

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI
REVISION CAUSE NO. 001 OF 2021

(Arising from the Chief Magistrate's court of Mpigi at Nsangi vide Miscellaneous
Application No. 58 of 2018 & Civil Suit No. 17 of 2018)

1. SSEBULINDYA LIVINGSTONE.....APPLICANTS
2. MULONDO GEOFFREY }

VERSUS

ABOMUGISHA PETER.....RESPONDENT

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE

Ruling

The applicants brought this application under **Sections 83** and **98** of the Civil Procedure Act and **Order 52 Rules 1, 2** and **3** of the Civil Procedure Rules, against the respondent seeking the following orders;

- a. The order of the Chief Magistrate's Court of Mpigi at Nsangi stating that a grade one Magistrate has pecuniary jurisdiction to entertain Civil Suit No. 17 of 2018 and also try and determine land matters where prayers for permanent injunction, declaration of trespass and general damages are sought to be revised and/or set aside.

- b. That costs of this application be provided for.

1. The applicants are aggrieved by the ruling and orders issued by the Chief Magistrate's court of Mpigi at Nsangi delivered on the 12th day of September 2018 vide Miscellaneous Application No. 058 of 2018 stating that a grade one Magistrate had pecuniary jurisdiction to entertain Civil Suit No. 17 of 2018 and also to try and determine land matters where prayers for permanent injunction, declaration of trespass and general damages are sought.

- 5 2. The learned trial Magistrate Grade one exercised jurisdiction vested in her illegally and/or with material irregularity and/or injustice when she held that the issue of pecuniary jurisdiction under the law would only apply where the money value has been mentioned in the pleadings or where the parties have agreed to compensate each other for the value beyond and above UGX 20,000,000/= which is above the pecuniary jurisdiction of a grade one Magistrate.
- 10 3. The learned trial Magistrate Grade one exercised a jurisdiction not vested in her in law when she held that she had all the jurisdiction to entertain Civil Suit No. 17 of 2018 and also try and determine land matters where prayers for permanent injunction, declaration of trespass and general damages are sought.
- 15 4. It is in the interest of justice that the said ruling and/or orders issued be revised and/or set aside.
- 15 The application is opposed by an affidavit sworn by Caroline Bamukunda for the respondent.

Representation:

M/s Lukwago & Co. Advocates represented the Applicants and M/s Nambale, Nerima & Co. Advocates represented the Respondent.

20 **Submissions:**

Both parties made oral submissions at the hearing of the case.

Counsel for the applicants submitted that in determining the application the case should be looked at as a whole and the instant case should have been entertained by the High Court.

- 25 On the other hand, counsel for the respondent submitted in reply that the Magistrate's court had jurisdiction as the matter before it was one on trespass and not for declaration of ownership or recovery of land and value of the subject matter was not above UGX 20,000,000/=. Counsel relied on the cases of **Mujib Juma v. Adam Musa & 8 others**, Civil Appeal No. 0053 of 2015 and **Kawaga Lawrence and 2 Others v. Ziwa & Sons Property Consultants Limited**, Civil Revision No. 04 of 2018.
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Counsel for the applicants in rejoinder submitted that the matter was on trespass and the magistrate did not have jurisdiction under section 207 of the Magistrates Courts Act.

Analysis of court:

- 5 The instant application is one for revision guided by Section 83 of the Civil Procedure Act which provides as follows;

10 *"The High Court may call for the record of any case which has been determined under this Act by any magistrate's court, and that court appears to have exercised a jurisdiction not vested in it in law; failed to exercise a jurisdiction so vested; acted in exercise of its jurisdiction illegally or with material irregularity or injustice."*

- 15 The applicants in the instant case contend that the Magistrate Grade one did not have pecuniary jurisdiction to handle the matter as the suit property was valued at above UGX 300,000,000/=. Secondly, that the instant case was not one on trespass but rather for recovery of land as there were issues of ownership involved. Therefore, this was a matter the Magistrate Grade one did not have jurisdiction to handle.

- 20 The applicants in the instant case who were the defendants in the original suit who claim to be grandchildren of Ssali Yosefu who died on the 14th April 1978 and are also administrators of their late mother, Nakafeero Christine Florence who passed away in 2008 and was a daughter to the late Ssali Yosefu. That their late mother acquired the suit land in the 1960s from her father and had fully utilized the same until her death. And upon her death they applied for Letters of Administration and they had been in occupation of the suit land through cultivation for sustenance of their families. That however, there was an illegal sale of part of the estate that the applicants were administering and some of the purchasers included the respondent. The 1st applicant even lodged caveats over the property.

- 30 That the respondent went as far as destroying the applicants' construction with the help of other individuals and this was reported to the police. The applicants maintained that they were the beneficiaries of the estate of the late Nakafeero Christine Florence and had been in occupation of the same and the respondent therefore had no interest in the suit land.

The respondent on the other contended that he purchased the suit land on the 24th December 2012 from Serugo James and had been handed the sale agreement and certificate of title of the same. That in 2018 the defendants unlawfully entered the suit land and started cutting down the banana plantation, eucalyptus trees, avocado trees and other crops belonging to him.

I have carefully considered the submissions, authorities cited and claims of both parties. The pecuniary jurisdiction of a Magistrate Grade one is one that does not exceeding UGX 20,000,000/= according to Section 207 (1) (b) of the Magistrates courts Act.

In the instant case the respondent did not indicate the value of the suit land under the guise of proceeding under the tort of trespass. However, the applicants in support of their claim attached a valuation report of the suit property which indicated that the suit land was valued at over UGX 300,000,000/=.

In the case of *Kawaga Lawrence and 2 others v. Ziwa & Sons Property Consultants Limited*, Civil Revision No. 04 of 2018, a distinction was made between what is an action for trespass to land as envisaged under Section 207(1) (a) of the Magistrates Courts Act as a common law tort and an action for recovery and an action for recovery of land as follows;

"An action for trespass to land occurs when the person directly enters upon another's land without permission and remains upon the land, places or projects any object upon the land. (See: Salmond and Heuston on the Law of Torts, 19th Edition). It is a possessory action where if remedies are to be awarded, the plaintiff must prove a possessory interest in the land. It is the right of the owner in possession to exclusive possession that is protected by an action for trespass. Such possession must be actual and this requires the plaintiff to demonstrate his or her exclusive possession and control of the land. The entry by the defendant onto the plaintiff's land must be unauthorized. The defendant should not have had any right to enter into the plaintiff's land. In order to succeed, the plaintiff must prove that; he or she was in possession at the time of trespass, there was an unlawful or unauthorized entry by the defendant, and the entry caused damage to the plaintiff.

In action for recovery of land, this is a substantive claim for getting declaratory orders as to the rightful ownership of land. Where there are two competing interests on the land. The duty of the court is to determine

between the two parties who is the rightful owner of the said land. i.e between the two titles or interests (lessor and lessee) (registered proprietor and kibanja owner/lawful occupant)."

5 In the instant case, the applicants trace their claim as beneficiaries and administrators of their late mother's estate from where they derive their interests and that part of this estate was sold and among the purchasers is the respondent. From, the reading of the facts at hand, it can be deciphered that there are two competing interests in the suit land, therefore not a matter that can be handled as a trespass.

10 In determining a matter on trespass the respondent ought to have proved that indeed the suit land belonged to him and that the applicants had entered upon the land, which entry was unlawful and without the permission of the respondent or that they had no right or interest in the suit land. (See: Sheik Mohammed v. Kitara Enterprises Ltd, Civil Appeal No. 4 of 1987 (CAU) [1992] KALR 126).

15 It is therefore my finding and holding that the case before the Magistrate Grade one was for recovery of land and not trespass. The value of the subject matter was also way above the pecuniary jurisdiction of the said magistrate, in the circumstances the Magistrate Grade one exercised jurisdiction not vested in them
20 in contravention of Section 207(1) (b) of the Magistrates Courts Act.

This application is accordingly granted with an order setting aside the order of the Chief Magistrate's Court of Mpigi at Nsangi stating that a grade one Magistrate had pecuniary jurisdiction to entertain Civil Suit No. 17 of 2018 and also try and determine land matters where prayers for permanent injunction, declaration of trespass and general damages. Costs are awarded to the applicants.
5 I so order.

Right of appeal explained.

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30 OYUKO ANTHONY OJOK

JUDGE

07/02/2022