

The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Civil Appeal No. 36 of 2019

[Arising from Kaberamaido Misc. Application No. 10 of 2018}

Acumo Jane ..... Appellant

Versus

1. Ejabu Benard

2. Eredu John

3. AJjokati Alfonse ..... Respondents

4. Epeku Simon

Before: Hon. Justice Dr Henry Peter Adonyo

Judgment

This appeal coming before this honourable court for judgment arises from a dismissal order of contempt proceedings brought before Kaberamaido Magistrates

Court on grounds that the Applicant was not the legal representative and did not have the right to bring the dismissed application hence this appeal.

The brief facts are that the Appellant's deceased's mother successfully sued the Respondents in 2012 in Kaberamaido Magistrates Court vide Civil Suit No. 20 of 2012 for trespass by the Respondents on land measuring approximately 100 acres forming part of the estate belonging to the Appellant's late father.

The background to this appeal is that the Appellants mother, Aoko Norah was the plaintiff in *Kaberamaido Magistrates Court Civil Suit No. 20 of 2012 Aoko Norah vs Ejabu Benard, Eredu John, Ajotaki Alfonse and Epeku Simon* and before her demise had successfully ejected the respondents from the suit land by way of execution.

After the demise of the appellant's mother, the respondents re-entered the suit land hence the filing of the contempt proceedings vide Miscellaneous Application No. 10 of 2018 by the Appellant.

The learned trial magistrate dismissed the said application grounds that the appellant was not a legal representative of Aoko Norah and did not have the right to bring the dismissed application hence the appeal.

The grounds upon which this appeal is grounded on are that;

- a. The learned trial Magistrate erred in law when he misguided himself on the law relating to contempt proceedings
- b. The learned trial magistrate erred in law when he misguided himself on the law relating to survivorship of a suit and substitution of a legal representative
- c. The learned trial Magistrate erred in law and fact when he failed to evaluate the evidence on record thereby arriving at an erroneous decision

Counsel for the Applicant framed two grounds for this appeal and follows;

- i. The learned trial Magistrate erred in law when he misguided himself on the law relating to contempt proceedings
- ii. The learned trial magistrate erred in law when he misguided himself on the law relating to survivorship of a suit and substitution of a legal representative

Counsel for the appellant argued both grounds i and ii together, stating that this appeal was brought on the legal basis that section 98 of the Civil Procedure Act, gives the High Court powers to make inherent decisions that are pertinent to meet the ends of justice.

Relying on *Stanbic Bank (U) Ltd & Jacobsen Power Plant Ltd vs The Commissioner General Uganda Revenue Authority MA 42 of 2010*, counsel highlighted the conditions that must exist before an order for contempt is granted. These include the existence of lawful order, the potential contemnor's knowledge of the Order and the potential contemnor's failure to comply.

On the existence of a lawful order, counsel submitted that judgment was entered against the Respondents in Civil Suit No. 20 of 2012 whereupon the respondents were then evicted through execution proceedings and vacant possession was then handed over to the appellant's mother. That the respondents re-entered the land and erected illegal structures and yet it was clear to them that there was a court order, which they knew about and that they had been evicted previously.

It was also submitted that pursuant to Order 24 rule 3 (1) of the Civil Procedure Rules, the dismissed application was not a continuing or surviving suit in court, and that the suit from which the dismissed application and the current appeal arose were long concluded through judgment and execution before the demise of Aoko Norah, mother to the Appellant and therefore, there was no continuing suit and so the learned magistrate erroneously dismissed the suit on grounds that the appellant did not substitute herself as the legal representative of her mother Aoko Norah which this court should find accordingly.

On the issue of whether the learned trial magistrate erred in law and fact when he failed to evaluate the evidence on record thereby arriving at an erroneous decision, counsel submitted that the learned trial magistrate failed to evaluate the evidence on record when he failed to take note of the fact the appellant had a powers of attorney to prosecute the suit and had even testified as PW1 in the original suit and had also sought to apply for letters of administration to her late mother's estate but was frustrated by the respondents in addition to the fact that she was beneficiary to the estate of the deceased who by law can bring an action where such an estate is going

to waste. Arising from these legal points, counsel for the appellant prayed court to find merits in this appeal and then set aside the dismissal order and find that the respondents were in contempt by re-entering the land.

*In response*, counsel for the respondent raised a preliminary objection submitting that the appellant did not seek leave before instituting this appeal referring to Order 44 rule 1 (a) to rule 1 (u) of the Civil Procedure Rules which lists the orders under the law from which an appeal lies as of right. With Order 44 rule 2 and rule 3 of the Civil Procedure Rules providing that an appeal from shall not lie from any order except with the leave of the court that made the order or the court to which such an appeal would lie if leave were granted as was pronounced in *Deo Mwasa vs Don Musoke Civil Appeal No. 54 of 2011* as well as *Heritage Oil & Gas Ltd vs Uganda Revenue Authority*.

That in relation to the instant appeal, the appellant had not sought the leave of the Grade 1 Magistrate's Court or the High Court which failure was contrary to the provisions of Order 44 rule 2 and 3 of the Civil Procedure Rules meaning that this appeal is incompetent since this honourable court had no jurisdiction to hear it given

the fact that no leave was previously sought and granted and so this court ought to dismiss this appeal on that basis.

Decision: of Court:

Counsel for the respondent raised a preliminary objection that appellant did not seek leave before instituting this appeal as required under *Order 44 (2) and (3) of the Civil Procedure Rules* and therefore that this honourable court has no jurisdiction to hear this appeal but to dismiss it. According to **Order 44 (2) of the Civil Procedure Rules** it is a requirement that an appeal cannot lie from any other order except with leave of the court making the order or of the court to which an appeal would lie if the leave were given.

Order 44 (3) provides that applications for leave to appeal shall in the first instance be made to the court making the order sought to be appealed from.

In the case of *Kilama Tonny & Another vs Grace Perpetua Otim Civil Appeal No. 13 of 2019*, this Honourable Court, after referring to the above provisions, found that there is no right of appeal to this court originating from the interlocutory orders of a

magistrate's court which orders are incidental to the suit but not resulting from the final determination of the suit itself.

This court also found that there is no right of appeal from an order overruling a preliminary objection or an objection raised during the course of the trial based on a point of law.

The import of the above decision is, therefore, that an appeal does not lie from any order except with the leave of the court which made the order or of the court to which the appeal would lie if such leave was granted.

Further, an application for leave to appeal is required in the first instance to be lodged with the court which made such order from which the appeal is sought.

Coming to the present case it is not in dispute that the appellant filed this appeal from a dismissal order of contempt proceedings brought before Kaberamaido Magistrates Court without first seeking for leave from Kaberamaido Magistrates Court as required under Order 44 rule (2) and (3) reproduced above on an order which is not listed under Order 44 rule 1 of the Civil Procedure Rules.



Secondly, it is provided in the law that where leave is not granted as required by the court which issued the order from which an appeal is not automatic and from which there is a desire to appeal against such an order, then the aggrieved party who proposes to appeal against the unlisted order must seek leave of the appellate court to file such unlisted order for which an appeal is desired to be prosecuted with any failure to do so would mean that any appeal prosecuted outside the provision of Order 44 of the Civil procedure Rules would result in being rendering an appellate court to lack such jurisdiction to hear the matter before it.

This is the situation for I find no record that the required leave to appeal was made before the trial court neither was any leave sought first from this court to file the instant appeal. That being so, I would agree with the counsel for the respondents that this appeal is incompetent given the fact that this honourable court is not bequeathed with the jurisdiction to hear it without first the provisions of Order 44 of the Civil Procedure Rules being complied with especially on the requirement that leave to appeal be sought either in the court which issued the order for which an appeal is intended and was denied or that any such leave was first sought before this court.

Given this situation, this appeal must fail for not complying with the provisions of the Order 44 of the Civil Procedure Rules given that no leave to appeal against an order not listed was first sought before this appeal was brought either from the court where the order originates or from this court were such leave to be denied which I find mandatory and cannot be cured by Section 98 of the Civil Procedure Act.

This resolution of the preliminary objection would thus resolve this appeal and I would find no reason to delve into the other issues raised by counsel for the appellant.

The appeal is thus dismissed with costs with the appellant advised to follow the requirements of Order 44 of the Civil Procedure Rules accordingly.

I so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

8<sup>th</sup> July 2021

Order:

This ruling is forwarded to the Registrar of this court to have it delivered online to parties in line with the Hon Chief Justice's directions on COVID-19 SOP's.

I so order



Judge

8<sup>th</sup> July 2021

23/7/21  
Court: ~~Ruling~~ judgment  
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