

THE REPUBLIC OF UGANDA
IN HIGH COURT OF UGANDA HOLDEN AT MASINDI
CIVIL APPEAL NO. 057 OF 2015

(Arising From Masindi Civil Suit No.0025 Of 2012)

TIBWOMU CHARLES WANENGE ::::::::::::::::::::::::::::::::::: APPELLANT

VERSUS

1. AWEKO CHARLES

2. AMOPI ALIASI

3. ANGALA TISIANO

4. POSTINO OZUNGA ::::::::::::::::::::::::::::::::::: RESPONDENTS

BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA

JUDGMENT

- [1] This is an appeal from the decree and judgment of the Magistrate Grade 1, Masindi Chief Magistrate's court at Masindi dated 8/5/2015.
- [2] The facts of the appeal as found by the Trial Magistrate are that the plaintiffs/Respondents sued the defendant /Appellant for inter alia; a declaration that the plaintiffs are the rightful owners of the suit land, that the defendant/Appellant fraudulently acquired a certificate of title comprised in **LRV 754, Folio 15 measuring 177 hectares** to the suit land, vacant possession and eviction of the defendant and his agents as trespassers.
- [3] The 1st and 3rd plaintiffs contended that they acquired the suit land from their respective fathers, **Oketcho Bosco** and **Tisiano Owurunga** who had acquired the same from a one Mutongole chief, **Remijjio Ochama** in 1962 as vacant land, marked with known boundaries and that they have been enjoying the customary ownership of the land measuring 50 and 12 acres respectively.
- [4] The 2nd and 4th plaintiffs also contended that they had utilized their portion of the suit land since 1964 and 1966 respectively having acquired the same from Mutongole chief **Remijjio Ochama** and that they have been both in occupation and cultivating uninterrupted until

2008 when the defendant started claiming the plaintiffs' entire land of 117 acres.

- [5] The defendant on the other hand contended that the disputed portion of land forms part of the defendant's land measuring 177 hectares which belonged to his late father, **Ezera Wanenge** who acquired it in the 1950's. That the disputed land shared a boundary with the 1st plaintiff's father's land who used to be his father's casual labourer on the suit land.
- [6] The defendant averred and contended further that the 1st plaintiff and his relative have rented the disputed land as tenants since 1998-2007 and that for the rest of the plaintiffs, they are not known to him as they have never stayed on the suit land. Further, that he did not misrepresent any fact to any authority in obtaining the Certificate of title in question, that his family followed proper procedures in obtaining the title and therefore, they cannot be trespassers on the suit land.
- [7] The trial magistrate evaluated the evidence before her, she found that the plaintiffs' evidence was corroborative in nature in respect of **olu trees**, the boundary trees planted by Mutongole chief in 1972 between the disputed land and the defendant's portion of land not in dispute. That the defendant had crossed and claimed the plaintiffs' land. Further, that the whole evidence on both sides at locus visit showed clearly that the plaintiffs were in actual possession of the suit land with settlements, crops and had stayed on the land for so long save for the 4th plaintiff who left for Nebbi in 1981 and left his portion of land which has graves and banana plants in care by the 2nd plaintiff.
- [8] On the whole, the trial magistrate concluded that the plaintiffs' evidence was cogent, corroborative, coherent and consistent that the plaintiffs have a customary interest in the suit land having acquired the same from a Mutongole chief **Remijjo Ochama** in 1960's. That they were the rightful owners of the suit portion of land and that the defendant and his co-owners in acquiring the certificate of title which included the suit portion of land, misrepresented to the District Land Board and the Area Land Committee as being in possession and that they owned the suit land.

[9] She held that there was ample evidence of fraud attributed to the defendant, that the grant and registration of the suit land in the defendant's names and co-owners was intended to defeat the unregistered interests of the plaintiffs. She inter alia, declared the defendant and his agents trespassers on the suit land and ordered for vacant possession and eviction. She referred the file to the High Court for cancellation of the Certificate of title the defendant acquired on the suit land.

[10] The Appellant/defendant was dissatisfied with the decision of the trial magistrate and filed an appeal to the High Court on the following grounds as contained in his memorandum of appeal:

1. *That the Learned Trial Magistrate erred in law by failing to consider and evaluate the evidence on the record properly thereby arriving at a wrong conclusion thus causing the Appellant a miscarriage of justice.*
2. *That the Learned Trial Magistrate erred in law and fact when she conducted locus in quo proceedings favourable only to the Respondents.*
3. *That the Learned Trial Magistrate erred in law by awarding UGX 10,000,000/- (Ten Million shillings Only) to the Respondents as general damages without justification.*
4. *That the Learned Trial Magistrate erred in law when she ordered for the cancellation of the Appellant's Certificate of title without the Respondents proving fraud.*
5. *That the Learned Trial Magistrate erred in law when she ascertained the suit land to be 117 acres yet held that the suit land was not surveyed by the Respondents but seen and known by the parties as such.*
6. *That the Learned Trial Magistrate erred in law when she entertained a suit whose estimated value at the time was about UGX 117,000,000/- (One hundred and Seventeen Millions Shillings Only) above the pecuniary jurisdiction of the lower trial Grade 1 Magistrate's court.*
7. *That the Learned Trial Magistrate erred in law by basing on the Respondents' purported unregistered interest in the suit land to cancel the Appellant's entire Freehold Certificate of title described as FRV 754, Folio 15, plot 41, Kibanda Block 14, Kiryandongo District.*

8. *That the Learned Trial Magistrate erred in law and fact when she proceeded to order for cancellation of Certificate of title to the suit land against co-registered proprietors who were not given chance to contest the serious allegation of fraud and this in turn occasioned a miscarriage of justice.*

(This last ground of appeal had not been included in the memorandum of appeal but was raised during the Appellant's oral submissions since in his memorandum of appeal his counsel had intimated that a further ground of appeal would be framed upon receipt of the certified record of the proceedings and judgment in the lower court).

[11] Counsel for the Respondent never objected to the introduction of this ground of appeal during submissions. This court therefore shall be entitled to determine it together with the other grounds for there shall be no prejudice since it has not been shown by the Respondents that they are aggrieved by the introduction of this ground of appeal.

Duty of the Appellate court

[12] This is 1st appeal from the decision of the Magistrate Grade 1, Masindi Chief Magistrate's court. The duty of this court as the first appellate court is well settled. It is to evaluate all the evidence which was adduced before the trial court and to arrive at its own conclusion, as to whether the finding of the trial court can be supported; **FREDRICK J.K. ZAABWE Vs ORIENT BANK LTD & 5 ORS S.C.C.A No.04/2006.**

[13] I shall proceed to evaluate the evidence as adduced before the trial magistrate and pronounce myself on the conclusion reached by the trial court.

Counsel Legal representation and submission.

[14] The Appellant was represented both in the lower court and on appeal by **Counsel Ian Musinguzi of M/s Musinguzi & Co Advocates, Masindi** while the Respondents were represented in the lower court and on appeal by **Counsel Kasangaki Simon of M/s Kasangaki & Co Advocates, Masindi.**

[15] All the grounds of appeal were tackled concurrently. Counsel for the Appellant submitted that he is a co-registered proprietor of the suit land comprised in **LRV 754 Folio 15 known as plot 41, Kibande Block 4 at Nyakabale Kiryandongo District.** It is the Appellant's contention

that the particulars of fraud set out in the plaint, paragraph 7(a)-(f) do not tantamount to fraud and that the trial magistrate did not rely on those grounds to find fraud. That she instead set out brand new reasons which were not pleaded as grounds for fraud. That no evidence was led whatsoever to substantiate the allegations of fraud and that besides the trial magistrate was not vested with pecuniary jurisdiction to entertain such a matter.

[16] That the standard of proving fraud is higher than the ordinary standard in ordinary suits though not to that set out in criminal cases and that fraud has to be attributable to the transferee; **F.J.K ZAABWE Vs ORIENT BANK & 5 ORS S.C.C.A No.2/2006 at pg 26.**

[17] It was his submission that in the instant case, nowhere in the record of proceedings was fraud as set out in the particulars attributable to the transferees. That the Respondents did not meet the standard of proof of fraud and later on substantiate on their claims as averred in the particulars of fraud.

[18] Counsel further submitted that in these proceedings, neither the co-owners of the suit Certificate of title nor the Registrar of titles/Commissioner Land Registration were brought in as parties. That the co-owners did not testify but they were found to have committed serious allegations of fraud without a fair hearing. The Commissioner Land Registration is having custody of the mother file which contains the processing leading to titling and it was not adduced in evidence to point at where the actual fraud is. That besides, the trial magistrate condemned the Area Inspection Committee and Masindi District Land Board as having participated in the fraudulent scheme but none of them testified in court and no credible evidence was adduced against either of the entitles.

[19] As regards damages, counsel for the Appellant submitted that though court has jurisdiction to award general damages at its discretion, it has to be premised on justifiable evidence. That in the instant case, the available evidence was in regard of boundaries, that is all.

[20] On the other hand, **Counsel Kasangaki** for the Respondents submitted on the following points:

1. **Co-ownership of the suit land;** that the co-ownership of the suit land by the plaintiff and the other persons is a joint tenancy and not a

tenancy in common where the common estate would be held personally. That in a joint tenancy, a declaration against one co-owner suffices for the rest of the co-owners.

2. **Locus in quo proceedings;** that the Appellant does not dispute that court visited locus. That testimonies were enlisted and observations were all put on record.

3. **Failure to sue the Registrar of titles and the District Land Board;** that suing them was not necessary because once it is established that the title was procured by fraud, the file is forwarded to the High Court for rectification or cancellation of title as it was done by the trial magistrate. He therefore invited this court to uphold the findings of the trial magistrate and proceed to issue the consequential order rectifying the Certificate of title held by the Appellant by surveying off 117 acres decreed to the Respondents.

4. **Jurisdiction of the trial magistrate;** that the Respondents sued the defendant/Appellant for trespass onto their land they held under customary tenure. That under this, the trial magistrate has unlimited jurisdiction by virtue of **Section 207(1) and (2) M.C.A.**

5. **General damages;** that the trial magistrate considered the evidence tendered in court concerning the inconvenience suffered by the Respondents arising out of the conduct of the defendant, that they had been deprived of their land and were not able to utilize their customary holdings and a Certificate of title had been processed fraudulently and without their knowledge or consent on their property without any compensation and as a result, she awarded a sum of 10,000,000/= as sufficient attornment for the injury suffered.

Consideration of the Appeal.

[21] In the memorandum of appeal, the Appellant raised a pertinent ground of jurisdiction in the 6th ground which is as follows:

“That the Learned Trial Magistrate erred in law when she entertained a suit whose estimate value at the time was about UGX 117,000,000/=, above the pecuniary jurisdiction of the lower trial Grade 1 magistrate’s court.”

[22] I think it is imperative for this court to first determine this ground because of the effect the entire decision of the appeal may have on the future litigation of this matter if this court is to find that the trial

magistrate had no jurisdiction to entertain the suit before her and this court is to direct that the plaintiffs/Respondents file the suit in the appropriate court vested with jurisdiction. The determination of the other grounds may pre-empt the outcome arising from the future litigation of this matter.

- [23] On this ground of whether the trial magistrate was vested with jurisdiction to entertain the suit before her, counsel for the Appellant submitted that the subject of the estimated suit is 117 acres and that an acre in Kiryandongo area, without engaging an expert is worth about **1,000,000/=** thus placing the suit property at **117,000,000/=**. That the lower trial magistrate therefore, exercised pecuniary jurisdiction that was not within her ambit. That the jurisdiction of the Grade 1 magistrate is 20,000,000/= as per **Section 207 of the Magistrate's Court Act** as amended.
- [24] Counsel for the plaintiffs/Respondents on the other hand submitted that Magistrate's Court Act provides exceptions by which the Chief Magistrate and Magistrate Grade 1 sitting in civil jurisdiction, that is, conversion, trespass, detinue and adjudication of matters regulated by Civil Customary Law where the trial court has unlimited jurisdiction. That in the instant appeal, the plaintiffs/Respondents sued in trespass on land, they contend that they held under customary tenure. He concluded on this issue that therefore, it cannot be argued as pointed by counsel for the Appellants that the trial magistrate did not have jurisdiction.
- [25] This ground of appeal requires this court to satisfy itself as to the correctness, legality and the regularity of the proceedings by and before the trial magistrate and make a finding as to whether the Grade 1 magistrate exercised jurisdiction not vested in her in law or acted in the exercise of her jurisdiction illegally or with material irregularity or injustice when she adjudged the case before her.
- [26] **Section 207 of the Magistrates Court Act** (as Amended by Act 7 of 2007) provides for the pecuniary jurisdiction of a Magistrate Grade 1 as follows:
- “(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;*

(a)...

(b) A Magistrate Grade 1 shall have jurisdiction where the value of the subject matter does not exceed twenty million shillings.

*(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 1 shall be unlimited.”*

[27] As it can be discerned from the above provision of the law, the Magistrates Court Act does not confer unlimited jurisdiction to **Magistrate Grade 1** in disputes relating to conversion, damage to property or trespass as counsel for the plaintiffs/Respondents contended. That unlimited jurisdiction is only conferred upon the **Chief magistrate** by virtue of **Section 207(1)(a) M.C.A.**

[28] In the instant appeal therefore, the issue is whether by virtue of **Section 207(2) M.C.A**, the suit filed by the plaintiffs/Respondents was governed **only** by civil customary law.

[29] In the suit in the court below, the plaintiffs led evidence to the effect that they owned their respective portions of the suit land under customary tenure but they proceeded to seek for cancellation of the defendant/Appellant’s Certificate of title of land comprised in **LRV 754 Folio 15 plot 41 Kibanda Block 4 at Nyakabale, Kiryandongo District** (formerly Masindi District). This rendered the suit not entirely being governed by customary law but both by the **Registration of Titles Act** and **Customary law**. As a result, the trial magistrate ended up declaring the defendant/Appellant and his agents trespassers and that the Certificate of title in question comprising of land measuring **177 hectares** was acquired fraudulently and referred the file the High Court for its cancellation.

[30] In my view, the suit in the lower court was not an action based exclusively on Civil Customary Law. It would have been different if the plaintiffs had not sought for cancellation of title. Its inclusion ceased the matter to be of a civil nature governed only by Civil Customary Law. Therefore, the Grade 1 Magistrate’s court did not have unlimited jurisdiction but rather its pecuniary jurisdiction was limited to Shs. 20,000,000/= as stipulated **by Section 207(1)(b) M.C.A as amended.**

[31] **Section 4 C.P.A** provides thus:

“Pecuniary Jurisdiction.

Except in so far as is otherwise expressly provided, nothing in this Act shall operate to give any court jurisdiction over suits the amount or value of the subject matter of which exceeds the pecuniary limits, if any, of its ordinary jurisdiction.”

[32] The Certificate of title in question of, and land measuring 177 hectares which is subject of cancellation cannot by any stretch of imagination be of the value of 20,000,000/=, the pecuniary limit of a Grade 1 Magistrate. The entertainment of the suit therefore by the trial court was an error material to the merits of the case and definitely involved a miscarriage of justice. The trial Magistrate Grade 1 therefore exercised her jurisdiction irregularly and illegally when she entertained the suit which was beyond her pecuniary jurisdiction and this rendered her decision a nullity and it is therefore, accordingly set aside but with no orders as to costs. The plaintiffs/ Respondents are to file the suit in the appropriate court with competent jurisdiction subject to the law of limitation. The determination of this ground of appeal entirely disposes off this appeal for reasons I have already advanced.

Byaruhanga Jesse Ruyema

JUDGE

4th/08/21.