THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT GULU

HCT-02-CV- CA – 0036 – 2013

(Arising from Kitgum CS No. 27/2010)

1. DOREEN OTTO AYA
2. SUNDAY OTTO
3. NYEKO GODFREY >>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>>APPELLANTS
4. ACIRO LILLIAN
5. OOLA JOHNSON

VERSUS

OKWERA WILLIAM >>RESPONDENT

BEFORE HON. LADY JUSTICE MUTONYI MARGARET

J U D G E M E N T

This appeal arises from the judgment and decree in which the Appellants were dissatisfied. The judgment and orders were made by His Worship Emuria Charles Chief Magistrate as he then was.

The grounds of Appeal are the following.

1. That the trial magistrate erred in law and fact in not properly evaluating the evidence tendered in court with regard to the letters of Administration obtained on 4/7/2003 that was used at the time of the sale of the suit land on 26/5/2005.
2. The trial Magistrate erred in law and fact with a bias in reaching his conclusion especially on the 1st defendant/Appellant.
3. The learned Magistrate erred in law in entertaining a suit that was irregular.

BRIEF BACKGROUND

The brief background of the case is that the land in dispute is part of the estate of the late Major Peter Oola. The first Appellant lived on this land with the 5th Appellant, being one of the sons and beneficiaries of the estate of the late Peter Oola. Omony Moses Oola one of the sons of the late Peter Oola applied for letters of Administration before a Grade II Magistrate under Administration of estates (small estate) (Probate and Administration Rules 1972) which application was granted by a Grade II Magistrate,

Komakech Pido on 4/07/2003. Using the above mentioned letters of Administration, he sold estate land to Okwera William the plaintiff/Respondent.

The estate then had issues arising out of the sale and the matter was reported in the office of the Administrator General Gulu who advised that the letters of Administration were granted by a court not vested with jurisdiction. He issued a certificate of no objection to the beneficiaries who applied for letters of Administration before the High Court. The grant was issued by the Hon. Resident Judge then His Lordship Remmy Kasule, on 6/4/2010.

The plaintiff/appellant filed a Civil Suit against the defendants on 8/7/2010 claiming for (a) declarations that he was the owner of and entitled to rightful and absolute ownership of the suit land with a right to possession.

(b) An order of vacant possession of the suit land.

(c) Mesne profits

(d) General damages for trespass.

(e) A permanent injunction restraining the defendants whether by themselves, agents' and or workmen from further trespassing on the suit land.

(f) Interest on the decretal sum,

(g) Costs of the suit
(h) And any other relief that court may deem fit.

The matter was heard interparties and execution was done against appellants who were released pending determination of this appeal.
This case was heard by two Chief Magistrates. Emuria Charles and Keremani Jameson. The lower court had to determine the following issues as adopted from the notes of both sides.
(a). Whether or not the sale agreement between Omony Moses and the plaintiff is valid and confers ownership to the plaintiff.

(b). Whether or not the children of the deceased have valid letters of Administration to the estate of the late Major Oola Peter.
(c) Whether the 1st defendant is a widow of the late Oola Peter or not.
(d) Whether the defendants were beneficiaries of the estate of the late Major Peter Oola.
(e) What remedies were available?

It is the evaluation of the evidence and application of the law to the evidence in order to arrive at resolving the above issues that is being challenged in this appeal.
Both counsels made written submissions which are on record and I will refer to them as and when necessary.

As the first appellate court I have the obligation to re evaluate the evidence and make a fair and fit decision either concurring with the decision of the lower court, disagreeing with it altogether or in part and varying the orders where necessary.

RESOLUTION OF THE GROUNDS

Let me now revert to the resolution of the grounds the first being whether the trial magistrate erred in law and fact in not properly evaluating the evidence tendered in court.
The bedrock of the plaintiffs' case is that he bought land from Omony Moses the legal administrator of the estate of the late Major Peter Oola. This was in paragraph 5 of his plaint. The defendants denied paragraph 3-8 of the plaint. They therefore denied that Omony Moses is the administrator of the estate.

The trial Chief Magistrate in his judgment which was not numbered stated ***"****it appears against the belief that the Administrator General had powers to declare a grant invalid on the general as I have stated, it is only a court of law which is clutched with the jurisdiction to do so"*

This brings me to the issue of definition of jurisdiction.

It is the legal power, right or authority of a particular court to hear and determine causes or try suspected criminals in execution of justice, or judicial authority over a cause of action or class of causes within its limits of authority.

Jurisdiction of courts is statutory and cannot be exercised by convenience. Jurisdiction exercised without statutory legal authority is invalid and whatever order granted or issued by the court which is not vested with jurisdiction is null and void abinitio.

It is very clear from the proceedings of the lower court that the issue of validity of the letters of Administration became contentious. That is the letters of Administration issued by the Grade II court. Valid letters of Administration have the legal strength or force. They are obtained through proper channels and following proper formalities and incapable of being rightly overthrown or set aside.

As the plaintiff in the lower court presented his case, he relied on PW2 Omony Moses Oola who sold estate land using the grant from a Grade II Magistrate

On page 14 of the typed proceedings, exhibit P.3 a letter from the office of the Administrator General/Public Trustee addressed to Sunday Otto and Family of Nyeko Godfrey 2nd and 3rd Appellants was tendered in court through PW2. It is dated 12/3/2007 before the filing of the suit. In his evidence, PW2 informed court that there was a complaint lodged at the office of the Administrator General. He went there and told him about the land in dispute. He informed court and I quote "*That land is the one in dispute I told the Administrator that she was (1st appellant) not a wife to my late father and now I have allowed her to settle there and that she had brought other children not of my father. The Administrator General gave me a letter to bring to her to leave the land"*.

In exhibit P.3 the letters referred to above, the opening sentence was *"We have assumed administration of the estate of the above deceased person"*

This witness went ahead to say *"I contacted the administrator General again who promised to meet all of us. He came and met us but we never agreed. He advised me that the letters of Administration have been granted by a court which had no jurisdiction as the estate was of a higher amount. He gave a certificate of no objection to apply to High Court"*.

He tendered in a certificate of No objection which was marked Exhibit P.4.

I lodged an application in the High Court but OOla Johnson lodged a caveat. We met the Registrar……. He accepted and was added. The grant was issued in the names of Oola Moses, Okwera Jackson, Oola John and Layolo Eunice".

The second Grant by High Court was tendered and marked exhibit P.5.

There is nowhere on record, where it was stated that the Administrator General declared the grant by Grade II invalid. That was the Chief Magistrate's own belief which was erroneous. The Administrator General advised PW2 that the grant was issued by a court which had no jurisdiction. It was a matter of fact that it was invalid because the court had no jurisdiction as the estate was big not small.

By conduct and implication PW2 believed the advise of the Administrator General and went ahead to put things right. He obtained a certificate of No objection and applied for another grant in the High Court, where the 5th appellant was added after lodging a caveat. The grant was tendered and marked as exhibit P5. Courts of law apply the law and evidence to arrive at judgments. The judicial officer evaluates the evidence and applies the law to the facts.

In his judgment, the Chief Magistrate wrote and I quote *"As the matter stands, there are now two grants of letters of Administration on the same estate which cannot be. The validity of the grant of the letters of administration to the children of Major Peter Oola against the background of the existence of an earlier grant to Omony Moses is questionable for no two grants can exist on the same estate"*.

The learned trial chief magistrate left the issue hanging and yet he was to resolve on the validity of the 2nd grant.

In his judgment he did not refer to any law concerning issuance of grants or give reasons why he was questioning the grant issued by the High Court. I agree with the appellants counsel that he never evaluated the evidence. Had he done that he would have realized that the person who sold land using the grant from the Grade II Magistrate was the same person who pursued the application for the grant in the High Court. Can it be said that PW2 Omony Moses Oola intended to have two grants? Certainly the answer is no. He realized that his earlier grant was invalid and therefore wanted to get valid letters of Administration.

The learned chief magistrate rightly noted that it is not possible to have two grants at the same time. He had the obligation and duty to make a declaration as court as to which one was valid in view of the evidence before him and the law. It was glaringly apparent that the Grade II acted without jurisdiction and upon realization, PW2 promptly applied to the High Court where he added other applicants.

Had the learned Chief Magistrate addressed his mind to the facts and the law, he would have ruled that the first grant was invalid because it was granted by a judicial officer who had no jurisdiction and that the 2nd grant issued by the High Court was the valid one.

In his judgment, he unfairly and wrongly criticized the Administrator General who actually gave the right advise to the family which enabled them to apply for Letters of Administration in the High Court as the estate was of higher value.

The plaintiff also relied on exhibit P.2 which had documents from the Magistrate Grade II in Administration Cause No. 6/1999. The applicant in that file Omony Moses Oola of Lamit Kapin i.e. PW2 did not indicate the value of the estate. He left it blank. This kind of conduct on the side of Omony Moses Oola was fraudulent. He was not honest with court because he knew he had gone to a wrong court.

S. 2(1) a of Administration of Estates (Small Estates) special Provisions) Act Cap 156 provides "*Notwithstanding any provisions of succession Act, or Administrator General's Act to the contrary, jurisdiction to grant probate or letters of Administration in respect of small estates of deceased persons shall be exercised by a Magistrate Grade II where the total value of the estate*

does not exceed ten thousand shillings. S. 191 of the Succession Act Cap. 162 provides" No right to any part of the property of a person who had died intestate shall be established in any court of justice unless letters of Administration have first been granted by a court of competent jurisdiction". The letters of Administration gives the administrator the legal authority to deal with the estate.

Counsel Jude Ogik who represented the Defendants/Appellants in the lower court submitted that the sale agreement between Omony Moses and the plaintiff was invalid. That he could not transfer ownership to the plaintiff since he did not have any proper and competent letters of Administration to the estate of the late Major Peter Oola. The Chief Magistrate disagreed with the above submission. He ruled that "*As long as the grant had not been annulled it is valid. The said Omony Moses was a legal representative.*
By that sale to the plaintiff of the suit property, he conferred upon the plaintiff ownership of property as he was a legal administrator of the estate"

With due respect to the learned Chief Magistrate, he failed to apply the law to the facts. An illegality is an illegality. Grant of letters of Administration is governed by the law. The estate under consideration was not a small estate. It belonged to a Major in the army. It involved properties and gratuity more than 10,000/= shillings. PW2 who applied for letters from the Grade II Court admitted his error. The illegality was brought to the attention of the Chief Magistrate.
The law on illegalities was well settled in the case of (**MAKULA INTERNATIONAL LTD VERSUS HIS EMINANCE CARDINAL NSUBUGA & ANOR. (1982) HCB 11** where it was held that a court of law cannot sanction what is illegal, an illegality once brought to the attention of court, overrides all questions of pleadings including any admission made thereon.

In the instant case the respondent bought land from PW2 Omony Moses Oola who had obtained letters of Administration from a court which was not competent to grant letters in the estate of his late father. Jurisdiction is a creation of statute much as a Grade II court had jurisdiction to grant letters of administration, it would only do so in small estates. When PW2 applied for letters, he filled forms which described his father's estate as small whereas to his knowledge it

was not small. He cannot be allowed by court to benefit from his own illegal actions, neither can ignorance of the law be his defence because it is not a legal defence. I agree with the submission of counsel for the applicants that the letters of Administration granted by His Worship Komakech Pido Magistrate Grade II on 26/5/2005 to Omony Moses were invalid and void in law.

What does that mean? They were of no legal effect and therefore had no binding force. Neither were they capable of any confirmation or ratification.

In my opinion, it was a useless piece of paper. The trial chief magistrate other than claiming the letters were valid because they had not been annulled did not mention anything about jurisdiction and competency of Grade II Magistrate to issue a grant in a big estate. The Chief Magistrate tried to say, that a grade II Magistrate can pass out a valid order in any cause or case beyond his jurisdiction and as long as it is not annulled, it remains valid and should be neglected by courts of law.

If courts of law are to sanction illegalities arising out of court's jurisdiction, then there would be no need for provisions relating to jurisdiction. I agree with the holding in **Inid Tumwebaze vs Mpweire Stephen & Anor HCT – CV - CA – 0039 – 2010** where Hon. Mr. Justice Bashaija K. Andrew held that the transaction that led to the sale of land and the sale itself were illegal abinitio and the orders of the trial court in that case were accordingly set aside.

In the instant case, the Chief Magistrate ought to have known that the sale of the land in dispute was as a result of letters of Administration obtained without jurisdiction. He admitted the second grant by the High Court in evidence but remained confused. He did not explain why he admitted it in evidence and why he doubted it. It was not enough for him to say it was questionable. It is also not conceivable that he would prefer the letter of Administration issued by the court which had no jurisdiction and therefore invalid to a valid one issued by the court vested with jurisdiction.

The above confirms the allegation of bias on his part which is the 2nd ground of this appeal and I do not intend to dwell on it further.

The respondents counsel submitted in brief that there is no legal basis for faulting the Chief Magistrate and that the authorities and sections of the law relied on by counsel for the appellants, are out of context. With due respect, I do not agree with him. The trial Chief Magistrate did not properly evaluate the evidence before him and the exhibits tendered in court before arriving at his erroneous decision.

The sale of land by PW2 to the plaintiff/respondent which led to the agreement dated 26/5/2005 was illegal because he was not in possession of valid letters of Administration issued by a competent court at the time the transaction took place. PW2 did not therefore have the legal authority recognized under the law and any competent court to confer ownership of estate property to the plaintiff/respondent.

The estate of the late major Peter Oola was as good as having no administrator as at 26/5/2005. It is only now that they have administrators vide letters of Administration issued by the High Court Gulu. The trial Chief Magistrate was also expected to make a ruling on whether or not the children of the deceased have a valid letters of Administration of the estate of the late Major Oola Peter.

In his decision as pointed out earlier, he failed totally to pronounce himself on this. He concluded that there are two letters of Administration which is not possible. He however questioned the valid grant which was initiated by PW2 who was in possession of an invalid one.

He therefore erred in law and fact by not coming out clearly on this issue. It was very apparent that the court was in possession of exhibit P5. PW2 had evidence in court that after the Administrator General advised him on the want of jurisdiction of the Grade II he followed the right procedure and formalities and they were granted letters of Administration by the High Court"

The Chief Magistrate indeed erred in law and in fact in not ruling that the children have a valid letters of Administration. In courts view he wanted to maintain the status quo which PW2 had left. That is invalid grant to remain in force.

The trial magistrate had to pronounce himself on whether the 1st defendant/appellant is a widow or not of the late Major Oola Peter. I do agree with his findings, on the status of the 1st defendant/appellant. Much as she is the mother of the 5th defendant/appellant who is a child to the late Major Oola Peter, that does not qualify her to be a widow to the late Major Oola Peter.

Marriage in Uganda is legally provided for and producing children or a child with a person does not automatically qualify one to be a widow or widower. I do not fault him in finding that 1st Defendant/1st Appellant did not adduce evidence to prove that she was a legal widow. She stayed on this land as a friend to the deceased and mother of defendant No. 5/Appellant. She raised her child from this very land.

The fourth issue was whether the defendants were beneficiaries of the estate. This court does not even see how this issue came about. It was wrongly framed. The issue before court was trespassing on the land and declaration of ownership.
He found that evidence on record shows that defendants No. 2, 3 and 4 did not reside on the suit property but were residents of Gangdyang. They further declared that they have no interest on the said land. Instead of pronouncing himself on this issue and declaring that defendant number 2, 3 and 4 were not trespassers, and have no interest on the land and that the plaintiff has not proved a case against them, he kept quiet about it but surprisingly made orders that the 1st defendant and other defendants are ordered to give vacant possession of the suit property to the plaintiff.

To show that he erroneously made the above order, he did not award general damages against them but only against 1st defendant/appellant. On the issue of 1st defendant/appellant, PW2 informed court that he allowed her to stay on the land in dispute as she had nowhere to go. This was after he assumed the purported letters of Administration which this court has ruled were invalid with no legal force and effect.

The plaintiff himself testified that Oola Johnson the 5th defendant refused to sign the sale agreement. In court's opinion he was right to refuse because PW2 and others purported to sell where the 5th defendant was living without even consulting him as a beneficiary. They were

using invalid letter of Administration. The chief magistrate ordered for vacant possession regardless of the fact that the 5th defendant was not party to the sell agreement, and not party to the family resolution to sell the property, and the fact that it was brought to his notice that the grant by the Grade II was invalid. The 5th defendant has the right to live on the land where his father left him.

In view of the above, this court is exercising its jurisdiction under S. 80 of the Civil Procedure Act to allow the appeal with the following orders:-

1. The letters of Administration issued by his Worship Komakech Pido Magistrate Grade II vide Administration Cause No. 6/1999 to Omony Moses Oola are declared null and void abinitio for want of jurisdiction of the court that issued them.
2. The sale of the suit land being part of the estate of the late Major Peter Oola vide sale agreement dated 26/5/2005 between Omony Moses Oola and Okwera William is declared illegal and unlawful as the seller had no legal right to sell or confer ownership to the buyer.
3. The status quo prevailing before 26/5/2005 be maintained.
4. The judgment and orders/decree made against the defendants be and are hereby set aside.
5. No order is made as to counter claim because I did not find any evidence on record in proof of the counter claim.
6. The respondent is at liberty to claim his money from the person who received it from him.
7. Costs of the suit below and here are awarded to the appellants.

Rights of appeal explained

…….

Mutonyi Margaret

Judge

28/10/2014

28/10/2014

Both parties in court

Judith Oroma for Appellants

Martin Oloya for the Respondent

Anna Alengo for clerk.

Oroma: The matter is for judgment and we are ready to receive it.

Court: Judgment read and delivered in the presence of the above parties present.

Right of Appeal explained.

……

Mutonyi Margaret

Judge

28/10/2014

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT GULU

HCT-02-CV- CA – 0036 – 2013

(*Arising from Kitgum CS No. 27/2010)*

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2. SUNDAY OTTO
3. NYEKO GODFREY >>>>>>>>>>>>>>>>>>>>>>>>>>>>APPELLANTS
4. ACIRO LILLIAN
5. OOLA JOHNSON

VERSUS

OKWERA WILLIAM >>RESPONDENT

O R D E R

This matter is coming up for final judgment this **28th** day of **October 2014** before me **Her Lordship Margaret Mutonyi**, the Resident Judge of Gulu High Court in the presence of **Judith Oroma ESQ,** Counsel for the Appellants and in the presence of **Martine Oloya ESQ,** Counsel for the Respondent and in the further presence of both parties.

IT IS HEREBY DECREED and ORDERED by this court that:-

1. The letters of Administration issued by His Worship Komakech Pido Magistrate Grade II vide Administration Cause No. 6/1999 to Omony Moses Oola are declared null and void abinitio for want of jurisdiction of the court that issued them.

2. The sale of the suit land being part of the estate of the late Major Peter Oola vide sale agreement dated 26/5/2005 between Omony Moses Oola and Okwera William is declared illegal and unlawful as the seller had no legal right to sell or confer ownership to the buyer.

3. The status quo prevailing before 26/5/2005 be maintained.

4. The judgment and orders/decree made against the defendants be and are hereby set aside.

5. No order is made as to counter claim because there is no evidence on record in proof of the counter claim.

6. The respondent is at liberty to claim his money from the person who received it from him.

7. Costs of the suit below and here are awarded to the appellants.

GIVEN under my hand and the seal of this Honourable court this ……..day of ……..2014

……
J U D G E

EXTRACTED BY:
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Gulu