

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

CIVIL APPEAL NO. 0053 OF 2015

[ARISING FROM WOBULENZI CIVIL SUIT NO. 143 OF 2014]

MUJIB JUMA:.....:DEFENDANT

VERSUS

- 1. ADAM MUSA**
- 2. HARUNA NOHA**
- 3. HUSSEIN NOHA**
- 4. KASSIM HASSAN SALONGO**
- 5. ISMAIL RAMADHAN:.....:CROSS APPELLANTS**
- 6. AMIN RAJAB**
- 7. ABDUL KARIM HARUN**
- 8. ABDUL HAMID HASSAN (KADOGO)**
- 9. MUSA HASSAN SALONGO**

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT

The appeal and cross appeal arise from the decision (Ruling) of the GI Luwero Court at Wobulenzi in Civil Suit No. 143 of 2014. The Ruling arose from proceedings whereby, following a preliminary objection raised by the Defendants/Cross Appellants, the trial Magistrate delivered a ruling, which is the subject matter of this appeal and cross appeal.

The Appellant raised 3 grounds of appeal namely;

- 1) That the Learned Trial Magistrate erred in law when he held that Abdallah Masum and Haruna Noha are the 2nd and 3rd Defendants.
- 2) That the Learned Trial Magistrate erred in law and fact in concluding that in the absence of a rejoinder to the Written Statement of Defence, the Plaintiff's claim was not for any other land, but that one for which the 2nd and 3rd Defendants are registered as proprietors, that is to say Bulemezi Block 1026 Plot 2033.

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- 3) That the Learned Trial Magistrate erred in law and fact when he held that there was a misjoinder of parties and action and consequently dismissed the Plaintiff's suit against the 2nd and 3rd Defendants.

By way of cross appeal, the Cross Appellant raised two grounds of appeal namely;

- i) That the Learned Trial Magistrate erred in holding that a Magistrate Grade one has jurisdiction to entertain claims of trespass in respect to the subject matter whose value exceed its stipulated pecuniary jurisdiction.
- ii) That the Learned Trial Magistrate erred in law when he misdirected himself in interpreting the law which provides for pecuniary jurisdiction of the Grade I Magistrate.

Arising from the cross appeal, the memorandum raises a question of law which touches the entire root of the trial. If what the Cross Appellant raises is found in the affirmative, it has an effect of disposing of even the main appeal. I will therefore first resolve the question raised by the Cross Appellant if the trial Court had the jurisdiction to hear the matter; and hence grant the orders, the subject of this appeal/cross appeal.

I will resolve the two grounds of the joint appeal together, then will determine the other grounds of appeal together.

The Cross Appellant's Counsel referred this Court to page two, paragraph 6 of the Trial Magistrate's Ruling where he stated that;

"I do agree. From the pleadings, it is clear that the cause of action is in trespass. The Plaintiff is not contesting ownership because he is the registered proprietor. He is only seeking to protect his rights as proprietor. The claim founded on trespass in my view is not subject to the value Counsel was alluding to. The Court has jurisdiction to entertain the matter and I hold so"

This holding arose from a preliminary objection raised at the commencement of the hearing by Counsel for the Respondents/ Cross Appellants that the trial Grade I Court did not have jurisdiction to entertain the subject matter relating to the suit land comprised in Bulemezi Block 1026 Plot 2300 about 8.734 hectares whose value exceeded shs. 80,000,000/- (*eighty million only*) above the pecuniary jurisdiction of the Grade I Court.

This is a point of law. Jurisdiction of Court can only be granted by law. If proceedings are conducted by a court without jurisdiction, they are a *nullity*. This was the case in *Desai versus Warsaw (1967) EA 351*. Therefore any award or judgment arising from such proceedings of a Court without jurisdiction is also a *nullity*.

I note from the Ruling of the Court and from the submissions of the Plaintiff/Appellant that the preliminary objection was raised, at a time when the Trial Magistrate had recorded a consent order between the parties to conduct a joint survey. Instead of getting the report, Court was informed that the Defendants/Respondents had not participated because they objected to Court's jurisdiction. The Court allowed Counsel to raise the objection formally – which he did. (*See the Ruling*).

In the Appellant's submissions, Counsel faults Court for entertaining the preliminary objection, instead of citing the Defendants in contempt of Court for disobeying Court's orders. This is a misunderstanding of the law and procedure because a preliminary objection that the Court has no jurisdiction, may be raised at any time. "If Court finds that it has no jurisdiction to handle the matter, the proceedings should be halted and transferred to the relevant Court where possible" (Per the *Uganda Civil Justice Bench Book – 1st Edn, Jan. 2016 – page 46.*)

Did the Magistrate have jurisdiction in the matter?

The jurisdiction of the Magistrate's Courts is laid out in the **Magistrate's Courts Act** as amended by **Act 7 of 2007**. The Act provided as follows:

Subject to this Act and other written law, the jurisdiction of Magistrates presiding over Magistrate's Courts for trial and determination of causes and matters of a civil

nature shall be as follows: “A Chief Magistrate shall have jurisdiction where the subject matter of the dispute does not exceed fifty million shillings and shall have unlimited jurisdiction in disputes relating to conversion, damage to property or trespass.

“A Magistrate Grade 1 shall have jurisdiction where the value of the subject matter does not exceed twenty million shillings”.

Looking at the plaint, the Plaintiff did not reveal the pecuniary equivalent value of the property, but described it as trespass on land comprised in Bulemezi Block 1026 plot 2300 Nyimbwa – Luwero. Though at the trial, the Defendant brought to the attention of Court that it had no jurisdiction to try the matter because the value of this land is over shs. 50,000,000/- (fifty million), the Court ruled that it has unlimited jurisdiction in matters of trespass to land.

In determining this matter, I will make reference to a similar case of **Koboko District Local Government versus Okujjo Swali Misc. Application No.001/2016 of Arua** where my brother **Hon. J. Mubiru**, considered this question at length and observed that according to **Section 207(1) (b) of the Magistrate Court Act as amended by Act No. 7 of 2007**, and **Section 207 (2)**, the Magistrate Court GI has unlimited jurisdiction with regard to disputes relating to a cause or matter of a Civil nature governed only by Civil Customary Law.

The question therefore is whether the suit filed by the Respondent was governed only by Civil Customary Law; whereas **Section 5(1)(a) of the Magistrate Court Act** defines *Civil Customary Law as the rules of conduct which govern legal relationships as established by custom and usage and not forming part of the Common Law formally enacted by a Parliament*, the Judge concluded that trespass described by the plaint in that case was not governed only by Civil Customary Law, but also by the Law of Contract both under **Common Law and the Contract Act 2010**.

The Judge observed that the action in trespass was as well is maintainable under the Common Law of Torts. The claim was therefore based on Legal relationships forming part of the Common Law and partly by the enactment of Parliament. He ruled that this was not an action based exclusively on Civil Customary Law and therefore the Grade One Magistrate’s

Court in his view did not have unlimited jurisdiction, but rather its pecuniary jurisdiction was limited to shs. 20,000,000/- (*twenty million only*) as stipulated by **S.207 (1) (b) of the MCA**.

I do agree and I find this case on all fours with the facts before me, where the suit was brought in trespass, arising from a landlord tenant relationship, governed by Statutory Land Law – and not Customary Law.

The Plaintiff's land is stated to be registered as Bulemezi Block 1026 Plot 2300 – Luwero. This land is governed *inter alia* by the provisions of the Registration of Titles Act, and not by Civil Customary Law.

Also the particulars stated under paragraph 5 of the plaint relate to failure to pay Busulu, OR buying off their bibanja to get titles, (which is a non-customary matter, but a requirement under **Section 29-31 of the Land Act**).

These matters are not purely matters of Customary Civil rights. I do not therefore agree with the proposition by the Learned Trial Magistrate that this type of cause of action is one where he held unlimited jurisdiction.

Therefore I do not agree with the holding on this issue by the Learned Trial Magistrate in this matter. According to the cited cases of **Stephen Mubiru versus Annet Mubiru, Rev. Cause No.4/2012** and **Karoli Mubiru & 21 Others versus Edmund Kayiwa [1979] HCB 212, Mugoya James Gidudu & Anor [1991] HCB 63**. *The effect is that as in Mugoya versus Gidudu & Anor (supra) which held that:*

‘A judgment of Court without jurisdiction is a nullity. The orders which follow such a judgment must be set aside ex-debits judiciali (as of right). The proceedings and pleadings before the Learned Trial Magistrate were enough for him to investigate the question of jurisdiction and confirm the pecuniary value since it had come in issue. There was no need to hide under the claim of trespass which in any case did not give him a right to confer jurisdiction on himself’.

Furthermore, **Section 4 of the Civil Procedure Act** provides that;

“Except in so far as is otherwise provided, nothing in this Act, shall operate to give any Court jurisdiction over suits the amount of value of the subject matter of which exceeds the pecuniary limits if any of its ordinary jurisdiction”

This provision limits the jurisdiction to its statutory provisions; hence the GI’s jurisdiction is limited to shs. 20,000,000/- (*twenty million only*).

The Learned Trial Magistrate therefore erred in law and in fact to grant himself jurisdiction in the matter. **In Makula International versus His Eminence Cardinal Wamala Nsubuga [1982] HCB 24,** Court held that;

‘Once an illegality is drawn to the attention of Court, it overrides all matters and such illegality cannot be allowed to stand’

The orders of the Learned Trial Magistrate therefore were given in error. This cross appeal succeeds as prayed by Counsel for the Cross Appellant.

The effect of this finding is that all the orders the Learned Trial Magistrate gave in that Ruling, which are the subject of the Plaintiffs/Appellants contentions, cannot stand. The Ruling is *null* and *void* so are the orders founded on it. No appeal can arise from them since they are a nullity.

In view of the findings under the Cross Appeal, that Court had no jurisdiction. The appeal is dismissed.

The Cross Appeal is allowed.

Costs to the Respondent/Cross Appellants.

I so order.

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Henry I. Kawesa

JUDGE

4/04/2018

4/04/2018 at 2.00 pm:

Jogo Tabu for the Appellant present.

Ajungule for the Respondent absent.

Court: Judgment red to parties above.

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Henry I. Kawesa

JUDGE

4/04/2018