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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KABALE

CIVIL APPEAL NO. 0030 OF 2022.

(An Appeal arising from Civil Miscellaneous Application No. 0030 of 2021)

(Arising from Civil Miscellaneous Cause No. 0006 of 2021 in the Chief

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Magistrate’s Court of Kisoro at Kisoro)

MUGISHA EPHRAIM:.....APPELLANT

VERSUS

BAHINYUZA FESTUS:.....RESPONDENT

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BEFORE: HON. JUSTICE SAMUEL EMOKOR

JUDGMENT.

This is an appeal against the ruling of the Chief Magistrate at Kisoro Chief Magistrate’s Court delivered on the 04/11/2022 in Civil Miscellaneous Application No. 0030 of 2021.

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Background.

The brief background to this appeal is that the Respondent herein filed Civil Miscellaneous Cause No. 06 of 2021 seeking the following orders:

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- a) That the Applicant be granted an order to deposit in Court the remaining balance of the purchased price amounting to UgX 9,000,000/= arising from the land purchase agreement executed with the Respondent for land in Suma village, Kirurira Parish, Nkuringo Town Council, Kisoro District for onward transmission to the Respondent.

- 5 b) That the respondent be ordered to specifically perform what was agreed upon in the agreement dated 15/05/2017 by accepting the remaining consideration and handing over the Suitland to the Applicant.
- c) That an order be made that the suit land belongs to the Applicant after payment of the balance and the Respondent or his agents be permanently
10 restrained from interfering with the Applicant's use of the same.

The trial Magistrate Grade one on the 22/06/2021 upon being satisfied that the Respondent had been properly served with the application but had not filed a reply to the same allowed the application and granted all the orders sought.

The Respondent being dissatisfied with the decision in Miscellaneous Cause No.
15 0006 of 2021 filed Civil Miscellaneous Application No. 0030 of 2021 seeking interalia orders that the exparte proceedings/ruling/orders/decree passed against the Applicant in Civil Miscellaneous Cause No. 0006 of 2021 be set aside and that the Applicant be granted unconditional leave to file his affidavit in reply out of time in Miscellaneous Cause No. 0006 of 2021 and that the matter be heard
20 interparties and determined on its merits.

The Chief Magistrate at Kisoro Chief Magistrates Court on the 04/11/2022 delivered his decision in Civil Miscellaneous Application No. 0030 of 2021 dismissing the same hence the instant appeal.

The instant Appellant who was self-represented set out 8 extensive grounds in
25 his memorandum of appeal but before I even consider whether it is necessary to outline them, the facts of this case prima facie demand that that this court

5 interrogates the same before evaluating the decision of the learned Chief Magistrate in Civil Miscellaneous Application No. 0030 of 2021.

Counsel for the Respondent in the above mentioned application Messrs Mutungi & Co. Advocates drew the attention of the learned Chief Magistrate to a point of law that the learned Chief Magistrate ought to have given due consideration. I
10 will reproduce the same below:

*“To begin with your Worship, Miscellaneous Cause No. 0006 of 2021 was heard and determined by the Magistrate Grade one, His Worship Raphael Vueni: It is our surprise that the application is now heard by the Chief Magistrate. Your Worship an application to set aside an exparte Judgment must be heard by the Judicial
15 Officer who heard the suit that was determined exparte. In this case this application should be heard by the Grade one who determined Miscellaneous Cause No. 0006 of 2021. We thus submit your Worship that you don’t have the jurisdiction to hear and determine the Application at hand. We thus pray that you either dismiss the same with costs to the Respondent or transfer it to the proper
20 Court for determination”*

The learned Chief Magistrate in his ruling delivered on 04/11/2022 did not address this point of law that in this Court’s opinion was Central to the issues to be determined by the Chief Magistrate because it was premised on the fact that he did not have jurisdiction to entertain the matter. It ought to have been resolved
25 first before the Chief Magistrate delved into the merits of the application.

To stress the importance of jurisdiction the Court of appeal in **Owners of Motor Vessel Lilian “S” versus Caltex Oil Kenya Limited [1989] KLR** held thus:

5 *“Jurisdiction is everything without it; a Court has no power to make one more step. Where a Court has no jurisdiction there would be no basis for continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”*

Civil Miscellaneous Application No. 0030 of 2021 was brought inter alia under
10 **Order 9 Rule 27 of Civil Procedure Rules** that provides:

*“In any case in which a decree is passed ex parte against a Defendant, he or she may apply to the Court by which the decree was passed for an order to set it aside; and if he or she satisfies the Court that the summons was not duly served or that he or she was prevented by a sufficient cause from appearing when the suit was
15 called on for hearing, the Court shall make an order setting aside the decree...”*
[Emphasis mine].

The key consideration of the above provision is that the application is made to the Court by which the decree was passed for an order to set it aside.

Applying the provisions to the facts of this case Civil Miscellaneous Cause No.
20 0006 of 2021 was heard and determined ex parte before His worship Vueni Raphael a Magistrate Grade one. It therefore follows that Miscellaneous Application No.0030 of 2021 was to be filed before the same Court in this case being that of a Magistrate Grade one.

The Chief Magistrates Court it goes without saying is a superior Court to that of
25 a Magistrate Grade one (**see Section 4(2) of the Magistrates Courts Act**) In fact in certain matters the Chief Magistrate is an appellate Court on matters arising

5 from the Magistrate Grade one Court (**see Section 105(c) of the children’s Act**)
it therefore cannot be said that the two Courts are the same.

Justice **Mubiru in Friendship Taxi (U) Ltd versus Adrana Matovu HCCM. Revision No. 0003 of 2019** made the following observation:

“A Court’s jurisdiction flows from either the Constitution or legislation or both.
10 Thus a Court of law can only exercise jurisdiction as conferred by the Constitution
or other written law.

*It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it
by law. A Court ought to exercise its powers strictly within the jurisdictional limits
prescribed by the law.*

15 *Acting without jurisdiction or ultravires or contrary to the provisions of a law or
its principles are instances of illegality”*

The Supreme Court on issues of illegality in **Makula International Ltd versus His Eminence Cardinal Nsubuga and another [1982] HCB 11** held that;

“A Court of law cannot sanction what is illegal and an illegality once brought to
20 the attention of Court overrides all questions of pleadings, including any
admissions made thereon”

In view of the above the Chief Magistrate in entertaining Civil Miscellaneous
Application No. 0030 of 2021 exercised his jurisdiction illegally by assuming a
jurisdiction that is not vested in his Court by law and as a result the decision
25 reached was a nullity.

5 On this ground alone the instant appeal succeeds and the orders in Civil
Miscellaneous Application No. 0030 of 2021 are hereby set aside. An order is
hereby issued that Miscellaneous Application No. 0030 of 2021 is returned to
Kisoro Chief Magistrate's Court to be determined by the Court that issued the
orders in Civil Miscellaneous Cause No.0006 of 2021. The parties shall each bear
10 their costs before this Court.

It is so ordered.

Before me,

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SAMUEL EMOKOR
JUDGE
27/03/2024