

THE REPUBLIC OF UGANDA
 IN THE HIGH COURT OF UGANDA AT GULU
 CIVIL APPEAL NO HCT -02 – CV – CA – 0025/2009
(Arising from Civil Appeal No. 042 of 2007)

1. BETTY ALANYO OPOKA	}	
2. PEACE MAKERS CHURCH	>>>}	APPELLANTS

VERSUS

1. ANGUT DOREEN		
2. RICKY RUBANGAKENE	>>>>}	RESPONDENTS

BEFORE HER LADY JUSTICE MARGARET MUTONYI

JUDGEMENT

This is an appeal from the orders of His Worship Omodo Nyanga as he then was delivered on 26/11/2009. The Appellants Betty Alanyo Opoka 1st Appellant and Peace Makers Church 2nd Appellant were aggrieved and dissatisfied with the judgment and orders in Civil Appeal No. 042/2007.

The Respondents in this case are Angut Doreen 1st Respondent and Ricky Rubangakene 2nd respondent.

The grounds of Appeal are

- (1) that the trial magistrate erred in law that the sale of land in dispute was illegal and that the second appellant bought air.
- (2) That the trial Chief Magistrate erred in law and facts when he failed to evaluate the evidence before him hence arriving at a wrong decision.
- (3) That the trial magistrate erred in law and fact to order the refund of money of 17,000,000/= to the 2nd Appellant without looking at the current market value of the land and improvement on the said land thereby leading to a miscarriage of justice.

The appellants prayed that this honourable court allows the Appeal, sets aside the judgement and orders of the lower court, declares that the sale of the suit land was legal and that the 2nd Appellant is the owner of the suit land.

They also prayed for costs of the suit and any other relief.

Both counsel submitted in support of their client's cases.

Back ground of the case:-

From the record before me, the genesis of this case arose from a family dispute arising out of Administration of an estate.

The beneficiaries to an estate filed a case before LC II court which decided a case against the 1st Appellant who filed an Appeal in Pece Division LC III court vide Land Dispute Appeal Case No LCC/24/07

Mrs. Alanyo Betty Opoka versus the children of the late Babylon Acaye and Magellan Acellam. The children were listed and numbered 13.

The appellant in the LC III court who is the first Appellant in Civil Appeal No. 041/2007 appealed against the decision of the LC II court of Pece. She lost the Appeal and further appealed to the Chief Magistrate. Surprisingly, the 2nd appellant comes on board in the Appeal before the Chief Magistrate and yet he was not a party in the lower court. It is not known whether the 2nd appellant is legally registered under the relevant laws and therefore acquired legal personality in order to sue or be sued. Perusal of the records did not reveal anything as regards the legal personality of the 2nd Appellant and how he was joined as the appellant at the chief magistrates' court level. Unlike application for review where any person considering himself or herself aggrieved by a decree or order of court from which an appeal is allowed, i.e. O.46 r (I) of CPR which in essence allows third parties to apply in case they are directly aggrieved by a decision, appeals can only be preferred by parties to the suit.

The above notwithstanding, the 2nd appellant is on record as a party to this appeal from the chief magistrates court. Both counsel submitted on this case. Ocorobiya Lloyd Esq. for the appellants

submitted that this appeal represents some of the difficulties from suits that originate from Local Council courts. The matter first begun before LC II of Tegwana Parish.

He went on to submit on ground 2 as follows: “According to the proceedings before the lower local council courts, it is evident that the suit land is a plot within an urban area (Pece Division). That being the case, the LC II court of Tegwana parish did not have jurisdiction, to try the case between the parties. The jurisdiction of courts is a creative of statute and cannot be informed from the circumstances.

Jurisdiction of local council courts regarding land matters is provided for under S.10 of the Local Council Courts Act and 3rd schedule to that act restricts jurisdiction to customary land. Therefore when the parish local council court sat in judgment over the suit land, it acted without jurisdiction. A decision arrived at by a court without jurisdiction is void ab initio. He went on to say that this ground alone is enough to dispose off the Appeal.

He went ahead and prayed for overturning the lower courts judgment and declaring the sale lawful and the 2nd Appellant the lawful owner of the suit land.

In his response, the respondents counsel Komakech Kilama submitted he does concede that the LC II court of Tegwana Parish, Gulu Municipality sat and heard a matter in respect of land within an urban area outside their jurisdiction.

Based on the above submission this court agrees with the submission of both counsel on the issue of jurisdiction.

The proceedings are null and void abinitio because the LC II acted without jurisdiction as the subject matter of the suit was titled land in Gulu municipality. Much as the agreement described it as customary land, the fact remains it was not customary land.

LC II court has original jurisdiction in case it was customary land of which it was not.

As to the first appellate court, the Chief Magistrate had a duty to review all the evidence adduced at the lower court and determine whether first and foremost the court had jurisdiction.

In his judgment, he did not raise the issue of jurisdiction at all. In his judgement, which is not numbered in the last two sentences, the trial chief magistrate stated “It was therefore not right to sell without the consent of the children. The LC III courts’ judgement on this point therefore appears to be correct”. A court without jurisdiction cannot make any legally binding orders. The orders of LC II court were equally null and void abinitio because it had no jurisdiction in this case. What is unfortunate however is that counsel in this case did not raise the issue of jurisdiction in 2007. Yet the proceedings of LC II Court of Tegwana Parish, Pece Division. Gulu Municipality land dispute on Plot 36/37 Ring Road case No. 003/2007 was attached. Advocates are officers of court and have an obligation towards court and their clients.

A lot of injustice has been occasioned to all parties since 2009 because right now 7 years down the road, there is no proper decision on the issue of the sale of land.

If the two deceased brothers held the land in dispute jointly, was Betty Alanyo Opoka the administrator of both brothers?

The facts raise serious issues under the law of Administration of estates and succession which issues have not been dealt with because the matter started in the wrong courts which were not vested with jurisdiction and not competent to resolve the issues.

In the result this court is of the view that a retrial in this case is very necessary in order to have estate issues raised be resolved once and for all.

The beneficiaries of the estates of Magellan Acellam and Babylon Acaye should file a Civil Suit in a court vested with jurisdiction given the value of the land. A beneficiary does not need to have Letters of Administration to sue for his interest in the estate.

In view of the fact that the LC courts did not have jurisdiction, this court cannot make any orders as regards ownership of the land because that would be resolved at a retrial.

The appeal is allowed with the following orders;-

1. A trial is ordered before a court of competent jurisdiction.
2. No order is made as costs because the parties were all misled by the Counsel who are officers of court.

Right of Appeal within 30 days.

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MUTONYI MARGARET

JUDGE

22/8/2014: At 11:00am.

1st Appellant absent but sent a son to represent her
Acaye Dan.

2nd Appellant present.

1st Respondent absent.

2nd Respondent absent.

Opoka Juliet holding brief for Henry Kilama
Komakech. And ready to receive the ruling.

Court: Judgment read and delivered in the presence of the above.
Anna for clerk.

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MUTONY MARGARET

JUDGE

22/08/2014