THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

Coram: (Kisaakye; Arach-Amoko; Buteera; Muhanguzi; Tuhaise; JJ.S.C)

CIVIL APPEAL NO.04 OF 2019

BETWEEN

JOHN LUBEGA::APPELLANT

AND

1. **JOHN SSINABULYA**
2. **DEZIRANTA NANNONO** :::::::::::::::::::::::::: **RESPONDENTS**
3. **IVONA NANZIRI**

(Arising from the decision of the Court of Appeal at Kampala in Civil Appeal No.18 of 2012, before Owiny-Dollo, Kakuru and Kasule, JJA, dated the 8th day of May 2019)

JUDGMENT OF BUTEERA, JSC

This is a second Appeal from a decision of the Court of Appeal in Civil Appeal No.18 of 2012 which was an appeal against a decision of the High Court in Civil Suit No.78 of 2009.

Background facts

The dispute in this appeal concerns Mailo land at Buye, Ntinda in Kampala comprised in Kyadondo Block 216 Plots 1218, 3960 and 3961 (hereinafter called "the suit land"). The suit land was previously owned by and registered in the names of the late Yozefu Bukenya who had no children and died intestate on 13th November 2007. In **High Court Administration Cause No.2072 of 2007**, Petolalina Nabulya, widow of the deceased, was appointed sole Administrator and in that capacity was registered under **Section 134** of the **Registration of Titles Act**.

On 9th September 2008, the said Petolalina Nabulya died testate at Rubaga hospital. The respondents as executors named in her will, applied and were granted probate to her estate by the High Court on 29th October 2008. Thereafter, the respondents caused themselves to be registered as proprietors of the suit property under **Section 134** of the **Registration of Titles Act**.

The appellant resisted the occupation of the suit property by the late Petolalina Nabulya and the respondents. In January 2008, the appellant and another entered upon the land and forcefully started collecting rent which as of March, 2009 stood at Shs.78,525,000/=. This prompted the respondents to file H.C.C.S No.78 of 2009 seeking the eviction of the appellant and another from the suit land, a permanent injunction, general damages for trespass and interest thereon at the rate of 25% p.a from the date of Judgment till payment in full and costs of the suit.

At the trial, the appellant and the late Namputa (defendants at the trial) filed a defence and counterclaim seeking cancellation of the respondents (plaintiffs at the trial) registration on grounds of fraud.

The facts of the counterclaim were narrated as follows; John Lubega (the appellant) is the son of Benedicto Yiga who is a paternal nephew to Yozefu Bukenya (hereinafter called "the deceased") of the Ngabi (Bushbuck) clan being the son of the late Joseph Wamala, a brother to the deceased. Namputa is a sister to the Deceased. The deceased was the customary heir to their father, the late Yozefu Mivule Mitawana whose residence became the family home of his lineal descendants located on the suit land at Bbuye estate, L.C.1 Bukenya zone, Bukoto II parish Nakawa division in Kampala District. The deceased was not married to Petolalina Nabulya and never produced a child with any woman throughout his life due to impotence and because of the said disability, occupied the said family home with the late Petolalina Nabulya as his housemaid until his death. The respondents (defendants in the counterclaim) denied any cause of

action against them by the appellant and the late Namputa (plaintiffs in the counterclaim).

The trial Court dismissed the plaintiff's suit (respondents in this appeal) with costs and entered Judgment in favour of the defendants/counter plaintiffs (Appellant in this appeal) on the counterclaim.

Aggrieved with the decision of the trial Court, the respondents appealed to the Court of Appeal. In response, the appellant (respondent at the Court of Appeal) filed a cross appeal. The Court of Appeal Justices dismissed the cross appeal and set aside the whole Judgment and orders of the trial Court. The Justices substituted it with their Judgment dated 8th May 2019.

Dissatisfied with the Judgment and orders of the Court of Appeal, the appellant appealed to this Court on the following grounds;

1. **"The learned Justices of Appeal erred in law and in fact when they held that the appellant had no *locus standi* to bring a Counter Claim as he was not a beneficiary to the estate of the late Yozefu Bukenya and yet went ahead to hold that as a customary heir of the deceased upon proof he was entitled to the deceased's estate thereby arriving at a wrong decision.**

2. **The learned Justices of Appeal erred in law and in fact when they held that the respondents/appellant could only qualify as beneficiaries to the estate of the late Yozefu Bukenya had they pleaded in their defence and counterclaim that they were dependent relatives within the meaning of the Succession Act that contrary to over whelming evidence on record thereby arriving at the wrong conclusion.**

3. **The learned Justices of Appeal erred in law and in fact when they held that the respondents/appellant did not in their petition for letters of administration to the estate of the late Yozefu Bukenya contend that they were his dependent relatives nor his customary heir.**

4. **The learned Justices of Appeal erred in law and in fact when they held that the suit lands belonged to the estate of the late Petolalina Nabulya and yet she fraudulently acquired the same from the estate of the late Yozefu Bukenya and as such the late Petolalina Nabulya had and/or left no estate or at all thus disregarding all overwhelming evidence on record thereby arriving at a wrong conclusion.**

5. **The learned Justices of Appeal erred in law and in fact when they failed in their bounden duty to enquire, investigate and find out the genesis of the appellants entry on the respective Mailo Certificates of Titles affecting the suit lands for had they done so, they would have arrived at the irrefutable conclusion that the same were fraudulently procured, something they never did contrary to overwhelming evidence on record thereby arriving at a wrong conclusion.**

6. **The learned Justices of Appeal erred in law and in fact when they held that the respondents/appellant were trespassers to the suit lands and collected rents therefrom when the same were the estate of the late Petolalina Nabulya contrary to overwhelming evidence on record thereby arriving at a wrong conclusion.**

7. **The learned Justices of Appeal erred in law and in fact when they held that the late Petolalina Nabulya was a widow of the late Yozefu Bukenya and entitled to his said estate without any empirical evidence in support thereof and contrary to overwhelming evidence**

on record disapproving of that said fact thereby arriving at a wrong conclusion.

8. **The learned Justices of Appeal erred in law and in fact when they held that the allegations of fraud at the trial Court were not specifically pleaded and evidence led by the respondents/appellant against the appellants/respondents contrary to overwhelming evidence on record disapproving of that said fact thereby arriving at a wrong conclusion.**

9. **The learned Justices of Appeal failed in their bounden duty to properly re-evaluate the evidence on the record in support of the respondents/appellant's case thereby arriving at a wrong decision.**

10. **The learned Justices of Appeal erred in law and in fact when they held that the Mivule Mitawana (called grandfather) the father of Yozefu Bukenya (deceased) was of Ngo (leopard clan) and yet overwhelming evidence was led at trial to prove that he was of Ngabi (bushbuck) clan thereby arriving at a wrong decision.**

11. **The learned Justices of Appeal erred in law and in fact when they held that Petolalina Nabulya was the sole beneficiary of the estate of the late Yozefu Bukenya whose entire estate vested upon her after his death with power to transfer the suit properties into her names and accordingly distribute them to others contrary to overwhelming evidence on record disapproving that said fact thereby arriving at a wrong conclusion.**

12. **The learned Justices of Appeal erred in law and in fact when they held that the respondents/appellant most valuable evidence in the Cross-Appeal in support of their case against the respondents/appellants appeal respecting the purported marriage of**

the late Petolalina Nabulya to the late Yozefu Bukenya contrary to overwhelming evidence on record disapproving that said fact thereby arriving at a wrong conclusion.

13. The learned Justices of Appeal erred in law and in fact when they delivered an impugned Judgment with the inclusion of His Lordship Hon. Mr. Justice Remmy Kasule JA who had since retired from service but never re-constituted a panel to hear Civil Appeal No.18 of 2012 afresh for each Honourable Justice to write his individual Judgment as required by law to conform to the Coram thus rendering the said impugned Judgment questioningly suspect to be effectively executed thus making wrong decisions.

14. The learned Justices of Appeal erred in law and in fact when they delivered an impugned Judgment on 25th March 2019 with the inclusion of a one Mohamed Alibhai who was neither a party to H.C.C.S No.78 of 2008 nor Civil Appeal No.18 of 2012 or at all as well as the Hon. Mr. Justice Geoffrey Kiryabwire JA a signatory thereto who was never part of the coram or reconstituted panel and being functus officio in the absence of any decree or at all and without formerly being moved by either party to the Appeal, on their own motion recalling and setting aside the said impugned Judgment and replacing it with another of 8th May 2019 again without a full coram/panel thus rendering the said impugned Judgment questioningly suspect to be effectively executed thus making wrong decisions."

Representation

At the hearing of the appeal, the appellant was represented by Mr. Mudde John Bosco and Mr. Arthur Kirumira while the respondent was represented by Mr. Peter Mukidi Walubiri and Mr. Hanington Mutebi.

The submissions of counsel and the Court's determination

Counsel for the parties filed written submissions which they adopted at the hearing of the appeal.

In their written submissions counsel for the appellant first addressed Court on grounds 1, 2, 3, 4, 10 and 11 together jointly. He then argued grounds 7 and 12 jointly, grounds 5, 8, and 9 jointly, grounds 13 and 14 jointly and lastly ground 6 of the appeal. Counsel for the respondent adopted the same order in their written submissions.

I will not follow the same order in resolution of the appeal for reasons that will become clear later in this Judgment.

I find it appropriate to resolve ground 13 of the appeal first.

On this ground of appeal, counsel argued for the appellant that on 8th May 2019 the Court of Appeal delivered the Judgment now being appealed in this Court with only two Justices of the Court of Appeal. According to counsel, by the time the Judgment was delivered, Justice Remmy Kasule, who had been on the Coram that heard the appeal had retired from service and was not part of the coram that delivered the Court of Appeal Judgment. Counsel submitted that the Court of Appeal lacked coram when it delivered the Judgment and that this was an illegality that rendered the Judgment delivered by two Justices instead of three a nullity. Counsel relied on **Supreme Court Civil Appeal No.21 of 2010, Komakech Geoffrey & another vs. Rose Akol Okullo & 2 others** to support his submission.

In response counsel for the respondents submitted that in the instant appeal there was quorum throughout the hearing and the making of the decision save for the fact that at the time of delivery of the Judgment Justice Mr. Remmy Kasule had retired from service and thus did not sign the Judgment. According to counsel the Judgment was signed by the majority of the Justices on the coram that heard and disposed of the appeal.

Counsel submitted further that there was coram during the hearing of the appeal and that the Judgment that was delivered was lawful. According to counsel, the inability of the third Justice to sign the Judgment amounts to a technicality in this case which is remedied by **Article 126(2) (e) of the Constitution** which provides that substantive justice should be administered without regard to technicalities.

I find the substantive issue in respect of ground 13 of the appeal to be whether or not there is a proper Court of Appeal Judgment in **Civil Appeal No. 18 of 2012.**

This Court has had occasion to consider the same issue in previous cases and the Court has clearly stated the law which will be of guidance to this Court in resolution of this issue.

In **Civil Application No. 17 of 2007, Orient Bank Limited versus Fredrick Zaabwe and another,** the appeal had been heard on 6th December 2006 by a panel of 5 Justices that included Justice Karokora. The Court Judgment was delivered and dated on 10th July 2007. At the time the Judgment was delivered, Justice Karokora, who had constituted the coram at the hearing of the appeal had retired. The separate Judgments of each of the five Justices were delivered by a sitting Justice. The issue before the Court was whether this Court's Judgment in a case heard and decided by a coram of five Justices is invalid if at

the time it is delivered one of the Justices has ceased to be a member of the Court.

The Court considered the issue and resolved as quoted below:

> ***"Under Article 131 of the Constitution of Uganda, the Supreme Court is duly constituted at any sitting in criminal or civil appeals, other than appeals from the Constitutional Court, if it consists of an uneven number not being less than five members of the Court. The practice and procedure of the Supreme Court is governed by the Judicature (Supreme Court) Rules (S.I. 13-11). The provisions relating to Judgments are set out in Rule 32, which reads -***
>
> > ***"32. <u>Judgment.</u>***
> >
> > ***1) Judgment or an order may be given at the close of hearing of an appeal or an application or reserved for delivery on some future day which may be appointed at the hearing or subsequently notified to the parties.***
> >
> > ***2) In a criminal application, other than application heard by a single judge, and in criminal appeals, one order or Judgment shall be given as the order or Judgment of the Court, but a judge who dissents shall not be required to sign the Judgment; except that the presiding judge may in any particular case, direct that separate orders or Judgments be given.***
> >
> > ***3) In a civil application, other than an application heard by a single judge, and in a civil appeal, including a constitutional appeal, a separate order or Judgment shall be given by the members of the Court, unless the decision being unanimous, the presiding judge otherwise directs.***

4) *An order of the Court on an application shall, where the application was heard in chambers be delivered in chambers, or if heard in Court, be delivered in Court, and a Judgment on an appeal shall be delivered in Court, except that the presiding judge may, in any particular case, direct that the decision of the Court only shall be so delivered and not the reasons for the decision, and in any such case, the Judgment or order shall be deposited in the registry, and copies shall be available to the parties when the decision is delivered.*

5) *Notwithstanding sub rule (1) of this rule, the Court may at the close of the hearing of an application or appeal give its decision but reserve its reasons; and in any such case the reasons may be delivered in Court or deposited in the registry.*

6) *Where the reasons are deposited in the registry, copies of the reasons shall be made available to the parties and they shall be so informed.*

7) *Where one Judgment is given at the close of the hearing as the Judgment of the Court, it shall be delivered by the presiding judge or by any other member of the Court as the presiding judge may direct.*

8) *Where Judgment, or the reasons for a decision, have been reserved, the Judgment of the Court, or a Judgment of any judge, or the reasons, as the case may be, being in writing and signed, may be delivered by any judge, whether or not he or she sat at the hearing, or by the registrar.*

9) *A Judgment shall be dated as of the day when it is delivered, or where a direction has been given under sub rule (4) of this rule, as of the day when the decision was delivered."*

Although the rule does not directly refer to the issue raised by the applicant, in our considered view sub-rule (8), which envisions delivery of a reserved Judgment by a judge who did not sit at the hearing or the registrar, covers not only the scenario where the judge who sat is temporarily absent but also the two scenarios where the judge is no longer available by reason of death or retirement. The only conditionality for the application of the sub-rule is that the Judgment in question is written and signed by the judge who took part in the hearing and deciding of the case. The reason that prevents the judge who wrote and signed the Judgment to deliver it in person is not a factor for sub-rule (8) to apply. For purposes of the sub-rule, it is immaterial that the judge is prevented by death or retirement provided that at the time of writing and signing the Judgment the judge was a member of the Court.

It is trite that a Judgment takes effect from the day it is pronounced, hence the requirement in sub-rule (9) that it be dated as of the day it is delivered and not necessarily the day it is signed, though more often than not the two are done at the same time. On the other hand, the requirement for the Judgment to be in writing and signed is to ensure its authenticity and validation as the Judgment of the judge/judges making it. In the case of reserved Judgments, the writing and signing are invariably done before the time the Judgment is delivered, and its authenticity and validity are thus preserved up to its delivery. Where at any time before its delivery, the Judgment is altered because there is change of mind, the altered Judgment has to be similarly authenticated and validated. In either case, the Judgment is delivered as the valid

Judgment of the judge who prepared and signed it. We are not persuaded that the situation where the judge, having signed a reserved Judgment, does not alter the Judgment, calls for speculation whether it is by choice or because the judge ceased to be a member of the Court. We say this because in our view, much as the date of delivery is the day it takes effect, it is not the day the decision is made. We think that neither the interest of justice nor public policy would demand that a decision of five judges be invalidated because one of the judges who participated in the decision retired or died before the decision was pronounced."

In ***Supreme Court Civil Appeal No.21 of 2010, Komakech Geoffrey and 2 others versus Rose Akol Okello and 2 others***, again this Court had to consider the validity of a ruling of this Court in a similar situation. The appeal in that case had been heard by a panel of three Justices of the Court of Appeal, including Justice Byamugisha. According to the Courts main ruling, Justice Byamugisha concurred with the ruling to strike out the appeal. However, she declined to sign the joint ruling of the Court because she did not agree with the order that the appellants be ordered to pay the Costs. It was noted that Justice Byamugisha also did not participate in the proceedings where Court ordered the advocates for the respondent to appear before it to show cause why they should not be ordered to pay the costs. Also, she did not write a dissenting Judgment. The Court considered the issue and resolved as follows:

"The Law:

Article 135(1) of the Constitution of Uganda prescribes the composition of the Court of Appeal this way—

1) The Court of Appeal shall be duly constituted at any sitting if it consists of an uneven number not being less than three Members of the Court.

Section 12 of the Judicature Act in effect provides that a single justice has powers to hear interlocutory matters, but for the Court to hear cases, there should be three justices. Neither the Constitution nor the Act allows two justices to hear a case including an application.

Rule 33 of the Court of Appeal Rules provides good guidance in that it describes how Judgments / rulings and orders of the Court of Appeal are to be written and delivered. In particular, Rule 33(5) & (6) provide as follows—

(5) In Civil Appeals, separate Judgments shall be given by the Members of the Court unless the decision being unanimous, the presiding judge otherwise directs.

6) In applications in criminal and civil matters, the decision shall be delivered and embodied in a ruling and order as follows—

(a) .....

(b) .....

(c) in applications to the full Court in civil matters, separate rulings shall be given by the Members of Court, unless the decision being unanimous, the presiding judge otherwise directs."

This paragraph is illuminating. When read together with Rule 6(3), a clear distinction is made. In criminal appeals, the Court is required to give one Judgment and a dissenting judge shall not be required to sign the Judgment. This is not the case in civil matters. Furthermore, it is our considered opinion that the word "shall" used in the provisions of

Rule 33 is mandatory and not directory and therefore judges should follow the procedure prescribed by the rules.

These provisions are intended to ensure consistence and certainty in practice and procedure in decision making by the Court. Individual justices who are part of a panel in civil causes must give reasons in writing for dissenting. That would enable anybody to understand the Court's decision. Allowing individual judges to ignore prescribed mandatory rules can lead to undesirable consequences.

From the statement of the Court of Appeal quoted earlier in this Judgment, the Court was apparently unanimous when considering to strike out the appeal. Yet because of disagreement about who should pay costs, the learned Lady Justice of Appeal decided not to sign the ruling nor give her own ruling. This affected the whole decision.

In the light of the provisions of Rule 33(6), in the absence of her own written reasons the ruling itself cannot stand.

This is a very interesting point. The Court record shows that the Court was in a full coram in that there were three justices during the hearing of the application to strike out the appeal. Judging from the contents of the main ruling striking out the appeal, there appears to have been agreement among the three justices constituting the Court to strike out the appeal. This is repeated in the order about payment of the costs. Surprisingly the third learned Justice of Appeal declined to sign the main ruling apparently because of the order as to who should pay the costs. However she did not give her own dissenting ruling as required by Rule 33(6) of Court of Appeal Rules. She also declined to participate in the subsequent hearing on costs because she disagreed as to who should pay costs. From the subsequent ruling on costs itself

there is no doubt that there was no coram when the hearing and final decision on costs was made. What has surprised us though is that on 02/04/2008, when the hearing on the question of payment of costs was conducted, the advocates for both sides appear to have condoned and allowed the hearing to proceed without a coram of three justices as required by law. None raised the question of lack of coram. In ordinary cases, this conduct would work against the appellants. But Article 135 and Rule 33 would be violated. Of course two wrongs never make a right. The order as to payment of costs is obviously incompetent. The question then is if C.K. Byamugisha, JA., participated in the hearing of the application, and reportedly concurred in ordering the striking out of the appeal, did her refusal to sign the main ruling and her absence from the hearing on costs render the ruling / order of the Court incompetent? Our answer is yes, it did. It is our considered opinion that the ruling by the Court of Appeal is a nullity because it lacked Coram during hearing and decision.

That would dispose of the appeal."

I find the following legal principles stated in the two above quoted cases relevant and providing guidance for resolution of the instant appeal.

1. A Justice who is a member of a Coram handling a case should participate in the proceedings of the Court at every stage from hearing to taking a decision on the case. The Court proceedings at every stage should be handled by a full Coram. Any proceedings in the case at any stage without a full Coram are a nullity.

2. Where Judgment or reasons for a decision, have been reserved and a Judge retires, dies or for any reason is not available for delivery of the Judgment, the Judgment may be delivered by another Justice/Judge or

a Registrar, provided the Judgment in question is in writing and was signed by the Justice/Judge who took part in the hearing and deciding of the case before he/she lost jurisdiction.

3. In criminal appeals, the Court is required to give one Judgment and a dissenting Judge shall not be required to sign the Judgment. This is not the case in civil matters. In civil appeals, separate Judgments shall be given by the members of the Court unless the decision being unanimous, the presiding Judge otherwise directs. Individual Justices who are part of a panel in civil cases must give reasons in writing for dissenting.

I will now proceed to investigate whether the Judgment in the instant appeal was handled in compliance with the legal principles stated in the two decisions of this Court above quoted.

The instant appeal was heard by Justices Alfonse Owiny-Dollo (DCJ now), Kenneth Kakuru JA, and Remmy Kasule JA at the Court of Appeal. It is not in contention that the appeal was heard by a full coram of three Justices on its merits. The issue in contention which is for resolution by this Court arises at the level of Judgment.

The Judgment available on Court record is dated 8th May 2019. It was signed by Justice Alfonse Owiny-Dollo and Justice Kenneth Kakuru. Ag. Justice Remmy Kasule did not sign the Judgment.

The reason why the Justice may not have signed the Judgment is given in the body of the Judgment itself in one sentence;

> ***"Justice Remmy Kasule was unable to sign this Judgment because at the time the final draft was ready he had retired from service."***

Justice Remmy Kasule did not write and sign his own Judgment before retirement. He did not write a dissenting Judgment stating his reasons for dissenting either.

The Judgment which is the subject of this appeal was ready after he had retired and it was signed only by Justices Owiny-Dollo and Kakuru.

My understanding of the circumstances of the Judgment of the Court Appeal in question is that Justice Remmy Kasule retired before the Judgment was ready and therefore he did not take part in writing the final Judgment of the Court. That is why he could not sign it. It was not his Judgment. He did not write his own Judgment or dissent before retirement.

The Court of Appeal had a coram when the appeal was heard but lacked quoram when the Court Judgment was finally produced and signed by only two Justices without the participation of the third member of the coram.

The resulting decision was taken by only two members of the three member coram. The two Justices acting alone without the participation of a third Justice forming the coram cannot form a majority. They could only form a majority if the three Justices had sat together and one of them had dissented from the other two. He would then be obliged to give reasons for his dissenting.

The Judgment of the two Justices produced without the participation of a third member of the coram is a nullity. I so hold. This goes to the root of the whole case and it is not a mere technicality.

There being no proper Judgment upon which the appeal is based, I would not proceed to discuss the other grounds of appeal.

Counsel for the respondent proposed in his written submissions, that incase this Court found the Judgment of the Court of Appeal wanting and unlawful for want of coram at the time of signing the Judgment, this should not be visited on

the respondents by delaying the Justice of this case. He prayed that the Court orders the learned Justices of the Court of Appeal who formed the coram in this matter to reschedule and consider the submissions which were made and are on record and deliver Judgment within 60 (sixty) days from this Court's decision.

I find that this proposal though intended to achieve expeditious disposal of the appeal, might give rise to unintended consequences and fresh challenges.

By the time the file reaches the Court of Appeal, one of the Justices may have retired or for any other reason may not be able to sit on the coram for different reasons.

In conclusion, I hold that the Court of Appeal lacked coram when it decided the appeal. The Judgment is a nullity as it does not comply with **Article 135 (1) of the Constitution, section 12 of the Judicature Act** and **Rule 33(5) of the Court of Appeal Rules.** I would hereby set it aside. The appeal should be heard afresh before a proper coram. I would leave the setting up of the coram to the Court of Appeal administration as they have information on the workload, the work schedules and availability of the Justices. I would only urge the Court of Appeal to give priority to the appeal as the case has clearly delayed in the Court system.

I would not make orders as to costs in this appeal given that the error arose from Court proceedings and was not a fault of either party.

Dated at this.....8th.....day of.....October.....2020

.....

Hon. Justice Richard Buteera

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA

(CORAM: KISAAKYE, ARACH-AMOKO, BUTEERA, MUHANGUZI, TUHAISE, JJSC)

CIVIL APPEAL NO.04 OF 2019

BETWEEN

JOHN LUBEGA::APPELLANT

AND

1, JOHN SSINABULYA
2. DEZIRANTA NANNONO:: RESPONDENTS
3. IVONA NANZIRI

[Appeal from the decssion of the Court of Appeal of Uganda at Kampala in Civil Appeal N0.18 of 2012] before: Owiny-Dollo, Kakuru and Kasule, JJA

JUDGMENT OF TUHAISE JSC.

I have had the benefit of reading in draft the lead judgment of my learned brother Justice Richard Buteera JSC.

I agree with his analysis of evidence, discussion of the law, decision and conclusions.

Dated at Kampala, this ----8th---- day of----October---- 2020.

Percy Night Tuhaise

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: Kisaakye, Arach-Amoko, Buteera, Muhanguzi, Tuhaise, JJSC)

CIVIL APPEAL NO. 04 OF 2019

BETWEEN

JOHN LUBEGA::APPELLANT

AND

1. **JOHN SSINABULYA**
2. **DEZIRANTA NANNONO**
3. **IVONA NANZIRI:::RESPONDENTS**

[Appeal from the judgment and orders of the Court of Appeal of Uganda (Owiny-Dollo, Kakuru, Kasule, JJA) in Civil Appeal No. 18 of 2012 dated 8th May, 2019]

<u>JUDGMENT OF MUHANGUZI, JSC</u>

I have had the benefit of reading in draft the lead judgment of my learned brother, Hon. Justice Richard Buteera, JSC.

I agree with his reasoning, conclusions and the orders he proposed.

Dated at Kampala, this......8th........ day of......October..........2020.

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Ezekiel Muhanguzi

JUSTICE OF THE SUPREME COURT.

THE REPURLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA
AT KAMPALA

(CORAM: Kisaakye, Arach-Amoko, Buteera Muhanguzi, Tuhaise; JJSC.)

CIVIL APPEAL NO. 04 OF 2019.

BETWEEN

JOHN LUBEGA:::APPELLANT

AND

1.JOHN SSINABULYA
2.DEZIRANTA NANNONO **:::::::::::::::::::::::::::RESPONDENTS**
3.IVONA NANZIRI

{Appeal arising from the judgment and orders of the Court of Appeal at Kampala (Owiny-Dollo, Kakuru, Kasule, JJA), in Civil Appeal No.18 of 2012 dated 8th May, 2019}.

JUDGMENT OF M.S.ARACH-AMOKO, JSC

I have had the benefit of reading in advance the draft Judgment prepared by my learned brother, Hon. Justice Buteera, JSC and I concur with his reasoning, conclusion and the orders he proposed.

Dated at Kampala this ...8th...day of...October...............2020

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M.S. ARACH-AMOKO
JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

[CORAM: KISAAKYE; ARACH-AMOKO; BUTEERA; MUHANGUZI; TUHAISE; JJ.S.C]

CIVIL APPEAL NO. 04 OF 2019

JOHN LUBEGA :: APPELLANT

v

1. **JOHN SSINABULYA**
2. **DEZIRANTA NANNONO :::::::::::::::::::::::::::: RESPONDENTS**
3. **IVONA NANZIRA**

(Arising from decision of the Court of Appeal at Kampala in Civil Appeal No. 18 of 2012, before Owiny-Dollo, Kakuru and Kasule, JJA, dated the 8th day of May 2019)

JUDGMENT OF HON. DR. KISAAKYE, JSC

I have had the benefit of reading in Draft the Judgment of my learned brother, Hon. Justice. Richard Buteera JSC. I agree with the Orders he has proposed.

As all other members of the Coram also agree, this appeal is allowed with the following orders:

1. The Judgment of the Court of Appeal in Civil Appeal No. 18 of 2012 is hereby set aside.

2. The appeal should be heard afresh before a proper Coram.

3. No orders are made as to costs.

Dated this 8th day of October 2020

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Hon. Dr. Justice Esther Kitimbo Kisaakye.
Justice of the Supreme Court