THE REPUBLIC OF UGANDA,

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: OWINY – DOLLO, CJ, MWONDHA, TIBATEMWA - EKIRIKUBINZA, CHIBITA & MADRAMA, JJSC)

CIVIL APPEAL NO 23 OF 2020

1. STEVEN KALANZI KATABAZI}
2. HENRY SENOGA}
3. ISAAC MATOVU} ..... APPELLANTS

VERSUS

1. IGANTITUS KADOMA}
2. HATI KOBUSINGYE} .....RESPONDENTS

(Appeal from the Judgment of the Court of Appeal at Kampala before Hon Lady Justice Elizabeth Musoke, Hon. Mr. Justice Stephen Musota and Hon. Justice Mr. Remmy Kasule dated 24th July, 2020 in Court of Appeal Civil Appeal No. 003 of 2018 also arising from the Judgment of the High Court of Uganda (Land Division) per Bashaija, J in Civil Suit No. 524 of 2014)

JUDGMENT OF CHRISTOPHER MADRAMA IZAMA, JSC

This is a second appeal from the judgment of the Court of Appeal upon determination of an appeal from the decision of the High Court in the exercise of its original jurisdiction. The respondents sued the appellant for trespass on 0.18 acres in their property comprised in Kyadondo Block 269 Plot 25, land at Lubowa, whereupon the appellants counterclaimed against the respondent for a declaration that they had a right of use of the 0.18 acres as an access road to their Plot and that the respondent was guilty of a private nuisance against the appellants for erecting a wall on the access road.

The High Court allowed the suit of the respondents, dismissed the counterclaim of the appellants and issued the following orders:

1. The defendants (the current appellants) are trespassers on 0.18 acres of the suit land.
2. The defendants ordered to give complete and full vacant possession to the plaintiffs by vacating of the suit land.
3. A permanent injunction to issue against the defendants or anyone deriving authority from them from continuing to trespass on the suit land.
4. The plaintiffs are awarded all the special damages as pleaded in the plaint.
5. The plaintiffs are awarded general damages of shillings 50,000,000/=
6. amount in (4) and (5) above shall attract interest at 8% per annum from the date of this judgment until payment in full.
7. The plaintiffs are awarded costs of the suit.

The appellants were aggrieved and appealed to the Court of Appeal and the appeal was dismissed save that the Court of Appeal reduced the award of Uganda shillings 50,000,000/= to 20,000,000/=.

The appellants were still aggrieved and lodged a second appeal in this court on two grounds of appeal namely:

1. That the learned Justices of Appeal erred when they failed to properly evaluate the law on easements and came to a wrong conclusion that the existence of a footpath on the suit land was not a form of easement on the suit property.
2. That the learned Justices of Appeal erred when they failed to properly evaluate the law and came to a wrong conclusion that the respondent's act did not amount to a private nuisance.

When the appeal came for hearing, the appellant was represented by learned counsel Esau Isingoma and the respondent was represented by learned counsel Amos Busheja. The court was addressed by way of written submissions filed on the court record which both counsel adopted as their address to this court whereupon Judgment was reserved on notice.

Ground 1.

The appellant's counsel addressed the court on the evidence that shows that there was a footpath which had been in continuous use on the suit land. Secondly, the appellant's counsel submitted that the learned Justices of the Court of Appeal erred in law in holding that the footpath recognised by the respondent and the trial judge was not an easement. That their lordships further erred when they confirmed the trial judge's assertion that the creation of all easements must follow the right procedure set out in the Access to Roads Act cap 350. He submitted that an easement is a right of use of someone's land for a specific purpose and allows another to use and to enter upon property of another without possessing it. Counsel further addressed the court on the law on easements.

With regard to ground 2, the appellant's counsel submitted that the holding on the first ground was erroneous and therefore if the court found that there was an easement, then the blocking of the access route by creating a wall fence was a private nuisance against them.

In reply to ground 1 of the appeal, the respondent's counsel submitted that issues were framed and agreed upon by the parties for the court's determination and upon which the decision of the trial court issued on the question of whether there was an access road on the land comprised in Kyadondo Block 269 Plot 25 land at Lubowa which serviced Plots 26, 50, 53, 54 and 55. The second issue in the trial court was whether the defendants created the access road. In the premises, it was misleading to divert the court to consider a footpath since the court dealt with the issue of whether there was an access road. Counsel contended that if the appellant wanted the Justices of the Court of Appeal to fault the trial judge and make a finding that the existence of a footpath on the suit property amounted to an easement, they ought to have pleaded the same and also adduced evidence in support thereof at the trial.

The submissions of the respondent on ground 1 also shaped the submissions on ground 2 based on the outcome of ground 1. Ground 1 of the

appeal, therefore, has to be determined as its outcome determines the outcome of ground 2. If ground 1 of the appeal fails, then there would be no need to consider ground 2 of the appeal because its outcome leads to the determination of Ground 2 of the appeal one way or the other.

In rejoinder, the appellant's counsel reiterated submissions that the trial Justices of Appeal erred in law and failed to evaluate the evidence on record on the question of the footpath as an easement. He contended that it was erroneous and a misdirection of the respondents' counsel to assert that the matter was never in the pleadings of the trial court yet it was argued by both parties in the trial court and in the Court of Appeal.

Consideration of the appeal.

I have carefully considered the grounds of appeal, the submissions of counsel and the law. A second appeal ought to be considered on point of law especially where there are concurrent findings of fact of the first appellate court and the trial court on the issue.

The facts on which the appeal is based are not in dispute. The respondent raised a point of law that the issue of a footpath as contra distinguished from an access road was not pleaded and cannot be considered in a second appeal. The two grounds of appeal in this court are that:

1. That the learned Justices of Appeal erred when they failed to properly evaluate the law on easements and came to a wrong conclusion that the existence of a footpath on the suit land was not a form of easement on the suit property.

2. That the learned Justices of Appeal erred when they failed to properly evaluate the law and came to a wrong conclusion that the respondent's act did not amount to a private nuisance.

If this court disallows the first ground and affirms the concurrent findings of fact and law of the trial court and the first appellant court, the resolution of ground 1 would resolve the second ground of appeal. Secondly the

respondent raised a point of law that the appellant cannot raise the issue of a footpath and easements in a second appeal because this was not pleaded.

I have carefully considered the matters considered by the trial court and the first appellate court to determine whether ground 1 can be lawfully argued in a second appeal and it is necessary to give a brief background to the ground before resolving the point of law.

Proceedings commenced in the High Court when the respondents to this appeal sued the appellants to this appeal for declaration that the defendants who are now the appellants in this court are trespassers on 0.18 acres of land comprised in FRV 365 folio 10 Plot 25 Lubowa Estate, and for vacant possession, a permanent injunction restraining the appellants or their agents from continuing to trespass on the suit property, general damages, interest and costs.

The plaintiffs are registered proprietors of 1.021 acres which they purchased from the former proprietor Mr Yusuf Kagumire. They purchased the property upon conducting a search which showed that there was no access road as alleged by the appellants but upon surveying the property after purchasing it, they established that 0.18 acres had been alienated leaving them with only 0.841 acres out of the 1.023 acres they purchased. The 0.18 acres remaining was created and alienated to make an access road to adjourning neighbouring plots which included that of the appellants and the adjourning Plots allegedly serviced by the created access roads are Plots 26, 50, 53, 54, and 55.

The respondents fenced off the entire 1.021 acres thereby fencing within their Plot, the contested 0.84 acres claimed by the appellants as an access road. The 0.84 acres was assessed by a valuation surveyor who valued it at a sum of Uganda shillings 125,000,000/=. The appellants destroyed the perimeter wall the respondent had erected to fence off their 1.021 acres of land. In their defence to the suit of the respondents, the appellants denied being trespassers and claimed to be users of the access road which leads

to the named adjourning plots. They claimed that the access road had been in existence for a long time. The appellants counterclaimed against the respondent alleging private nuisance for interference with their quiet enjoyment of the access road. They sought a declaration that they were entitled to the use of the access road comprising of the 0.84 acres carved out of the respondent's Plot No. 25.

The trial court set out four issues for determination of the suit namely:

1. Whether there was an access road on the land comprised in Kyadondo Block 269 Plot 25 land at Lubowa that services Plot 26, 50, 53, 54 and 55?
2. Whether the defendants created the access road?
3. Whether the plaintiffs are liable to the defendants for private nuisance?
4. Remedies for the parties.

On the first issue the trial court considered the fact that there was no access road as shown in the title and cadastral map for the suit property (Plot No. 25) produced by the respondent which was for the entire 1.021 acres. The court found as a later creation, the cadastral map produced by the appellants which has provision for an access road between Plots 24 and 26 and which reduced Plot 25 by 0.18 acres. Further the trial judge found that the stance of the appellants in the suit was untenable as there was no evidence of a lawfully created access road that reduced the respondent's Plot by 0.18 acres.

The trial judge held that such a reduction required prior adequate and fair compensation to the registered owners of the Plot 25. He also held that the instrument numbers of the title of the respondent which had no access road disclosed in its cadastral map proved that it was registered much earlier in 1968 than that of the appellants whose instrument and cadastral map had provision for an access road. This later instrument was registered in 1994 and therefore the earlier instrument of the respondents' registration took precedence over the later instrument. The trial judge also held that his

findings meant that no access road ever existed which serviced adjourning Plots 26, 50, 53, 54 and 55. Further, if there was an access road as reflected in the appellant's cadastral map, it was created without consent of the respondent.

On the second issue of who created the access road, the trial court found that it was created by the defendants who are now the appellants in this court.

On the third issue on whether the respondents are liable in the tort of private nuisance against the appellants, the trial Judge answered the question in the negative. The trial Judge found that the appellants were trespassers on the 0.18 acres of the suit property and made an order for vacant possession and other consequential orders inclusive of special damages and general damages as well as issued an injunction restraining the appellants from trespassing on the suit property.

The appellants being aggrieved by the decision of the trial court appealed to the Court of Appeal on three grounds of appeal namely:

1. The learned trial judge erred in law and fact when he acknowledged that there was a footpath on Plot 25 but held that there was no easement.
2. The learned trial judge erred in law and fact when he held that the plaintiffs did not commit any act of private nuisance.
3. The trial judge erred in law and fact when he awarded special and general damages as prayed by the plaintiffs without regard to the law in respect of damages.

On the first ground, the court found that the existence of a footpath was not a form of easement on the suit property. That the creation of an access road on Plot 25 without consent of the respondents was unlawful. As a question of fact, the Court of Appeal found that there was no access road servicing Plot 26, 50, – 55 and the creation of one, without following the procedure laid down under the Access to Roads Act, amounted to trespass.

The above holding also resolves ground 2 of the appeal and the Court of Appeal reached the conclusion that the construction of the wall by the respondents did not constitute a private nuisance against the appellants.

On the third ground of whether the damages awarded were excessive, the Court of Appeal reduced the award of Uganda shillings 50,000,000/= general damages for being excessive to Uganda shillings 20,000,000/=. In the premises, the appeal substantially failed and was dismissed with costs.

In this court ground 1 of the appeal reopens issue 1 in the trial court and ground 1 of the appeal in the first appellate court where the two courts have arrived at concurrent findings of fact and law.

The respondents' objection to ground 1 of the appeal is that the issue of a footpath was not pleaded and is a new matter which cannot be raised in a second appeal.

I have perused the pleadings of the parties in the trial court. The question of the access road arose in the pleadings of the parties and particularly in the counterclaim of the appellants in the trial court. The counterclaim is contained in paragraph 8 of the written statement of defence of the appellants and their counterclaim which is hereby reproduced for ease of reference:

> 8. The defendants repeat the contents of paragraph 1 to 7 of the Written Statement of Defence and Counter – Claim against the Plaintiff as follows;
>
> a) That the first, second, third, fourth, fifth, sixth and seventh Defendants the registered proprietors of the land comprised bordering the suit access road and therefore members of the user community to the exclusion of land. The defendant's certificate of title shall be produced and relied on at the trial.
>
> b) That the defendants were issued with copies of the mapping plan of the area before buying their respective Plots from Mitchell courts who originally owned the entire piece of land and were also responsible for creating the various access routes to the various Plots which included the suit access road. A Photostat copy of the cadastral map of the area is hereto marked and attached as annexure "B".

c) That the plaintiff's malicious acts of attempting to block the access road by building a perimeter wall over it interfered with the defendant's right to quiet enjoyment of their land which caused him to suffer great discomfort and inconvenience.

PARTICULARS OF PRIVATE NUISANCE.

i) The first, second, third, fourth, fifth, sixth and Seventh defendants are the registered proprietors of the land comprised bordering the suit access road and therefore members of the user community to the exclusion of none. The defendants' certificate of title shall be produced and relied on at the trial.

ii) That the suit access road was created by Mitchell courts who owned the entire piece of land which they later subdivided up into various Plots and sold off to the defendants and the plaintiffs.

iii) That the plaintiffs have on several previous occasions attempted to block the access road by building a wall fence over it which caused the defendants to suffer great discomfort and inconvenience.

iv) That the plaintiffs knew about the existence of the said access route and acted maliciously in an attempt to block of the said access road thus amounting to unreasonable interference with the defendant's right to the quiet enjoyment of their land.

In their defence to the counterclaim, the respondents generally denied the averments in the counterclaim with regard to the private nuisance and specifically pleaded that the plaintiff shall be put to strict proof thereof. In paragraph 10 they averred as follows:

> Paragraph 8 (b) is denied in total and the counter plaintiffs shall be put to strict proof thereof and the alleged access if created was done so illegally, and without notice and consent of the registered proprietors of Plot 25 which is a freehold interest.

The appellants in their written statement of defence to the respondents' plaint also have the same averments about the existence of an access road which was reflected in a cadastral map. Surprisingly, the words "foot path" and easement" were not used even once in the written statement of defence and counterclaim and the basis of the defence was that this access road was even indicated in the cadastral print from the Mailo Block of the land

office of Kyadondo Block 269 and details by way of photocopies were attached to the written statement of defence.

The issues framed by the parties through their lawyers arose from the pleadings and were reproduced by the learned trial judge as questions for trial. Generally, the procedural law is that issues arise from pleadings according to **Order 15 rule 1 of the Civil Procedure Rules** which provides that:

> 1. Framing of issues.
>
> (1) Issues arise when a material proposition of law or fact is affirmed by the one party and denied by the other.
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> (2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute a defence.
>
> (3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.
>
> (4) Issues are of two kinds: issues of law and issues of fact.
>
> (5) At the hearing of the suit the court shall, after reading the pleadings, if any, and after such examination of the parties or their advocates as may appear necessary, ascertain upon what material propositions of law or fact the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.
>
> (6) Nothing in this rule requires the court to frame and record issues where the defendant at the hearing of the suit makes no defence, or where issue has been joined upon the pleadings.

The issue of a foot path as an easement was not pleaded and could not be a matter in controversy for resolution by the High Court or the Court of Appeal.

Further Order 21 rules 4 and 5 of the Civil Procedure Rules deals with what the contents of a Judgment should be, provides that:

> 4. Contents of judgment.

Judgments in defended suits shall contain a concise statement of the case, the points for determination, the decision on the case and the reasons for the decision.

5. Court to state its decision on each issue.

In suits in which issues have been framed, the court shall state its finding or decision, with the reasons for the finding or decision, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

The question of whether the appellants were entitled to an easement which was embodied in a foot path which had been in use for a long time was not an issue for trial. It is clear that the matter before the trial court and the first appellate court concerned an access road. An access road is governed by the Access to Roads Act whose provisions override common law. The court held that if there was an access road, the procedure for creating one was not followed. The concurrent finding of the court was that procedure under the Access to Roads Act Cap 350 was not followed and any access road claimed by the appellants was illegal. This was where the controversy revolved. The issue of the footpath as an easement was not considered. I further note that it did not arise from the pleadings and is a new point that does not fall under the Access to Roads Act.

Under the Access to Roads Act, an access road can be created upon application for leave to construct a road in terms of section 2 of the Act. Secondly, the application shall be served on the owner of land who is affected by the proposed access road in terms of section 3. Thirdly, there has to be a hearing of the affected parties by the Land Tribunal. Moreover, section 7 provides for registration by the Registrar of Titles of the order creating the access road. The order shall be endorsed on the certificate of title affected with a sketch map showing the course and plan of the proposed access road. Last but not least section 10 of the Access to Roads Act provides for a right of appeal within 30 days of the order of the Land Tribunal to the High Court against the order and the decision of the High Court shall be final.

The fact that a later cadastral map registered in 1994 reflected the existence of an access road would have been a valid registration but for the holding of the learned trial Judge and the Court of Appeal that the procedure under the Access to Roads Act was not followed and the access road was unlawfully created. The appellants did not pursue this holding on appeal and chose to change and base their defence, to the issue, on the existence of a footpath as an easement to which they were entitled to use. The matter of unlawfulness of the access road was finally determined by the two lower courts and was not further appealed to this court. It therefore rested.

In terms of the footpath as an easement, to argue a matter that is not pleaded on the basis of the testimony of some witnesses is not tenable. The real question in controversy is whether it can be determined by this court as a new matter not arising from pleadings. In **Alwi Abdulrehman Saggaf v Abed Ali Algeredi [1961] 1 EA 767** the Court of Appeal of East Africa sitting at Dar-Es-Salaam considered the raising of new points on appeal for the first time based on evidence and not pleadings and held that:

> The circumstances in which a point of law which has not been argued in the court below may be taken on appeal were considered by the Privy Council in Perkowski v. City of Wellington Corporation (2), [1958] 3 All E.R. 368. This was an appeal from a decision of the Court of Appeal of New Zealand. The facts of the case are not material, but the appellant there sought to base her case both before the Court of Appeal of New Zealand and before the Privy Council on a submission which had not been made at the trial. The Court of Appeal of New Zealand decided that, the point not having been taken at the trial, it could not be taken on appeal. Their lordships of the Privy Council said (at p. 373 of the report):
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> "In Connecticut Fire Insurance Co. v. Kavanagh, [1892] A.C. 473, Lord Watson, in delivering the judgment of their Lordships' Board, after referring to the raising of points of law in an appellate court on facts admitted and proved beyond controversy said (ibid., at p. 480):
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> > 'But their lordships have no hesitation in holding that the course ought not, in any case, to be followed, unless the court is satisfied that the evidence upon which they are asked to decide established beyond doubt that the facts, if fully investigated, would have supported the new plea.'

I agree that any new point of law raised for the first time on appeal should be based on facts not in controversy and evidence that is not challenged. Where the matter is contested, it cannot form the basis for a new point of law raised on appeal.

Similar to the matter before this court, the question of the pleadings not having an averment of the cause of action sought to be argued in the final court of appeal was also considered by the East African Court of Appeal in **Alwi Abdulrehman Saggaf v Abed Ali Algeredi** (supra) where the Court cited with approval the dictum of Lord Normand in **Esso Petroleum Co. Ltd. v. Southport Corporation (3), [1956] A.C. 218 at p. 238** on the purpose of pleading to found a cause of action. I have found it instructive to quote the full text of the Judgment of Lord Normand on the issue in **Esso Petroleum Co. Ltd Vs Southport Corporation [1956] A.C. 218 at pages 238 – 239** which judgment is persuasive and applicable to the facts before this court. After setting out what the pleadings in the plaint disclosed, Lord Normand said:

> These were the allegations which the respondents set out to prove. There was no notice in the pleadings of any other cause of action, such as that the appellants negligently sent the vessel to sea in an unseaworthy condition.
>
> The function of pleadings is to give fair notice of the case which has to be met so that the opposing party may direct his evidence to the issue disclosed by them. In fact, the evidence in the case was concerned only with the negligence alleged. The result was that the master of the vessel was acquitted by Devlin J. of the negligence alleged, and the logical consequence was that the owners were also acquitted by him.
>
> The majority of the Court of Appeal, however, held that the onus lay on the owners to show that the accident which caused the damage was inevitable, and to do this it would have been necessary to show that no reasonable care which they might have taken would have avoided the damage. As the appellants had made no attempt to lead evidence to discharge this onus, the majority of the Court of Appeal found them liable in damages.
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> I do not wish to speculate on what might have been alleged, nor on what evidence might have been adduced by either side on other allegations, nor on how the onus might have shifted in consequence of other allegations and evidence. Confining

> myself to the actual allegations of negligence and to the evidence in the case, I find the conclusion inevitable that, since the master has been acquitted of the faults alleged against him, the owners must also be acquitted. I wish to associate myself with the observations of my noble and learned friend, Lord Radcliffe, on the value of the pleadings. To condemn a party on a ground of which no fair notice has been given may be as great a denial of justice as to condemn him on a ground on which his evidence has been improperly excluded.
>
> I would allow the appeal.

Similar to the matter before this court, the pleadings do not support a cause of action of the footpath issue raised in evidence being an easement giving the appellants a right of access. The appellant's suit was founded on a cause of action under the Access to Roads Act and they should not be allowed to depart from their pleadings without amendment to set out a new basis for the new cause of action on a second appeal. To do so would be to deprive the respondent of an opportunity to raise a defence not under the Access to Roads Act but under the heading of easement whether under the common law or the Registration of Titles Act violating the right of hearing. The right to a fair hearing can be violated by failure to give notice of the cause of action and therefore the opposite party need not prepare or adduce evidence in defence. The opportunity of the parties to address the lowers court on this new cause of action and deal with the evidence passed at the stage of the trial court and the matter rested. It ought not in the circumstances, be raised in a second appeal.

In **Interfreight Forwarders (U) Ltd v East African Development Bank (Civil Appeal No. 33 of 1992) (UGSC)**, the situation is succinctly captured by Oder, JSC when he stated that:

> The system of pleading is necessary in litigation. It operates to define and deliver it with clarity and precision the real matters in controversy between the parties upon which they can prepare and present their respective cases and upon which the court will be called upon to adjudicate between them. It thus serves the double purpose of informing each party what is the case of the opposite party which will govern the interlocutory proceedings before the trial and which the court will have to determine at the trial.... Thus, issues are formed on the case of the parties

so disclosed in the pleadings and evidence is directed at the trial to the proof of the case so set and covered by the issues framed therein. A party is expected and is bound to prove the case as alleged by him and as covered in the issues framed. He will not be allowed to succeed on the case not alleged by him and be allowed at the trial to change his case or set up a case inconsistent with what he alleged in his pleadings except by way of amendment of the pleadings.

In the premises, the appellants did not plead the issue of the footpath giving a right of easement and the case was founded on another statute; the Access to Roads Act. Evidence was adduced by way of cadastral maps for and against the existence and legality of an access road under the Access to Roads Act. The appeal would fail on this point and accordingly ground 2 whose determination depends on the outcome of ground 1 of the appeal cannot succeed. I would find that the appeal has no merit and I would make an order dismissing the appeal with costs to the respondents.

Dated at Kampala the 12th day of Sept 2023

Christopher Madrama Izama

Justice of the Supreme Court

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

CORAM: OWINY-DOLLO CJ; MWONDHA, TIBATEMWA-EKIRIKUBINZA, CHIBITA AND MADRAMA JJSC

CIVIL APPEAL NO. 23 OF 2022

1. **STEVEN KATABAZI**
2. **HENRY SENOGA** ..... **APPELLANTS**
3. **ISAAC MATOVU**

VERSUS

1. **IGANTITUS KADOMA**
2. **HATI KOBUSINGYE** .....**RESPONDENTS**

(Arising from the Court of Appeal No. 003 of 2018 Judgment at Kampala, before Musoke, Musota, JJ and Kasule Ag. JJA dated 24th July, 2020)

JUDGMENT OF OWINY - DOLLO; CJ

I have had the benefit of reading the judgment of my learned brother Madrama, JSC; in draft. I agree with his findings; and the conclusion that this appeal be dismissed.

Since Mwondha, Tibatemwa-Ekirikubinza and Chibita; JJSC also agree, orders are hereby issued in the terms proposed by Madrama JSC in his judgment.

Dated, and signed at Kampala this 12th day of Sept 2023

Alfonse C. Owiny - Dollo

Chief Justice

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

***Coram**: Owiny-Dollo, CJ, Mwondha, Tibatemwa-Ekirikubinza, Chibita, Madrama JJ.SC*

CIVIL APPEAL NO. 23 OF 2020

Steven Kalanzi Katabazi
Henry Senoga
Isaac Matovu
..... Applicants

Versus

Igantitus Kadoma
Hati Kobusingye
..... Respondents

(Arising from Court of Appeal No 003 of 2018 judgment at Kampala, before Musoke, Musota JJ and Kasule Ag. JJA Dated 24th July, 2020)

JUDGMENT OF MWONDHA JSC

I have had the benefit of reading in draft the judgment of my learned brother, Christopher Madram Izama, JSC. I concur with the analysis, decision and the proposed orders.

I hasten to add that Order 6 rule 7 of the Civil Procedure Rules forbids departure from previous pleadings as follows:-

"No pleading shall, not being a petition or application, except by way of amendment raise any new ground of claim or contain any allegation of fact, inconsistent with the previous pleadings of the party pleading that pleading."

This rule was affirmed in the cases also of **Jani Properties Ltd. versus Dar-es-salaam City Council [1966] EA 281**; and **Struggle Ltd versus Pan African Insurance Co. Ltd (1990) ALL 46,** 47.

The Court stated, "the parties in Civil matters are bound by what they say in their pleadings, which have the potential for forming the record

narrower, the Court itself is also bound by what the parties have stated in the pleadings as to the facts relied on by them. No party can be allowed to depart from its pleadings.

It's apparent that the appellants did not plead the fact of footpath as clearly discussed in the lead judgment.

Dated at Kampala this ..... 12th day of ..... Sept 2023

Mwondha

JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

[CORAM: OWINY – DOLLO, CJ, MWONDHA, TIBATEMWA - EKIRIKUBINZA, CHIBITA & MADRAMA ; JJ.S.C.]

CIVIL APPEAL NO. 23 OF 2020

BETWEEN

1. **STEVEN KALANZI KATABAZI**
2. **HENRY SENOGA** :::::::::::::::: **APPELLANTS**
3. **ISAAC MATOVU**

AND

1. **IGANTITUS KADOMA**
2. **HATI KOBUSINGYE** :::::::::::::::::::::::: **RESPONDENTS**

[Appeal from the Judgment of the Court of Appeal at Kampala before Hon Lady Justice Elizabeth Musoke, Hon. Mr. Justice Stephen Musota and Hon. Justice Mr. Remmy Kasule dated 24th July, 2020 in Court of Appeal Civil Appeal No. 003 of 2018 also arising from the Judgment of the High Court of Uganda (Land Division) per Bashaija, J in Civil Suit No. 524 of 2014.]

JUDGMENT OF PROF. TIBATEMWA-EKIRIKUBINZA, JSC.

I have had the benefit of reading the judgment of my learned brother, Hon. Justice Christopher Madrama Izama, JSC. I agree with his analysis and decision that this appeal should be dismissed with costs to the respondents.

Dated at Kampala this ..... 12th day of ..... Sept ..... 2023.

.....

PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA
JUSTICE OF THE SUPREME COURT.

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

(CORAM: OWINY-DOLLO, CJ; MWONDHA; TIBATEMWA-EKIRIKUBINZA, CHIBITA; MADRAMA; JJ.SC.)

CIVIL APPEAL NO: 23 OF 2022

BETWEEN

1. **STEVEN KATABAZI**
2. **HENRY SENOGA**
3. **ISAAC MATOVU :: APPELLANTS**

AND

1. **IGANTITUS KADOMA**
2. **HATI KOBUSINGYE :: RESPONDENTS**

[Arising from Court of Appeal No. 003 of 2018 judgment at Kampala, before Musoke, Musota, JJ and Kasule Ag. JJA Dated 24th July, 2020]

JUDGMENT OF CHIBITA, JSC

I have had the benefit of reading in draft the judgment prepared by my learned brother, Hon. Justice Christopher Madrama Izama, JSC and I agree with his reasoning and his decision that this appeal be dismissed.

I also agree with the orders that he has proposed.

Dated at Kampala this .....12th.....day of .....Sept.....2023

Justice Mike J. Chibita

JUSTICE OF THE SUPREME COURT