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**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**LAND DIVISION**

**CIVIL APPEAL NO. 19 OF 2014**

**ANDREW KAWUKI :::APPELLANT**

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**VERSUS**

**JACKSON SEMAGANYI:::RESPONDENT**

**BEFORE: HON MR. JUSTICE BASHAIJA K. ANDREW**

**JUDGMENT**

This is an appeal from the decision of the Magistrate Grade1 His Worship Ereemye James  
 15 Jumire Mawanda sitting at the Chief Magistrate’s Court of Mengo at Mengo (*hereinafter referred to as the trial court*”). Jackson Semagayi (*hereinafter referred to as the “Respondent”*) sued Andrew Kauki (*hereinafter referred to as the “Appellant”*) and Kampala District Land Board (KDLB) seeking an order of a permanent injunction restraining the Appellant from trespassing on the Respondent’s land at Nateete Central Zone in Plot 3 and part of Plot 5 River  
 20 Road at Nalukolongo (*hereinafter referred to as the “suit land”*) a declaration that the lease offer made by KDLB in favor of the Appellant on the part of the suit land occupied by the Respondent is void, an order for cancellation of the lease offer, a declaration that the Respondent is a sitting tenant on the suit land and is thus entitled to be given priority in the grant of the lease, general damages for trespass, and costs of the suit.

25 **Background:**

The Respondent, who was the plaintiff at the trial, sued Appellant, who was 1<sup>st</sup> defendant, for trespass to the suit land. The Respondent claimed that he purchased the suit land from late Namwanja Richard sometime on 06/11/2004, and the two executed a sale agreement. He averred that he bought the suit land as unregistered Kibanja based on boundary marks that were shown  
30 him by Namwanja who owned the land. The suit land had, however, been demarcated way back in 1970s.

That shortly after executing the sale agreement, one Nasibu Njogeza lodged a complaint at Nateete LC1 Zone that Namwanja had sold land to the plaintiff which included a portion belonging to Njogeza and demanded compensation. The LC1 decided that the balance of Shs. 2  
35 million due to Namwanja be paid directly to Njogeza; and it was paid and an agreement to that effect signed at the LC1 Chairman's office.

Sometime later Njogeza again returned to the LC1 with the 1<sup>st</sup> defendant with a fresh claim that he was the owner of another portion of the land which the plaintiff had purchased from Namwanja, and that he wanted to sell it to the 1<sup>st</sup> defendant at Shs.2.8 million. That he had in fact  
40 already received Shs.2million. The LC1 rejected the transaction as fraudulent since Njogeza had already sold off his land to the plaintiff. Nevertheless, Njogeza proceeded and sold the piece of land to the 1<sup>st</sup> defendant without the knowledge of the LCs or them witnessing on the sale agreement dated 25/12/2004.

In order to conclude and settle the dispute and develop his land, the plaintiff offered a piece of  
45 land to the 1<sup>st</sup> defendant which borders Mr. Kasozi, and demanded that the balance of Shs. 800,000/= due to Njogeza be paid to him. An agreement to that effect was concluded and taken to the LC1 Chairman to witness. It was left there as all the committee members were not present

to sign it. The plaintiff alleges that the 1<sup>st</sup> defendant, however, retrieved the agreement from the LC1 Chairman and has since hidden it.

50 Later the 1<sup>st</sup> defendant asked the plaintiff to give him alternative piece of land as the previous one did not have an access road. The plaintiff agreed and gave another piece that stretches 150 feet from the Balokole Church towards plaintiff's maize mill factory. However, this agreement was not reduced in writing. Later the 1<sup>st</sup> defendant showed the plaintiff an agreement which he claimed is the one that was left at the LC1 offices. The plaintiff alleged that the contents are  
55 quite different from the one he executed and his signature was altered. The plaintiff claimed that all these actions of the 1<sup>st</sup> defendant are fraudulent.

The plaintiff further avers that in 2005, he applied for a lease from KDLB, the 2<sup>nd</sup> defendant, for part of the land where he had constructed structures and put machines for his maize mill factory. That while the 2<sup>nd</sup> defendant granted the lease, it never took into account the whole area occupied  
60 by the plaintiff. According to the plaintiff, the 2<sup>nd</sup> defendant relied on the area earlier demarcated in 1970s to grant the plaintiff the lease as Plot 3. The plaintiff contends that the lease should have been granted for the whole area he occupied as a sitting tenant which extends beyond the demarcation of Plot 3 to Plot 5.

The plaintiff also avers that subsequently, he applied to the 2<sup>nd</sup> defendant for a resurvey which  
65 was done on 16/07/2008 which revealed a new measurement of 0.656 hectares that attracted a new premium of Shs.32million and ground rent of Shs.1.6million, which he paid. That upon the resurvey, the plaintiff realized that part of his land on Plot 5 measuring approximately 0.12 decimals had been left out. The error was later noticed by the former KCC surveyor who recommended in writing that there was need to resurvey Plot 3 following the existing

70 developments on the ground. The plaintiff applied to the 2<sup>nd</sup> defendant to revisit the suit land and make accurate measurements, but the 2<sup>nd</sup> defendant declined insisting on maintaining the 1970s demarcations and had no intentions of making new alterations. This was despite several other recommendations by different offices including the Commissioner Surveys & Mapping who had carried out investigations on the ground showing that the disputed land belongs to the plaintiff.

75 In 2010 the 1<sup>st</sup> defendant applied for and was granted a lease offer to land comprised in the original Plot 5 which had been surveyed together with plot 3 in 1970s. In granting the lease, however, the 2<sup>nd</sup> defendant did not consider the fact the plaintiff was the occupant of the area measuring 0.12 decimals on Plot 5 which was developed with a maize mill factory on it. The plaintiff avers he was entitled to priority as an occupant and ought to have been heard and his  
80 consent sought before the grant of a lease to the 1<sup>st</sup> defendant. That as such the entry on to Plot 3 by the 1<sup>st</sup> defendant amounts to trespass and ought to be stopped.

The plaintiff further avers that the act of the 2<sup>nd</sup> defendant refusing to visit the suit land to make accurate measurements was intended to deprive him of his land and the act of granting the 1<sup>st</sup> defendant 0.12 decimals without giving the plaintiff the first option as a sitting tenant was an  
85 illegality that rendered the said lease offer void *ipso facto*.

At the trial, the Appellant denied being a trespasser on the suit land. He contended that he was granted a lease offer on Plot 5B at Nateete in 2010 by the KDLB whose conditions he has satisfied. He also denied causing any loss or damage to the Respondent. The Appellant also filed a counterclaim seeking a declaration that he is the lawful owner of land comprised in Plot 5  
90 Block 18 River Road; that the Respondent was in fundamental breach of the agreement dated 01/09/2010, an order of specific performance, a declaration that the Respondent's interest is only

restricted to 0.12 decimals on the Appellant's Kibanja on land comprised in Plot 3 Block 18 to which the Respondent has a lease offer from KDLB, a permanent injunction, general damages, and costs of the counterclaim.

95 The trial court gave judgment in favor of the Respondent and awarded general damages in the sum of Shs. 20,000,000/= and costs; and also dismissed the counterclaim. Being dissatisfied with the judgment and orders of the trial court, the Appellant filed this appeal and advanced nine grounds of appeal as follows;

- 100 **1. The learned trial magistrate erred in law and fact in his failure to properly and thoroughly evaluate the evidence on record thereby coming to the erroneous decision that the Respondent was a bonafide occupant on the disputed land.**
- 2. The learned trial magistrate erred in law and fact in holding that the Appellant was unlawfully granted the lease in question in the circumstances of the case before him.**
- 105 **3. The learned trial magistrate erred in law and fact in impeaching the Appellant's agreements on account that they were not witnessed by the LC officials whereas there is no law making such witnessing mandatory.**
- 4. The learned trial magistrate erred in law and fact in holding that the Appellant was a trespasser upon land that had been leased to him and was in his possession.**
- 110 **5. The learned trial magistrate erred in law and fact in exercising a jurisdiction not vested in him thereby cancelling the Appellant's lease title.**

6. *The learned trial magistrate respectfully erred in law and fact in capriciously awarding the excessive 20,000,000/= prayed for by counsel for the Respondent as general damages.*
- 115 7. *The learned trial magistrate erred in law in ordering a resurvey of the disputed land and a fresh grant of the lease in respect thereof.*
8. *The learned trial magistrate erred in proceeding with the suit against the 2<sup>nd</sup> defendant without a statutory notice.*
9. *The learned trial magistrate with due respect erred in law and fact in casually dismissing the Appellant's counter claim without due consideration of the evidence and*
- 120 *issues raised by the pleadings in respect of the counter claim.*

Counsel for both parties filed written submissions to argue the appeal which I have taken into account in the resolution of the grounds of appeal.

***Duty of the first appellate court:***

In the cases of *Selle vs. Associated Motor Board Co. [1968] EA 123; Bogere Moses & O'rs vs. Uganda, SC.Crim. Appeal No. 01 of 1997;* and *Kifamunte Henri vs. Uganda, SC.Crim.Appeal No.10 of 1992;* it was held that the duty of the first appellate court is to subject the evidence to a fresh and exhaustive scrutiny, weighing the conflicting evidence and drawing its own inferences and conclusion from it. In so doing, however, the court has to bear in mind that it has neither seen nor heard the witnesses and should, therefore, make allowance in that respect. With that

125 duty in mind, I proceed to consider grounds 2, 4, 5 & 7 concurrently. Grounds 1, 3, 6, 8 & 9 will

130 be resolved separately.

***Ground 1: The learned trial magistrate erred in law and fact in his failure to properly and thoroughly evaluate the evidence on record thereby coming to the erroneous decision that the Respondent was a bonafide occupant on the disputed land.***

135 It is important to note that whether or not a person is a bonafide occupant is a question of law and fact. Therefore, even if pleaded or not, once the facts exist, court can rightfully draw that inference, and determine whether one is a bonafide occupant. Order 6 r.1 (1) of the Civil Procedure Rules provides that;

140 ***“Every pleading shall contain a brief statement of the material facts on which the party pleading relies for a claim or defence, as the case may be.”***

Order 7 r. 1 (e) (supra) also provides that the plaint shall contain the facts constituting the cause of action and when it arose. According to the amended plaint, the facts constituting the Respondent’s cause of action were set out in the paragraph 5 that;

145 ***“The plaintiff is the owner of the piece of land comprised in plot 3 and part of Plot 5 River Road at Nalukolongo having purchased the same from the late Namwanja Richard on the 6<sup>th</sup> day of November 2004”***

In paragraph 15 he avers that;

150 ***“The 2<sup>nd</sup> defendant went ahead and granted the lease offer but in so doing, he did not take into account the whole area occupied by the plaintiff. The 2<sup>nd</sup> defendant relied on the demarcation and plotting done earlier in the 1970s and went ahead to grant the plaintiff a lease on Plot 3. The plaintiff avers that the lease should have been granted to the whole area he occupied as a sitting tenant, which went beyond the demarcation of Plot 3.”***

In paragraph 21 he also avers that;

155            ***“Sometime in 2010, the 1<sup>st</sup> defendant applied for and was granted a lease offer to land comprised in original Plot 5 which had been surveyed together with Plot 3 in 1970s.”***

In paragraph 22 he avers that;

***“While granting the lease to the 1<sup>st</sup> defendant, the 2<sup>nd</sup> defendant did not consider the fact that the plaintiff was the occupant of the area measuring 0.12 decimals on Plot 5 which he had developed with a maize factory.”***

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In paragraph 23 he further avers that;

***“The plaintiff shall aver that as he was in occupation of the suit land, he was entitled in priority to a grant of a lease offer and that he ought to have been heard and his consent sought before the grant of the lease offer of the suit land was made in favor of the 1<sup>st</sup> defendant.”***

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The trial court, at page 279 and 281 of the record of appeal, after considering the pleadings and evidence, held as follows;

***“I have read the cases submitted by both counsel in their submissions and in particular counsel for the plaintiff of Kampala District Land Board and Chemical Distributors vs. National Housing and Corporation SCCA No. 2 of 2004. It was held that a holder in possession of public land is equated to a bonafide occupant. He submitted therefore that the plaintiff who purchased from people who held this land from the 1970s qualifies as a bonafide occupant under the provisions of S.29 of the Land Act and Article 237 (8) of the Constitution...The above provisions of the law are protective of the plaintiff’s rights on the land...The plaintiff was not given an opportunity to submit objections or to be heard before the lease was granted...”***

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From the above the pleadings clearly the Respondent's occupancy was illustrated. The trial court was right in making a finding in that respect. Worthy of note is that the decision of the trial court was not premised only on the plea of bonafide occupancy but also on evidence on the record to support it. Since the Respondent was in possession of the suit land with developments thereon; which fact was not contested by the Appellant in anyway whatsoever, the trial court rightly found that the Respondent was a bonafide occupant protected by the law.

Counsel for the Appellant relied on the case of *Nalongo Nalwoga Nakazzi vs. Ssalongo Kesi Bagaalaliwo HCCA No. 84 of 2012* to buttress his opposition to the trial court's findings. However in that case, the cause of action was in trespass. It is therefore, distinguishable from the instant case. Accordingly Ground 1 of appeal fails.

***Grounds 2, The learned trial magistrate erred in law and fact in holding that the Appellant was unlawfully granted the lease in question in the circumstances of the case before him.***

***Ground 4: The learned trial magistrate erred in law and fact in holding that the Appellant was a trespasser upon land that had been leased to him and was in his possession.***

***Ground 5: The learned trial magistrate erred in law and fact in exercising a jurisdiction not vested in him thereby cancelling the Appellant's lease title.***

***Ground 7: The learned trial magistrate erred in law in ordering a resurvey of the disputed land and a fresh grant of the lease in respect thereof.***

Having found in *Ground 1* that the Respondent was a bonafide occupant on the suit land, it also follows, on facts of this particular case, that he had an existing equitable interest therein. The

trial court properly evaluated the evidence on record in arriving at the decision that the Appellant was unlawfully granted a lease by KDLB.

200 The Respondent led evidence showing that he had purchased the 0.12 decimals on the suit land from a one Namwanja who was also a bonafide occupant. When he applied for a lease, KDLB granted him the lease but did not take into account the 0.12 decimals which he occupied and had developments of a maize milling factory. This was owing to the fact that the KDLB relied on the demarcations and plotting that was done in 1970s and went ahead to grant lease to the on Plot 3  
205 without the 0.12 decimals which was effectively under occupation and use by the Appellant on Plot 5. The Respondent also stated, at page 102 of the record of appeal, that the Appellant took him to KDLB which had people like Kanyankole and Senior Staff Surveyor, one Wasemi George, who after duly considering the matter advised that it was a mistake to measure Plot 3 before all the developments were covered. The Senior Staff Surveyor even made a comment on  
210 the document and directed the surveyor to redo the work and diffuse the dispute.

This evidence was corroborated by the Appellant himself, at page 137 of the record of appeal, that the Kibanja he bought from Kamanyi does not include the 0.12 decimals of the Respondent. Further, at page 133 of the record of appeal, that the Appellant applied for a lease on Plot 5, as stated in his counterclaim; and took possession of the part which was his Kibanja and the other  
215 part was in the Respondent's possession. Also at page 137-138 (supra) the Appellant stated that when he was applying, he did mention the developments he had on the land but that he never mentioned that that there were developments of the Respondent. The Respondent, at page 103-104 of the record of appeal, indeed showed that he constructed a maize mill factory on the 0.12 decimals which he later rented out to Hadija Namusisi, Mustapha Zambala and Elliot Bigira.

220 The above evidence clearly shows that KDLB grant of the lease to the Appellant on Plot 5 which  
included 0.12 decimals that belonged to the Respondent was unlawful. The Respondent was in  
lawful possession and occupation of that portion of the land. He was thus entitled to be granted  
priority by KDLB in the lease offer for the 0.12 decimals. From the foregoing, the trial court  
rightly held that the Appellant was a trespasser on the suit land. That disposes of Ground 2, 4, 5  
225 and 7 of the appeal.

This court, however, finds that the trial court exercised its powers illegally when it ordered for  
the cancellation of the Appellant's lease and ordered for resurvey and grant of a fresh lease on  
the suit land. In the case of *Paulo Kamywa vs. Kampala District Land Board SCCA No. 6 of*  
*2001* it was held that the court cannot cancel the lease but can only direct the concerned  
230 authority, being the a District Land Board in this respect, to deal with the land following the  
correct procedure.

As applicable to the instant case, it means that the trial court should have directed KDLB to deal  
with the suit land as recommended. However, that notwithstanding the trial court rightly held  
that the lease offer for Plot 5 which was given in favor of the Appellant was no longer in  
235 existence since Plot 5 was no more, and there was no evidence adduced by the Appellant to show  
that he had a fresh lease offer to Plot 5A, having established that Plot 5B was granted to the  
Church. Therefore, the decision for cancellation of Plot 5 and ordering for its resurvey would not  
change the outcome and did not occasion a miscarriage of justice.

***Ground 3: The learned trial magistrate erred in law and fact in impeaching the Appellant's***  
240 ***agreements on account that they were not witnessed by the LC1 officials whereas there is no***  
***law making such witnessing mandatory.***

At page 282 of the record of proceedings the trial court held that;

245 *“...There was no LC1 member of the area to witness the agreement like it is usually done when a Kibanja is sold. At least from established usage judicially noticeable by this court. As sincere and prudent persons the parties should have executed the sale agreement before the LC officials of the area where the Kibanja is situate for authentication. I equally noted as did Mr. Musisi, that it was important to note, as a trend, that none of the agreements presented to court by the defendant was witnessed by the LC officials. A very unlikely scenario in Kibanja transactions...”*

250 There is no established law that requires a Kibanja transaction to be witnessed by LC officials of the area where it is situate. What is important in sale of land transactions; whether a Kibanja or registered land, is an agreement between the parties. The trial court therefore erred in law and fact to impeach the Appellant’s agreements on that account. This, however, would not change the result that the agreements were null and void as they purported to include land that was under  
255 the occupation and use by the Respondent. This ground does not succeed.

*Ground 6: The learned trial magistrate respectfully erred in law and fact in capriciously awarding the excessive Shs. 20,000,000/= prayed for by counsel for the Respondent as general damages.*

260 It is trite law that damages are the direct probable consequences of the act complained of as noted in the case of *Storms vs. Hutchison (1905) AC 515 and Kampala District Land Board & George Mitala vs. Venansio Babweyana Civil Appeal No. 2 of 2007*. Such consequences may be loss of use, loss of profit, physical inconvenience, mental distress, pain and suffering. See:

*Assist (U) Ltd vs. Italian Asphalt & Haulage & another HCCS No. 1291 of 1999 at page 35.* It is also trite law that the award of general damages is in the discretion of the court.

265 In respect to the quantum of the general damages Lord Blackburn stated in *Livingstone vs. Ronoyard's Coal Co. (1880) 5 AC No 259* defined the measure of damages as that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation. In the case of *Kenneth Robert Bataringaya vs. Attorney General*  
270 *HCCS No. 250 of 2011*, it was held that in arriving at the quantum of damages courts are usually guided by the value of the subject matter, the economic or other inconvenience that a plaintiff has been put though at the behest of the defendant and the nature and extent of the damage of loss suffered.

It is also important to note that an appellate court will only interfere with the award of damages  
275 where it showed that the trial court in the exercise of its discretion followed wrong principles of law or applied the principles incorrectly or the amount awarded was so extremely high or manifestly so law as to make it an entirely erroneous estimate of the damages to which the plaintiff is entitled. See: *Francis Sembuya vs. All Ports Services (U) Ltd CACA 43 of 2010.*

In the instant case, in the amended plaint the Respondent prayed for general damages for the  
280 inconvenience and anguish caused by the Appellant. The trial court, in its judgment at page 285 and 286 of the record of proceedings, held that;

***“PW1 testified that ‘Mr. Kawuki’s acts since he got the lease offer have injured my work and set back my business. And after influencing those who were running my business, there is when my factory was out of work for three months and even the rent***

285 *I used to receive from the tenants I stopped receiving the same because he had grabbed that place. I suffered mental anguish.’...The plaintiff has related to the court the inconvenience he has gone through from the time he took over the premises and the loss of income occasioned. He prayed for general damages of Shs. 20,000,000/= which I agree and believe will adequately compensate the plaintiff.”*

290 Having established that the Respondent bought the suit land in 2004, constructed a maize mill and rented out the same but the Appellant has taken it over without any claim of right deprived the Respondent usage and rent; it is an inconvenience that entitles the Respondent to an award of general damages. As a result I agree with the trial court in the award of Shs. 20,000,000/= as general damages to the Respondent. This ground appeal also fails.

295 ***Ground 8: The learned trial magistrate erred in proceeding with the suit against the 2nd defendant without a statutory notice.***

The position of the law in serving of a statutory notice was considered in the case of ***Kabandize J.B and 20 others vs. KCCA COCA No. 28 of 2011*** where it was held that;

300 *“The Section 2 of Civil Procedure and Limitations (Miscellaneous Provisions) Act Cap 72... was enacted in 1969. It therefore falls under the category of all laws that must be construed in conformity with the 1995 Constitution under Article 274... While construing Section 2 of The Civil Procedure and Limitations (Miscellaneous Provisions Act) already set out above, Courts of law must therefore take into account the provisions of Articles 274 and Article 20 of the Constitution of Uganda. Article*

305 *20(1) of the Constitution... requires that parties appearing before Courts of law must be treated equally and must enjoy equal protection of the law. The reading of Article*

310 *20(1) above and Article 274 of the Constitution together would require Section 2 in  
Cap 72 to be construed with such modifications, adaptations, qualifications and  
exceptions as is necessary to bring it into conformity with the Constitution. Section 2  
above is a law that gives preferential treatment to one party to a suit by requiring the  
other party to first serve it with a 45 days mandatory notice of intention to sue. The  
section is also discriminatory in that it requires one party to issue statutory notice to the  
other without a reciprocal requirement on the other. None compliance renders a suit  
subsequently filed by one party incompetent. Government and all scheduled  
315 corporations are under no obligation to serve statutory notice of intention to sue to  
intended defendants. On the other hand ordinary litigants are required to first issue  
and serve a 45 days mandatory notice upon Government and scheduled corporations.  
We find that in view of Article 20(1) of the Constitution, a law cannot impose a  
condition on one party to the suit and exempt the other from the same condition and  
320 still be in conformity with Article 20(1) of the Constitution.*

In that case Counsel for the defendant had submitted that Government requires more time to inquire into the facts set out in the notice of intention to sue than is required by ordinary citizens. The court disagreed that Government and scheduled corporations require more time to ascertain facts arising from a notice to sue than ordinary citizens. The Court held that;

325 *“...It is Government that has all the machinery, the personnel and the financial means  
required to prepare and file a defence in time, ordinary citizens do not all have such  
means. Be that as it may, the Constitution must be complied with by according parties  
to an intended suit equal treatment and protection of the law. We find that Section 2  
referred to above is not a law that treats all persons equally before the law neither does*

330 *it accord them equal protection. We accordingly find and hold that the requirement*  
*to serve a statutory notice of intention to sue against the Government, a local*  
*authority or a scheduled corporation is no longer a mandatory requirement in view of*  
*Articles 274 and 20(1) of the Constitution. We also find and hold therefore that*  
*noncompliance with that impugned Section 2 does not render a suit subsequently filed*  
335 *incompetent.”*

As applicable to the instant case, the issue of non-service of a statutory notice is no longer a mandatory requirement and does not render a suit incompetent. It is also important to note that the Appellant is not a party that requires service of statutory notice but the KDLB. However the KDLB which would be the aggrieved party is not a party to this appeal. As a result the Appellant  
340 cannot raise the non-service of a statutory notice as a ground of appeal. This ground of appeal fails.

***Ground 9: The learned trial magistrate with due respect erred in law and fact in casually dismissing the Appellant’s counter claim without due consideration of the evidence and issues raised by the pleadings in respect of the counter claim.***

345 In the case of ***Kabonge John & Another vs. Semanda Paul, HCCA No. 76 of 2014***, it was held to the effect a counterclaim is an independent action against the plaintiff; and in a suit where there is a counterclaim the trial court is required to consider the counterclaim and make specific findings on it as a separate action. In the instant case, the Appellant filed a counterclaim against the Respondent. The trial court in its judgment dismissed the counterclaim with no order as to  
350 costs. I have perused through the record of appeal and noted that the Respondent, in paragraph 14 of the counterclaim at page 43 of the record of appeal, averred that;



***“The counterclaimant shall aver that the subject of the counterclaim is well over 30,000,000/= and remedies sought are within the jurisdiction of this court.”***

The suit was before the trial court presided over by a Magistrate Grade1. Under Section 207 (b) 355 of the Magistrates Courts Act Cap 16, a Magistrate Grade 1 has pecuniary jurisdiction where the value of the subject matter does not exceed Shs.20,000,000/=. Therefore,

the trial court clearly did not have jurisdiction to handle the counterclaim since its subject matter exceeded the pecuniary jurisdiction of a Magistrate Grade1. It meant that the trial court did not have to consider the evidence and issues raised by the pleadings in respect of the counterclaim.

360 The trial court should have dismissed the counterclaim at the outset for want of jurisdiction.

However Section 27 (1) of the CPA provides that costs follow the event and shall be in the discretion of the court and in subsection (2) the fact that the court has no jurisdiction to try the suit shall be no bar to the exercise of the powers. Accordingly this court award costs of the counterclaim to the Respondent in the court below. This ground of appeal fails.

365 The net effect is that the appeal fails. It is dismissed with costs of the appeal to the Respondent both in this court and the lower court.

***BASHAIJA K. ANDREW***

***JUDGE***

***02/05/2017***

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Mr. JM Musisi Counsel for the Respondent present.

Both parties present.

Mr. Godfrey Tumwikirize Court Clerk present.

Court: Judgment read in open Court.

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***BASHAIJA K. ANDREW***

***JUDGE***

***02/05/2017***

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