

**CIVIL SUIT NO. 0862-2017-STEPHEN STUYVESANT VS HON. NANDALA MAFABI  
(RULING)**

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**LAND DIVISION**

**CIVIL SUIT NO.862 OF 2017**

**1. STEPHEN STUYVESANT WOBWENI**

**2. NATURINDA ANNENT :::PLAINTIFFS**

**VERSES**

**1. HON.NANDALA MAFABI**

**2. THE COMMISSIONER LAND REGISTRATION::::::::::::::::::DEFENDANTS**

**BEFORE: HON. MR. JUSTICE HENRY I. KAWESA**

**RULING**

The Plaintiffs filed HCCS No 862 of 2017 against the Defendants jointly and severally for a declaration that;

1. The registration of the 1<sup>st</sup> Defendant as the registered proprietor on the certificate of title to the land comprised in FRV 391 Folio 21 known as Plot 4 Nakaloke Road Mbale M.29, measuring approximately 0.290 Hectares is *null and void*.
2. A declaration that the 1<sup>st</sup> Defendant was wrongfully and unlawfully registered as owner of the suit property.
3. An order directing the Commissioner Land Registration and the Registrar of Titles to cancel the certificate of title of the suit land, de-register the 1<sup>st</sup> Defendant and in the alternative the Commissioner Land Registration does issues a special certificate of title for the suit land.

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4. A permanent injunction against the 1<sup>st</sup> Defendant.
5. General damages.
6. Exemplary damages and;
7. Costs of the suit.

In his defence, the 1<sup>st</sup> Defendant (*Hon. Nandala Mafabi*) raised a point of law to the effect that the land Division sitting at Kampala, (*this Court*) does not have the jurisdiction to hear this suit and that the same should be dismissed with costs.

On the 13<sup>th</sup> June 2019, this Court granted the applicants leave to file written submissions in regard to the 1<sup>st</sup> Defendant's point of law which was adhered which will accordingly be relied on in this ruling.

Issues to be determined by this Court.

Whether this Court (High Court Land Division) has no jurisdiction to try Civil Suit No. 862 of 2017.

From the onset, I note that contrary to the order of Court to the parties to file submissions of five pages of ordinary front, the Plaintiff on the 1<sup>st</sup> July 2019 filed into Court 23 pages citing various authorities without attaching them for perusal by this Court.

The 1<sup>st</sup> Defendant filed his rejoinder on the 5<sup>th</sup> July 2019 cautioning Court on the number of pages the Plaintiff had filed in this Court and thereafter on the 29<sup>th</sup> July 2019, the Plaintiff filed what he titled submissions in reply to the 1<sup>st</sup> Defendant's written submissions. The later submissions filed by the Plaintiffs will be considered as they have been filed out of time and without leave of Court.

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Be that as it may, this objection was premised on the point that this suit should be dismissed with costs for being filed in Court that lack jurisdiction.

It was the 1<sup>st</sup> Defendant's submission that suits for recovery of immovable properties shall be instituted in the Court with the local limits of whose jurisdiction the property is situate

Counsel for the 1<sup>st</sup> Defendant relied on Section 12 (a) & (d) of the Civil Procedure Act which states;

(a), that subject to the pecuniary or other limitations prescribed by any law, suits for recovery of immovable property, with or without rent or profit...shall be instituted in the Court within the local limits of whose jurisdiction the property is situated. He further cited the case of ***Makula International Ltd (1982) HCB 11*** for the holding that;

*'an illegality once brought to the attention of Court overrides all questions of pleading including admissions'.*

In reply, at page 5 of the Plaintiff's submission in rebuttal, it was Counsel's case that the High Court has unlimited jurisdiction in civil matters. He cited Article 139 of the Constitution and section 14 of the Judicature Act for the above position. That in selecting a Court with power over this type of litigation, regard must be made to the pecuniary limitation of such Courts and the enabling law which empowers such Courts to hear such cases, see. Section 4 and 12 of the Civil Procedure Act

He submits that the cause of action arose in Kampala within the jurisdiction of this Court and that the value of the subject matter is around Ushs. 1,000,000,000/- only (*one billion shillings*).

It was his case that the as a general rule, a Plaintiff has a right to choose his or her Court and that an order for transfer of a suit cannot be made unless the suit has in the first instance been brought to a Court which has jurisdiction to try it.

In ***Mujib Juma versus Adam Musa & Others C.A No. 53 of 2015***, this Court held that;

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*“Jurisdiction of Court can only be granted by law. If proceedings are conducted without jurisdiction, they are a nullity. Therefore any award or judgment arising from such proceedings of Court without jurisdiction is also a nullity”.*

And also in *Uganda Telecom Limited versus Adratere Oreste (Misc Civil Appln No. 0021 of 2015)*, it was noted that;

*“It is trite law that the jurisdiction of Courts is a creature of statute. A Court cannot exercise a jurisdiction that is not conferred upon it by law. Therefore, whatever a Court purports to do without jurisdiction is a nullity abinitio”.*

Article 139 (1) of the Constitution empowers the High Court with unlimited jurisdiction in all matters brought before it.

I agree with the Plaintiff’s submissions that the High Court has unlimited jurisdiction and that the Plaintiff is at liberty to sue in a Court in which he wishes. However, I need to note that this is true where the Defendant has not disputed to the geographical jurisdiction and has merely submitted to the jurisdiction of Court.

I find that the Plaintiff’s case is clear and the remedies sought there under. The Plaintiffs seek recovery of an immovable property which is comprised in FRV 391 Folio 12 Plot 4 Nakaloke Road Mbale M.29 measuring approximately 0.290 Hectares in Mbale district.

Having found that this Court has no geographical jurisdiction, it shall hence be handled with a Court having both geographical and pecuniary jurisdiction to give effect to Section 12(a) of the Civil Procedure Act which provides for jurisdiction as to immovable properties.

In the case of *Makula International Ltd versus His Eminence Cardinal Nsubuga (1982) HCB 11*; it was held that, ‘*an Illegality ounce brought to the attention of Court overrides all questions of pleading including admissions*’.

In *Cyprian Obbo versus Alafari Onyango & Ors; HCCA No. 130/2012* the trial judge relied on the case of *Kigenyi versus Musiramo (1968) EA* where it was held that;

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*“an order for transfer of a suit cannot be made unless the suit had in the 1<sup>st</sup> instance brought to a Court which has jurisdiction to try it. As such, to avoid any illegality, this suit will not be dismissed but it is hereby transferred to Mbale High Court since both Courts have jurisdiction to try this matter”.*

It is also undisputed that the suit property of which the Plaintiffs claim to be their matrimonial home is in Mbale. On his part, the Defendant claims that the cause of action arose in Mbale outside the jurisdiction of this Honourable Court. The Court will also ease the issues of *locus* in case of *locus* visits since the Defendant claims this property has never been a matrimonial home.

With this Court, I find that it will be costly and inconveniencing to transport witnesses and catering for them if any. I therefore order the Registrar to transfer the matter to the High Court at Mbale immediately.

Each party to bear its own costs.

I so order.

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Henry I. Kawesa

**JUDGE**

22/08/2019

22/08/2019:

Semuyaba for the Plaintiff

Komakech Geoffrey for the 1<sup>st</sup> Respondent.

1<sup>st</sup> Respondent present.

Plaintiff present.

Court:

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Ruling is delivered to the parties on the preliminary objection. The same is red out to the parties.

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Henry I. Kawesa

**JUDGE**

22/08/2019