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FORMERLY CIVIL APPEAL NO. 036 OF 2022 AT MBALE

ARISING FROM CIVIL SUIT NO. 003 OF 2016 AT BUTALEJA

GEORGE DAMBA :::::::::::::::::::::::::::::::::::::: APPELLANT

VERSUS

1. MUGABULI JOHN
2. WANDERA MUGABULI
3. GABO MUGABULI
4. MISAKI NIALI
5. MUBISI MUGABULI ::::

JUDGMENT

BEFORE HON MR. JUSTICE HENRY I. KAWESA

This appeal arises from the ruling of Her Worship Kyomuhangi Happy Anne, a Grade One Magistrate, at the Chief Magistrates Court of Tororo at Butaleja. The ruling sustained a preliminary objection raised by the respondents.

Background

The appellant sued the respondents claiming ownership of land situated in Hisege Village, Hisege Sub-County in Butaleja District (**hereinafter the suit land**). He claimed to have acquired the suit land vide Tororo Land Tribunal Suit No.TL/025/2005—Damba George vs. Kiwala Yakobo.

According to a copy of the judgment attached to his plaint of the suit, the suit land was decreed to the appellant by a Land Tribunal, and awarded other reliefs against the respondent therein. It also indicates that the appellant claimed the suit land under his late father Nawede Daudi from whom he allegedly inherited it. He testified

before the Tribunal that Misaki Niala held land in trust for Nawede Daudi; and that following the death of Nawede Daudi, Misaki Niala handed over Nawede Daudi's land to his four children, namely, Ezekiel Hirya, Isaka Nawede, Benjamin Were, and the appellant herein. Further, that the handover ceremony was done in the presence of the elders; and he adduced a document to verify the handover ceremony, which was admitted as EXP 1 dated 20/2/1988—a copy of the same document is attached to his plaint in the instant suit. The suit land appears to be part of the land which was allegedly handed over by Misaki Niala to Nawede Daudi's children.

Furthermore, the judgment, attached to the appellant's plaint, also shows that the respondent in that suit (Kiwala Yakobo) alleged that the suit land was given to him by his father Misaki Nyala (also written as Misaki Niala—the 4th respondent herein); and that Misaki Niala obtained it vide High Court Civil Appeal No.10 of 2000 formerly Civil Appeal No.2 of 1990 (Misaki Niala vs. Samson Damba).

It appears that Kiwala Yakobo is related to the respondents in this case. In their defence to the appellant's suit, the respondents also claimed to be successors in title of Misaki Niala who was declared the rightful owner of the suit land in the aforesaid Civil Appeal. A copy of the judgment of the said appeal is on record, and indicates that the High Court of Uganda at Mbale upheld a judgment of the lower court vide Civil Case No.MT/12/1982 which was in favour of Misaki Niala's ownership of the suit land.

When Civil Suit No.03 of 2016 came up for hearing inter-parties, the respondents raised a preliminary objection to the effect that the suit was res judicata. The ground of their objection was that the ownership of the suit land was settled in favour of their father in the judgment vide High Court Civil Appeal No.10 of 2000/ formerly Civil Appeal No.2 of 1990 (Misaki Niala vs. Samson Damba) which upheld the judgment in Civil Case No.MT/12/1982.

The learned trial Magistrate agreed with the respondents hence this appeal.

Ground of Appeal

1. *The learned trial Magistrate erred both in law and in fact when she ruled/held that the plaintiff's suit is res judicata because the suit was subject of litigation in HCCA No.10 of 2000 formerly Civil Appeal No.02 of 1990.*
2. *The learned trial Magistrate erred both in law and fact when she held that the decision in HCCA No.10 of 2000 set aside the decision in LTS No.TL/ 025 of 2005 which sought to enforce in land Civil Suit No.03 of 2016.*
3. *That the decision of the trial Magistrate is tainted with fundamental misdirection and non-direction in law and fact and as a result led to the miscarriage of justice.*

Court gave Counsel for the parties schedules to file submissions. However, the record only bears the submissions by Counsel for the appellant; implying that the respondents did not file submissions. This court shall only consider what is on record.

Determination of the Grounds

Ground One: The learned trial Magistrate erred both in law and in fact when she ruled/held that the plaintiff's suit is res judicata because the suit was subject of litigation in HCCA No.10 of 2000 formerly Civil Appeal No.02 of 1990.

Counsel for the referred me to **Sections 7 of the Civil Procedure Act Cap.71 and Section 210 of the Magistrates Court Act Cap.16** under which the principle of res judicata is enshrined. These provide that:

No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a

former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court.

According to the Supreme Court in **Karia and Another vs. Attorney General and Others [2005] 1 EA 83**, the conditions to be satisfied for the above provisions to apply are:

- 1. The matter in dispute in the former suit between the parties must also be directly or substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar; and*
- 2. The parties in the former suit should be the same parties or parties under whom they or any of them claim, litigating under the same title.*
- 3. There has to be a former suit or issue decided by a competent court.*

Counsel for the appellant referred to the said conditions while referring to the case of **Akuku vs. Munia & Anor Civil Appeal No.27 of 2016**.

The task of this court is to compare the judgment in HCCA No.10 of 2000/Civil Case No.MT/12/1982 and the plaint in Civil Suit No.03 of 2016.

With regard to the first condition; whereas the causes of action litigated upon under HCCA No.10 of 2000/Civil Case No.MT/12/1982 and Civil Suit No. 03 of 2016 are apparently the same (recovery of land and trespass to land), the facts upon which they are premised substantially differ. For instance, the appellant's claim under Civil Suit No.03 of 2016 is premised on the allegation that Misaki Niala, under who the respondents claim, was a caretaker of his late father's land, a one Nawede Daudi; and that the former handed over the said land to Nawede Daudi's children, including the appellant. This allegation is explicitly revealed under two attachments to the

plaint, which include a copy of a judgment vide TI./025/2005 and an un-translated document wherein Misaki Niala allegedly handed over Nawede Daudi's land to his children, including the appellant.

It appears to be the appellant's claim, against the respondents, that it is after Misaki Niala handed over the suit land to him that the respondents trespassed thereon. These allegations were most certainly not in issue in HCCA No.10 of 2000/Civil Case No.MT/12/1982. For that cause, therefore, it cannot be said that the matter in dispute in HCCA No.10 of 2000/Civil Case No.MT/12/1982 is directly or substantially in dispute between the parties in Civil Suit No.03 of 2016. The first condition is not satisfied, therefore.

The court shall now turn to the second condition.

The judgment in HCCA No.10 of 2000 was between Misaki Niala and Samson Damba. Under Civil Suit No.03 of 2016, Misaki Niala is a party, and the defendants/respondents herein claim under him. This alone satisfies the second condition, notwithstanding that neither the appellant nor the person under whom he claims was a party to HCCA No.10 of 2000/Civil Case No.MT/12/1982. Consequently, the court disagrees with Counsel for the appellant as far as this ground is condition is concerned. The learned trial Magistrate was right in her assessment.

With regard to the last condition; there is no doubt that HCCA No.10 of 2000. Thus, this court finds that the third condition is satisfied.

Finally, and on the overall assessment, one of the three conditions stated above having not been satisfied, this court agrees with Counsel for the appellant and finds that the principle of res judicata did not apply to Civil Suit No.03 of 2016. Accordingly, the first ground of the appeal succeeds.

Ground 2: The learned trial Magistrate erred both in law and fact when she held that the decision in HCCA No.10 of 2000 set aside the decision in LTS No.TL/ 025 of 2005 which sought to enforce in land Civil Suit No.03 of 2016.

This court has looked at the learned trial Magistrate's statements at page 3 of her ruling in respect to this ground. These are to the effect that:

The same land was adjudicated in the 1st instance before H/W ODONGO, declared null and void, a retrial before H/W OKELLO, then before Tororo LT CS No: TL/025 of 2005 and finally in High Court CA NO. 02 of 1990 Mbale HC CA NO: 10 of 2000.

This being the last court of record in this case, I will draw special attention to it.

This case set aside the decision of the Chief Magistrate in LTS NO: TL/025 OF 2005 which the plaintiff sought to enforce in CS NO:3 of 2016.

Note that the decision the plaintiff is seeking to enforce was already nullified and set aside in CA NO:2 of 1990 surely can this court have jurisdiction to enforce this decision?

As a matter of principle, the court is disturbed by the above statements of learned trial Magistrate. The statements are not factual, and are clearly not supported by any materials on record. It is not true that the judgment in IICCA No.10 of 2000 set aside the decision in LTS No. TL/025 of 2005. That judgment speaks of a very different judgment delivered by some court in on the 5th of August 1986.

It is also untrue that the appellant sought to enforce LTS No. TL/025 of 2005 in Civil Suit No.03 of 2016, at least as far as his pleadings are concerned.

As such, therefore, this court agrees with Counsel for the appellant that the learned trial Magistrate's assessments as far as this ground is concerned were erroneous. This ground succeeds as well.

Ground Three: That the decision of the trial Magistrate is tainted with fundamental misdirection and non-direction in law and fact and as a result led to the miscarriage of justice.

Counsel for the appellant cited the case of **Matayo Okumu vs. Fransisko Amudhe & Others (1979) HCB 229** where Odoki J. (as he then was) held that "*a decision appears to have caused a miscarriage of justice where there is prima facie evidence that an error has been made*".

In this case, considering the conclusions on ground one and two, this court agrees that the decision of the learned trial Magistrate occasioned a miscarriage of justice. This ground also succeeds.

Result

In the end, this appeal succeeds entirely. The ruling and orders of the learned trial Magistrate in Civil Suit No.03 of 2016 are hereby set aside and file sent back for hearing of the suit on its merits.

The costs of the appeal shall abide in the outcome of the suit.

It is so ordered.

Delivered at Tororo this 2nd Day of Nov 2023



HON. JUDGE

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