

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MUBENDE
CIVIL APPEAL NO.027 OF 2023
(Arising out of Mityana Civil Suit No.79 of 2014)

1. BYEKWASO PAFULA
2. KATONGOLE GODFREY
3. NANKYA DEBORAH
4. NAMUBIRU JALIA
5. NAGADDYA JANET
6. KAMYA HENRY
7. RICHARD KIKANZIIRA
8. MUWANGA CHRISESTOM
9. REGINA NAKAWUNDE

10. MUTEBI JOSEPH

APPELLANTS

VERSUS

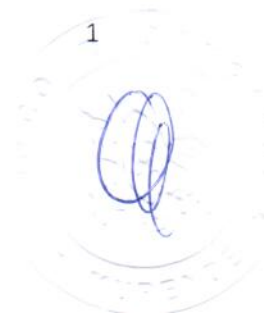
CECILIA LWANGA

RESPONDENT

BEFORE HON JUSTICE MOSES KAZIBWE KAWUMI

JUDGMENT

This appeal arises from the judgment of the Chief Magistrate at Mityana delivered on 17th April 2023. The suit was filed by the Respondent claiming that the Appellants had encroached on her family land comprised in Singo Block 4 Plots 112 and 113. It was decided in favour of the Respondent to the dissatisfaction of the Appellants who lodged the instant Appeal.



Background.

In 1974 the Respondent and her late husband Dr. David Lwanga acquired a lease of 40 years from a one Yakobo Kassede Mulinyabigo on the land comprised in Singo Block 4 Plot 4. The Lease was registered as Plot 4 LRV 1082 Folio 18 measuring 320 acres. The Respondent and her husband utilized the land for farming under D&G Farm Enterprises Limited but were disrupted by the 1981 to 1986 war which forced them into exile.

Farming activities were resumed in 1986. In 2008 Dr. Lwanga and the Respondent entered into a purchase agreement for the reversionary interest from Mathew Kiridde Kasedde the successor in title of the original owner of the land. The two purchased 250 of the 320 acres leaving 70 acres for any encroachers and third parties who would lodge any claims. The land was thus split into Plots 112 and 113 of Block 4.

The Appellants and others who did not appeal are alleged to have entered the suit land in 2011 claiming to be lawful and bona fide occupants. The Respondent lodged Civil Suit No.79 of 2014 against 20 defendants. In the course of the trial she withdrew her claims against seven of the defendants. The Appeal was filed by 10 of the remaining defendants who lost in the Chief Magistrate's court.

The trial Magistrate adopted three issues framed by Counsel during at the scheduling stage of the trial ;-

1. Whether the defendants are bona fide/lawful occupants on the suit land?
2. Whether the defendants are trespassers on the suit land?
3. What remedies are available to the parties.

The court found that the Respondent was in actual possession of the suit land at the time the Appellants started cultivating and occupying parts of it even against an order restraining them to do so issued by the court.

The Court declared the Appellants to be trespassers on the land and further dismissed their counter claim.

A Permanent injunction was issued restraining the Appellants from occupying or using the suit land. An Eviction order was issued against the Appellants. Each of them was ordered to pay shillings 2,000,000/= to the Respondent as general damages and to pay costs of the suit.

Representation.

M/S LMN Advocates represent the Appellants while Elgon Advocates represent the Respondent.

Counsel filed submissions which have been adopted and considered in the determination of the Appeal.

Grounds of Appeal.

1. The learned trial Magistrate erred in law and in fact when he held that the court had jurisdiction to entertain the Respondent's suit.
2. The learned trial Magistrate erred in law and in fact when he held that the Appellants were not lawful and bona fide occupants of the suit land.
3. The learned trial Magistrate erred in law and in fact when he disregarded the Appellants' documentary evidence of payment of Busuulu.
4. The learned trial Magistrate erred in law and in fact when he held that the Appellants are trespassers on the suit land.
5. The learned trial Magistrate erred in law and in fact when he failed to properly evaluate the Appellants' evidence that they are lawful and bona fide occupants and therefore arrived at a wrong decision.
6. The learned trial Magistrate erred in law and in fact when he failed to award the Appellants costs after the Respondent had withdrawn the suit against them.

Duty of the Court.

It is settled law that a first appellate court is under duty to subject the entire evidence on the record to an exhaustive scrutiny and to re-evaluate it and make its own conclusions. The fact that the court never observed the witnesses under cross examination so as to test their veracity has to be taken into consideration by the court.

Selle V Associated Motorboat Company Ltd [1968] EA 123; Sanyu Lwanga Musoke V Sam Galiwango. SCCA No.48/1995.

Consideration of the grounds of Appeal.

I will consider grounds of Appeal numbers 1 and 6 separately. Grounds of Appeal No.2,3,4 and 5 which relate to the evaluation of evidence and the decision of the court will be jointly considered.

Resolution of the 1st Ground of Appeal.

The learned trial Magistrate erred in law and in fact when he held that the Chief Magistrate had jurisdiction to entertain the Respondent's suit.

In the Complaint filed on 17th December 2014 the Respondent sought orders for vacant possession of portions which form part of land comprised in Singo Block 4 Plots 112 and 113 , an eviction order, General damages for trespass, a Permanent injunction against the defendants restraining them from further trespass on the suit land and costs.

The Respondent stated in the Complaint that the Appellants and others had encroached on 60 acres of her land on which they had built houses and planted trees without her consent. Nkamuhebwa Godfrey(PW3) who was the Respondent's Farm Manager confirmed to court that the defendants had built houses on the suit land.

When the case was called for hearing on 8th July 2015 Counsel for the Defendants/Appellants raised a preliminary objection arguing that the court did not have jurisdiction to entertain the suit on account of the value of the over 100 acres the Plaintiff/Respondent based her suit on.

Counsel for the Plaintiff in reply argued that the Chief Magistrate's court had jurisdiction to entertain the suit since it was founded on trespass as a cause of action. Section 207(1) of the Magistrates Courts Act which gives the Court unlimited jurisdiction in disputes relating to conversion, damage to property or trespass matters of trespass was referenced as the enabling provision of the Law.

The trial Chief Magistrate dismissed the preliminary objection on the basis of section 207(1) of the Magistrates Courts Act which gives Chief Magistrates unlimited jurisdiction asserting that the suit was premised on trespass to land as a cause of action.

On Appeal Counsel for the Appellants contends that the jurisdiction of the Chief Magistrate should not only have been determined from the cause of action or value of the subject matter alone but also from the remedies being sought by the Respondent from the court as well.

Counsel further contends that recovery of possession of land includes the value of all structures on it which had to be ascertained for the court to determine whether it had jurisdiction. Reliance was placed on **Opedo Patrick & 16 others VS Kiconco Medard. HC Civil Revision No.33 of 2018** to bolster the arguments.

Counsel for the Respondent on his part argued that whereas the **Kiconco case**(supra) was about buildings put up on his land, the Respondent's claims was against a mixture of crops and buildings whose value and ownership could not be ascertained with clarity. It

was further argued that the court had unlimited jurisdiction to handle the case since it was founded on trespass.

I find it pertinent to point out that much as the Kiconco case re-states principles on jurisdiction of courts, it is premised on the fact that Kiconco sought a demolition of the structures on his land under the Physical Planning Act, 2010 which restricts jurisdiction to the High Court. It is therefore to that extent distinguishable from the subject of this Appeal.

Decision.

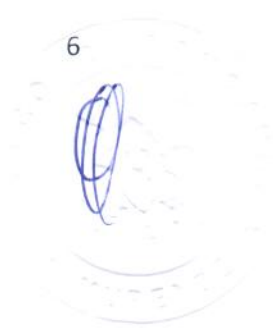
Section 207(1)(a) of the Magistrates Courts Act provides :-

"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 question for the court to determine for any conclusion to be made about whether the trial court had jurisdiction to try the suit or not is whether the Respondent's claim related to trespass? Simply put trespass is the unauthorized entry on to someone's land. This is well stated in the Pleadings followed with the prayers for vacant possession and eviction orders.

The Appellants in their Written Statement of Defence contended that they are lawful and bona fide occupants on the suit land. Some of them claim to have bought and others inherited parts of it before the Respondent leased it and later acquired the reversionary interest from the registered proprietor.

Others claim to have inherited bibanja and to have lived on the land for over 40 years before the Respondent started claiming ownership of the same. The Appellants contended that the Respondent's



leasehold interest and subsequent registration was subject to their unregistered interests since they were in occupation at the time she acquired full ownership and even declined to receive busuulu from them.

From the claims advanced by the litigants in the pleadings it was evident that the suit before the trial court was not merely a trespass claim. It was about determination of the competing rights to the ownership of the suit land by the title holder and those claiming to be lawful and bona fide occupants on it. The suit was clearly outside the ambit of section 207(1) of the Magistrates Courts Act.

The reliefs of eviction which entailed demolition of the houses on the suit land and forests to give vacant possession of the 60 acres sought by the Respondent further point to the monetary aspect of what was at stake.

In Kawaga Lawrence & 2 Others Vs Ziwa & Sons Property Consultants Ltd. HC Civil Revision No.004 of 2018 Justice Musa Ssekaana observed :-

“In an 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 ie between two titles or interest (Lessor and Lessee)(registered proprietor and kibanja Owner/Lawful Occupant).

A similar observation was made by the Court of Appeal to the effect that the tort of trespass to land deals with possessory rights to land and an action for trespass falls squarely within the scope of actions to recover land.

Kiwanuka Fredrick Kakumutwe V Kibirige Edward. CA Civil Appeal No.272 of 2017.

It is thus the finding of this court that the Respondent filed an action for recovery of land disguised as a trespass claim. The acreage allegedly occupied by the Appellants as pleaded in the Complaint was 60 acres. The Appellants had houses, tree plantations and other crops on the land.

The Respondent did not in her Complaint attempt to put a value to the subject matter in dispute. It is however evident that it was way above the pecuniary jurisdiction of the trial court.

Section 11(1) of the Civil Procedure Act provides:-

"Except as is provided in this Act or the Magistrates Courts Act, suits and proceedings of a Civil Nature shall be instituted in the High Court."

Section 11(2) of the same Act provides:-

"Whenever for the purpose of jurisdiction or court fees it is necessary to estimate the value of the subject matter of a suit capable of money valuation, the plaintiff shall in the Complaint, subject to any rules of court, fix the amount at which he or she values the subject matter of the suit; but if the court thinks the relief sought is wrongly valued, the court shall fix the value and return the Complaint for amendment."

In view of the nature of the defence filed by the Appellants and the objection raised by Counsel for the Appellants at the initial stage of the hearing, the trial Magistrate was under a duty to establish the estimated value of the subject matter in the suit filed by the Respondent to determine if he/she had the pecuniary jurisdiction to entertain the suit.

I find comfort in the observation made by the Judge in **Civil Revision No.7 of 2017 the Kiconco case**(supra) to the effect that the jurisdiction of the court should not only be determined from the cause of action or value of the subject matter where it applies, but also the remedies being sought from the court as well.



A perusal of the lower court record further reveals other breaches relating to the jurisdiction of the court. On 13th August 2019 at Page 71 and on 7th November 2019 at page 72 of the proceedings, the hearing was conducted by a Magistrate Grade 1. This happened despite the objection raised by the 1st Appellant which appears on page 68 of the record.

Even if this court had held that the Chief Magistrate had jurisdiction to entertain the suit the evidence of DW8 would have been expunged being a nullity. The Magistrate who took his evidence and the subsequent cross examination had no jurisdiction to entertain the business for the two days.

I hold that the Chief Magistrate's court had no jurisdiction to entertain the suit. It is settled law that judgments and orders of a court without jurisdiction however precisely certain and correct are a nullity only fit to be set aside.

The Appeal succeeds on the 1st ground per se and I find no reason to delve into the rest of the grounds of Appeal. The judgment and orders of the trial court are set aside. Costs of the Appeal and in the lower court shall be paid by the Respondent.



Moses Kazibwe Kawumi

Judge

7th September 2023