

**THE REPUBLIC OF UGANDA**  
**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**  
**CIVIL APPEAL NO. 200 OF 2014**

5 **MARVEL CONTRACTORS & ROAD**  
**MAINTENANCE LTD..... APPELLANT**

**VERSUS**

**HENRY RWAMASASA MUNYANGANIZI.....RESPONDENT**

10 *(Appeal from the judgment of the High court of Uganda at Nakawa, before Lady Justice Faith Mwendha, J. delivered on the 30th day of April 2013 in High Court, Civil Suit No. 290 of 2006)*

**Coram: Hon. Mr. Justice Muzamiru M. Kibeedi, JA.**  
**Hon. Mr. Justice Christopher Gashirabake, JA.**  
**Hon. Mr. Justice Oscar John Kihika, JA.**

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**JUDGMENT OF THE COURT**

**Background**

20 This is a first appeal arising from the decision of Hon. Lady Justice Faith Mwendha, J. (as she then was) in High Court Civil Suit No. 26 of 2000 at Nakawa dated 20<sup>th</sup> May 2013. The respondent instituted a suit against the appellant, claiming that, the appellant while carrying out road maintenance work on Mubende-Kakumiro Road in 2010, unlawfully and or wrongly entered upon his land comprised in Block 277, Plot 1 at Kigobegobe Parish, Kibale District and without his consent and or approval excavated murrum therefrom leaving behind a  
25 large pit. The appellant refused to refill the pit thus rendering the land unusable. As a result, occasioning the respondent to suffer loss and damage. The appellant in

*W. M. Muzamiru M. Kibeedi*

*J. Gashirabake*

their defense admitted carrying out road maintenance works along Mubende-Kakumiro Road in 1999 – 2000. However, they denied the rest of the allegations in the plaint.

The learned Trial Judge found in favour of the respondent after a full trial.

5 Being dissatisfied with the decision of the trial court, the appellant appealed to this court on the following grounds: -

1. *The learned Trial Judge erred in law and fact when he failed to properly evaluate the evidence on record and thereby arrived at a wrong decision.*
- 10 2. *The learned Trial Judge erred in law and fact when he failed to hold that the respondent/plaintiff had no cause of action against the appellant/defendant.*
3. *The learned Trial Judge erred in law and fact by awarding the respondent interest at 20% per annum which figure was*  
15 *unconscionable in the circumstances,*
4. *The learned Trial Judge erred in law and fact by awarding shs. 25,000,000/= as general damages to the respondent which amount was manifestly excessive in the circumstances.*

The respondent filed a cross appeal on the following ground: -

20 The learned Trial Judge erred in law and fact in failing to find that the Respondent proved his claim of Shs. 35,660,000/= and awarding the same with interest instead of awarding shs.25 million only as general damages with interest.

## Representation

When the matter came up for hearing, the appellant was represented by Mr. Nasser Lumweno while the respondent was represented by Mr. Robert Ayebare holding brief for Mr. Nester Byamugisha. The parties had prior to the hearing date been  
5 directed by this Court to proceed by way of written submissions, which they both filed.

This judgment is therefore rendered on the basis written submissions of both parties.

## The Appellant's Case

10 Counsel for the appellant argued and submitted on only the 1<sup>st</sup> ground of the appeal. It was submitted that, the learned Trial Judge erred when she failed to properly evaluate the evidence on record and as such she arrived at a wrong decision. It was argued that, the suit land did not legally belong to the respondent and as such was not entitled to compensation.

15 It was contended that, the transaction between the respondent and the sellers before first obtaining the Letters of Administration after having committed the said illegality, the fact that the sellers subsequently applied for Letters of Administration after having committed the said illegality did not validate the transaction. Counsel relied on Section 180 of the Succession Act Cap 162,  
20 *Makula International Vs. His Eminence Cardinal Emmanuel Nsubuga & another, Court of Appeal Civil Appeal No. 4 of 1981; Twinobusingye Severino Vs. The Attorney General Constitutional Reference No. 27 of 2013 and Nipun Northam Bhatia Vs. Crane Bank Limited, Court of Appeal Civil Appeal No. 75 of 2006*".

It was further submitted that the actions of the sellers in dealing with respondent in respect of the suit land amounted to intermeddling with the property of the deceased, which is a crime and punishable under the Section 11(1) & (2) Administrator General's Act (Cap) 157. Counsel asked Court to find that the  
5 alleged purchase of the suit land by the respondent was an illegality, *void ab initio* and did not confer any proprietary interest or other benefit upon the respondent thereof.

In the premises, he prayed that, the respondent's entire claim against the appellant should fail for this reason and that the appeal be allowed with costs to the  
10 appellant.

### **The Respondent's case**

In reply, it was submitted that, the appellant's argument that the purchase of the suit land by the respondent was illegal is untenable, in so far as it is raised by the respondent who were not privy to the contract of sale and the suit was not founded  
15 on the contract of sale, even the Court's decision was not based on that issue.

Counsel contended that, the appellant was not affected by the contract of sale of the land and as such is not entitled to raise the issue of illegality of the contract of sale/purchase of the land. The principle is the "No person can claim any right or remedy whatsoever under an illegal transaction in which he has not participated.

20 Counsel cited *Gordon Vs Metropolitan Commr, [1910]2 KB 1080 at page 1098 per Buckley L. JJ.*

Counsel further contended that, the suit in the Trial Court was not for enforcement of the contract of sale between the parties to the contract but for compensation between the respondent who is the registered proprietor of the land and the

appellant, a total stranger to the contract of sale. The stranger has no locus to challenge the contract of sale of the suit land which ended in the respondent registering himself on the title. The Respondent was registered on the Certificate of title upon the persons who initially sold to him the suit land obtained Letters of Administration of the estate of their late fathers which included the suit land. The Administrators signed transfers and he was accordingly registered.

The acquisition of the suit land by the respondent from the administrators of the estates who sold it to him, was therefore, lawful and or legal. In *Israel Kabwa vs Martin Banoba Musiga, Supreme Court Civil Appeal No. 52 of 1995*, Court found that:

*“that the persons who sold to the respondent were entitled to do so as lineal descendants and dependents of their late fathers. Further that the acts of the administrator which are rendered invalid are only those which diminish or damage the estate”.*

Counsel argued that, although it is trite law that an illegality once brought to the attention of Court, cannot be condoned such illegality must be unequivocal, clear and sufficiently proved. Where further inquiry is required to see whether or not an illegality has in fact been committed, then a Court of law is not entitled to make such finding or come to the conclusion that an illegality exists unless and until such further inquiry has been undertaken. There was no such evidence of illegality at the trial.

Furthermore, Counsel submitted that, the issue/argument in contention was raised for the first time on appeal, the issue was neither pleaded not raised before the trial Court from where this appeal originated. The issue before this court is therefore, whether the alleged illegality was sufficiently proved or at all and not satisfactory

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explanation could have been offered by the respondent regarding the contract of sale if the respondent had been given opportunity.

In any case, as we have already submitted, the appellant not being privy to the contract of sale and the suit not having been between the parties to the contract of sale of the land or anybody affected by such a contract, the appellant has no locus  
5 to raise the issue. Counsel asked court to dismiss the appeal with costs.

### **Cross Appeal**

It was contended that, the learned trial judge erred when she failed to find that, the respondent had proved his claim of Shs. 35,660,000/= with interest instead of  
10 awarded Shs.25 million only as general damages with interest. It was submitted that, there was an error in calculation. Secondly it was argued that the respondent was not entitled to special damages since the same was specifically pleaded and proved on a balance of probabilities.

In reply the appellant submitted that, the respondent cannot rely on an illegal  
15 transaction to claim for damages. Counsel asked Court to allow the Appeal with costs and that Respondent's cross Appeal be dismissed with costs.

### **Resolution**

We have carefully read the record of appeal and written arguments of the parties. We have also read the authorities cited and relied upon by Counsel. This is a first  
20 appeal and, as such, this court is required to re-evaluate the evidence and come up with its own inferences on issues of law and fact. Rule 30 (1) of the Rules of this court provides as follows:

*“Power to reappraise evidence and to take additional evidence.*

*W. D. O. 23*

*J. J. J.*  
*2023*

(1) *On any appeal from a decision of the High court acting in its original jurisdiction, the court may: -*

*(a) reappraise the evidence and draw inferences of fact”*

*See also: - Fr. Narsensio Begumisa and 3 others vs Eric Tibebaga, Supreme Court Civil No. 17 of 2002 and Ephraim Ongom Odongo Vs. Francis Binega Donge Supreme Court Civil Appeal No. 10 of 2008 (unreported).*

We shall keep the above principles in mind while resolving this appeal.

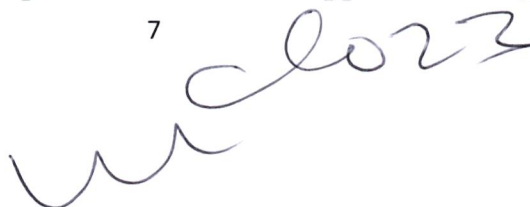

The sole issue here is whether the respondents were at the material time owners of the land or were intermeddling with the estate.

Simply put, intermeddling is the *Assuming of authority to administer the estate of another when a person does not have such authority. (see black’s law dictionary ninth edition page 1195).*

Section 268 of the Succession Act provides that: -

*“A person who intermeddles with the estate of the deceased or does any other act which belongs to the office of executor, while there is no rightful executor or administrator in existence, thereby makes himself or herself an executor of his or her own wrong... ”.*

This is a question of both law and fact. No evidence on intermeddling was adduced or provided by the appellants. It is a principle cardinal under Section 101 (101) of the Evidence Act that whosever desires any court to give judgment as to any legal right or liability depend on the existence of facts which he or she assents must prove that those facts are in existence and all evidence is proved on a balance of probabilities. See: *Miller V Minister of Pensions [1947] 2 ALLER 372* and *Katumba vs. Kenya Airways, Supreme Court Civil Appeal No. 9 of 2008.*

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The fact proved was that the respondent admitted trespass and damage to the suit land.

Although the respondent was not the registered proprietor at the time, he was a beneficial owner, with equitable interest. He had purchased the land from the beneficiaries of the Estate subject to their grant of letters of administration. The sellers subsequently obtained letters of administration and effected transfer of title to his name. Section 192 of the Succession Act stipulates that: -

10                   *“Letters of Administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration has been granted at the moment after his or her death”.*

We find that the respondent was not intermeddling with the estate in the meaning of the term as set out in the Succession Act. The contract between the respondent and the beneficiaries was not illegal, it was voidable. It was subsequently confirmed when the beneficiaries obtained Letters of Administration and transferred the title to the respondent. At that point all interest in the land was vested Secondly the appellant never received permission from the beneficiaries before entering their land and excavating marram. He never paid them in him including past claims.

20                   The appeal is premised on a mere technicality, that is not valid at law. Beneficiaries selling their interest in land subject to grant of letters of administration is not an illegality. We find no merit in this appeal and we dismiss it with costs.

The respondent raised a cross-appeal. The Appellant offered no response to it, except that the whole transaction was illegal.



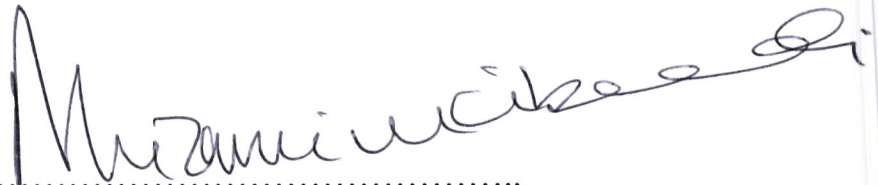
Having found that the transaction was not illegal, leaves the cross-appeal unchallenged and we hereby allow it with costs.

The cross-appeal is hereby allowed, the award of Ug. Shs. 25,000,000/= (Uganda shillings twenty-five million only) is hereby set aside and substituted with the  
5 award of Ug. Shs. 35,660,000/= (Uganda shillings thirty-six million six hundred sixty thousand only) at 20% per annum from the date of institution of the suit until payment in full.

It is so ordered.

Dated at Kampala this .....<sup>17<sup>th</sup></sup>..... day of.....<sup>October</sup>.....2023.

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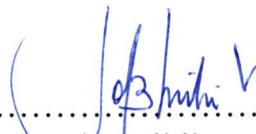
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Muzamiru M. Kibeedi  
**JUSTICE OF APPEAL**

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Christopher Gashirabake  
**JUSTICE OF APPEAL**

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Oscar John Kihika  
**JUSTICE OF APPEAL**

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