THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO.14 OF 2016

ASUMAN MUGYENYI .....APPELLANT

VERSUS

M.BUWULE .....RESPONDENT

(CORAM: KATUREEBE, C.J, MWANGUSYA, OPIO-AWERI, TIBATEMWA – EKIRIKUBINZA JJ.S.C, TUMWESIGYE. A.G JSC.)

(Appeal against Judgment of Court of Appeal before Mpagi-Bahigeine, Byamugisha and Nshimye JJA given on the 14th day of November 2011.)

JUDGMENT OF OPIO-AWERI (JSC)

Introduction

This is a third appeal by the appellant, against the decision of the Court of Appeal which quashed the decision of the High Court as 1st Appellant Court and ordered the eviction against the appellant and awarded costs to respondent.

Brief Facts

The respondent sued appellant in Chief Magistrate' s Court of Nakawa, alleging that the appellant trespassed on his land comprised of Kyadondo Block 237 plot 368 at Mutungo Luzira and sought for eviction order, general damages and costs. It was the respondent's case that he was a registered proprietor and owner of land comprised in Kyadondo block 237 plot 368 at Mutungo Luzira and that around 1998 he discovered that the appellant had settled on his land and occupied it unlawfully without his consent and

permission. The respondent averred that the suit land was a mailo land which he bought from Lake View Properties and that he found the appellant in 1998 and 1999 constructing structures on his piece of land. The appellant erected a house and a building in permanent material. That the respondent reached out to the appellant for an understanding but the later deliberately refused to approach him. On the other hand the appellant contended that he saw the respondent for the first time in court and that he bought his kibanja in 1996 from one Freddie Kaggwa, that by then he was a DPC Jinja Road Police Station, he paid for it 2.5 million on 26/10/1996 and sale agreement was witnessed by one Obul Godfrey who was his driver, Joseph Muyenja, Edward Kiwanuka and Mrs. Betty Kaggwa. That by time he bought it there was a house of blocks with iron sheets which was two roomed with a toilet and there were fruits of mangoes, avocadoes, Coffee trees and banana planation. That he took over possessions, and since then constructed houses on said kibanja.

The Trial Magistrate (Byarugaba John) in his judgement found that the appellant had bought land from Kaggwa, who was a bona fide occupant of suit land and that he had acquired interest thereon and that the respondent had failed to prove his case and dismissed the suit with costs to the appellant.

The respondent being dissatisfied with the judgement of the Trial Magistrate appealed to the High Court in 2005. The appellant filed misc. Application No.220 of 2005 in High Court of Uganda at Nakawa seeking to strike out the appeal having been filed out of time. However the appellant withdraw the application. The 1st appellate court heard the appeal on its merits. The parties filed their written submissions but when the appeal came up for oral rejoinder by the respondent's counsel, the appellants' new counsel raised an objection that the appeal had been filed out of time notwithstanding the earlier order withdrawing the application /objection. The first appellate court however acceded to objection that appeal had been filed out of time. However the learned judge paradoxically proceeded to consider the appeal on merit and he

found that the appeal had been filed out of time, the respondent had failed to justify how he acquired the suit land as there was no sale agreement or transfer form and that the respondent was a bona fide occupant on the suit land.

The respondent being dissatisfied with the 1st appellate court finding, filed the second appeal to Court of Appeal, which heard the appeal and allowed the appeal in favor of the respondent and issued an eviction order against the appellant with costs of lower court.

The appellant being dissatisfied with Court of Appeal judgment brought this third appeal after obtaining a certificate of importance. The memorandum of appeal has seven grounds of appeal namely;

1. The Learned Justices of Appeal made an error of law when they held that the first Appellate Court was not entitled to inquire into whether the appeal before it was filed out of time and faulted and reversed the said court's finding that appeal was incompetent for being filed out of time.

2. The Learned Justices of Appeal made an error of law when they held that Freddie Kaggwa from whom the Appellant purchased the suit Kibanja acquired the said kibanja in 1974 and that the law applicable to the said acquisition was the 1975 land reform Decree.

3. The Learned Justices of Appeal made an error of law when they held that the sale of the suit Kibanja by Freddie Kaggwa to the appellant in 1996 was a nullity as they neither obtained the consent of the Kabaka nor informed the commissioner for lands.

4. The Learned Justices of Appeal made an error of law when they held that the sale of the suit Kibanja by Freddie Kaggwa to the appellant in 1996 clearly flouted section 34 (9) of the Land Act which makes it mandatory to seek and obtain the registered proprietor's consent to sell kibanja .

5. The Learned Justices of Appeal made an error of law when they held that it was errorous for the first appellate court to inquire into the process by which the respondent acquired the land comprised in block 237 plot 368 at Mutungo.
6. The Learned Justices of Appeal made an error of law when they disregarded unchallenged evidence to the effect that the appellant's suit kibanja was not block 237 plot 368 at Mutungo.
7. The Learned Justices of Appeal made an error of law when they made an eviction order in favor of the respondent, in effect gifting him the kibanja and appellant's development thereon.

Representation

The appellant was represented by Mr. Benson Tusasirwe while the respondent was represented by Mr. Kiiza Kabundama Simon. Both parties were present during the hearing of the appeal. Both counsel filed written submissions.

Submissions

Ground one

The appellant's case.

Counsel for appellant submitted that the ruling of court did not show that parties agreed the appeal proceeds on its merit. Counsel contended that the withdrawal of the application did not stop the appellant (then respondent) from raising the argument that the appeal was a nullity.

Even if no formal application had been filed, the respondent in that appeal (now appellant) would still have been within his rights to raise the point relating to the competence of the appeal as a preliminary point, orally at the hearing.

He contended that by the application being withdrawn, that right was not surrendered. Counsel submitted that the court was required to inquire into competence of the appeal suo moto because

competency of appeal touched the legality of appeal. Counsel cited the case of **Makula International VS Cardinal Nsubuga (1982) HCB 11,** to the effect that illegality once brought to attention of court overrides all questions of pleadings and all admissions made.

Counsel for appellant faulted the Court of Appeal for faulting the 1st appellate Court for going against consent order ,that it did so in error .Counsel argued that it was not necessary for consent to be set aside first in order for court to make the inquiry. Counsel submitted that withdrawal of the application could not dress the appeal with a competency it lacked unless the parties had consented to extension of time within which the appeal was required to be filed under **section 79 of Civil Procedure Act** and no consent was entered to that effect or recorded.

Counsel submitted that the record clearly showed that the judgement of the Trial Court was made on 28th may 2003, the Decree was sealed on 11th June 2003, then the respondent stated on oath in affidavit that the proceedings and judgement of court were certified on 23rd June 2003 and that indeed the stamps on last pages of the proceedings show that was the case and that the appeal was filed in 2005 way out of the time prescribed in Section 79 of the Civil Procedure Act.

Counsel contended that it was a matter of general importance that an appeal which was defective and incompetent should not stand, once there was no appeal before the High Court then there was none before the Court of Appeal. That to deprive the appellant of property and gift the same to the respondent on the basis of a null and void appeal was subversion of justice and contrary to public policy.

The respondent's case.

Counsel for respondent submitted that appellant counsel withdraw the application in view of Section 79 of Civil Procedure Act, at that time the respondent had not received copies of the proceedings, judgment and final order .That on May 06, 2008, the Registrar of

the High Court wrote to Chief magistrate requesting that original case file with certified typed copies of the lower court record be forwarded to the High Court but that was not done. That even the appellants counsel wrote to court on 17 /2/2009 complaining about the missing file and that the original court file went missing up to now.

Counsel submitted that given the provision of **Section 79 (2) of Civil Procedure Act** the respondent would to date still be within time to file the appeal if the duplicate file had not been opened. That it was until 9/03/2009 when the appellant counsel consented to opening of replacement file when they respondent got record of proceedings, judgement, final order for purpose of hearing the appeal.

Counsel submitted that Section 79 (2) provides that the time taken by court in preparing the proceeding and order shall be excluded, counsel faulted the 1st Appellate Court for holding that the respondent filed the appeal out of time and the Court of Appeal rightly faulted the 1st Appellate Court on revisiting an application which had been determined. There was nothing illegal since whatever was done to hear the appeal was within the parameters of law and the case of **Makula International vs Cardinal Nsubuga (1982) HCB 11** was cited out of context.

Counsel for appellant in rejoinder contended that **Section 79 of the Civil procedure Act** stated that the time to be excluded in computing time for filing an appeal to the High Court is the time taken by the court in making a copy of the decree and that of proceedings and counsel further averred that decree was sealed on 11th June, 2003 and the proceedings were certified on 23rd June, 2003. That was when time started to run from that date. That the withdrawal of the application to strike out the appeal did not cure the illegality of the appeal and the court was still entitled to inquire into the legality of the appeal before it.

Court's finding

Before I solve this ground I find it worthy to first reproduce what the first appellate court said on this issue, it held on page 5 of the judgement/ page 36 of the record of appeal that

> **"The record of appeal shows that judgement was delivered on 28th May 2003.The Memorandum of Appeal was filed in court on 10th November 2005. The appeal number is 56 of 2005, indicating that the appeal was filled in 2005.The decree on record is dated 11th June 2003.There was undue delay in filling the disputed appeal.**
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> **Under section 79 (10) (a) of the Civil Procedure Act, the intended appellant must lodge an appeal within 30 days of the date of the decree or order of the court. Order 43 rule 1 of the civil procedure rules an appeal is commenced by a memorandum of appeal.**
>
> **In the instant appeal the memorandum of appeal ought to have been filled in court on or by 28th June, 2003, that is within 30 days from date of the judgment. The exception to that requirement is covered under order 43 rules 10 of the civil procedure rules. However I have perused the record of the appeal and there is no letter written by counsel for the appellant to trial court requesting for the copies of the proceedings and the judgment. The appellant cannot rely on section of 79(2) of the Civil procedure Act which allows the intended appellant to appeal in the high court after receiving the copies of the trial court proceedings and judgment. There is evidence given by the decree which is date 11th June, 2003.this indicates that by 11th June, 2003, the appellant already had the judgement from where he could have prepared memorandum of appeal and filled the same by 28th June, 2003.**
>
> **In the result, I agree with counsel for the respondent that this appeal was filed out of time. Therefore there is no valid appeal that was filed out of time. Therefore, there is**

no valid appeal that was filed in this court. This argument would dispose of the appeal. However, since Mababzi Mohamed for the respondent did not raise his comment as preliminary objections. I can as well resolve the ground of appeal that were argued inter parties in the interest of justice."

The 1st appellate judge was alive to the law as far **Section 79 of the Civil procedure Act and Order 43, Rule 10 of the Civil Procedure Rules** are concerned with the institution of the appeals from Magistrate's court to High Court. I note that the respondent obtained the Decree of appeal on 30th September 2009 whereby under section 79(1)(a) of the Civil Procedure Act was required to file the memorandum of the appeal within thirty days from date of the decree and he did not do that. I find the appeal was instituted out time and it was incompetent .The respondent did not need the record of proceedings in order to institute the appeal, because the appeal by its very nature was against the judgement or a reasoned order. See **Tumuhairwe VS Electoral commission HC EPA No.02 of 2011.** Where BASHAIJA K. ANDREW.J held that

"The provisions of O.43 r.1 CPR are instructive on the point of contention. It states as follows: 'Every appeal to the High Court shall be preferred in the form of a memorandum signed by the appellant or his or her advocate and presented to court or to such officer as it shall appoint for that purpose.' The rule does not seem to me to suggest that the record of appeal be filed in the manner which Counsel for the Respondent pointed out. It would appear correct that filing all pleadings with the memorandum of appeal is only required in appeals to the Court of Appeal under the provisions of Rule 83 (1) of the Judicature (Court of Appeal Rules) Directions S.1 No.13-10, which govern appeals in the Court of Appeal. However, O.43 r. 10 (2) CPR, imposes a duty on the court from whose decree the appeal is preferred to send, with all practicable dispatch, all material documents in the suit or such papers as may be specially called

for by the High Court. In the circumstances, this objection is untenable, and it is overruled."

All the respondent needed to institute the appeal to High Court was Decree of the appeal which was in his possession see **Suleiman vs Bwekwaso Magenda (1989) HCB 140.** In case of **Utex Industries Limited vs the Attorney General (Supreme Court Civil Application No.52 of 1995)**, it was held that the intending appellant has the legal duty to take and pursue the essential steps necessary to prosecute the appeal without any dilatory conduct on his/her part. It is not the duty of the court or any other person to do this on behalf of such a party.

With due respect to the first appellate Judge I find that he errored in law to go ahead and determine an incompetent appeal just because counsel for the appellant did not raise preliminary objection. The Court had a duty to make sure Rules of procedure and Act are not flauted, because the Courts are eyes of justice and the Court is under duty at all times to uphold the law and its procedure.

In case of **Hwan Sung Limited v M & D. Timber Merchants and Transporters (CIVIL APPEAL NO. 02 OF 2018.** My learned brother Buteera who wrote the lead judgement, held that "

> **"The preliminary objection before the Court of Appeal in the instant case was for the appeal to be struck out on the ground that the appeal was incompetently before the Court. The Court found that the appeal before the Court was incompetently filed for lack of leave and dismissed it.**
>
> **In my view, the Court would not have gone ahead to determine any issues that go to the merits of the appeal after holding that the appeal itself was incompetently before the Court. The Court of Appeal, therefore, did not err in law in not deciding ground two of the Memorandum of Appeal since that would entail determining on merit a ground of an appeal they had found they had no Jurisdiction to handle..."**

I find that the learned first appellate court erred in determining the incompetent appeal which was filed out of time

On this issue about the validity of the appeal, the Court of Appeal justice's held that

> **"In view of the earlier consent order of 25/02/2009, regarding the competence of the appeal, which had been endorsed by the court and which order had not been set aside the subsequent order to the contrary was null and void. It is well settled that a consent order /decree has to be upheld unless it is found to be vitiated by fraud, mistake or misrepresentation. See Meera Investiment Ltd vs Jeshang popat Shan C.A No, 56/2003, Nalumansi Christine VS. Hon Steven Kavuma JA court appeal Misc. Application No.155/2008. First of all it was erroneous to have found that appeal was filed out of time and in same breath proceed to consider it. To go against a consent order is tantamount to sitting appeal over the earlier order or reviewing it..."**

The Justices of Court of Appeal with due respect misconstrued the Misc. application which the appellant had withdrawn, by saying it was withdrawn by a consent agreement which was not the case, the justices quoted well the words of Fred Makada ,counsel for appellant that he was withdrawing the application and then Counsel for respondent Kyazze Joseph had no objection to the application being withdrawn, so where was the consent order /decree that was entered into by the parties ?

In my opinion, a consent order is an order that comes from consent judgement, whereby parties enter into mutual understanding which creates a legal relationships and it must be endorsed/signed by a judge. Upon perusal of the file, I have found no such consent order /judgement that was entered by parties as misconstrued by the Court of appeal. Even if it would be case as the Court of Appeal wanted it to seem like, a consent order cannot override illegality,

and parties cannot consent to oust the law and procedures set by law under Civil Procedure Act and Rules.

Makula International Limited Vs His Eminence Cardinal Nsubuga & Anor (CIVIL APPEAL NO. 4 OF 1981) [1982] it was held that

> **"The last question is whether court can interfere with the taxing officer's order in view of the fact that the appeal in incompetent. We think this court has power to intervene following the precedent laid down in Elmandry v. Salam (supra). Secondly there is no doubt that the award contravenes Schedule VI, and, as such,it is illegal. A court of law cannot sanction that which is illegal. As Donladson, J. pointed out in Balvoir France Co. Ltd v. Harold. G. Cole Ltd /1967/2 ALL E.R. 904 at 908 illegally once brought to the attention of the court, overrides all questions of pleading, including any addition made thereon.And in Phillips v Copings /1935/1 K.B. 15 scrutton L.J. said at p.21:"But it is the duty of the court when asked to give a judgment which is contrary to a statute to take the point although the litigants may not take it...."**

The above case is clear that once an illegality is brought to the attention of court it over rides the questions of pleadings. In the instant case, the 1st Appellant judge was under duty to dismiss the appeal filed by the respondent because the appeal was filed out of time. There was no need for the appellant to raise a preliminary objection first in order to dismiss the appeal. The court would have on its own motion dismissed the same. The Court of appeal even if it made it seem that the issue of appeal being filed out of time was resolved by a consent order, that was illegality which could override the question of such pleadings such as consent order in this case .

I would also like to point out that the 1st appellate judge went on to hear the incompetent appeal on the basis of the interest of justice, and it may have done this under the constitutional principle that substantial justice shall be done without un due regard to technicalities. This has for a long time been dealt with in case of

Kasirye Byaruhanga and Co. Advocates VS Uganda Development Bank Supreme Court Civil Appeal No.2 of 1997,where the lords held that constituent assembly delegates did not intend to wipe out the rules of procedure by enacting Article 126 (2) (e) and that it was not a magic wand in the hands of defaulting litigants. The same was held in the case of **Kitariko vs. Twino Katama (1983) HCB 97.**

In the case of **Mubezi James & 2 Ors v Uganda Supreme court Civil Appeal No. 10** of 2017, the facts of the case were that on 7/9/2017, the consent order was entered for Miscellaneous Application No. 19 of 2017**,** where by, both the applicant's and respondent counsel consented to have the time within which to file and serve the Notice of Appeal extended, On 13th September 2017, the consent order was endorsed by single Judge. The supreme court went ahead and heard the appeal, however when the they were writing the judgement, they realized that the appeal was incompetent as it had earlier been struck out by the court and they held that;

> **"We are alive to the fact that a full bench had earlier on delivered a decision striking out the appeal and the said Notice of Appeal. We find it irregular for parties to consent on a matter already determined by the Court. It follows that the orders contained in the consent and endorsed by the single judge could not overturn the orders of the full bench. Civil Appeal No.10 of 2017 is a disguised attempt to have the appeal heard despite the fact that it had been struck out.**
>
> **We hereby dismiss Civil Appeal No. 10 of 2017 as having been incompetently placed before this Court. We make no order as to costs."**

I find that the withdrawal of the application by appellant did not in any way prevent the appellant from raising or bringing to the attention of court illegality of the appeal being filed out of time and further, I find that the first appellate court would not have gone ahead to hear the appeal which was incompetent.

The above finding would alone dispose of this appeal. However since the matter and substance of the appeal was heard on merit by both the High Court as first appellate court and Court of Appeal as second appellate court. I will go ahead to the determine merits of the appeal.

In the case of **Hwan Sung Limited v M & D. Timber Merchants and Transporters (supra)** The counsel for the appellant requested this court to exercise its inherent powers and do justice by determining the question of ownership of the suit property in light of the evidence on record. My learned brother Buteera JSC declined the request to determine the appeal and remitted the file back to High court and held that:-

> **"The facts and the situation in Capt. Philip Ongom versus Catherine Nyeko Owata (supra) are distinguishable from those in the instant case. In Capt. Philip Ongom (supra) the suit was for breach of contract and for recovery of a sum of $ 13,000. The defendant did not deny liability. Four months prior to the hearing date, through his advocates the appellant had paid 19,000,000/= into court and admitted the contract between the two parties but contended that what he deposited in court was the amount he was owing to the respondent. The appellant thereafter did not enter appearance and the court proceeded ex parte. The plaintiff adduced evidence ex-parte in court. Judgment was entered on the basis of the ex-parte evidence and the admission by the respondent. His appeal was dismissed at the Court of Appeal. He appealed to the Supreme Court and was partially successful. The Supreme Court in its decision to dispose of the appeal on its merits was influenced by the fact that there was evidence on court record and there was an admission by the respondent. It was on that basis that the Court found that "the appellant would have very little to defend in the suit ----."**

In the instant case, there was no evidence on the records of the lower courts. This court would therefore have no basis upon which to make findings of fact and determine the rights and remedies of the parties. I would therefore not grant the prayer of counsel for the appellant to go ahead and determine the appeal on its merits."

In the circumstances of this case, I find that despite the fact that there was an incompetent appeal at both the first appellate court and at the second appellate court, this court can invoke the provisions of Section 7 of the Judicature Act, since both courts already heard the evidence and evaluated the substance of the appeal, I should determine the rest of the grounds of the appeal on that basis.

I find merit in ground one of the appeal.

Ground 2

Appellant's case.

Counsel for appellant submitted that the decision of Court of Appeal was based firstly on typographical error and secondly on its erroneous interpretation of Section 4 of the Land Reform Decree and thirdly on its erroneous interpretation of Section 34 of the Land Act to transactions concluded long before the Act came into force.

Counsel contended that it was clearly a typographical error because there were numerous other indicators that the correct year was 1974. That in his written statement of defence, the appellant pleaded that that Fred Kaggwa had lived on the land uninterrupted for over 20 years until when he sold it to appellant in 1996, that in cross examination of the respondent it was put to him that Kaggwa had acquired the land in 1974.

Counsel submitted that although the record first stated 1994 when Kaggwa acquired the land, it was corrected when he stated that he constructed the house immediately after buying it by 1974.Counsel further argued that Kaggwa also testified that his purchase agreement and Busuulu receipts were destroyed during 1979

liberation war, that would not have happened if he had bought it in 1994 which was 15 years after the war. Further that Kaggwa acquired receipts for plan approval by Kampala City council which were dated 1990, that it could not have happened if he bought in 1994.

Counsel submitted that Kapere's son testified that Kapere died and was buried at Muntugo in 1993, that Kaggwa would not have executed agreement with Kapere after a year later.

Counsel submitted that the Court of Appeal erroneously found that the law applicable to sale was Land Reform Decree 3/1975, that this was an error because that Decree came into force on 7th May, 1975 and that it could not have retrospectively applied to that sale. Counsel prayed that this court finds that the decree was inapplicable to the transaction of 1974. That the respondent had not challenged the acquisition by Kaggwa on grounds of lack of consent by mailo title holder. Counsel further submitted that there was no need to get consent from Kabaka for sale of 1974 because the respondent had not yet bought the suit land until 1979.

Respondent's case

Counsel for respondent submitted that much reliance was put on the testimony of Freddie Kaggwa but unfortunately the land referred to in the testimony of Kaggwa was not the suit land. That the respondent sued in respect of land comprised in kyadondo block 237 plot 368 land at Mutungo Luzira, but the testimony of Freddie Kaggwa describe relates to in block 237 plot No.62, Mutungo and that his evidence relates to plot 62 and not suit land plot 368.

Counsel submitted that the Kibanja that Kaggwa acquired in 1974 was on plot 62 and not suit land plot 368 and that he was a lawful or bonafide occupant , with an interest on registered land which land was described as block 237 plot 62 over which the respondent has no claim.

Counsel contended that the appellant's submission that date of 20/10/1994 is a typographical error is a mere afterthought and devoid of any merit. That appellant was successful party in Chief Magistrate Court and High Court ,that the appellant did not apply to have judgements rectified .That it was testimony of Kaggwa Freddie that he acquired the suit land on 20/10/1994 and the year of 1974 was a mere afterthought meant to divert the truth which caught up with him when he stated that he completed the house in 1995.Counsel argued that construction of the house could not take 21 years because Kaggwa stated in his testimony that he constructed the house immediately he bought the land in 1974 and completed it in 1995.

Counsel submitted that even if court was to believe that Kaggwa purchased the land in 1974, the applicable law at the time was the Busuulu and Envujjo law and section 8 thereof required the consent of the registered proprietor which Kaggwa conceded not having obtained the same thus his alleged acquisition of the land would still be illegal for lack of consent. That his evidence that all documents were destroyed during 1979 liberation war was a mere afterthought.

Counsel for appellant in rejoinder contended that counsel for the respondent made misconceived argument that the appellant did not prove that his land was not on plot 368 but on plot 62.

That the burden was first and foremost on the respondent as plaintiff to prove that the suit kibanja was located on his plot 368 and that he could not do that by simply proving he owns plot 368. Counsel submitted that the Kibanja claimed to be on plot 62 was a different plot and that it was common ground that that the suit is about one kibanja.

Court's finding

As a third appeal, ordinarily this Court would not be required to go into a detailed analysis of the evidence. However, I have found it necessary to give a deep analysis of the evidence without which analysis the intricate nature of the case would not be understood.

It is because the Courts below did not subject the evidence to close scrutiny that I delve into the details of the case.

The appellant in his written statement of defence in paragraph four at page 72 of record of appeal stated that, **"The said Freddie Kagwa was a Kibanja holder thereof and had lived and or settled on the same for 20 years uninterrupted".**

The appellant in examination in chief stated that he bought the kibanja from Freddie Kaggwa who was a retired police officer and paid for the same for 2.5 million (two million five hundred thousand) Uganda shillings on 26/10/1996. And during cross examination, the appellant stated that **"Mr. Kagwa told me that he had been told that the land belonged to Kabaka. I didn't doubt him. He had stayed there for long and the neighbors were present. He did not take me to the Kabaka. He never told me of one Buwule. I did not know him."**

Dw2 Freddie Kagwa during examination in chief on page 80 of record of appeal stated that **"I constructed the house immediately I bought it by 1974 and it was completed by 1995....."**

DW2 Freddie Kagwa 57 years on page on page 80, states that **"I acquired this kibanja on 20th /10/1994... the sale agreement was signed by me, late Kapere, muzei Sajjabi. All those documents were destroyed during the 1979 liberation war including the sale agreement. I constructed the house immediately I bought it by 1974 and it was completed by 1995..."**

Dw3 Kabanda who is son of late Kapere stated on page 81 that **"my father Kapere was buried at Mutungo in 1993.I know one Kagwa Fred. He is in court.my father sold to Kagwa his kibanja which kibanja I used to occupy before I shifted elsewhere. I used even to pay busulu for it .I used to pay busulu to the Kabaka of Buganda. The tickets were destroyed during the war of 1979..."**

Dw 4 Silas Sajjabi 99 years, on page 82 stated that **"Being friendly to Kapere for the said kibanja which he bought on 20/2/1974.the Kapere was buried in 1983 on that kibanja.."**

Dw5 Dezilanta Nalumansi stated on page 82 that **"the house was built by Kagwa during Amin regime but I don't still recall the year**.

The Court of Appeal in their judgement at page 339 of record of appeal stated 2nd paragraph **"the respondent himself testified having paid shs.2.5 million as consideration for the kibanja on 26/10/1996. Kagwa himself had bought on 20/10/1994 from Yonasani Nyanzi Kapere. Kapere used to pay Busuulu to kabaka of Buganda..."**

The gist of this ground is to determine when Freddie Kagwa actually acquired the kibanja (suit land), whether it was in 1974 or 1994.Dw2 Kagwa contradicts himself on page 80 of the record as when he actually acquired his kibanja. He states on one hand he acquired the kibanja on 20/10/1994 and later he states that he constructed house immediately after buying the land in 1974.

The Court of Appeal profoundly relied on 1994 as a year which Kagwa acquired the kibanja, it did so without solving the mischief of the year of 1974, which was unfortunate. Counsel for appellant submitted that it was a typing error. It is more problematic because both the Trial magistrate and the first appellate judge did not determine and address it in their judgements.

Upon persual of the file, I find the accurate year was 1974 ,that is when Kaggwa acquired the kibanja from Kapere. He did state that his documents during the sale agreement were destroyed during 1979 liberation war which means he had acquired the same before 1974. He was not cross examined on that by counsel for respondent. This can further be corroborated by evidence of Dw3 who stated that his father was buried in 1993 ,however there is a conflict when Dw4 states that late Kapere was buried 1983,but that shows that by 1994 the late Kapere was dead and he wouldn't have transacted with Kagwa. I agree with counsel for appellant that by

1994 Kapere was dead .This can further be corroborated by the evidence of Dw5 who stated that Kagwa occupied the kibanja in 1974 from Yonasani Kapere Nyanzi.

On page 75 of record of appeal on last paragraph, the respondent states that "**I bought the said land from lake view properties, it is milo land. I bought it in 1979.**"

Further on page 76 of paragraph 2, the respondent states that when he found the defendant erecting the said structures, he called him and wanted to reach an understanding, but the defendant deliberately refused to approach him later he met Mr. Kagwa and complained to him about the trespasser.

On cross examination on page 77, 1st paragraph, the respondent states that "**I acquired the said land from lake view properties in 1978-9.there were a few occupants on the said land. I counted the number of houses but I did know their names. They were Bibanja holders when I bought the said land in 1979...I know one Freddie Kagwa. He was on that land and the land was empty. He instead wanted to buy from me that plot...I don't know whether Kapere was an occupant by 1974. I don't know whether Freddie Kagwa acquired the land from Kapere by 1974...**"

During re-examination on same the page he stated that "**I can't remember the number of people occupying that land**"

On page 79 of appellant stated that "**Mr. Kagwa told me that he had been told that the land belonged to Kabaka I did not doubt him**...."

On page 80.dw2 Kaggwa states that "**Dr Kasasa Buwule never approached me in respect of the said kibanja...I didn't know there was one Buwule (Dr.) as the registered proprietor of the land.**"

It is now clear from above that the suit land originally belonged to the Kabaka. It was mailo land as admitted by the respondent. Freddie Kagwa acquired his kibanja interest in 1974 as I have

determined from above and the respondent acquired his registered interest in 1979. The respondent in cross examination acknowledged that there were occupants on the land he acquired who were Bibanja holders.

However, he denies that Kaggwa was not part of them and he stated that land was empty, which I do not believe because if the land was empty then what were those occupants (Bibanja holders) occupying?. Dw2 Kaggwa also testified that he had coffee trees and other plants and had a built house on it. Dw3 and Dw 5 also confirm the presence of crops and house of Kagwa on the kibanja. This can further be solved when the respondent acknowledges that he was not aware that Kaggwa had acquired the kibanja from Kapere in 1974. In re-examination the respondent states that he could not remember the number of people occupying that land. This makes it more probable that Kaggwa was one of the kibanja holders on land which the respondent acquired.

Having found that Kaggwa acquired his Kibanja from Kapere in 1974, the Land Reform Decree of 1975 did not apply to that transaction and there was no need for getting consent from Kabaka as required by Land Reform Decree of 1975 since the transaction was before the said legislation.

The transaction of Kaggwa to the appellant falls under the Land Reform Decree of 1975 as the transaction was made on 26/10/1996 and this was before the coming into force of the Land Act of 1998. Dw2 Kagwa stated that the respondent never approached him in respect of the said kibanja which means that Kaggwa was not aware of the interest of the respondent as a registered proprietor of the suit land by the time of that later transaction. There is no way he would have given notice as per the Land reform decree to a landlord he never knew.

Therefore I find that the appellant is a kibanja holder on the respondent's registered land and is not a trespasser and the order of eviction which was issued by Court of Appeal was out of context. I answer this issue in the affirmative.

Ground 3 and 4

Appellant's case.

Counsel for appellant faulted the Justices of Court of Appeal for holding that that the sale by Kaggwa, had to have authority and consent of the registered proprietor under section 4(2) of the Decree, otherwise the transaction was a nullity. Counsel contended that, that was erroneous because section 4(2) of the Decree never provided notice to the controlling authority. That its wording was clear and that the respondent's claimed by 1996 the title was in his names then Kabaka's consent was not necessary.

Counsel submitted that the need of consent of Registered proprietor to transaction affected by the section of the Land Act would not have arisen in 1996.Counsel contended that the purchase by appellant in 1996 did not require consent of registered proprietor because the law requiring such consent was not yet in existence and that it only required notice not permission of the prescribed authority.

Counsel cited the case of **Tifu Lukwago vs Sammuel Mudde Kizza SCCA No.13 of 1996 f**or proposition that the a failure to give notice is mere irregularity not nullifying the sale and that the kibanja holder showed that they used to pay Busuulu to Kabaka the known registered proprietor.

Counsel contended that having purchased before the Land Act came into force, the appellant was protected by 1995 Constitution which was already in force whose Article 237 (3) and (4) recognized customary occupants. That when Land Act came into force it embraced him as bona fide occupant under Section 29 (2) as of 1996 when the purchase was effected. The Land Reform Decree being existing law had to be construed subject to the Constitution in accordance with Article 273.That it meant it could not be construed in a manner that defeated rights protected by Article 237 of the constitution.

The respondent's case

Counsel for respondent submitted that Kaggwa's testimony relates to Block 237 plot 62 and not the suit land as described in the plaint. That kibanja which Kaggwa sold to the appellant was on plot 62 not plot 368.

Counsel submitted that there were major finding by justices of Court of Appeal, first one was that all acquisitions before Land Act 1998 derived validity from the 1975 decree and secondly that section 29(5) of the Land Act did not intend to condone or protect past illegalities .That those findings were very important and crucial in reaching the decision their Lordship made and the appellant did not contest them.

Counsel submitted that the case of Tifu Lukwago was distinguishable from the facts of this instant case, that the issue in that case was failure to comply with customary practice to give a gift of kanzu and that in this case, it was failure to comply with the provision of particularly Section 4 of the Decree and learned judge in that case went on to state that in his view failure to give notice under Section 4 (1) of the Decree was curable irregularity ,so that even of it had been proved that notice had not been given would not have regarded the sale as a nullity for those reasons. Counsel contended that that was all obita dicta. Counsel submitted that the protection that was intended in both Land Act and the Land Reform Decree was to protect interest which were lawfully acquired, the very reason why the Court of Appeal held that Section 29 of the Land Act was not meant to legalize past illegalities.

Counsel contended that purchase having been affected in 1996 it ought to have complied with the Land Reform Decree which was applicable law at the time so as to take benefit of Article 237 of the constitution and later section 29(2) of the Land Act.

Court's finding

I have already resolved this ground when I was resolving ground 2. I have already found that the transaction between Kaggwa and the

appellant did not need the consent of the respondent .I have explained it above that Kaggwa obtained his kibanja from one Kapere in 1974 and the respondent obtained the a mailo tenure/certificate of the suit land in 1979 subject to the equitable interests of the appellant. In the Later transaction between the appellant and Kaggwa in 1994, Kaggwa was supposed to acquire consent from the respondent, but as explained above he could not obtain consent from unknown landlord. Counsel for the respondent pointed out that Kaggwa's testimony relates to block 237 plot 62 and not the suit land as described in the plaint. I note that the respondent sued the appellant in the Chief Magistrates Court and his cause of action per the plaint was that the appellant was trespassing on his land comprising of Kyadondo Block 237 plot 368 at Mutungo Luzira and the appellant in his written statement of defence was that he was the rightful owner of the suit kibanja having bought the same from Freddie Kaggwa. Throughout the trial and the two appeals, it was a perceived fact that the appellant's kibanja was the suit land which was appellant's registered milo land. Even if Kaggwa described the suit land as block No.237 plot .62 Mutungo, I find that as a minor inconsistency which cannot change the fact of what he stated that he was a kibanja holder on the suit land.

Section 4(1) of the Land Reform Decree provides that a holder of a customary tenure on any public land may after notice of not less than three months to the prescribed authority or a lesser period as the authority approves transfer such tenure by sale or gift subject to such transfer not vesting the transfer of title in the land to the transferee except the improvements and developments carried within the land.

Subsection 2 is to the effect that any agreement or transfer by the holder of the customary tenure purporting to transfer of customary tenure if it were actual land shall be void and of no effect and the person purporting to such transfer shall be guilty of an offence and if found guilty be liable on conviction to a fine not exceeding two thousand shillings or imprisonment for 2 years or both.

The section only provides for the notice to the prescribed authority but does not state or provide who that is prescribed authority. In the case of **Tifu Lukwago-V-Samuel Mudde Kizza SCCA No. 13 of 1996**, this court already held that the law does not specify the prescribed authority and the court could not hold that the sale or transfer of interest without notice to the prescribed authority is not a nullity as it is a curable irregularity.

Court also clarified the position in the case of **Paul Kiseka Ssaku-V-Seventh Days Adventists SCCA No. 3 of 1993** at page 7 of the judgment that there is need to clarify by the legislature who is the prescribed authority in relation to section 4 (1) and (2) of the Land Reform Decree

The appellant bought the land in 1996 and in that regard the law applicable is the Land Reform Decree of 1975. The vendor to appellant bought the kibanja in 1974 and stayed on the land uninterrupted for more than 12 years. The respondent only came to realize the sale between appellant and Kaggwa in 1998 two years after the sale though he did state that Kaggwa Freddie wanted to buy the kibanja from him sometimes back. This points to the fact that the respondent knew him and I think it is out of bad deals that he wants to get more on what he does not have.

The Land Act in section 34(9) makes it mandatory to get the consent of the authority and makes such transaction without authority consent void. This Act came into force in 1998 and the sale was done in 1996, therefore the applicable law as already pointed is the Land Reform Decree not the Land Act.

The issue of bona fide occupants as addressed by the counsel for the appellant that the vendor Freddie Kaggwa in 1974 and later selling it to the appellant in this case makes him a bona fide occupant whereas the respondent submits that the sale was done in contravention of the land reform decree and sale was illegal. Article 273(3) and (4) recognizes customary occupants, the land Act came in force in 1998 whereas the constitution in 1995, Article 274 saved the existing laws that were applicable before coming in force

and those laws that were enacted after it was to be interpreted according to the old laws which was protecting or conferring some rights in transactions under the old laws in this case was the land reform decree. Therefore, the appellant's rights are protected under the new land Act and the constitution of Uganda 1995, hence he is a bona fide occupant.

In the circumstances, I hold that the sale to the appellant by Freddie Kaggwa was not a nullity because it was accruable irregularity as in the case of Tifu Lukwago and the sale did not flout section 34(9) of the Land Act as the transaction happened before the Act came in force and the rights were already protected by the Constitution of 1995.

Issue 3 and 4 are answered in the affirmative.

Ground 5

The appellant's case.

Counsel for the appellant conceded that it was an error for the 1st appellate judge to look into pre-sale position and argued that it was within his right to do for the purpose of determining whether there was bona fide occupants on the land by time of purchase by the registered proprietor.

The respondent's case.

Counsel for respondent submitted that it's a statutory provision under section 59 of the registration of titles act that a certificate of title is conclusive evidence of owner and same section does not require that court investigates pre-sale positions. Counsel averred that the appellant's submissions that the 1st appellate court went into pre-sale position for purposes determining whether there were bona fide occupants is devoid of any merit and deliberate move to mislead court.

Court's finding

Counsel for appellant conceded that it was an error for the appellate judge to look into a pre-sale position. What was required of the

judge was to determine whether the kibanja of the appellant was within the boundaries of the certificate of the title of the respondent, which I have already solved as positive. This position was elaborated in the case of **Fr. Narsensio Begumisa and Ors v Eric Tibebaga ((Civil Appeal No.17 of 2002), where Justice Mulenga JSC held that**

> **"The respondent had the burden to prove his ownership of the suit land. For that purpose, he opted to rely principally on the certificate of title, Exh.P1. It is trite that a certificate of title issued under the RTA, is conclusive evidence that the person named in the certificate as proprietor, is possessed of the estate in the land described in the certificate. See section 59 of the RTA Cap. 230 (formerly s.56 of Cap.215: 1964 Ed.). As the learned trial judge observed, such certificate of title can only be impeached for fraud. It is otherwise sacrosanct. Accordingly, on the face of it, by producing Exh.P1, the respondent proved conclusively that he is proprietor of a freehold estate in an 8-hectare-parcel of land registered as Kinkizi Block 53 Plot 9, which is described in the certificate as Land in Muruka Masya Gombolora Kirima. Section 59 of the RTA expressly stipulates that the certificate -**
>
> **"shall be received in all courts as evidence of the particulars therein set forth and of the entry thereof in the Register Book" (emphasis is added).**
>
> **In my view, it follows that the inviolability of a certificate of title is circumscribed in as much as it is confined to the particulars in the certificate. The court therefore, cannot receive the certificate as evidence of particulars, which are not set forth in it. For that reason, and particularly in view of the defence, the respondent also had to show that the particulars in Exh.P1, relate to the suit land on the ground. He fell far short of doing that. He did not show, and I have not found, any nexus between his application**

for title and the certificate he obtained. The most significant gap is the lack of any independent evidence to prove the respondent's assertion that the land, which the adjudication committee verified as his, was surveyed, let alone to show that Exh.P 1 was issued on strength of a survey of that land. The remark by Berko JA, that the respondent tried to show the Commissioner a print where a mark-stone had been removed and the latter did not listen, cannot be a substitute of such proof. I must emphasise that the inviolability of a certificate of title under the RTA is hinged on a survey that determines and delimits the land to which the certificate relates..."

I find that the particulars of the respondent's certificate are clear and as I have discussed above, there is no doubt that the appellant's kibanja is located on the respondents' title. My view is that the inquiry though was a general one since there was need for the first appellate court to make informed decision as regards other interests that existed before the respondent acquired his interest and subsequent registration thereof and it was a necessary inquiry as the appellant was alleging another plot, it was the only way to know what interest existed before.

The Justices of Appeal were right as regards certificate of title being conclusive evidence of ownership, though the judicial officer should not be limited from making an inquiry for proper dispensation of justice as the inquiry would be for the good of the greater community. Therefore, it was just and fair that he made the inquiry to know what interest existed before the registration without disregarding the certificate of title. A certificate of title issued when other rentable interest exist should remain valid, but would be subject to this interests.

Therefore, issue 5 is answered in the affirmative.

Ground 6

The appellant's case.

Counsel submitted that it was alleged that the suit kibanja was on his land, counsel argued that he who alleges must prove and cited section 101 (1) of the Evidence Act (Cap.6). That it was the respondent who asserted that the appellant was a trespasser on his land, the respondent had to prove that the appellant was occupying his land, that what the respondent did was only to produce a land title to show that he was the registered proprietor of the land comprised in block 237 plot 368 and that was not proof that the kibanja was on that plot. Counsel submitted that it was necessary to open boundaries of the land and to establish that the kibanja was within that plot and that the appellant indicated as far as he was concerned that his kibanja was plot 62.

Respondent's case.

Counsel submitted that the respondent was registered owner of the suit land having acquired the same in 1979 from Lake View Properties. The respondent being the registered proprietor of the land knew his boundaries the very reason, why he was able to tell that the appellant had trespassed on his land upon which he filed a suit against the appellant. Counsel submitted that land under operation of the registration of titles act has known boundaries as they are clearly demarcated with mark stones, the print on the certificate of the title clearly show its boundaries and there was no need to open boundaries as it was not in issue.

Counsel contended that appellant having denied ever trespassing on the respondent's land, it was incumbent upon him to show that he was not on the respondent's land as alleged. Counsel submitted that merely alleging that he was not on the respondent's land was not sufficient as this was evidential burden which shifted to him as a person asserting.

Counsel applauded the Court of Appeal for coming to the conclusion that the respondent was the registered owner of the suit

land and having produced a certificate of title in court was sufficient evidence to prove ownership, the appellant having not controverted the respondent's evidence of being registered proprietor by producing different certificate of title meant that he was occupying the respondent's land.

Courts' finding

As it is true that the respondent had a certificate of title as proof of ownership, it is also true that the appellant through the witnesses and the evidence of receipts brought to court points to plot 62 which the appellant owned. The law, the Evidence Act section 101, is to the effect that he who desires to have judgment entered in their favour should prove their case on the balance of probabilities.

It was the respondent who was supposed to show by producing evidence external of the title to counter the evidence of the appellant because he was the plaintiff in the magistrate's court. Moreover, when the Appellant produced and ensured in sum of receipts showing that this kibanja was on plot 62, it was their incumbent upon the respondent to prove that. This was done by the respondent. Looking at the history of the title, the respondent did not show how he acquired the suit land first in 1978 and again later in 1979. This created doubt that required the inquiry into pre-sale.

In my opinion the evidence of the appellant was ignored by the Justices of Appeal which evidence was unchallenged. In the circumstances ground 6 is answered in the affirmative.

Ground 7

The appellant's case.

Counsel contended that even if the sale was void under the Land Reform Decree, the kibanja interest would then revert back to Kaggwa who can then regularize the sale or take back the kibanja, counsel submitted that the registered proprietor does not then automatically acquire the right of vacant possession. That if the failure to give notice nullifies the sale, the equitable outcome is that

the kibanja interest reverts to the true holder before invalid sale because in the eyes of the law, there was no sale.

The respondent's case.

Counsel for respondent submitted that it was respondent's evidence that the suit land was vacant at the time he acquired it and further that Kaggwa Freddie wanted to buy the same piece of land from the respondent and further that Kaggwa Freddie wanted to buy to buy the same piece of land from the respondent but did not and that he later found appellant developing the land and requested him to negotiate but the defendant refused.

That from the respondent's testimony it's clear that land was vacant but the appellant forcefully developed the suit land and that the respondent called up the appellant to make understanding but the appellant deliberately refused to approach the respondent and that the appellant forcefully constructed on the respondent's land. That submission of appellant that the registered proprietor does not automatically acquire the right of vacant possession is devoid of any merit.

Court's finding

The learned Justices of Court of Appeal on page 345 of the record states that I quote. **"It is clear that both lower courts did not confront the task before them with the relevant laws clearly in mind, thus both reaching erroneous conclusions. Consequently, I would allow the appeal with costs here and in the courts below, quash the first appellate courts findings and grant the orders sought**..."

This matter raises concern to the general public and is of importance because the decision of the Court of Appeal if allowed would affect a greater section of the community especially where mailo land ownership is found in the regions of Uganda.

People who had not taken extra care to see proper documentation of their transactions and those with personal interest would start

claims as long as they can sustain the legal proceedings which this court should not allow such a protracted litigation in the future

I have already held in the previous issues that the sale was not illegal because of the gap in the law that was existing then in the Land Reform Decree because it provided for the prescribed authority but did not state who that authority was so that people could give the notice for their consent during their transactions.

I find the eviction order issued by the Justices of the Court of Appeal erroneous and hereby quash their findings and the order. This issue is answered in the affirmative. The appeal to this court succeeds.

For the reasons given herein, I would set aside the judgment of the Learned Justices of Court of Appeal and affirm the judgment of the first Appellate Court Judge in the terms stated by that Court.

I would also order the respondent to pay costs to the appellant in this Court, and Courts below.

Dated at Kololo this.....28th.....day of...November.....2019

Hon. Justice Opio-Aweri,
JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO.14 OF 2016

ASUMAN MUGYENYI .....APPELLANT

VERSUS

M.BUWULE .....RESPONDENT

(CORAM: KATUREEBE, C.J, MWANGUSYA, OPIO-AWERI, TIBATEMWA JJ.S.C,TUMWESIGYE. A.G JSC.)

(Appeal against Judgment of Court of Appeal before Mpagi-Bahigeine, Byamugisha and Nshimye JJA given on the 14th day of November 2011.)

JUDGMENT OF HON. JUSTICE MWANGUSYA ELDAD, JSC.

I have had the benefit of reading in draft, the judgment of my learned brother Hon. Justice Opio-Aweri, JSC.

I agree with him that this appeal should succeed. I also agree with the Orders he has proposed.

Date at Kampala this.....28th.....day of.....November.....2019.

Hon. Justice Mwangusya Eldad,
JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

(CORAM: KATUREEBE, CJ, MWANGUSYA, OPIO-AWERI, TIBATEMWA-EKIRIKUBINZA, JJSC; TUMWESIGYE AG. JSC)

CIVIL APPEAL NO: 14 OF 2016

BETWEEN

ASUMAN MUGYENYI :: APPELLANT

AND

M. BUWULE :: RESPONDENT

[Appeal from the judgment and orders of the Court of Appeal at Kampala [Mpagi Bahigeine, DCJ, Byamugisha and Nshimye, JJA, in Civil Appeal No. 24 of 2010 dated 14th November 2011]

JUDGMENT OF TUMWESIGYE, JSC

I have had the benefit of reading in draft the judgment prepared by my learned brother, Hon. Justice Opio-Aweri, JSC and I agree with his reasoning and his conclusions as well the orders he has proposed.

Dated at Kampala this 28th day of November 2019

Hon. Justice Jotham Tumwesigye
AG. JUSTICE OF THE SUPREME COURT

REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

(CORAM: [KATUREEBE, CJ; MWANGUSYA; OPIO-AWERI, JJ.S.C, TIBATEMWA-EKIRIKUBINZA JJ.S.C, TUMWESIGYE, AG.J.S.C])

CIVIL APPEAL NO: 14 0F 2016

BETWEEN

ASUMAN MUGYENYI :: **APPELLANT**

AND

M.BUWULE :: **RESPONDENT**

[Appeal against judgment of court of appeal before Mpagi-Bahageine,Byamugisha and Nshimye, JJA given on the 14th day of November, 2011]

JUDGEMENT OF KATUREEBE,CJ

I have had the benefit of reading in draft the judgment of my learned brother Opio-Aweri, (JSC) and I agree with him that this appeal should succeed. I also concur in the orders he has proposed as to costs.

As all the other members of the court agree, the appeal is allowed. The Judgment and orders of the Court of Appeal are set aside. The Judgement of the first appellate Court is affirmed. The respondent shall pay to the appellant the costs in this Court and in the courts below.

Dated at Kampala this 28th day November 2019

Bart M. Katureebe

CHIEF JUSTICE

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

[CORAM: KATUREEBE, CJ; MWANGUSYA; OPIO-AWERI; TIBATEMWA-EKIRIKUBINZA; JJSC; TUMWESIGYE Ag. JSC]

CIVIL APPEAL NO.14 OF 2016

BETWEEN

ASUMAN MUGYENYI ::APPELLANT

AND

M. BUWULE :: RESPONDENT

(Appeal from the judgment and orders of the Court of Appeal at Kampala before: Hon. Justices: Mpagi Bahigine DCJ, Byamugisha and Nshimye, JJA in Civil Appeal No.24 of 2010 dated 14th of November 2011).

JUDGEMENT OF PROF.TIBATEMWA-EKIRIKUBINZA, JSC.

I have had the benefit of reading in draft the Judgment of my learned brother, Hon. Justice Opio-Aweri, JSC and I agree with his analysis and conclusion as well as the Orders he has proposed.

Dated at Kampala this 28th day of November 2019.

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PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA
JUSTICE OF THE SUPREME COURT