

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
CIVIL APPEAL NO. 054 OF 2021
(Arising out of C.S No.003 of 2021)
(All arising from Land Civil Suit No.038 of 2020)

BATEGEKA GROWERS CO-OP. SOCIETY LTD ::::::::::::::: APPELLANT

VERSUS

1. KIRAGURA ROBERT
2. KIRAGURA JULIUS
3. BAGUMA RONALD
4. ABIGABA JANE

::::::::::::: RESPONDENTS

Before: Hon. Justice Byaruhanga Jesse Rugyema

JUDGMENT

[1] This is an appeal against the ruling and orders of **H/W Deo Ssejemba**, Chief Magistrate Masindi, delivered on 19/11/2021.

Background

[2] The Appellant Cooperative Society instituted **Masindi Chief Magistrate’s Civil Suit Case No.38 of 2020** against **Uganda National Roads Authority (UNRA)** for inter alia, trespass to land located at **Karujubu Cell, Kisiita Ward, Karujubu Division, Masindi Municipality**, compensation, mesne profits and general damages. During the pendency of the suit, 3rd party litigants, the Respondents i.e, **Kiragura Robert, Kiragura Julius, Baguma Ronald and Abigaba Jane** applied to join the case with the Defendant, **UNRA Vide Misc. Application No.3 of 2021**. The trial Chief Magistrate allowed the 3rd party Respondents to join the suit.

[3] The Appellant was dissatisfied with the decision of the learned Chief Magistrate allowing the Respondents' application to join the suit and filed the present appeal on the following grounds as contained in the memorandum of appeal:

1. *The Learned trial Magistrate was biased, acted in bad faith, erred in law and fact when he deliberately refused to evaluate the overwhelming evidence clearly before him of ILLEGALITY and RES JUDICATA, thereby arriving at a wrong decision and occasioning the appellant more injustice.*
2. *The Learned trial Magistrate erred in law and fact by promoting illegality when he forced the Appellant to sue the respondents well knowing the appellant had no evidence or the pleadings disclosing a cause of action in the circumstances, thereby occasioning a miscarriage of justice.*
3. *That the Learned Trial Magistrate erred in law and fact by abusing his discretion and acting without jurisdiction, when he forced the Appellant to sue the Respondents against whom the appellant does not have a claim thereby occasioning the appellant a miscarriage of justice by denying them fair hearing which is unconstitutional.*

[4] In her submissions, counsel for the Appellant included 2 additional grounds which are as follows:

- a) *The Chief Magistrate acted without jurisdiction by insisting on hearing a case of 66,684,000/=.*
- b) *The Chief Magistrate lacks jurisdiction to hear or add the Respondents as parties since the High Court is already entertaining the matter to wit; 1. Kiragura Robert Vs UNRA H.C.C.S No.63/2021.
2. Bategeka Grower's Cooperative Society Ltd Vs UNRA H.C.C.S No.79 of 2021.*

Duty of the 1st Appellate court

[5] The law governing first appeals is well settled. The duty of the 1st Appellate court is to rehear the case on appeal by reconsidering all the evidence adduced before the trial court as a whole by giving it fresh and exhaustive scrutiny and then draw its own conclusion of fact and determine whether on the evidence, the decision of the trial court should stand; **Pandya Vs R (1957) EA 336** and **Selle & Anor Vs Associated Motor Boat Co. Ltd & Ors (1968) EA 123**.

Consideration of the Appeal

- [6] I have critically perused the grounds of appeal as raised by the Appellant. I find that the grounds raise the following issues: illegality and or biasness, Res judicata and jurisdiction of the Chief Magistrate.

Illegality and or biasness

- [7] Counsel for the Appellant **Ms. Barbara Katusabe** submitted that the Chief Magistrate acted selectively in a compromising manner because he deliberately refused to address issues of an already existing L.C3 court judgment that had not been challenged. 2ndly, that the Chief Magistrate forced the Appellant to sue the Respondents (by allowing the Respondents' application to be added as defendants) over compensation even when the Appellants had indicated that they had no evidence against the Respondents for payment of **Ugx 66,684,000/=**.
- [8] Counsel for the Respondents **Mr. Kasangaki Simon** on the other hand submitted that **O.10 r.2 CPR** permitted and covered the Chief Magistrate's orders. It provides thus;

“The court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectively and completely to adjudicate upon and settle all questions involved in the suit, be added.”

Counsel argued that the Respondents filed **M.A No.03 of 2021** to protect their interests as owners and in possession of the suit land and were entitled to be paid compensation from UNRA as part of the suit land had been expropriated by Government for construction of Masindi-Kigumba Road.

- [9] I have perused and carefully examined the pleadings in **MSD C.S No.38 of 2020**, then **MSD M.A No.03/2021** where the Respondents as claimants of the suit land who had contracted with UNRA to construct a road on the suit land sought to be added as defendants with UNRA in **MSD C.S No.38/2020**.

- [10] The trial Chief Magistrate while allowing the application in his ruling dated **19/11/2020**, found that the Applicants/Respondents sought to be added to the main suit as co-defendants with **UNRA** because they are in possession of the land in issue as beneficiaries of the estate of the late **Ezra Tirega**, their deceased father. 2ndly, that as people in possession, they had made an agreement with **UNRA** for compensation for the portion of that land taken up in the construction of a road.
- [11] It is clear from the **Chief Magistrate C.S No. 38/2020** the Appellant sued the Defendant **UNRA** for inter alia, trespass to land, mesne profits and General damages while at the same time seeking inter alia, a declaration that the suit land belongs to the plaintiff/Appellant and that the defendant is a trespasser.
- [12] On the other hand, the Respondents in the instant case were claiming to be beneficial owners of the suit land who were in possession thus they applied to be added as defendants with **UNRA** in the mother suit so that the central issue of ownership is adjudicated upon and the determined rightful owner of the suit land recovers the assessed compensation of the suit land amounting to **Ugx 66,684,000/=**.
- [13] In view of the above, I am unable to see any illegality in allowing the Respondents added as defendants to the mother **C.S No.28/2020** under **O.10 r.2 CPR** to enable court settle all questions involved in the suit not limited to the determination of the rightful owner of the suit land and therefore the rightful payee for the compensation sum of **Ugx 66,684,000/=** for the part expropriated by Government for construction of the road.
- [14] The trial Magistrate is found to had properly and correctly determined the application to add the Respondents as parties. There is no evidence that he was biased in any way. This ground of appeal is found to have no merit and it is rejected accordingly.

Res judicata

- [15] The law on res judicata is provided for under **S.7 CPA**. It provides thus;
“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially

in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court.”

The common law doctrine of *res judicata* thus bars re-litigation of cases between the same parties over the same issues already determined by a competent court. The rationale is to prevent multiplicity of suits and bring finality to litigation; **General Industries (U) Ltd Vs NPART & 3 Ors, Civil Appeal No.51/2007[2019] UG CA 1.**

[16] In this case, it is the contention of the Appellant that the application by the Respondents to be added on the mother suit was *res judicata* by virtue of the existing L.C3 Court Judgment that has not been challenged. The said L.C3 Court Judgment was brought to the attention of the learned trial Magistrate during the determination of the Respondents' application to be added as parties. The trial Magistrate considered the L.C3 judgment but did not find the Respondents' application *res judicata*.

[17] I have also examined the L.C3 judgment referred to, I have not found the Respondents' application to be added as parties to the main suit *res judicata*. **The L.C3 judgment Karujubu sub county Land Dispute No.65/07/2009** was between **Kiragura Robert and Karujubu sub county**. The L.C3 court had concluded the matter at hand in favour of the Appellant who had leased the disputed land in that case from the sub county, the then defendant in the L.C3 court. There is however, no evidence that the suit in question in the former L.C3 Court is the same suit portion of land in the present case that was expropriated by Government for construction of the road. This may have to be a matter of evidence. As a result, I find that this matter is not *res judicata* as it has never been adjudicated upon between the parties and finally adjudicated upon by a competent court of jurisdiction.

[18] As correctly put across by counsel for the Respondents, judgment of the **L.C III Karujubu Court in 2009** was of no legal consequence. In **Nalongo Burashe Vs Kekitiiibwa Mangadalena C.A No.89/2011(C.A)** it was held that:

“By 2009, the L.C1, L.C II and L.C III, courts were not legally constituted and decisions made by such courts were

“no decisions” having been made by a court not legally constituted. The decisions are devoid of any force of law.”

- [19] Besides and in any case, the L.C III court had no original jurisdiction in land matters. The jurisdiction was vested in the parish or Ward Executive L.CII Committee courts; **See S.76A (1) of the Land Act Cap.227.**
- [20] From the foregoing, I find this ground of appeal also devoid of merit since the Karujubu L.C III court decision cannot be a basis for res judicata as it was not a competent court of jurisdiction to entertain the matter.

Jurisdiction of the Chief Magistrate

- [21] The Jurisdiction of a chief Magistrate is provided for under **S.207 (1) (a) MCA**. It provides thus:
- “a) A chief magistrate shall have jurisdiction where the value of the subject matter in dispute does not exceed fifty million shillings and shall have unlimited jurisdiction in disputes relating to conversion, damage to property or trespass.”*
- Under **S.11 (2) CPA**, it is provided that,
- “2) whenever for purposes of jurisdiction or court fees it is necessary to estimate the value of the subject matter of a suit capable of a money valuation, the plaintiff shall, in the plaint, subject to any rules of court, fix the amount at which he or she values she subject matter of the suit.”*

- [22] In the instant case, in the main suit, the Appellant/plaintiff Co-op. did not fix the amount or estimate the amount at which the subject was valued. It is however apparent that both the Appellant/plaintiff and the Respondents/defendants are in agreement that though it is the Appellant/plaintiff who filed the claim before the Magistrate’s court, the court is without pecuniary jurisdiction for recovery of the suit land compensation in the sum of **Ugx 66,684,000/=**. **Section 4 of the CPA** prohibits Magistrates from presiding over suits whose amount or value of the subject matter exceeds the pecuniary limits of their ordinary jurisdiction. Besides, the Appellant filed a similar suit against **UNRA** in High Court vide **C.S No.79/21** and it is still pending in this court. The Respondents would therefore have an option of filing any relevant and

necessary applications in order to have their interests catered in the suit filed in the High Court, court vested with jurisdiction.

- [23] In the result, I find or hold that the Chief Magistrate's court had no pecuniary jurisdiction to handle this matter. The Appellant/plaintiff instituted the suit in a court that was not vested with the pecuniary jurisdiction to handle. In **Seggululigamba Vs Kyobe Gerald & Anor, H.C.C.A No.92 of 2017**, it was held;
- “proceedings of a court without jurisdiction are a nullity because no court can confer jurisdiction on itself...”*

- [24] In the premises, I allow this ground of appeal and order that the trial of the Magistrate's court **Suit No.38 of 2020** be accordingly halted for lack of jurisdiction. The proceedings and orders therein are therefore set aside as they are null and void. Besides, the trial Chief Magistrate would have found challenges to make an order of compensation whose value is beyond his jurisdiction since a Chief Magistrate cannot award what is beyond the pecuniary jurisdiction of the court; **Koboko District Local Government Vs Okujjo Swali H.C.M.A No.001 of 2016**. The parties to pursue the pending suits and applications before the High Court concerning the same subject matter.
- No order as to costs since parties had in a way instituted their respective actions in a court that was not vested with the competent pecuniary jurisdiction.

Signed, dated and delivered at Masindi this **28th** day of **September, 2022**.

Byaruhanga Jesse Rugyema
JUDGE.