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**THE REPUBLIC OF UGANDA**

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

**CIVIL APPEAL NO.018 OF 2016**

**(ARISING FROM CIVIL APPEAL NO.02 OF 2009 OF NABWERU CHIEF  
MAGISTRATE’S COURT)**

10 **STEPHEN LUBWAMA :::APPELLANT**

**VERSUS**

**MUGANZILWAZZA GROWERS**

**CO-OPERATIVE SOCIETY :::RESPONDENT**

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

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**JUDGMENT**

Steven Lubwama (*hereinafter referred to as the “Appellant”*) filed this appeal against the decision of Her Worship Joy K. Bahinguza Chief Magistrate of Nabweru at Nabweru Court (*hereinafter referred to as the “trial court”*) dated 04/11/2010. The Appellant seeks orders that the M/s. Muganzilwazza Growers Cooperative Society (*hereinafter referred to as the*  
20 *“Respondent”*) is a non-existent organization/co-operative society at law; that the LC1 and LCII which entertained the dispute earlier did not have jurisdiction to handle the disputes in respect of ownership of the suit Kibanja, costs of this appeal and in the courts below.

***Background:***

The Appellant bought a Kibanja from Ms. Painento Kaggwa Serina on 21/05/1972. The Kibanja  
25 had clear boundary marks which had been in existence for thirty – two years. Later disputes developed over the boundaries between the Appellant and the Respondent. The Respondent

claimed that the Appellant had extended the boundaries and encroached on the Kibanja that belonged to the Respondent. The dispute was referred to the LC1 court of Katooke which decided in favor of the Appellant. The Respondent appealed to the LCII court of the area which still ruled in favor of the Appellant. The Respondent filed an appeal in the LCIII court of Nabweru and still lost. The Respondent then filed the appeal in the Chief Magistrate's Court of Nabweru which decided favor of the Respondent. The trial court then ordered the Appellant to remove any structures that he might have constructed on the disputed land immediately, and each party was to meet their own costs. Dissatisfied with the judgment and orders of the trial court, the Appellant was and filed this appeal advanced three grounds of appeal as follows;

***1. The learned trial magistrate erred in law and fact when she held that the Respondent is a legally existing co-operative society whereas not.***

***2. The learned trial magistrate erred in law and fact when she entertained and upheld proceedings from the L.C Courts which had handled the subject matter without jurisdiction to do so.***

***3. The learned trial magistrate erred in law and fact when she relied on the L.C 1 and L.C II judgments which had been passed by the said courts when did not have jurisdiction.***

At the hearing of this appeal, the Appellant was represented by Mr. Kenneth Kajeke while the Respondent was represented by Mr. A. Twinamatsiko. Both counsel filed written submissions to argue the appeal.

***The Law:***

It is settled law that the right of appeal is a creature of statute. There is no such a thing as inherent appellate jurisdiction. See: *Hamam Singh Bhogal T/a Hamam Singh & Co. vs. Jadv*

50 *Karsan (1953)20 EACA 17 at p.18.*

In Local Council Courts, (LCCs) the right of appeal is provided for under section 32(1) of the Local Council Courts Act (LCCA). Appeals from appellate decisions of the Chief Magistrate lie with the High Court under section 32 (2) (d) LCCA. When lodging an appeal of this nature, leave to appeal must be obtained from the Chief Magistrate's Court that rendered the decision  
55 the subject of the appeal. Section 32 (3) LCCA provides that leave must not be granted unless the Chief Magistrate's Court is satisfied that the appeal involves a substantial question of law or is a decision appearing to have caused a miscarriage of justice. It invariably means that an appeal of this nature must be only on questions of law or where it appears that a miscarriage of justice occurred as a result of the decision being appealed against. Section 33(1) LCCA requires that an  
60 appeal of this nature must be lodged within fourteen days from the date the leave is granted. The appeal is lodged by way of filing a memorandum of appeal by the Appellant in the form set out in the 4<sup>th</sup> Schedule to the LCCA.

Section 35(supra) provides for the powers of the appellate court to dismiss the appeal which must only be done if the decision appealed from did not occasion a miscarriage of justice. It also  
65 gives the appellate court powers to allow the appeal and make such orders as outlined in section 35(2)(supra) if it allows the appeal. Clearly, therefore, these kinds of appeals are well regulated and the same provisions are emphasized in Part X of the Local Council Courts Regulations S.I 51 of 2007, particularly from Regulations 60-64. This court, therefore, deals with only with questions of law or where substantial miscarriage of justice has been occasioned.

70 The reading of the provisions in the LCCA on appeals to High Court from decisions of a Chief Magistrate's Court as an appellate court of decisions from LCCs shows that the duty of the High Court is the same as the duty of the second appellate court in ordinary appeals. As such, this court is not required to re-evaluate the evidence which is essentially the duty of the first appellate court stated in the cases of *Pandya vs. R [1957] EA 336*; and *Okeno vs. Republic [1972] EA 32*.

75 Even where the trial court has erred, the appellate court will only interfere where the error has occasioned a miscarriage of justice.

The second appellate court has no duty to re-evaluate the evidence of the immediate lower court but will consider the facts of the appeal to the extent of considering the relevant points of law or mixed law and fact raised. The 2<sup>nd</sup> appellate court may only interfere with the decision of the

80 immediate lower appellate court, if that court misapplied or failed to apply the principles of the law or the decision was manifestly erroneous. See: *Kifamunte Henry vs. Uganda SCCrim Appeal No. 10 of 1997*.

I now consider the grounds in the order they have been raised but shall resolve grounds 2 and 3 together since they are similar.

85 ***Ground 1: The learned trial magistrate erred in law and fact when she held that the Respondent is a legally existing co-operative society whereas not.***

Counsel for the Appellant submitted that, at page 33 of the record of appeal, the trial court was referred to a letter from the Registrar of Co - operatives which confirmed that the Respondent is a non-existent entity. That counsel for the Respondent Mr. Kenneth Kajeke in

90 reply had argued that the Respondent is a trade name. Mr. Musisi Damiano counsel for the Appellant herein referred to page 9 of the record of appeal where this particular submission is

contained. He opined that the only existing co-operative society is Kazo Muganzilwazza Co-operative Society registered under *Certificate No. 1741*; but not the Respondent as the two can never be the same and neither can one be used in substitution of the other.

95 Counsel for the Appellant argued that it is trite law that a non-existing person and or organization cannot bring a suit or be sued in its capacity and as such any proceedings commenced by them in all the lower courts were illegal and an abuse of court process including the proceedings in the Chief Magistrate’s Court at Nabweru. Counsel for the Appellant that Mr. Musisi should have filed a suit in his own names. Counsel cited the case  
100 of ***Makula International Ltd vs. Cardinal Nsubuga [1982] HCB 11*** where it was held that a court of law cannot sanction what is illegal and an illegal act brought to the attention of court overrides all questions of pleadings. Counsel then prayed that this court finds merit in this ground and allow this appeal with costs in this court and in the lower courts.

In reply the Respondent’s counsel supported the judgment of the Chief Magistrate’ Court.  
105 Counsel added that this ground was raised in the Chief Magistrate’s Court as a preliminary objection and the Respondent submitted documents before the Chief Magistrate which clearly showed that the Respondent is an existent entity. That therefore the Respondent is a legally existing cooperative society. Counsel prayed that this court holds so.

This ground goes to the legal status of the Respondent and its legal capacity to institute legal  
110 proceedings in a court case. The reason that the Appellant gave in the lower court for the challenge of the legal status of the Respondent is that under section 57 of the Co-operative Societies Act where the society is not in operation or the society has not commenced its operations or has ceased to operate for two consecutive years, it is not in existence. At page

33 of the record of proceedings, is a letter dated 15/03/2010, which was the date after the  
115 preliminary objection was raised. It is therefore not believable that the Chief Magistrate was  
made aware of the letter from the Registrar of Co-operative societies. If she was made aware  
of it, is also not clear from the record how it came about. In fact at page 13 of the record of  
appeal the Chief Magistrate ruled that that there was no merit in the preliminary objection  
because though the Respondent (now the Appellant) raised the point, they did not produce  
120 any evidence to support this fact. Further, the Chief Magistrate in her judgment at page 10 of  
the record of proceedings paragraph 1 thereof, observed that

***“...Looking at the evidence both in writing and documentary evidence, the  
appellant is still in existence. This was clearly brought out in both written  
evidence by counsel for the appellant Mr. Kajeke, having established that  
125 the appellant is still in existence... “***

This shows that the learned Chief Magistrate considered all the evidence before the court at  
the time. She could not have considered evidence which was obtained after her ruling on the  
matter. I am therefore inclined to find that the Appellant failed to produce the evidence to  
prove that the Respondent is a non-existent entity. The letter at page 33 of the record of  
130 appeal was never part of the record of the lower court and so this court cannot rely on it to  
fault the judgment of the lower court. This ground of appeal has no merit. This court  
therefore finds that given the material evidence to the trial court at the time the learned Chief  
Magistrate did not err in law and fact when she held that the Respondent is a legally existing  
co-operative society.

135 ***Ground 2: The learned trial magistrate erred in law and fact when she entertained and***

*upheld proceedings from the L.C Courts which had handled the subject matter without jurisdiction to do so.*

*Ground 3: The learned trial magistrate erred in law and fact when she relied on the L.C 1 and L.C II judgments which had been passed by the said courts when did not have*  
140 *jurisdiction.*

The Appellant’s main complaint in this ground is that jurisdiction is a creature of statute. That section 10 of the LCCA provides the jurisdiction of local council courts and Regulation 26 of Local Council Courts Regulations S.I 51 of 2007; which includes entertaining cases of trespass and civil matters governed by customary law. The Appellant argued that the LCCs in this case  
145 did not have jurisdiction to handle the matter since the subject matter is not governed by customary law. That therefore the learned Chief Magistrate improperly entertained and upheld proceedings from the LCCs and so this appeal should be allowed.

In reply counsel for the Respondent submitted that the LCCs had jurisdiction because under section 10 and Reg. 26 (supra) that the jurisdiction of the LCCs includes cases of trespass and  
150 civil disputes governed by customary law.

I have considered the submissions of both parties. The dispute between the parties was about the boundaries of land. It is so clear at page 37 of the record of appeal in the LC II court when asked

***“QUESTION FOUR BY COURT MEMBER TO APPELLANT***

***Are you aware that the respondent has a plot of land next to your Kibanja?***

155 ***RESPONSE***

***Yes of course. But not in the dimensions mentioned in the agreement”.***

This is further clear in paragraph 5 of the LC1 court judgment at page 34 of the record of appeal.

Under section 10(1) (a) LCCA and 2<sup>nd</sup> Schedule to the same Act, the LCCs have jurisdiction to handle matters of trespass and in section 10(1) (b) and 3<sup>rd</sup> Schedule, disputes in respect of land  
160 held under customary tenure. Under section 10 (e) (supra) the LCCs have wider jurisdiction to handle matters relating to land generally. I therefore find no merit in grounds 2 and 3 of appeal as well.

The LCCA under section 12 also provides for objection to jurisdiction. The Appellant had all his chances to object but he did not. Therefore, the objection being raised now is an afterthought  
165 which did not occasion a miscarriage of justice on the part of the Appellant. The appeal has no merit and it is accordingly dismissed it with costs to the Respondent.

***BASHAIJA K. ANDREW***

***JUDGE***

***02/05/2017***

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