

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MASINDI  
MISCELLANEOUS CAUSE NO. 0001 OF 2023

(ARISING FROM CIVIL SUIT NO. 0037 OF 2013 IN THE CHIEF MAGISTRATES COURT OF MASINDI AT MASINDI)

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1. TIBEZINDA MUSA
2. ASABA REHEMA
3. MBABAZI ZAICA
- 10 4. MUGENYI MUSTAFAH
5. RASHID
6. HARUNA BYENKYA
7. NYAMAHE
8. AMANYA
9. ISMAIL BARBARA
- 15 10. NYANGOMA MARGARET
11. KISEMBO PATRICK
12. MUHUMUZA JULIUS
13. KIIZA KAAHWA
14. ISINGOMA
- 20 15. SARAH
16. ISINGOMA ISMAIL
17. KABURARA
18. KAAHWA BONIFACE
19. GEORGE RUKYALEKERE
- 25 20. KABATANZI JOYCE
21. MUGISA ..... APPLICANTS

VERSUS

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1. GAHWERA GEORGE
2. KAJURA WILLIAM
3. KABONGERA JENNIFER ..... RESPONDENTS

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BEFORE: Hon. Justice Isah Serunkuma

RULING

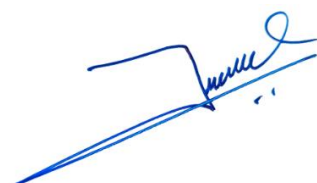
40 This application is brought by Notice of Motion under Section 83 and 98 of the Civil Procedure Act Cap 71, Section 33 of the Judicature Act and Order 52 rules 1 and 2 of the Civil Procedure Rules SI 71-1 for revision of the Chief Magistrate's ruling and seeking orders that;



- a) The orders of the Chief Magistrate in Civil Suit no. 037 of 2013 be revised and/or set aside.
- b) The costs of the application be provided for.

5 The grounds for the application are set out in the Notice of Motion and the affidavits in support sworn by Tibeindwa Musa and Achurobwe Rashid, the 1<sup>st</sup> and 5<sup>th</sup> Respondents but briefly are;

- a) The Applicants are Defendants in Civil Suit No. 037 of 2013.
- b) The Respondents instituted Civil Suit No. 037 of 2013 against the Applicants jointly and severally for recovery of special and general damages for trespass to land and  
10 loss of property as a result of the Defendants' actions, a declaration of ownership of the suit land, costs, interest thereon and to secure a permanent injunction to restrain the Defendants and their agents from further trespassing on their land or in any other interrupting the Plaintiff's use and enjoyment of the suit land.
- c) The suit land is comprised in LRV 1610 Folio 6 Plot 39 at Buruli Block 6 land at  
15 Katana, Buruli, Masindi District measuring approximately 20 Hectares.
- d) Civil Suit no. 037 of 2013 is seeking for declaratory orders as to ownership of the suit land which is titled and beyond the pecuniary jurisdiction of the Chief Magistrate's court.
- e) In their defence, the applicants have pleaded several issues which include fraud,  
20 adverse possession and ownership/ proprietary rights which issues are not limited to trespass for which the lower court has the jurisdiction to entertain.
- f) The Applicants raised a preliminary object to the suit as to the pecuniary jurisdiction of the Magistrate's Court, but the Chief Magistrate dismissed the preliminary objection and insisted that the lower court is clothed with the jurisdiction to  
25 entertain the matter whereas not.



g) The Honorable Court has the power to call for and revise any decision of the lower court and/or set aside the orders of the Lower Court.

h) It is in the interest of justice that this Application be allowed by the Honorable Court.

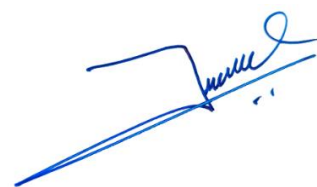
In the affidavit in Reply sworn by Kajura William, the 2<sup>nd</sup> Respondent, it was averred that;

- 5 a. The applicants did not show any sufficient cause as to why the decision of the magistrate should be revised.
- b. The decision that the magistrate's court had jurisdiction was determined following the consideration of all the evidence that was provided by the parties.
- c. The cause of action in the lower court is in respect to trespass which does not have  
10 a pecuniary limit in the court presided over by the Chief Magistrate.
- d. The application was brought in bad faith with the intention to delay the hearing of the lower court matter by lodging objections and various applications such as this one.

### Background

15 This application for revision was brought in respect to a ruling regarding a preliminary objection raised by the Defendants, herein the Applicants, in Civil Suit No. 0037 of 2013 Gahwera George & Ors v. Tibeziinda Musa & Ors. The preliminary objection raised was that; the suit land in the said matter is beyond the pecuniary jurisdiction of the Chief Magistrate's Court and that the matters in contention went beyond trespass for which the  
20 Chief Magistrate has unlimited jurisdiction. The Applicants averred that the suit also had issues relating to fraud, adverse possession and ownership/ proprietary rights. Further, that being titled land, it fell outside the realm of matters to which the court had civil customary rights.

In a decision delivered by the Acting Chief Magistrate, H/W Kosia Kasibayo he overruled  
25 the objection on grounds that the Plaintiffs' claim is purely premised on trespass, in respect



to which the Chief Magistrate's court has unlimited jurisdiction. He held that the pecuniary limit in section 207 (1)(a) of the Magistrates Court Act only applies where the matter is not in respect conversion, damage to property and trespass.

Secondly, the trial magistrate noted that the trespass was in respect to only 8 of the 20 acres which are the total area of the suit land. He held that even if the court were to consider the valuation report that was not even duly sealed by the stamp of the government valuer, a division of the UGX 250,000,000/= that is the total value would mean that each of the 20 acres is UGX. 12,000,000/=. This then means that the 8 acres in contention would be valued at 100,000,000/=. He held that the suit was filed in 2013 before the land appreciated to that extent, it would be unjust to strike the suit out in consideration of the current value as it could have been way less at the time of filing the suit. Finally, it was held that section 11(2) of the Civil Procedure Act regarding the need for the plaintiff to determine value of the subject matter at the time of filing is irrelevant as the issue of pecuniary jurisdiction does not arise in cases of trespass.

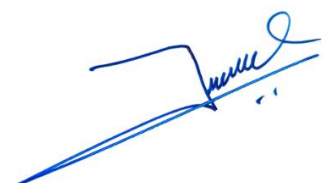
The Applicants filed this application seeking for the said decision of the trial magistrate to be revised.

### **Representation**

The Applicants were represented by Counsel Musiitwa Paul of **M/s Kob Advocates & Solicitors** while the Respondents were being represented by Counsel Nabirye Gertrude of **M/s Kasangaki & Co. Advocates**. Both parties filed their submissions and the same have been considered in the preparation of this ruling.

### **Submissions of the parties**

The Applicants submitted that they raised a preliminary objection in the main suit because the subject matter is beyond the pecuniary jurisdiction of the Chief Magistrate and involves issues not limited to trespass. They highlighted that other issues such as fraud, adverse



possession and ownership /property rights were also to be considered in the determination of the matter and yet they were beyond the jurisdiction of the Chief Magistrate. They submitted that the Chief Magistrate was erroneous when he held that the matter was purely based on trespass and therefore within the jurisdiction of the Lower Court and he did not address the fact that there are other issues being pleaded beyond trespass. They highlighted paragraph 3 of the plaint in which the plaintiffs sought inter alia; special damages for trespass to land and loss of property as a result of the Defendant's actions, a declaration of ownership of the suit land, interest and a permanent injunction to prevent them from trespassing. They therefore submitted that this not an action for trespass to land but rather, for recovery of land.

Further the Applicants submitted that the Plaintiffs, herein being the respondents intentionally left out the value of the land contrary to Section 11(2) of the Civil Procedure Act Cap 71 and Section 203 of the Magistrate's Court Act but the trial magistrate did not address this issue in his ruling, which was a material irregularity.

In response, the Respondents submitted that their cause of action was trespass only and pursuant to Section 207(1)(a) of the Magistrates Court Act, the Chief Magistrate's jurisdiction is unlimited in respect to such actions. Further, they submitted that the pecuniary jurisdiction is irrelevant where by law, the court has unlimited jurisdiction. Further, that the valuation report being referred to by the Applicants was acquired in 2022 and the value of the land has appreciated since 2013 when the suit was filed. They submitted that it would be erroneous for court to rely on values acquired over ten years after as the suit was filed and yet the question of pecuniary jurisdiction is determined at the point of filing and thus the relevant value is that of the land back in 2013.

### Court's Ruling

Revision is a remedy provided for in **Section 83 of the Civil Procedure Act Cap 71** provides that;



“The High Court may call for the record of any case which has been determined under this Act by any magistrate’s court and if the court appears to have-

(a) exercised a jurisdiction not vested in it in law;

(b) failed to exercise a jurisdiction so vested; or

5 (c) acted in the exercise of its jurisdiction illegally or with material irregularity or injustice,

the High Court may revise the case and may make such order in it as it thinks fit but no such power of revision shall be exercised;

(d) unless the parties shall first be given the opportunity of being heard; or

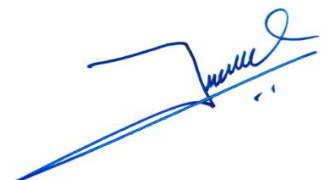
10 (e) where, from the lapse of time or other cause, the exercise of that power would involve serious hardship to any person.

**Section 207 of the Magistrates Courts Act** provides for the civil jurisdiction of the Magistrates. **Section 207(1)(a)** provides that a Chief Magistrate shall have jurisdiction where the value of the subject matter in dispute does not exceed fifty million shillings and shall have unlimited jurisdiction in disputes relating to conversion, damage to property or trespass. The assertion of the Respondents is that their matter being in respect to trespass, they are rightly before the Chief Magistrate’s court. This position was upheld by the trial magistrate in his ruling.

20 The first question to be determined is whether this is an action for trespass to land or whether there are other issues arising as the Applicants are alleging.

Trespass to land was defined in the Supreme Court decision of **Justine E. M.N Lutaaya vs Starling Civil Engineering Co. Limited; SCCA No. 0011 of 2002** as;

*“When a person makes an unauthorized entry upon land and thereby interferes, or portends to interfere, with another person’s possession of the land.”*



The Court further held that,

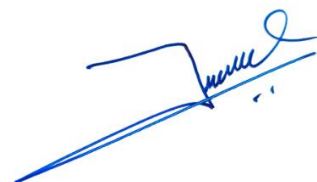
5           *“Needless to say, the tort of trespass to land is committed, not against the land, but against the person who is in actual or constructive possession of the land. At common law, the cardinal rule is that only a person in possession of the land has capacity to sue in trespass.”*

Therefore, the action of trespass to land applies only where an individual is in possession of the suit land and is an action for enforcement of possessory rights rather than proprietary rights. (**Odyek Alex & Anor v. Gena Yokonani & Ors; Civil Appeal No. 0009 of 2017**).

10       Where questions arise as to the rightful ownership of the suit land, that becomes an action for recovery of land. Recovery of land has been defined as an action by which a person not in possession of land can recover both possession and title from the person in possession of the land if he or she can prove title. (See: **Nyombayabo William v. Bundibugyo District Local Government; Civil Suit No. 008 of 2020**).

15       As can be established from the Plaint, one of the prayers of the Plaintiffs is for a declaration of ownership of the suit land, which prayer is only achievable by examining and determining the ownership of the said land. It has further been noted that there is a dispute as to the actual ownership of the suit land between the Applicants and Respondents. Therefore, I agree with the Applicants that the questions in court transcend  
20       the issue of trespass.

It is trite that an action where there are two competing interests in the land as is the case herein, such a matter cannot be tried as a matter of trespass as the issue then becomes one for declaration of the ownership of that land.



Both parties to the suit are claiming the rightful ownership of the 19 acres that have been identified in paragraphs 4(c) to (i) of the Plaint that has been attached to the affidavits of the Applicants.

- I agree with the authority of **Kawaga Lawrence, Sulaiman Nteezi and Namusamula Sarah v. Ziwa & Sons Property Consultants Limited; HCCR No. 0004 of 2018** that there is need to draw a distinction between trespass to land as provided for in Section 207 (1)(a) of the Magistrates Courts Act and the action of recovery of land; and that where the court is meant to determine and make a declaration on the ownership of the land, that shall be considered as an issue arising under recovery of land as a distinct cause of action.
- 10 The question to be determined now is whether the Chief Magistrate's court has the jurisdiction to determine an action for recovery of land in respect to the suit land. As stated, prior, **Section 207 (1)(a) of the Magistrates Courts Act** provides that the Chief Magistrate's pecuniary jurisdiction is UGX. 50,000,000/=.

- At the filing of the plaint in 2013, the Plaintiffs did not provide for the value of the land.
- 15 However, in 2022 when the most recent valuation was done for the 20 acres, it was valued at UGX. 250,000,000/=. In consideration of paragraphs 4 (c) to (i) of the Plaint, the total acreage in contention is 19 acres.

- The value of the said land is more than the pecuniary jurisdiction of the Magistrate as the land in contention is almost the whole of the suit land. In the absence of a valuation of the land in 2013 when the suit was filed, I cannot establish whether the suit land formerly fell
- 20 within the pecuniary jurisdiction of the Chief Magistrate's court. Accordingly, I shall rely on the available values to decide that this matter is outside the jurisdiction of the Chief Magistrate.



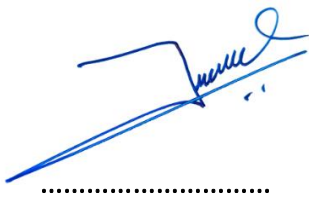


I find that the said application succeeds as it raises issues other than trespass to be determined at trial and that the value of the subject matter is beyond the pecuniary jurisdiction of the Chief Magistrate's court.

Each party shall bear its own costs.

5 It is so ordered.

Dated and delivered at Masindi this 13<sup>th</sup> day of October, 2023.

A handwritten signature in blue ink, appearing to be 'Isah Serunkuma', written over a horizontal dotted line.

10 Isah Serunkuma

JUDGE