

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
[LAND DIVISION]

CIVIL APPEAL NO. 0036 OF 2019

[ARISING FROM C/S. NO. 043 OF 2016 IN THE CHIEF MAGISTRATES COURT OF KASANGATI  
AT KASANGATI

**KIVUMBI CRANIMER**

(SUIING THROUGH KABOGOZA SIMON & KITANDWE GODFREY).

**APPELLANT**

**V**

**1. NAKATO JOY**

**2. WASSWA WILLIAM**

**RESPONDENTS**

**BEFORE: HON. LADY JUSTICE P. BASAZA - WASSWA**

**J U D G M E N T**

Representations:

Mr. Nakueira Musa for the Appellant.

Mr. Ssajjabi Richard for the Respondents.

Introduction:

[1] This Judgment is in respect of an Appeal filed by Mr. Kivumbi Cranimer (the Appellant), against the Decision of Magistrate Grade One: **His Worship Matovu Hood**, vide Civil Suit No. 43 of 2016, dated December 17, 2018. (Hereinafter referred to as 'the impugned Decision').

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- [2] The subject matter of the lower court suit: No. 43 of 2016, is a *Kibanja* on land comprised in **Kyadondo Block 158B Plot 56 at Namulonge – Nabalanga, in Wakiso District**. (The *Kibanja* shall hereinafter be referred to as '**the suit Kibanja**').
- [3] The Plaintiff: Mr. Kivumbi is a grand uncle to the Defendants: Ms. Nakato and Mr. Wasswa. He was an uncle to their late mother: Sarah Nabaggala. And, a cousin to their late grandmother: Eva Nkolo. The late Eva Nkolo was a biological mother of the late Sarah Nabaggala. The paternal Parents of the late Eva Nkolo and of Mr. Kivumbi, were brothers. The duo shared the same grandfather: the late Lasto Nkolo.

Background:

- [4] The lower court suit: No. 43 of 2016, was preceded by three earlier suits. Proceedings before the Sub-County Local Council Court of Busukuma in Wakiso District; **vide No. 004/10/2007**, Proceedings in the Chief Magistrate's Court of Nabweru at Kasangati, **vide CS No. 044 of 2008**, and Proceedings by motion, in the same Chief Magistrate's court, **vide Misc. Applic No. 071 of 2016**.
- [5] The suit in the Sub-County Local Council Court of Busukuma was filed by the late Sarah Nabaggala against Mr. Kabogoza Simon. The late Sarah Nabaggala claimed in that suit; '**that Mr. Kabogoza Simon pretended to be looking after her, following the death of her late mother; Eva Nkolo, but subsequently, upon her own sickness and treatment away from her home, Mr. Kabogoza deceitfully took over her home and the suit Kibanja, and constructed his own house thereon**'. In answer, Mr. Kabogoza Simon contended; '**that he was only a care - taker of the heir of Lasto Nkolo, whom he named as Mr. Kivumbi Cranimer (the 1<sup>st</sup> Appellant in this Appeal)**'. The 1<sup>st</sup> Appellant:

*Ms. Nakato 19/1.*

Kivumbi Cranimer appeared in that Sub-County Local Council Court merely as a witness on behalf of Mr. Kabogoza Simon.

[6] Upon hearing both sides between 12/11/2007 and 3/01/2008, the Sub-County Local Council Court rendered its Judgment on 18/04/2008. That Court's decision was; 'that it found that Mr. Kabogoza Simon and Mr. Kivumbi Cranimer did not have documentary evidence of ownership of the Kibanja in dispute, nor did they have any witness to support their claim over the Kibanja'. 'They concluded that Mr. Kabogoza Simon has no ownership / interest in the Kibanja, and is there illegally and wrongfully. They also concluded that Ms. Nabagala was at liberty to have back her kibanja'.

[7] As it were, the hearing of the matter by the said Local Council Court between 12/11/2007 and 3/01/2008, and the delivery of its Judgment on 18/04/2008, were a nullity on account that at that time, the Court was not legally constituted as the elective term of its members had expired. Its members had been elected under the movement system that ceased to exist upon the ushering in of the multi-party system in 2006, upon the amendment of the 1995 Constitution of Uganda in 2005, and the general elections in 2006.

[8] It is well settled that the decisions of Local Council Courts during that period when they were not legally constituted, were a nullity and were devoid of any force of law. See the Court of Appeal decision in Nalongo Burashe v Kekitiibwa Mangadalena<sup>1</sup>.

In that Burashe appeal, a decision of the Local Council 11 Parish Court at Kalangala rendered in April 2009 was, on the same account, declared as no decision at all.

[9] Subsequently, proceedings were taken in a second suit: CS No. 044 of 2008 in the Chief Magistrate's Court of Nabweru at Kasangati. That suit was filed jointly by Mr. Kivumbi

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<sup>1</sup> COA C/ Appeal No. 089 of 2011



(the Appellant in this Appeal) and the same Mr. Kabogoza Simon; the Respondent in the defunct suit before the Local Council Court. Their suit that was against the late Sarah Nabagala, was heard *ex-parte*, and an *exparte* Judgment was rendered on 13/3/2009 by HW Agnes Nkonge, then a Magistrate Grade one.

- [10] The third suit, was vide Misc. Application No. 71 of 2016. An application that was filed by Ms. Nakato Joy and Mr. Wasswa William against Mr. Kivumbi Cranimer and Mr. Kabogoza. In that application the duo sought that the said *exparte* Judgment in CS No. 044 of 2008 that was rendered on 13/3/2009, be set aside. That application was allowed and by virtue of which Ruling, the ***ex parte* Judgment and Orders in CS No. 044 of 2008**, were set aside, and the said suit is still a pending suit.

Analysis by this Court:

- [11] On account that CS No. 044 of 2008 was, and still is, a pending suit, the lower court was prohibited by statute: under **section 6 of the Civil Procedure Act**<sup>2</sup> from trying CS No. 43 of 2016. **Section 6** stipulates that:

'No court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where that suit or proceeding is pending in the same or any other court having jurisdiction in Uganda to grant the relief claimed'

- [12] In that previous suit: CS No. 044 of 2008, filed jointly by Mr. Kivumbi and Mr. Kabogoza against the late Nabagala Sarah, the matter in issue is a dispute over the same Kibanja that was the same kibanja in issue in the subsequent suit: No. 43 of 2016. Clearly the

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<sup>2</sup> Cap 71

same people in the previous suit: CS No. 044 of 2008, litigated over the same matter in issue, under the same title (same capacity<sup>3</sup>).

Sec. 6 removes jurisdiction from the courts where the suit is between either the same parties, or even where it is parties under whom those parties claim. In the subsequent suit: No. 43 of 2016, the Defendants claim under the late Sarah Nabagala. **As it is, CS No. 43 of 2016, from which this present appeal arises, was statute barred under sec. 6 & 8 of the Civil Procedure Rules, and the lower court therefore did not have Jurisdiction to try that suit.**

[13] It is trite law that a Court of law only has jurisdiction to try suits of a civil nature except suits that are expressly or impliedly barred. (See sec. .5 of the Civil Procedure Act).

[14] Saied, J., in his decision in the celebrated case: Eriazali Bameka v Dodvico Nviri<sup>4</sup>, citing Woodroffe and Ameerli's Commentary on Civil Procedure<sup>5</sup>, stated that:

'Where a Judge omits to do something which a statute enacts shall be done, the omission may not amount to more than an irregularity in procedure'

'Where a Judge does something which a statute says shall not be done, the doing of the prohibited thing is ultra vires and illegal, and without Jurisdiction'

(Underlining added for emphasis).

[15] I subscribe to the above definitions and distinction between an illegality and an irregularity. Unlike a mere irregularity, where an illegality has been committed, as was

*Nasir Mwanume 19/11*

<sup>3</sup> See the decision of Windham, C.J., in Saleh Bin Kombo Bin Faki v Administrator General, Zanzibar [1957] E.A at page 191-192: to the effect that the expression 'same title' means 'the same capacity'

<sup>4</sup> Civil Revision No. 1 of 1973 ULR [1973] at 134 - 137

<sup>5</sup> 2<sup>nd</sup> ed., at page 477

done in this present case: CS No. 43 of 2016, the learned trial Magistrate then exercised a Jurisdiction not vested in him in law.

[16] It is the position of the law, that all proceedings and a Judgment arising out of a matter in which a Court exercised a Jurisdiction not vested in it, are no proceedings at all, and no decision at all. They are a nullity and void *ab initio*. Such Judgments and orders are void and of no legal effect. See this principle enunciated in the decision in Desai v Warsama<sup>6</sup>

[17] It has also been well established, that a court of law cannot sanction that which is illegal. Once an illegality is drawn to the attention of court, it overrides all questions of pleadings, including any admissions made. And, the court must set aside such illegality. Makula International Ltd v His Eminence Cardinal Nsubuga & Anor<sup>7</sup> followed.

Decision of this Court:

[18] In the result, in exercise of this court's inherent powers under sec. 98 of the CPA, it's Appellate powers under Order 43 Rule 27 of the CPR, and its general supervisory powers over Magistrates courts under section 17 of the Judicature Act, I Declare and Order as follows:

1. A Declaration is made that the proceedings, Judgment and Decree in **CS No. 43 of 2016**, from which this appeal arises, are a nullity, and are void *ab initio*, and are hereby set aside.

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<sup>6</sup> [1957] 1 E.A 351

<sup>7</sup> COA C/Appeal No. 4 of 1981



2. I direct the learned Chief Magistrate of the Chief Magistrates' Court of Nabweru at Kasangati, to try CS No. 044 of 2008 in accordance with the law, as soon as possible.
3. I accordingly stay any fresh trial of CS No. 43 of 2016 until the disposal of the said previous suit: CS No. 044 of 2008. **(Sec. 6 of the CPA, applied).**
4. Should the Plaintiffs in CS No. 044 of 2008 not wish to continue with their suit, and 'abandon' it as complained by the Defendants therein<sup>8</sup>, such Defendants are at liberty to file a counter-claim to that suit, subject to the law on limitation of actions and to the exceptions thereto.
5. The costs of this Appeal, and the costs of CS No. 43 of 2016, shall be borne by the Appellant: Mr. Kivumbi Cranimer, who well knowing that he filed an earlier pending suit: No. 044 of 2008, filed a subsequent Civil Suit No. 43 of 2016, in abuse of court process.

I so Order,

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**P. BASAZA - WASSWA**  
**JUDGE**

January 19, 2024.

Judgment delivered electronically on the Judiciary ECCMIS Portal and via email to the parties.

Email to: [Musanakueira@gmail.com](mailto:Musanakueira@gmail.com) , [lmadvocates.ug@gmail.com](mailto:lmadvocates.ug@gmail.com) for the Appellant, and to [richardsjib@yahoo.com](mailto:richardsjib@yahoo.com) , [info@km-advocates.com](mailto:info@km-advocates.com) for the Respondents.

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<sup>8</sup> Refer to paragraph 7 of the written statement of defence of Ms. Nakato Joy and Mr. Wasswa William in CS No. 43 of 2016.