THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT ARUA

CIVIL APPEAL NO. 0011 OF 2005

DRICIRU HELLEN _____ APPELLANT

=VERSUS=

WATHUM DONALD _____ RESPONDENT

JUDGMENT

BEFORE HON. JUSTICE NYANZI YASIN

BACKGROUND

1. In the court below the current respondent was the plaintiff. He started the suit in a very straight manner. His prayer was that land that he held under lease with the appellant's deceased father be sub-divided in two equal shares. In evidence he exhibited the land title for LRV 1523 Folio 9 for Approximately 196.5 hectors of land at Ocoko, Vurra, Arua District to be the land he wanted sub-divided. The Title was received as Exh. P.1. it was an initial title for 5 years from 1st November, 1986. However the same land been extended to full term of 44 years with effect from 1/11/1991 as Exh. PE proved.

2. In her written statement of defence the respondent who appeared as the administrator of her father's estate did not agree that the land be sub-divided. She pleaded that the land was leased for the benefit of ADRALAPI MIXED FARM which was a project of more than the 2 registered owner of the land. According to paragraph 4 of the defence here were 2 other persons who were apparently beneficiaries of the lease. She added the partnership of the mixed farm project.

3. There were claims that the land was a customary holding for the clan but nothing inter that was pleaded in the defence. It appears to have been an after thought to colour the defence case.

4. At the trial the plaintiff gave evidence and tendered in court the duplicate certificate of title that he wanted court to sub-divide. The registered owners were namely DONATO WATHUM and AUGUSTINO MATUA P.O BOX 112 ARUA (Tenants in common in equal shares) registered on 16/12/1986.

5. The appellant called 2 witnesses in addition to her testimony the cumulative effect of DW1, DW2 and DW3's evidence would appear as if fraud was being alleged against the respondent that would be compared to the pleading in paragraph 4. However no specific pleadings or particulars were given. May be because the pleadings were drafted by the lay parties themselves.

   In their evidence DW1, 2 and 3 appeared to have agreed that the respondent was given land. They appeared to dispute the lease. It was the evidence of defence that MATUA died in 1997.

6. The trial started before the District Land Tribunal of Arua but completed by H/W JOHN KATEGAYA on 21/06/2007. In his

judgment he framed the following issues for court determination, they are namely;-

a) Whether the plaintiff has a legal interest in the suit property.
b) Whether the land should be sub-divided in two equal shares.
c) Remedies the plaintiff is entitled to.

7. The trial court proceeded to resolve those issues and made the following orders;-

1) That the 196.5 hectors of the disputed land be sub-divided equally.
2) That there is no evidence to show that the disputed land belongs to a clan tribe or family of some sort.
3) That the applicant is entitled to an order of eviction against all trespassers on the land. Should the respondent consider them as her tenants let them be on her part of the land but none of them should occupy the applicant's land.
4) That an order of eviction against the people who trespassed on the land is hereby granted to the applicant.
5) That judgment is hereby entered for the applicant.
6) Cost of the suit awarded to the applicant.

8. As to the last order of costs. It was an oversight for court to have awarded costs. PW1 said in her evidence

"I have been staying well with the respondent's father and her grandfather who was originally the land lord as such I will not ask for costs".

If such was the mind of the respondent there was no reason why court went against his wish to make an order for costs.

Those decisions aggrieved the present appellant and filed an appeal in this court. The memorandum of appeal raised 5 grounds namely;-

1) The learned trial Magistrate erred in law when he held that the plaintiff has a legally recognizable interest in the land as a co-owner/tenant in common when the leasehold certificate of title expired.
2) That the learned trial Magistrate erred in law when he relied on the expired leasehold title to order that the suit land be sub-divided.
3) That the learned trial Magistrate failed to judicially conduct proceedings at the locus in quo and relied on evidence not adduced before him.
4) That the learned trial Magistrate failed to judicially evaluate the evidence on record an erred when he held that there were trespassers on the suit land.
5) That the learned trial Magistrate erred when he improperly awarded costs to the respondent.

10. At the trial Jimmy Madira of Madira & Co. Advocates acted for the appellant while Mr. Ojiambo from Joel Cox Advocates represented the respondent. This court permitted the two sides to present written arguments in the hearing of the appeal. They did so and closed their submissions on 27/11/2012.

11. Before turning to the main grounds of appeal as a court of first appellate jurisdiction I have observed an illegality in the whole trial whose effect I must state before resolving the grounds of appeal.

    My observation in conformity with the decision in MAKULA INTERNATIONAL =VS= CARDINAL NSUBUGA & ANOR [1982] HCB 11 which is to the effect that in illegality once brought to the attention of court over rides all matters including pleadings.

12. This court's observation starts with the issues court framed particularly issue two. For purpose of clarity I will reproduce issue No. 2 it stated

    "***Whether the land should be sub-divided in two egual shares"***

    Mr. Madira framed it netter as a ground in his submission as below;

    > Whether the learned trial Magistrate erred in law and fact when he ordered for the sub-division of the land comprised in LRV 1523 Folio 9 situate at Ocoko, Vurra, Arua District between the plaintiff and the defendant.

13. In the decree the observation concerns clause (1) of the decree which ordered that the 1995 hectors of the disputed land be sub-divided equally.

14. The question is whether the trial court had the jurisdiction to do so or make such an order.

    I must make it clear that although Exh. PE1 had expired Exh. PE2 the lease offer clearly showed that the lease has been extended to a full term of 44 years. It was up to the respondent in this appeal to take that instrument and it is accordingly endorsed by the Chief Registrar of titles. Consequently if clause one of the decree was to be implemented it would mean that the trial court as a Magistrate court

would have made an order directing the Chief Registrar of Titles to effect an entry on the Registrar to sub-divide the land and issue two separate fills of 98.25 hectors each. Did the trial court have the power to make such an order.

15. It is trite law that jurisdiction is a creative of status. KAROKORA J (as he then was) held in **SEPERANZA KEKISHAKA –VS- ARTHUR MUHOOZI (1992 – 93) HCB 150** jurisdiction of every court is conferred by law. See also **OSCROTI =VS= BENABO [1967] 2 ALL ER 548** Lord Dipluck's judgment as page 557.

16. To the contrary in the present case the law provided for exclusion of jurisdiction. The statute in issue is the 2004 land Amendment Act referred to as Land (Amendment) Act 2004, S.7 A (3) is amended provided that (i) of this section a District Land Tribunal shall not make an order for cancellation of entries in a certificate of title and vesting title but shall refer such cases to the High court for the necessary consequential of orders.

17. While dealing with the amendment section **IREN MUKYAGUNYA J (now 199) in KIGAMBA EDWARD & 18 OTHERS =VS= TILDA (UGANDA) LTD CIVIL APPEAL NO. 0005/2005** held;

    District Land Tribunals had jurisdiction to entertain all matters of disputes relating to land which do not exceed shs. 50 M/- excluding making an order for cancellation of entries in a certificate of title and vesting title which had to be referred to the High court for the necessary consequential order.

18. The facts and procedural history revealed that this case started at the District Land Tribunal. H/W JOHN KATEGAYA must have

inherited it as a result of PRACTICE DIRECTION No. 001/2006 dated 6/12/2006.

Recently while considering the same matter in Misc. Application No. 0027/2010 FLORENCE DAWARU =VS= ANGUMALE ALBINO I stated as below;

> ***"By virtue of practice direction No. 1/2006 dated 6/12/2006 issued by the Hon. The Chief Justice, when the term of office for all the District Chairpersons expired, powers to hear and handle land cases were transferred to Magistrate Grade I and Chief Magistrate courts. Consequently when H/W JOHN KATEGAYA entertained this matter he did so as a District Land Tribunal who by virtue of S.76A (3) of the Land Act as amended did not have the power to order cancellation of entries on a certificate of title"***

19. Without hesitation I would repeat the same words in the present case. What makes the case worse is that the trial Magistrate framed an issue over which he has no power to try, cook evidence on it and ended by making the order that the land be sub-divided.

In my view all such actions as he did without the jurisdiction to do so were a nullity thereby fundamentally affecting the proceedings before him and the resultant words.

In other wards the trial was affected by illegalities which this court cannot ignore.

20. The second aspect of want of jurisdiction related to value of the subject matter. S.76 A (3) allowed the Magistrate court or Tribunals to handle land whose value does not exceed shs. 50m/= the record did not show the value of this kind as the applicant/claimant did not state

it. Nonetheless I do not agree that it was not over 50m/= value. Exh. PE1 shows he area of the dispute land on lease to be 196.5 Hectors equivalent of 477.49 acres in this area is close to one square mile. It was PW1's evidence that part of this land is used for cattle rearing as a form and it has houses on it. DW2 also admitted they have houses on the land. It is hardly inconvincible that such a piece of land with a land title on full term lease cannot cost less than shs. 50m/= and if it did it was the duty of the plaintiff to show to court the cost of the land.

21. S.11 (2) CPA would be applicable to this situation. I will reproduce the gist of both section and afford them court's interpretation. S.11 (2) provides

> ***"Whether for purposes of jurisdiction……..it is necessary to estimate the value of the subject matter of a suit capable of a monetary valuation the plaintiff shall, in the plaint……..fix the amount at which he/she values the subject matter of the suit……."***

The sub section means that the plaintiff was under a duty to give the value of the land for purposes of S.76A (3) the Land (Amendment) Act to make sure it does not exceed shs. 50m/= for purposes of jurisdiction.

Then S.11 (4) provides for a situation where it may not be possible to give the value and states;

> ***"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 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.

The sub section means that even where no estimate was made, the court cannot pass a decree that exceeds its pecuniary jurisdiction. In the present case the pecuniary jurisdiction of the court/tribunal was only 50m/= the subject land it dealt with it was my finding above that amount, and S.11 (4) prohibits the court to make such a decree declaring ownership in land that more than shs. 50m/= in value. Yet the trial court in answer to issue number one it declared that the plaintiff had lawful interest in the suit land. The suit land being above 50m/= the court had no power to make that declaration.

If both aspects are considered it turns out that the trial Magistrate and the tribunal heard and determined a matter over which they had no jurisdiction.

In the result I find that the trial in the court below was a nullity and nothing from it would be of legal effect or enforcement.

I however before taking leave of this appeal feel I must explain that this decision has no effect on the proprietary rights of either party who by virtue of S.56 R.T.A still share undivided interest in the land in equal shares. What the ruling means is that the issues which were before court were not resolved because court did not have the power to solve them. Who ever wishes to have them solved can seek a remedy from courts of competent jurisdiction.

I make no orders as to costs since the point of law that has ended this appeal was at the courts instance.

NYANZI YASIN
JUDGE
24/04/2013

I direct that this ruling be read by the Deputy Registrar of this Court or any other Judicial Officer he appoints. The date of delivery shall be the date of the ruling.

NYANZI YASIN

JUDGE