



5 The claim of Iriama Leonard and Ariko Saverio in the lower trial court was that they were the customary owners of 20 acres of suit land which they inherited from their biological father called Opuyo s/o Odukatum.

That in 2015, the appellants without any colour of right laid claims to the suit land and started cultivating it to date.

10 Otim Sam, Adunget Simon Peter and Omoding Richard who are the appellants in their joint Written statement of defence denied the claim of Iriama Leonard and Ariko Saverio and contended that Iriama Leonard's and Ariko Saverio's father had never owned the suit land.

That the suit land originally belonged to Ikorit Enoch and Okure Yafesi their  
15 grandfathers which land passed onto Omongin John Stephen (father to D1) and Okello Blasio inherited the same.

That after peace returned the appellants occupied the suit land by way of cultivation and around 2009 constructed their homes on the same without interference from anybody.

20 The suit was heard and the trial magistrate having evaluated all the evidence on record entered judgement in favour of Iriama Leonard and Ariko Saverio, the respondents with the following orders;

a. The plaintiffs are declared the lawful owners of the suit land located at Orukurukun village, Okocho Parish, Okulonyo Sub County, Katakwi  
25 District.

b. A permanent injunction is issued restraining the defendants and their assignees/legal representatives or anyone claiming through them from trespassing on the suit land forthwith.

c. An order of vacant possession is issued against the defendants

30 d. Ug Shs. 5,000,000/= as general damages.

e. Costs of the suit awarded to the plaintiffs.

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5 Otim Sam, Adunget Simon Peter and Omoding Richard, the appellants  
were dissatisfied with the judgement and orders appealed on the following  
grounds;

a. That the learned trial Magistrate erred in law and fact when she failed  
to evaluate the evidence on record hence arriving at the wrong  
10 conclusion.

b. That the decision of the trial magistrate has occasioned a miscarriage  
of justice upon the appellants.

2. Duty of the 1<sup>st</sup> appellate court:

This court is the first appellate court in respect of the dispute between  
15 Otim Sam and company and Iriamo Leonard and Ariko Saverio.

An appellate court is a higher court that reviews the decision of a lower  
court. It does so by hearing an appeal from a lower court. The primary  
function of an appellate court is to review and correct errors made by a  
trial court. In addition, an appellate court may deal with the development  
20 and application of law.

In carrying out its duty, the appellate court can do one of the following:

- a. Review decisions made by lower trial court;
- b. Affirm the decision of the trial court, in which case the verdict at trial  
stands;
- 25 c. Reverse the decision to the trial court, in which case a new trial may  
be ordered;
- d. Modify an order or a decree;
- e. Remand the case back to the lower court for further proceedings;
- f. Dismiss the case.



5 This Honourable Court is the first appellate court in respect of the dispute between the parties herein and is obligated to re-hear the case which was before the lower trial court by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and to re-appraise the same before coming to its own conclusion as was held in *Father Nanensio*  
10 *Begumisa and Three Others v. Eric Tiberaga SCCA 17 of 2000; [2004] KALR 236.*

The duty of the first appellate court was well stated by the Supreme Court of Uganda in its landmark decision of *Kifamunte Henry Vs Uganda, SC, (Cr) Appeal No. 10 of 2007* where it held that;

15 *"...the first appellate court has a duty to review the evidence of the case and to reconsider the materials before the trial judge. The appellate Court must then make up its own mind not disregarding the judgement appealed from but carefully weighing and considering it"*

In rehearing afresh, a case which was before a lower trial court, this  
20 appellate court is required to make due allowance for the fact that it has neither seen nor heard the witnesses and where it finds conflicting evidence, then it must weigh such evidence accordingly, draw its inferences and make its own conclusions. *See: Lovinsa Nakya vs. Nsibambi [1980] HCB 81.*

25 In considering this appeal, the above legal provisions are taken into account.

### 3. Representation:

The appellants were represented by M/s Obore and Co. Advocates while the respondents were represented by Baobab Advocates.

30 This matter proceeded by way of written submissions which will be considered in the determination of this appeal.

5 4. Determination:

a. Preliminary objections:

Counsel for the respondents raised three preliminary objections in their submissions which I will first consider.

**The first objection** is that this appeal was illegally filed out of time contrary  
10 to section 79(1) of the CPA which requires every appeal to be appeal shall be entered within 30 days of the date of the decree or order of court.

That in the instant case, judgement was given on the 8<sup>th</sup> November 2022 and the appellants ought to have filed their appeal by 8<sup>th</sup> December 2022 but chose to file the same on 13<sup>th</sup> December 2022 out of time and without  
15 leave of court.

Counsel further submitted that good cause for filing the appeal out of time under section 79(2) of the Civil Procedure Act was not shown by the appellants.


In reply counsel for the appellants submitted that the judgement availed  
20 to them was certified on 05/12/2022 while the proceedings were certified on 06/12/2022, implying that at the time they filed their memorandum of appeal on 13/12/2022 only 7 days had elapsed and so meaning the appeal was within time.

**Section 79 of the Civil Procedure Act** provides for limitation of appeals thus;  
25 (1) Except as otherwise specifically provided in any other law, every appeal shall be entered—

(a) within thirty days of the date of the decree or order of the court; or

(b) within seven days of the date of the order of a registrar,

as the case may be, appealed against; but the appellate court may for good  
30 cause admit an appeal though the period of limitation prescribed by this section has elapsed.

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5 (2) In computing the period of limitation prescribed by this section, the time taken by the court or the registrar in making a copy of the decree or order appealed against and of the proceedings upon which it is founded shall be excluded.

In the instant case judgement was delivered on the 08<sup>th</sup> of November 2022  
10 and the memorandum of appeal herein was filed on the 13<sup>th</sup> of December 2022.

No notice of appeal or letter requesting for proceedings was filed and no letter informing the parties that the certified record of proceedings and judgement were ready can be seen in the file.

15 There is also no extracted decree on record. All that is available on record is the non-certified judgement dated 08/11/2022 and the record of proceedings certified on the 06/12/2022.

Section 79(2) of the Civil Procedure Act provides that in computing the period of limitation prescribed the time taken by the court in making a copy  
20 of the decree or order appealed against and of the proceedings upon which it is founded shall be excluded.

Section 791(a) requires that the appeal be filed 30 days within the date of the decree or order of court, however, in this instance no order was extracted and so even if the proceedings were certified on the 06/12/2022  
25 and it can be taken that the time before that is excluded in the filing of the appeal meaning that the memorandum of appeal filed in 13/12/2022 was within time, the appeal would still be defective because no is order taken out. So this preliminary ground is upheld.

The **second preliminary objection** is that both grounds of appeal are too  
30 general that they offend Order 43 rule 1 (1) and (2) of the Civil Procedure Rules.

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5 Counsel for the respondents submitted that it is difficult to discern what the learned trial magistrate is being criticised for on both grounds of this appeal.

That it is difficult to ascertain the trial Magistrate's error in law and fact as alleged and it is also difficult to ascertain how the trial Magistrate  
10 occasioned a miscarriage of justice upon the appellants.

That ideally the grounds of appeal ought to concisely specify points in her judgement which are alleged to have been wrongly decided which is not the case herein.

Counsel further submitted that these types of grounds have been held to  
15 give room to the appellants to go on a fishing expedition hoping that by doing so court will find for them the defects on the record to assail the decision of the lower court and yet the appellants themselves neither knew nor detected the same at the time of formulating the impugned grounds of appeal.

20 Counsel additionally, submitted on various cases where such grounds were having been struck off for either offending Order 43 rule 1 (1) and (2) CPR or Rule 86 (1) of the Court of Appeal Rules or Rule 82(1) of the Supreme Court Rules in the case of the Court of Appeal and Supreme Court respectively.

25 Cases relied on by counsel for the respondents included those of *Celtel Uganda Limited t/a Zain Uganda v Karungi (Civil Appeal No. 73 of 2013) [2021] UGCA 93, Nsubuga v Mukundane and Another (Civil Appeal No. 208 of 2018) [2023] UGCA 98 and Okot and Ors v Lamoo (Civil Appeal No. 26 of 2018) [2020] UGHC 174.*

5 Counsel for the appellants in reply submitted that the submissions of  
counsel do not hold any water because the two grounds of appeal are in  
line with Order 43 rules 1 and 2 and so the objection should be dismissed.  
Order 43 Rule 1 of the Civil Procedure Rules provides that;

(1) Every appeal to the High Court shall be preferred in the form of a  
10 memorandum signed by the appellant or his or her advocate and presented  
to the court or to such officer as it shall appoint for that purpose.

(2) The memorandum shall set forth, concisely and under distinct heads, the  
grounds of objection to the decree appealed from without any argument or  
narrative; and the grounds shall be numbered consecutively.

15 I have considered the authorities cited by counsel for the respondents and  
I have noted that in all the cases cited where raised a ground of appeal  
similar to those in this appeal were found to offend the law all those  
appeals were struck out for offending both Order 43 rule 1 of the Civil  
Procedure Rules which is applicable to this Honourable Court or Rule 86 (1)  
20 of the Court of Appeal Rules.

For example, in *Celtel Uganda Limited t/a Zain Uganda v Karungi (Civil  
Appeal No. 73 of 2013) [2021] UGCA 93* the wording of ground 1 of the  
appeal therein were;

25 "The learned appellate judge failed to evaluate the evidence on  
record and made an erroneous judgement."

In resolving the matter, Hon. Justice Remmy Kasule while relying on the  
principle articulated in *Ranchobai Shivbhai Patel Ltd and Another vs Henry  
Wambuga and Anor SCCA No. 006 of 2017* where Mugamba JSC pointed  
out a similar error as in the instant matter, went on to similarly strike off  
30 the grounds of appeal for offending the Civil Procedure Rules.

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5 Also, in *Okot and Ors v Lamoo (Civil Appeal No. 26 of 2018) [2020] UGHC*  
174, Justice Stephen Mubiru who was similarly faced with the same  
situation where a ground of appeal was drafted as “...the learned trial  
Magistrate erred in law and fact when he failed to properly evaluate the  
evidence before him thereby arriving at an erroneous decision against the  
10 appellants thus occasioning a miscarriage of justice.” went on to hold that;

“I find the first ground of appeal to be too general that it offends the  
provisions of Order 43 r (1) and (2) of The Civil Procedure Rules which  
require a memorandum of appeal to set forth concisely the grounds  
15 of the objection to the decision appealed against.

Every memorandum of appeal is required to set forth, concisely and  
under distinct heads, the grounds of objection to the decree appealed  
from without any argument or narrative, and the grounds should be  
numbered consecutively.

20 Properly framed grounds of appeal should specifically point out errors  
observed in the course of the trial, including the decision, which the  
appellant believes occasioned a miscarriage of justice. Appellate  
courts frown upon the practice of advocates setting out general  
grounds of appeal that allow them to go on a general fishing  
25 expedition at the hearing of the appeal hoping to get something they  
themselves do not know. Such grounds have been struck out  
numerous times (see for example *Katumba Byaruhanga v. Edward*  
*Kyewalabye Musoke, C.A. Civil Appeal No. 2 of 1998; (1999) KALR 621;*  
*Attorney General v. Florence Baliraine, CA. Civil Appeal No. 79 of 2003).*  
30 The ground is accordingly struck out.”

5 I adopt both the holding by Hon Justice Remmy Kasule *in Celtel Uganda Limited t/a Zain (supra)* and that of Hon Justice Stephen Mubiru in *Okot and Ors* (Others) to the instant appeal where the grounds of appeal read thus;

- That the learned trial Magistrate erred in law and fact when she failed to evaluate the evidence on record hence arriving at the wrong  
10 conclusion.
- That the decision of the trial magistrate has occasioned a miscarriage of justice upon the appellants.

The two grounds above when read both are indeed too general as they do not pinpoint to the exact errors which this Honourable Court should fault  
15 the trial magistrate by this appeal.

That being the case and in line with the holding in the authorities above, I would similarly find that these two grounds Order 43 rule 1 of the Civil Procedure Rules and as such allow and sustain the second preliminary objection.

20 **The third and final preliminary objection** relates to altered grounds of appeal in submissions.

Counsel for the respondent submitted that the appellants' counsel in his submissions changed the substance of ground 1 and argued an entirely new ground and ground 1 was not argued at all.

25 Counsel for the respondent submitted that counsel for the appellants rearranged and argued unknown and new grounds that introduced the issue of *locus standi* of the respondents in bringing the original action in and that relating to the law of limitation.

That these grounds are not contained in the memorandum of appeal and  
30 that offend the provisions of Order 43 rule 2 (1) of the Civil Procedure Rules

5 and since they are not there in the memorandum of appeal, then this 3<sup>rd</sup> preliminary objection should be upheld.

In resolving this preliminary objection, I do look at the relevant law in respect of this argument. That law is **Order 43 rule 2 of the Civil Procedure Rules** it is provided that;

10 The appellant shall not, except by leave of the court, urge, or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the High Court in deciding the appeal shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the court under this rule; except that the High Court shall not  
15 rest its decision on any other ground unless the party who may be affected by the decision has had a sufficient opportunity of contesting the case on that ground.

In *Ocaya (Administrator of the Estate of late Ochan) v Akena and 3 Others (Civil Appeal No. 30 of 2015) [2023] UGHCLD 103*, Justice George Okello  
20 while faced with a similar question of the introduction of new grounds not framed in a memorandum of appeal went on to find that, by counsel for the respondent arguing transposed grounds as if it flowed from an amended memorandum of appeal whereas not, then by that conduct of counsel the appellant had abandoned the original ground by not arguing  
25 it at all and since the alien ground had no basis for having sprung out of any known memorandum of appeal on the court record then the introduced new grounds were done so contrary to Order 43 rule 2 of the Civil Procedure Rules.

In the instant case, I find a similar situation in play.



5 In his submissions while arguing this appeal, counsel for the appellant brings in the grounds of locus standi of the respondent in having taken to court the original suit as well the issue of limitation.

These are indeed two new grounds which do not arise from the memorandum of appeal which is on record and quoted above. Accordingly,  
10 they are clearly contrary to the provisions of Order 43 rule 2 of the Civil Procedure Rules. They are rejected.

In addition, since counsel spent his energy addressing new grounds, then I would deem it that the appellants' grounds in their memorandum of appeal have been abandoned and as a result of my findings above, the  
15 third preliminary objection would be found to have a sound legal basis and thus is sustained.

Accordingly, since I have resolved all the preliminary objections in the affirmative then this appeal is inhibited on the basis that it does not comply with the provisions of the law.

20 It is thus struck out for being incompetent before this court. It is dismissed for the reasons above.

5. Orders:

- This appeal is struck out for being incompetent before this court.
- It is dismissed for having no merits.
- 25 - The costs of this appeal are awarded to the respondents.

I so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

20<sup>th</sup> September 2023

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