

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**HCT – 01 – LD – CA NO. 0014 OF 2021**  
**(ARISING FROM KAS – 02 – CV – CS LD – 015 OF 2020)**

5 **BWAMBALE SEMU ::: APPELLANT**

**VERSUS**

**KAPURU MILTON ::: RESPONDENT**

**BEFORE: HON. JUSTICE VICENT WAGONA**

**JUDGMENT**

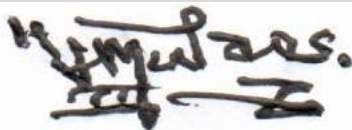
10 ***1.0. Introduction:***

This was an appeal against the decision of His Worship Karakire Edgar, Magistrate Grade One at Kasese Bwera asking court to have the same set aside and have the case heard on merits.

***2.0. Background:***

15 The Appellant brought this suit against the Respondent/defendant in the Chief Magistrate’s Court of Kasese at Bwera seeking among others a declaration that the respondent had trespassed upon his land located at Kyanduli II Cell, Rusese Ward, Mpondwe Lhubiriha Town Council, Kasese District.

20 The defendant denied the claims and contended that he had maintained the boundary marks between him and the plaintiff. He further averred that due to the continuous acts of the plaintiff of conversion and trespass on the defendant’s land,



he had filed a case against the plaintiff in the L.C I court at Kyanduli I Cell and later the same was forwarded to the L.C.II Court which was still on going. He thus asked court to dismiss the suit with costs.

When the suit came up on the 28<sup>th</sup> day of April 2021, the trial magistrate dismissed the case for want of jurisdiction with costs to the defendant. The appellant being aggrieved lodged an appeal to this court.

### ***3.0. Grounds of appeal;***

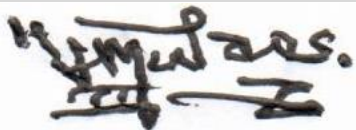
The appellant framed the following grounds of appeal:

- 1. The learned trial magistrate erred in law when he dismissed the plaintiff's/appellant herein KAS – 02 – CV – CS LD – 015 of 2020 for want of jurisdiction hence causing a miscarriage of justice.**
- 2. The learned trial magistrate erred in law when he held that Civil Suit No. 015 of 2020 was wrongly before court hence coming to a wrong decision.**
- 3. That the learned trial magistrate erred in law and fact when he dismissed the appellant's case with costs.**

### ***4.0. Representation and Hearing:***

The appellant at the time of filing the appeal was represented by *M/s Ahabwe James & Co. Advocates*. The case came up several times and both parties never attended court. I thus decided to consider the appeal on the basis of the memorandum of appeal filed and the record of proceedings from the lower court.

### ***5.0. Duty of this court:***



As the first appellate court, the duty of this court is to rehear the case by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion. (*See: Father Nanensio Begumisa & 3 others vs Eric Tiberaga SCCA 17 OF 2000 [2004] KALR 236*).

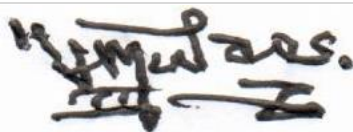
5 The first appellate court does re-evaluation on record of the trial court as a whole weighing each party's evidence, keeping in mind that an appellate court, unlike the trial Magistrate had no chance of seeing and hearing the witnesses while they testified, therefore this court had no benefit of assessing the demeanor of the witnesses. (*See: Uganda Breweries v Uganda Railways Corporation 2002 E.A*)

#### 10 **6.0. Consideration of the grounds of appeal:**

I will thus consider all the grounds under one issue being - **whether the trial magistrate rightly dismissed the appellant's case for want of jurisdiction.**

Jurisdiction has been defined to connote any authority conferred by law upon the court, tribunal or judge to adjudicate any dispute between the parties or pass  
15 judgment or order. Or the power to hear and determine issues of law and fact or the authority by which a court or tribunal determine cases before them. (See *Hriday Nath Roy Vs. Ram Chandra (1921)*).

**Mrima J** in *Kenya Constitutional Petition No. E336 of 2020, Benson Makori Makworo Vs. Nairobi Metropolitan Services and Anor*, gave a wide  
20 definition of what constitutes jurisdiction. He Quoted John Beecroft Sounders in **Words and Phrases legally defined, Volume 3 page 113** where it was observed thus: *"By jurisdiction is meant the authority which a court of law has to decide matters that are litigated before it or to take cognizance of the matters presented in a formal way for its decision. The limits of this authority is imposed by statute,*



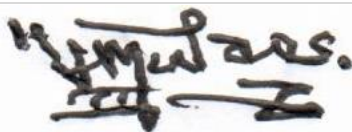
*charter or commission under which the court is constituted and may be extended or restricted by the like means. If no restriction or limit is imposed, the jurisdiction is said to be unlimited...”*

Further Nyarangi JA in *Owners of Motor Vessel Lilian S Vs. Caltex Oil (Kenya)*

5 *Ltd (1989) KLR 1*, jurisdiction was defined as; “ ...Jurisdiction is everything without it a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law disowns a tool in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

10 Mubiru J in *Uganda Vs. Wadri & 31 others, Criminal Revision No. 2 of 2018 [2018] UGHCCRD 151 (20 August 2018)* observed in relation to jurisdiction thus: *It has been defined as the limits imposed on the power of a validly constituted court to hear and determine issues between persons seeking to avail themselves of its process by reference to the subject matter of the issues or to the persons*  
15 *between whom the issues are joined or to the kind of relief sought, (See AG of Lagos State Vs. Dosunmu (1989) 3 NWLR at p 111. Therefore, jurisdiction means and includes any authority conferred by law upon the court to decide or adjudicate any dispute between the parties or pass judgment or order.”*

To put in simpler terms, jurisdiction refers to the power or authority granted by law  
20 either in form of a statute, a charter, bye laws, upon a court of law, an individual, or tribunal to adjudicate a dispute and make binding decisions upon the parties before it. The key elements to observe are that, jurisdiction is creature of statute and where the law does not vest specific jurisdiction either upon a court of law, a tribunal or individual, such jurisdiction cannot be exercised. The law granting the



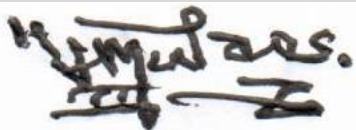
jurisdiction states the extent of the same and the manner in which the same may be exercised.

A court of law cannot arrogate itself jurisdiction beyond what is provided for under the law. A court of law ought to exercise its powers strictly within the jurisdictional limit prescribed by law otherwise acting without jurisdiction or *ultra-vires* or contrary to the law renders the decision illegal. (See *Pastoli Vs. Kabale District Local Government Council and others*, [2008] 2. E.A 300 and *Uganda Vs Wadri & others supra*).

Types of jurisdiction include pecuniary jurisdiction and geographical jurisdiction. Under Section 207 (1) (b) of the Magistrates Courts Act, a **Magistrate grade 1 shall have jurisdiction where the value of the subject matter does not exceed twenty million shillings**

For geographical jurisdiction, the guiding instrument is the Magistrate's Court (Magisterial Areas) Instrument 2017 which states the extent of geographical jurisdiction for Magistrate's Court.

In the present appeal, the trial magistrate dismissed the suit for of jurisdiction with costs. It is not ascertainable from the record the type of jurisdiction which was beyond the trial magistrate. The trial magistrate simply indicated that the case was dismissed for want of jurisdiction. In rejecting a claim for want of jurisdiction, the judicial officer should have stated the type of jurisdiction that was beyond his jurisdiction. It was not enough for the trial magistrate to have stated merely that the court lacked jurisdiction. Such a decision given by a judicial officer without reason is susceptible to being set aside on appeal. In this case, I am unable to address

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myself to the matter and make a determination as to the alleged jurisdiction that the trial magistrate lacked.

I am therefore inclined to set aside the dismissal order and order that the case be tried on merits.

5 This appeal therefore succeeds with the following orders:

1. The Dismissal order by the trial magistrate made on the 28<sup>th</sup> of April 2022 is hereby set aside.
2. Land Civil Suit No. 015 of 2020 shall be heard on the merits.
3. The costs of this appeal shall abide the outcome of the main suit.
- 10 4. The Registrar of this court should immediately transmit this file to the Chief Magistrate's Court of Kasese for further management.

I so order.



Vincent Wagona

15 **High Court Judge**

**FORT-PORTAL**

**DATE: 24/8/23**

