

5 **THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KABALE**  
**CIVIL APPEAL NO 011 OF 2021**  
**(Arising from Kabale Chief Magistrates Court Civil Appeal No.14 of 2019)**  
**(Arising from Kabale Municipality Northern Division Case No.1/2019)**

10 **TUMUHEISE MARY ARINAITWE=====APPELLANT**  
**VERSUS**  
**EMILY TURYASINGURA=====RESPONDENT**

**BEFORE: HON. JUSTICE MOSES KAZIBWE KAWUMI**

**JUDGMENT**

15 This is a second Appeal arising from the decision on Appeal of the Chief Magistrate at Kabale delivered on 19<sup>th</sup> February 2021. The Appeal in the Chief Magistrate’s court arose from a decision of the Kabale Municipality Northern Division LC 111 Court delivered on 15<sup>th</sup> November 2019.

**Background.**

20 The background to the Appeal is that the parties to the present appeal had a dispute over a piece of land at Rwabusizori. The Respondent herein contended that it was bought by her late husband Bright and had been encroached on by the Appellant. The LC111 Court found in favor of the Respondent on 15<sup>th</sup> November 2019.

The Appellant was dissatisfied by the decision of the LC111 Court and filed Civil Appeal  
25 No.011/2021 in the Chief Magistrate’s court at Kabale on 12<sup>th</sup> December 2019. The Court determined the Appeal on 19<sup>th</sup> February 2021 in favor of the Respondent.

On 1<sup>st</sup> March 2021 a Memorandum of Appeal was filed in this court by the Appellant listing three grounds. On 6<sup>th</sup> October 2021 Counsel for the Appellant wrote to the Court Registrar for a schedule of filing submissions which request was granted. Counsel filed submissions which have  
30 been considered in arriving at the decision of the court.

5 **Representation.**

M/S George Muwanguzi & Associates Advocates represent the Appellant while M/S Muhangi & Co. Advocates represent the Respondent.

**Determination.**

10 Counsel for the Respondent raised a preliminary objection contending that the Appeal is incompetent in as far as leave to appeal to the High Court was not sought by the Appellant. Reliance for the submission was placed on Sections 32(2)(d), 32(3) and 32(4) of the Local Governments Act of 2006. I was urged to dismiss the appeal.

In response, Counsel for the Appellant wrote a justification for the Appeal to be sustained in the following submission;-

15 *‘The Appellant’s Counsel wrote a letter to the Chief Magistrate at Kabale dated 22<sup>nd</sup> February 2021 requesting for a certified copy of the judgment and record of proceedings for purposes of prosecuting the Appeal in the High Court.... There is no particular procedure provided for application for leave to appeal.*

20 *As such, the letter from Counsel for the appellant requesting for the said documents constitutes an application for leave and the grant thereof implies that leave was accordingly granted. It is therefore our submission that this Appeal is competent and complied with the provisions of the law.’*

25 With all due respect to Counsel for the Appellant, the concept of an application for leave to appeal was misconceived in the submissions he filed. **Section 32(2)(d) of the Local Governments Act** provides: -

*“An appeal shall lie from the decrees and orders made on appeal by a chief magistrate, with the leave of the chief magistrate or of the High Court, to the High Court”*

30 Section 32 (3) provides for the leave to be granted only when the intending appellant has satisfied the Chief magistrate or the High Court that the decision against which an appeal is intended involves substantial questions of law or is a decision appearing to have caused a substantial miscarriage of justice.

5 My appreciation of the two sections is that a *formal application* must be filed and arguments made to satisfy the court of the merit in the intended appeal based on the question of law or a miscarriage of justice that the intending appellant shall raise in the High Court.

The same concept is also replicated in **Section 220(1)(c) of the Magistrates Courts Act** which provides:-

10 “An appeal shall lie-  
“from decrees and orders passed or made in appeal by a Chief Magistrate, with the leave of the Chief Magistrate or of the High Court, to the High Court.”

**Section 220(3) of the same Act** provides:-

15 “Leave to appeal for the purpose of subsection (1)( c) shall not be granted except where the intending appellant satisfies the Chief Magistrate or the High Court that the decision against which an appeal is intended involves a substantial of law or is a decision appearing to have caused a substantial miscarriage of justice.”

It was submitted for the Appellant that no particular procedure is provided for application for leave to appeal. I find this to be an incorrect submission. **Section 219(1) of the**  
20 **Magistrates Courts Act** provides:-

“Every suit or appeal in the Court of a Chief Magistrate or a Magistrate Grade 1 shall be instituted and proceeded with in such a manner as may be prescribed by rules applicable to suits and appeals in the High Court.”

Rules applicable to suits and appeals in the High Court and also to Magistrates’ Courts except  
25 the Grade 11 Courts are the Civil Procedure Rules created by statutory instrument 71-1.

**Order 52 rule 1 of the Civil Procedure Rules** provides:-

“All applications to the court, except where otherwise expressly provided for under these Rules, shall be by motion and shall be heard in open court.”

The Appellant had to file a notice of motion in the chief magistrate’s court for leave to appeal to  
30 the High Court and to the High Court in the event that it was not granted by the Chief

5 Magistrate’s court.A letter requesting for the record of proceedings did not amount to such an application.

**Degeya Trading Stores V URA.CACA No.16/1996;Sango Bay Estates V Dresdener Bank[1972]EA 17;UHMG VKatinvuma Broadcasting Ltd t/a Signal FM,HC MA No.270/2012.**

10 An Appeal filed without the leave of the Chief Magistrates Court or of the High Court is incompetent and cannot be sustained on the court record.

The Appeal is hereby dismissed with costs to the Respondent.

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15 **Moses Kazibwe Kawumi**  
**6<sup>th</sup> July 2022**

**Judge**