

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASINDI

CIVIL APPEAL NO. 0006 OF 2021

*(Arising from Kagadi C.S. No. 27 of 2019)*

WAKISA FRED & OTHERS ::: APPELLANTS

*VERSUS*

KATABARWA JOSEPHINE ::: RESPONDENT  
*(Administrator of the Estate of Katarbarwa Matiya)*

JUDGMENT

*Before: Hon. Justice Byaruhanga Jesse Ruyyema*

- [1] The Respondent/Plaintiff as an Administrator and beneficiary to the Estate of the late **Katarbarwa Matia** filed **CS-027 of 2021** at Kagadi Magistrate Grade I Court against the Appellants (in the amended Plaintiff) for inter alia; that the suit land measuring **approximately 50 acres situated in Kisegu LCI (now Munsoga), Kilyanga Sub county, Kagadi District** belongs to the Estate of the late Katarbarwa Matia, that the Defendants/Appellants are trespassers and for cancellation of the Title **FRV KIB3 Folio 2 Plot 16** in the names of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> Defendants/Appellants.
- [2] In their Written Statement of Defence (W.S.D.) the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants/Appellants contended that they are the registered owners of the suit land and averred that the jurisdiction of the matter is in High Court and not the Chief Magistrate's Court.
- [3] At the commencement of the hearing of the suit, Counsel for the Defendants/Appellants raised a point of law challenging the

jurisdiction of the Court. Upon receipt of written of submission on the issue of jurisdiction, the trial Magistrate over ruled Counsel for the Defendants/Appellants in the following words:

*“I have carefully perused the submission filed by both Counsel, I have also perused the pleadings. It is clear that none of the parties in their pleadings pleaded the value of the suit land. Still none of the parties in their pleadings pleaded the size of the land in issue ... It is the Defendants who are alleging that the value of the suit land is above the jurisdiction of this Court... It is therefore incumbent on them to produce in Court evidence... I find that the Defendants have not adduced sufficient evidence to prove their objection. I therefore dismiss the objection raised by the Defendants with costs to the Plaintiff”.*

[4] The Defendants were not satisfied with the ruling and the order of the trial Magistrate. The Appellants applied for leave to appeal against the order which was granted and they appealed to this Court on the following issues.

1. ***The learned trial Magistrate erred in law and fact when he overruled the Appellants’ objection challenging the jurisdiction of the Court of the suit for recovery of land approximately 17.27 hectares (42.67464 acres) of registered land whose value exceeded his stipulated pecuniary jurisdiction.***
2. ***The learned trial Magistrate erred in law and fact when he held that the size of the land in dispute was neither pleaded by the respondent nor the appellants thus leading him to reach a wrong decision.***

**3     *The learned trial Magistrate erred in law and fact when he held that the appellants had failed to adduce evidence to show that the value of the suit land was so big and its pecuniary value was above his jurisdiction thus leading him to reach a wrong decision.***

[5] The Appellants were represented by **Mr. Aaron Baryabanza of Baryabanza & Co. Advocates, Hoima** while the Respondents were represented by **Mr. Alekaho Allan of Ms. Alibankoha & Co. Advocates, Hoima**. Both Counsel filed their respective submissions for consideration of the preliminary point of law raised. Both Counsel argued the 3 grounds of appeal jointly because all the grounds revolve around whether the trial Magistrate had the jurisdiction to entertain the matter in question.

[6] Counsel for the Appellants submitted that the trial Magistrate erred in law when he dismissed the Appellants' objection challenging the jurisdiction of the Magistrate Grade one over the suit for recovery of registered land measuring approximately 17.27 hectares whose value exceeded the pecuniary jurisdiction of the Magistrate Grade One Court: **S.207(1)(b) MCA as per amended**).

[7] Secondly, that the trial Magistrate erred in law when he held that the size of the land was never pleaded and further that no evidence was led to prove that the value of the suit land is above the jurisdiction of Grade One Magistrate. He relied on the following authorities:

1. **Tarema Justus v Biteteyi Robina & 2 Others H.C. Rev. Application No. 001 of 2017**

2. **Kawaga Lawrence & 2 Others v Ziwa & Sons Property Consultants Ltd H.C. Civil Rev. No. 04 of 2018.**
3. **Mujib Juma vs Adam Musa & 8 Others H.C.C.A No. 53 of 2015**

[8] Counsel for the Respondent on the other hand submitted and argued that the Plaintiff in this case did not reveal the value of the property but pleaded trespass to land measuring approximately 50 acres and that the Appellants relied on mere speculations to estimate the value of the suit land to exceed 20,000,000= millions which is the pecuniary jurisdiction of the Magistrate Grade 1. He submitted that the Grade 1 Court had jurisdiction to entertain the matter as it could not rely on mere speculation. He relied on the following authorities:

1. **Musisi Gabriel v EDCO ltd and Anor H.C.C.A. No. 52 of 2010.**
2. **Munoba Muhammed v Uganda Muslim Supreme Council H.C.C. Rev. No. 1 of 2006.**
3. **Koboko District Local Government v Okujjo Swali H.C.M.A. No. 001 of 2016.**

[9] In the first instance, I find that the trial Magistrate erred in law when he held that none of the parties in their pleadings pleaded the size of the land in issue. In para. **4(b) of the amended Plaintiff**, it is pleaded that the property was approximately **50 acres** while the Defendants pleaded that they were registered proprietors of the suit land and attached a copy of the certificate of title; **FRV 1476, Folio 18, Plot 1, Bugahya Block 335** which reflect the size of the suit land as **17.2720 hectares** (42.67464 acres).

[10] The jurisdiction of the Magistrate's Court is provided by **S.207(1) MCA** (as amended by Act No. 7 of 2007) as follows:

*“(1) Subject to this Act and any other written law, the jurisdiction of Magistrate presiding over Magistrate's Courts for trial and determination of causes, and matters of a civil nature shall be as follows:*

*(a) A Chief Magistrate shall have jurisdiction where the subject matter of the matter of the dispute does not exceed fifty million shillings and shall have unlimited jurisdiction in matters relating to conversion, damage to property and trespass.*

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

[11] In the instant case, as indeed found by the trial Magistrate none of the parties in their pleadings pleaded the value of the suit land.

[12] **S.207(3) MCA provides** thus:

*“Whenever for the purposes of jurisdiction or Court fees it is necessary to estimate the value of the subject matter of a suit capable of money valuation, the Plaintiff shall in the Plaint, subject to any rules of the Court, fix the amount at which he or she values the subject matter of the suit”.*

In this case, the Respondent/Plaintiff did not give an estimate of the value of the subject matter in the plaint, other than pleading that the suit land was approximately **50 acres**.

[13] Where a suit is for recovery of land and not exclusively trespass as in the instant case where the Respondent/Plaintiff is seeking for, in addition, cancellation of a Certificate of Title of the Defendants/Appellants, since a registered proprietor cannot be a trespasser on his registered land; (**Prince Keffa Wasswa & Anor vs Joseph Kiyimba, H.C.C.S. No. 0482 of 2021 [2019] UGHCLD 130**), whether the subject matter value is pleaded or not, the trial Magistrate ought to inquire and establish the value of the estate involved first before determination of the matter; see also **Tarema Justus v Kiteteyi Robina & 2 Ors (Supra)** where Justice Dr. Flavian Zeija (as he was then) observed that:

*“Jurisdiction is a very crucial aspect in litigation. Without it a Court has no power to make any step. 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”. See **Owners of Motor Vessel Lillian vs Caltex Oil Kenya Limited (1989) (1) KALR.***

[14] The instant case was before the Magistrate Grade 1. Under **S.207 (2) MCA (as amended)**, the Magistrate Grade 1 has unlimited jurisdiction with regard to disputes, relating to a cause or matter of a civil nature governed **only** by civil customary law. In the instant case, the suit in question is besides, governed by the Registration of Titles Act and therefore, the Magistrate Grade I does not have that unlimited jurisdiction. As per **S.207(1)(a) MCA**, it is only the Chief Magistrate who has unlimited jurisdiction in trespass and not the Grade 1 Magistrate.

[15] In the instant case, a suit for recovery of **50 acres of land** considering the economic value of land in the jurisdiction of

this Court would alert the trial Magistrate to inquire into the value of the subject matter where the value is not pleaded. Where the Plaintiff would not reveal the value of the suit property, and the trial Magistrate fails to inquire into the value of the subject matter, and pecuniary jurisdiction is contested, this Court would find that the trial Magistrate entertained the matter without pecuniary jurisdiction and in the instant case I find so. The 3 grounds of appeal are found to have merit. As a result, the appeal is accordingly allowed. Where Court finds that it has no jurisdiction to handle the matter, the proceedings are halted and or transferred to the relevant Court; **Uganda Civil Justice Bench Book - 1<sup>st</sup> Edition, January-2016 page 46 cited in June vs Musa & 8 Ors (Supra).**

[16] This Appeal is allowed with an order setting aside **C.S. No. 27 of 2019**, Kibaale the proceedings before the trial Magistrate, the matter shall proceed in the High Court, the Court with the competent jurisdiction. No order as to costs.

Signed, Dated and Delivered at Masindi this **8<sup>th</sup> day of September, 2022.**

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**Byaruhanga Jesse Ruggyema**  
**JUDGE**