuniary limits of the ordinary jurisdiction of the court passing the decree.

10 (5) A magistrate's court may grant any relief which it has power to grant under this Act or under any other written law and make such orders as may be provided for by this Act or any written law in respect of any case or matter before the court."

15 It is further stated in Section 208 of the Magistrates Courts Act Cap 16 that;

"208. Courts to try all civil suits unless barred.

20 Every magistrate's court shall, subject to this Act, have jurisdiction to try all suits of a civil nature excepting suits of which its cognisance is either expressly or impliedly barred; but every suit instituted in a magistrate's court shall be instituted in the court of the lowest grade competent to try and determine it."

The same Magistrates Courts Act gives powers to the High Court to withdraw and transfer cases.

"218. Power of High Court to withdraw and transfer cases.

(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without that notice, the High Court may at any stage—

5 *(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any magistrates court competent to try or dispose of it;*

(b) withdraw any suit or other proceeding pending in any magistrate's court, and—

10 *(i) try or dispose of it;*

(ii) transfer it for trial or disposal to any court subordinate to it and competent to try or dispose of it; or

(iii) retransfer it for trial or disposal to any court from which it was withdrawn.

15 *(2) Where any suit or proceeding has been transferred or withdrawn as aforesaid, the court which thereafter tries the suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn."*

20 In this appeal the matter was first handled by a Chief Magistrate whose pecuniary Jurisdiction in civil matters is fifty million. In the instant case the plaint stated in paragraph 4 that;

5 *"The plaintiff's cause of action against the defendant is for trespass to land situate at Plot No. 70 Ohwanguji Road, Lira Municipality and he seeks orders of permanent injunction restraining the Defendants, their agents, servants and/or employees from further trespassing, damaging, wasting and/or alienating the suit land, Ug. Shs 46,201,000/= being special damages, general damages and costs of the suit."*

10 The claim therefore involved the suit land on which the plaintiff sought a permanent injunction against the respondents/defendants. In my assessment this suit far exceeded the pecuniary Jurisdiction of a Chief Magistrate. The special damages claimed on their own were 46,201,000/= before valuation of the suit land itself. Which in my assessment would ordinarily exceed the 4 million which was left on the pecuniary damages claimed by the appellants. On that basis I would find that the trial magistrate indeed had no pecuniary jurisdiction to entertain the matter. Therefore, the learned chief Magistrate had no power or Jurisdiction or authority to entertain the case at all.

20 A suit filed in a court that has no jurisdiction cannot be transferred from that court. Accordingly, the order of transfer of the suit to the High Court was not rooted in law and was null and void. The power to withdraw and transfer suits from Magistrates Courts is vested in the High Court under *Section 218 of the Magistrates Courts Act Cap 16* and not in the Chief Magistrate.

On the issue of whether a Magistrates court can hear a dispute over titled land, to my mind there is no law that bars a magistrate's court to hear a case involving land which has a certificate of title to it or land under *The Registration of Titles Act, Cap 230*. What a Magistrates court cannot do is cancel a Certificate of Title or make orders to effect any changes on the Register of Titles. I would therefore find that the learned trial Judge indeed erred in finding and holding that the Chief Magistrate did not have jurisdiction to entertain a civil suit over land that has a Certificate of Title. This is because of *Section 177(1) of the Registration of Titles Act Cap 230* which provides: -

"Upon recovery of any land, estate or interest by any proceedings from the person registered as proprietor thereof, the High Court may in any case in which the proceedings 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 substitute such certificate of title or entry as the circumstances of the case require, and the Registrar shall give effect to that order."

I accordingly would find merit in ground 1 of the appeal.

Ground 2 The Learned Trial Judge erred both in law and fact when he failed to evaluate all the evidence on record and determine the issues framed when the case was referred to him by the then Chief Magistrate for appropriate determination of the matter.

Having found in resolving ground 1 that the referral was illegal null and void and without basis in the law, it follows that the trial Judge could not legally consider any merits of the case. I accordingly find no merit in this ground of appeal.

5 **Conclusion**

For the reasons I have given the appeal would partly succeed on ground 1 of appeal.


I would find no merit in ground 2 of the appeal.

10 Having found that the civil suit exceeded the pecuniary jurisdiction of the Chief Magistrate and since the Chief Magistrate had no power or authority to transfer the civil suit, he ought to have dismissed the suit. I would accordingly decline to grant the orders as prayed for in this appeal.

15 I would instead order that the appeal be dismissed with each party bearing its own costs and I hereby do so.

I so order

Dated this 15th day of Dec 2022



Stephen Musota
JUSTICE OF APPEAL

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5 THE REPUBLIC OF UGANDA,
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
(CORAM: CHEBORION, MUSOTA, MADRAMA, JJA)

CIVIL APPEAL NO 124 OF 2013

OPIO DANIEL} APPELLANT

10 VERSUS

1. OTAKA VINCENT}

2. LIRA MUNICIPAL COUNCIL} RESPONDENTS

*(Appeal from the Judgment of Byabakama J of the High Court of Uganda
as he then was at Lira in High Court Land Civil Suit No. 74 of 2009 dated
15 24th January, 2013)*

JUDGMENT OF CHRISTOPHER MADRAMA IZAMA, JA

I have had the benefit of reading in draft the Judgment of my learned brother
Hon. Justice Stephen Musota, JA.

20 I agree that the appeal be dismissed for the reasons given in the judgment
and with the orders proposed therein. For emphasis paragraph 9 of the
plaint in the Magistrates Court read together with the attached notice of
intention to sue, annexure "F" to the plaint, in paragraph 1 (h) thereof ends
with the averment that:

25 The value of the subject matter of the suit, general damages and costs of the suit
is approximately Uganda shillings 100,000,000/=.

I therefor concur that the pleadings disclose that Magistrates Court had no
pecuniary jurisdiction to hear the suit and I have nothing useful to add.

Dated at Kampala the 15th day of Dec 2022

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Christopher Madrama

Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Cheborion Barishaki, Stephen Musota & Christopher Madrama, JJA)

CIVIL APPEAL NO.124 OF 2013

OPIO DANIEL:.....APPELLANT

10

VERSUS

1. OTAKA VINCENT

2. LIRA MUNICIPAL COUNCIL:.....RESPONDENTS

(Appeal from the judgment of Byabakama, J (as he then was) in the High Court of Uganda at Lira in Land Civil Suit No.74 of 2009 dated 24th January, 2013)

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JUDGMENT OF CHEBORION BARISHAKI, JA

I have had the benefit of reading in draft the judgment in this Appeal prepared by my brother Stephen Musota, JA and I agree with him that the Appeal succeeds in part. Clearly the Civil Suit exceeded the pecuniary jurisdiction of the Chief Magistrate who ought to have dismissed it and since he failed to do so, the appeal arising from those proceedings cannot succeed and has to be dismissed.

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Since Madrama, JA also agrees, this Appeal is dismissed with each party bearing its own costs.

It is so ordered.

Dated at Kampala this 15th day of Dec 2022.

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 Cheborion Barishaki
JUSTICE OF APPEAL