

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT MUKONO
CIVIL APPEAL 26 OF 2021
(ARISING FROM LD-CS 0014 OF 2015)

ALICE NAKIRANDA.....APPELLANT

VERSUS

SERUNKUMA FREDRICKRESPONDENT

BEFORE HON. LADY JUSTICE CHRISTINE KAAHWA

JUDGMENT

1. Background.

The Plaintiff brought a suit in the Chief Magistrates Court seeking a declaration for specific performance, damages for breach of contract and costs of the suit. The plaintiff also prayed for any other remedy that the court deemed fit.

2. The matter was heard by His Worship Muinda Tadeo, Grade 1 Magistrate and judgement entered for the Plaintiff in the following terms;

- i. That defendant pays to the plaintiff Shs. 6,000,000/= (Uganda Shillings Six Million only) in compensation and damages.
- ii. The Plaintiff completes the construction of the building as he had commenced.
- iii. The Plaintiff is the rightful owner of 2 acres purchased from the defendant.
- iv. The defendant pays costs of the suit.

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28/2/2023

3. The Defendant being dissatisfied with the Judgement of the lower court rendered on the 12th July 2021 by His Worship Muinda Tadeo, Grade 1 Magistrate, filed a Memorandum of Appeal on the 28th July 2021.

4. Grounds of Appeal

The following are the grounds of appeal;

1. The Learned Trial Magistrate erred in law and fact when he failed to find and hold that the Respondent breached the contract when he took possession and utilized the suit land prior to discharge of his obligations under the contract.
2. The Learned Trial Magistrate erred in law and fact when he failed to find and hold that the Respondent fundamentally breached the contract by his inordinate delay to construct and complete the suit house.
3. The Learned Trial Magistrate erred in law and fact when he failed to find the Appellant lawfully terminated the contract owing to the Respondent's breach of the same.
4. The Learned Trial Magistrate erred in law and fact when he ignored the LC 3 Judgement that had declared the Respondent to be in breach of the contract and ordered him to vacate the suit land.
5. The Learned Trial Magistrate erred in law and fact when he failed to properly evaluate the evidence on record hence arriving at an erroneous decision.

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28/2/2023

5. Representation

The Appellant was represented by Mr. Sajja Ismail while the Respondent was represented by Mr. Denis Nyombi. Both parties filed written submissions.

6. Analysis and determination

Before delving into the merits of the Appeal the Court will deal with the issue of whether the Trial Court had Jurisdiction to adjudicate Civil Suit No. 14 of 2015.

The Court is of the view that where issues of both law and fact arise in the same suit, and the court is of the opinion that the case or any part of it may be disposed off on issues of the law only, it shall try those issues first, and for that purpose may, if it thinks, postpone the settlement of the issues of fact until after the issues of law have been determined. See Order 15 rule 2 of the Civil Procedure Rules.

It is trite law that the jurisdiction of courts is a creature of statute. A court cannot exercise a jurisdiction that is not conferred upon it by law. Therefore, whatever a court purports to do without jurisdiction is a nullity *ab initio*. It is settled law that a judgment of a court without jurisdiction is a nullity and a person affected by it is entitled to have it set aside *ex debito judicial* (See *Karolin Mubiru and 21 Others v Edmond Kayiwa* [1979] HCB 212; *Peter Mugoya v James Gidudu and another* [1991] HCB 63).

15
28/02/2023

Where a trial court has not exercised its original jurisdiction over a matter, there certainly cannot arise a valid appeal on the merits.

I will lay the background to the issue of jurisdiction of the Trial Court as follows;

- i. The Appellant/Defendant in paragraph 11 of the Written Statement of Defence at page 20 of the Record of appeal stated thus;

"The Defendant shall raise a preliminary objection that the matter was res judicata as it was handled by the LC III Court of Nakisunga Sub county in Mukono District. Copies of the record of proceedings and Judgement are attached hereto and marked Annexure "C". "
- ii. The Record of appeal at pages 24- 27 bears the LC III judgement dated 9th December 2014, which was exhibited before the lower Court and marked D Exhibit No.1.
- iii. The Court observed that the record of proceedings does not indicate that this issue was raised as preliminary point and neither was it framed as an issue before the Trial Court.

The agreed issues framed by the parties were three to wit; *whether the defendant is in breach of the agreement between the parties, if so whether there was breach of the same by any of the parties, and remedies, See page 54 of the Record of Appeal.*

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28/02/2023

- iv. The Defendant closed her case 18th May 2021 and the court set timelines for filing submissions and reserved the Judgement for 29th June 2021. The Judgement was however delivered on the 12th July 2021 and Trial Magistrate observed at page 92 of the record of Appeal that both Counsel though directed to file submissions none did so.

From the above facts it is clear that the LC111 Court of Nakisunga Sub County made a decision on the subject matter from where this Appeal arises.

7. The Local Council Courts' legal jurisdiction is conferred by Section 10 of the Local Council Courts Act, 2006 (the Act) which provides;

"10. Legal jurisdiction

(1) Subject to the provisions of this Act and of any other written law, every Local Council Court shall have jurisdiction for the trial and determination

(a) causes and matters of a civil nature specified in the Second Schedule to this Act;

(b) causes and matters of a civil nature governed only by customary law specified in the Third Schedule;

(c) causes and matters arising out of infringement of bye-laws and Ordinances duly made under the Local Governments Act;

28/2/2023

(d) matters specified under the Children Act;

(e) Matters relating to land

(2) In any suit relating to causes and matters specified in the Second and Third schedules –

(a) the jurisdiction of the Local Council Court shall, in respect of causes and matters specified in the Second Schedule be restricted to causes and matters where the value of the subject matter in dispute does not exceed one hundred currency points;

(b) *the jurisdiction of the court in respect of causes and matters specified in the Third Schedule shall not be restricted by the monetary value of the subject matter in dispute.*

(3) *In any suit relating to causes and matters specified in the Second Schedule and in the Third Schedule, where the court awards compensation exceeding twenty-five currency points, the court shall refer the case to the Chief Magistrate of the area for the purposes of execution of the order and the Chief Magistrate may, if he or she finds that the judgment award is grossly excessive, reduce the amount of the award taking into account awards in similar cases."*

K
28/2/2023

The second schedule includes cases and matters of civil nature which are debts, contracts, assault or assault and battery, conversion, damages to property and trespass.

Conversely, the third schedule lists civil disputes governed by customary law which include disputes in respect of land held under customary tenure; disputes concerning marriage, marital status, separation, divorce or the parentage of children; disputes relating to the identity of a customary heir and customary bailment.

The aforementioned provisions of the law demonstrate the jurisdiction of the Local Council Courts. It is my considered opinion that until the Judgement of the LC III court is set aside or appealed it remains a valid judgement.

Section 32 of the Act provides as follows;

“(1) A party dissatisfied with the judgment or order of a Local Council Court may, subject to the provisions of this section or any written law, appeal against the judgment or order; but no appeal shall lie from a judgment or order passed or made as a result of the consent of the parties.

(2) An appeal shall lie—

.....

c) from the judgment and orders of a town, division or sub-county Local Council Court to a Court presided over by a Chief Magistrate; (emphasis mine)

10
28/02/2023

(d) from 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."

8. It is apparent from reading Section 32 (2) (c) Act that an appeal in the instant case would lie to a court presided over by a Chief Magistrate and not a Magistrate Grade 1.

9. Section 32 (2) (d) of the Act confers jurisdiction on the High Court in instances where an appeal arises from a decree or order of a Chief Magistrate.

The recourse that the Respondent/Plaintiff had was to appeal the LCIII judgement and not to bring a fresh matter as he did. If he had any procedural matters regarding the proceedings of the LCIII court he was well within the law to invoke the supervisory powers of the Chief Magistrate provided by Section 40 of the *Local Council Courts Act, 2006*.

Having said so this Court similarly does not have jurisdiction to delve into the merit of this appeal not being vested with authority to do so.

I accordingly make the following orders;

1. The Appeal is dismissed.

28/02/2023

2. That the Judgement of the lower Court is set aside.

3. The Respondent shall pay the costs the Appeal in this Court and the lower Court.

Dated at Mukono this ^{28th}.....day of February 2023.



HON. LADY JUSTICE CHRISTINE KAAHWA
JUDGE