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**THE REPUBLIC OF UGANDA,**

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

**[Coram: Egonda-Ntende, Musota & Madrama, JJA)**

**CIVIL APPLICATION NO 286 OF 2014**

**(ARISING OUT OF CIVIL APPEAL NO 23 OF 2011)**

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**FARIDA NANTALE}.....APPLICANT**

**VERSUS**

**1. ATTORNEY GENERAL}**

**2. REGISTRAR OF TITLES}**

**3. HOUSE OF DAWDA (U) LIMITED}.....RESPONDENTS**

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**RULING OF COURT**

The Applicant filed this application by Notice of Motion for orders that the Consent Order dated 14<sup>th</sup> June, 2011, executed between the Respondents allowing Civil Appeal No 23 of 2011 be annulled, cancelled and/or set aside.

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Secondly, it is for an order that the third Respondent's certificate of title comprised in LRV 4243 of 24 which arose out of FRV 440 folio 17 & 18 secured through the said impugned Consent Order be nullified and cancelled. Thirdly, the Applicant prays for costs of the application to be provided for.

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The grounds of the application are that the third Respondent filed in the High Court Miscellaneous Cause Number 88 of 2009, in which she sought reliefs against the first and second Respondents pertaining to land comprised in LRV 394 1427 Plot 10 – 22 Nakawa.

5 Notwithstanding, the fact that the above said case proceeded ex parte, it was dismissed as devoid of merit by the trial judge, Hon. Mr. Justice Joseph Murangira. Thirdly, being dissatisfied with the dismissal, the 3<sup>rd</sup> Respondent lodged in the **Court of Appeal Civil Appeal No 23 of 2011**, but the appeal was never heard only for it to be disposed of by a Consent Order entered and executed before the Registrar of the Court of Appeal. Fourthly, besides  
10 the Registrar of the Court not having jurisdiction to dispose of appeal, the said Registrar exceeded his powers when he purported to issue orders pertaining to a different land comprised in FRV 440 folio 17 & 18 at Nsambya, which land is being claimed by the Applicant in **High Court Civil Suit No 97 of 2011 Farida Nantale v Attorney General and 5 others**. Fourthly, the said  
15 Consent Order is illegal and should be set aside. On the sixth ground, armed with the Consent Order, the third Respondent is holding out as having secured proprietorship through a superior Court order. Lastly it is averred in the Notice of Motion that it is in the interest of justice that the application is  
20 allowed as presented.

The application is supported by the affidavit of Peter Kimanje Nsibambi, an advocate of the High Court representing the Applicant in High Court Civil Suit No 97 of 2011. The affidavit in reply is that of Emmanuel Bamwiite, the Registrar of Titles working in the Department of land registration. The second  
25 affidavit in reply is that of a director of the third Respondent Mr Manish Dawda. For the moment there is no need to set out the facts in the affidavit in support of the application and in the replies because the application was argued on a point of law as to whether the Registrar of this Court had any jurisdiction to endorse the consent decree in question. Secondly, the fact of  
30 endorsement of the Court order by consent of the parties is not in dispute.

When the matter came for hearing, Mr. Brian Othieno represented the Applicant, while Mr. Yesse Mugenyi appeared for the third Respondent and Mr. Moses Ssekitto for the second Respondent/Registrar of Titles. No one

5 appeared for the Attorney General/the first Respondent and there is no affidavit in reply by the Attorney General. On the application of the Applicant's Counsel, we allowed a prayer by the Applicant's Counsel for the application to proceed ex parte as against the Attorney General under Rule 56 (2) of the Judicature (Court of Appeal) Rules.

10 With the leave of Court, Counsel Brian Othieno submitted that the Consent Order is illegal because the Registrar has no jurisdiction to hear the appeal. He relied on two authorities: **Uganda Broadcasting Corporation v Sinba (K) Ltd and 3 others, Court of Appeal Civil Application No 12 of 2014 (arising from Civil Appeal Number 107 of 2012)** and **Edith Nantumbwe**  
15 **Kizito and 3 others v Miriam Kuteesa, Court of Appeal Civil Application No. 294 of 2013**, (unreported) on the issue of whether a Registrar of the Court of Appeal had jurisdiction to endorse a Consent Order.

The Applicant's Counsel submitted that the Registrar purported to compromise the rights of the parties by consent when he issued an order by  
20 consent of the parties which is illegal. Secondly, he contended that anything that flows from an illegality is an illegality and cannot stand (i.e. the outcome of the order by execution thereof is also an illegality).

In reply Mr. Yesse Mugenyi made reference to the affidavit of Manish Dawda and submitted that the title has been directed to be cancelled by the  
25 President. On being prompted by the Court to submit on the issue of whether the Registrar had jurisdiction to enter a Consent Judgment between the parties on appeal, he submitted that section 11 of the Judicature Act provides that the Court of Appeal has all the jurisdiction of the lower Court. Secondly, the Registrar of the Court of Appeal has the same powers as that of a High  
30 Court Registrar to endorse a consent agreement as a Consent Order or decree. Thirdly, he submitted that the Applicant is not an aggrieved person because she has no interest in the land, the subject matter of the consent and should not be heard. Fourthly he contended that the application was

5 misconceived and under rule 44 of the Judicature (Court of Appeal Rules) is supposed to be supported by the affidavit of a person having knowledge of the facts but the affidavit in support is sworn by advocate Mr. Peter Kimanje contrary to the law.

10 In further support of the third Respondents reply, Mr. Moses Ssekitto on behalf of the second Respondent/Registrar of Titles associated himself with the submissions of Mr. Yesse Mugenyi and submitted that he agreed with the submissions of the third Respondent's Counsel. The judgment of the High Court sought to challenge the powers of the Commissioner for Land Registration to cancel registration of a proprietor on a certificate of land title.  
15 Murangira, J., held that the Registrar of Titles had powers to cancel registered proprietorship and title to land. He advised the Applicant to present objections to the Registrar of Titles. The Applicant in the trial Court appealed to the Court of Appeal. The Consent Order does not vary the orders of the judge of the High Court and the parties only compromised their interests.

20 We have considered the issue as to whether the Registrar of the Court of Appeal had jurisdiction to enter a Consent Judgment in the appeal from which this application arises. We note that a similar issue was considered by this court in **Edith Nantumbwe & 3 Others v Miriam Kuteesa, (supra)**, and **Uganda Broadcasting Corporation v Sinba (K) Ltd, and 3 others (supra)**.  
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The consent judgment was held to be a nullity as it was entered into without jurisdiction. The Court went further and held that jurisdiction cannot be conferred on the Court by consent of the parties. A Consent Judgment is an agreement between the parties and is not binding on a person who is not a party and they cannot direct another person to do anything he or she has  
30 not consented to.

5 The general rule is that an appellate Court will not allow an appeal to be settled by consent:

"the general rule is that this Court or any appellate Court will not allow an appeal to be settled by consent. There is no law provided for Consent Judgments on appeal, as far as we could ascertain. This proposition of the law is set out in Slanley v Keane [1970] Ch 245..."

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In **Uganda Broadcasting Corporation v Sinba (K) Ltd and 3 others** (supra) this Court after citing with approval its decision in **Edith Nantumbwe & 3 Others v Miriam Kuteesa Court of Appeal Civil Appeal No 294 of 2013** (supra) further held that:

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"The parties are free to settle or compromise suits in the High Court and Magistrates Courts because at that stage, the suits are not yet heard and the disputes are not yet determined. On appeal this is not so. There is already a judgment or ruling of the lower Court and the parties cannot by agreement reverse or vary it."

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We have considered the opposition of Mr. Yesse Mugenyi to our consideration of the point of law raised by the Applicant's Counsel on the ground that the Applicant has no *locus standi* challenge the Court order filed by Consent of the parties. We are not persuaded by Mr Mugenyi's submission for the reasons that we enunciate below.

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The Consent Order reads as follows:

**"THE REPUBLIC OF UGANDA**

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

**CIVIL APPEAL NUMBER 23 OF 2011**

**HOUSE OF DAWDA (U) LTD..... APPELLANT**

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**VERSUS**

**ATTORNEY GENERAL..... FIRST RESPONDENT**

**REGISTRAR OF TITLES..... SECOND RESPONDENT**

**CONSENT ORDER**

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This Appeal coming up before the Registrar His  
Worship E. O. Kisawuzi in the presence of Mr Yesse  
Mugenyi, Counsel for the Appellant and the Ms  
Patricia Mutesi Counsel for the 1st and 2nd  
Respondents, it is hereby agreed and ordered that the  
above suit to be settled as hereunder:

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1. The Respondents and the Government of Uganda  
hereby do acknowledge and recognise the Appellants  
proprietary interest in this suit land comprised in LRV  
384 147 plot number 10 - 22, Nakawa Road measuring  
4.086 ha. A copy of the Appellant's title here to  
annexed and marked annexure "A".

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2. At the request of the Respondent and/or Government  
of Uganda and in accordance with the terms  
hereunder, the Appellant agrees to surrender and  
transfer all its interests and title to the suit land to the  
Uganda Land Commission (ULC) free of all  
encumbrances of whatever nature.

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3. In the consideration thereof the government of  
Uganda, Uganda land commission and the second  
Respondent undertook to process a lease title in  
favour of the Appellant measuring 3.064 ha (on the  
basis of the agreed the ratio of 0.75 ha to 1 ha of land  
held at Nakawa) of alternative land identified to the  
Appellant as Uganda railways Corporation land in  
Nsambya comprising of FRV 440 folio 17 and FRV 440

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5 folio 18. A copy of the said in Nsambya land title are attached as annexure "B".

10 4. Provided the government of Uganda and Uganda land commission and the second Respondent shall process a lease title in favour of the Appellant for 3.064 ha for five years (renewable 249 years) at no additional premium, in the period of 90 days from the date of execution of this consent, the Appellant shall handover its certificate of the title of the suit land with 15 duly executed transfer forms and Uganda land commission in exchange for its title.

5. Each party shall bear its own costs in relation to the proceedings in Court."

20 The order was endorsed by the Counsel on 10<sup>th</sup> June, 2011 and endorsed by the Registrar as a Consent Order on 14<sup>th</sup> June, 2011.

The above order clearly indicates that it was a compromise or an agreement between the parties and does not make reference to the judgment of the lower Court. It shows that it was the appeal that was coming for disposal 25 before the Registrar. The questions that arise include whether an original agreement can be filed in an appellate Court which only hears appeals.

We have specifically taken note of the submissions of Mr. Moses Ssekitto on behalf of the Registrar of Titles that the Consent Judgment does not affect the judgment of the High Court from which the parties appealed to the Court 30 of Appeal. It underscores the point that the agreement is a mere agreement between the parties and has nothing to do with the appeal or the decision of the judge appealed against to the Court of Appeal. The most important aspect of the procedure adopted by the parties is that the Registrar of this Court endorsed the Consent Order as given under his hand and the seal of 35 the Court of Appeal on 14<sup>th</sup> June, 2011. The Consent Order as entitled is on

5 the face of it a judgment of the **Court of Appeal in Civil Appeal Number 23 of 2011.**

There are certain fundamental problems with the Consent Judgment. The issue of *locus standi* of the Applicant cannot stop the Court from considering whether the Registrar had powers to issue the judgment by consent of the parties as he did. Secondly the question of whether the application could be supported by the affidavit of advocate Peter Kimanje Nsibambi will likewise not stop this Court from dealing with the question of law as to whether the Registrar had jurisdiction to issue an order of this Court which in any way does not affect or arise from the appeal itself or from the decision of the trial judge. We reject the objections of Mr. Yesse Mugenyi because what is in issue in the point of law raised by the Applicant is an illegality brought to the attention of the Court. In **Makula International v Cardinal Nsubuga [1982] HCB 11**, it was held that an illegality once brought to the attention of the Court overrides any questions of pleadings including any admissions made therein.

This Court will consider a point of law raising an illegality once its attention is drawn to it without regard to pleadings, or admissions. The Court does not have to deal with the issue of *locus standi* or affidavit in support. The illegality can be considered on the face of the record attached to the application.

25 The fundamental point for consideration relates to the jurisdiction of the Court of Appeal. The Court of Appeal is an appellate Court and appeals lie from such decisions of the High Court as may be prescribed by law under Article 134 (2) of the Constitution of the Republic of Uganda. It provides as follows:

30 "134. Court of Appeal of Uganda.

(1) The Court of Appeal of Uganda shall consist of—

....



5 (2) An appeal shall lie to the Court of Appeal from such decisions of the High Court as may be prescribed by law."

The composition of the Court of Appeal is provided for by article 135 (1) of the Constitution of the Republic of Uganda which provides as follows:

10 "135. Composition of the Court of Appeal.

(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."

15 Court is duly composed of uneven number not being less than three members. In addition appeals lie from decisions of the High Court. The Judicature Act is the law which prescribes which decisions of the High Court are appealable. The Judicature Act Cap 13 and section 10 confers appellate jurisdiction on the Court of Appeal.

"10. Jurisdiction of the Court of Appeal.

20 An appeal shall lie to the Court of Appeal from decisions of the High Court prescribed by the Constitution, this Act or any other law.

Mr. Yesse Mugenyi submitted that the Court of Appeal has the jurisdiction of the original Court (High Court) under section 11 of the Judicature Act Cap 13 and can exercise all its powers inclusive of entering into a Consent Judgment. He stretched the argument to include powers of a Registrar of the High Court to endorse a Consent Judgment or order in the High Court. The 3<sup>rd</sup> Respondent's Counsel argued that similarly a Registrar of the Court of Appeal can endorse a Consent Judgment because he or she enjoys similar powers like that of a high Court judge. We are not persuaded by that submission. The Court of Appeal in dealing with an appeal it may reverse, affirm, vary or set aside the decision of the trial Court. Section 11 of the Judicature Act provides as follows:

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5 "11. Court of Appeal to have powers of the Court of original jurisdiction.

For the purpose of hearing and determining an appeal, the Court of Appeal shall have all the powers, authority and jurisdiction vested under any written law in the Court from the exercise of the original jurisdiction of which the appeal originally emanated."

We think that the question for consideration goes beyond mere jurisdiction of the Registrar in light of the submission of the second Respondent's Counsel that the decision of the High Court is not affected by the impugned Consent Order in this application. The issue stretches to consideration of whether the Court of Appeal has a jurisdiction in the matter at all since it only has appellate jurisdiction. To resolve the question raised by Mr. Yesse Mugenyi, it is quite clear that section 11 of the Judicature Act only applies in the words of that section: "For the purpose of hearing and determining an appeal,". In other words when the Court is determining an appeal is when it may exercise any or all the powers of the High Court.

The Consent Order in this matter purported to determine Civil Appeal No. 23 of 2011 when it did nothing to the judgment of the lower Court by affirming, reversing, setting, aside or varying it. It was an agreement made by the parties compromising their rights and not necessarily dealing with the decision of the trial judge. In such cases it is not only the Registrar of the Court of Appeal who has no jurisdiction but also the Court of Appeal duly constituted under article 135 (1) of the Constitution of the Republic of Uganda would lack jurisdiction.

30 An appeal is a creature of statute. In the case of **Attorney-General v Shah (No 4) [1971] 1 EA 50**, the Court of Appeal of East Africa sitting at Kampala held, per Spry Ag. P:

5 "It has long been established and we think there is  
ample authority for saying that appellate jurisdiction  
springs only from statute. There is no such thing as  
inherent appellate jurisdiction. In this connection, our  
attention was drawn to a passage in the case of  
10 Ibingira v. Uganda, [1966] E.A. 445, at p. 450. ... In any  
case, the position is now regulated by Art. 89 of the  
Constitution of Uganda and Part IV of the Judicature  
Act 1967, which made it clear that this Court has only  
such jurisdiction as is conferred on it by Parliament."

15 An appeal lies from the decision of the High Court or specifically from the  
decision of a judge of the High Court. Where the decision is not challenged,  
then this Court lacks jurisdiction to entertain the matter because it does not  
amount to determining an appeal as envisaged by section 11 of the  
Judicature Act, Cap 13. On that basis alone the objection to the Consent  
20 Order for want of jurisdiction is sustained.

Lastly in **Edith Nantumbwe & 3 Others v Miriam Kuteesa** (supra) this Court  
held that the Registrar of the Court of the Appeal cannot act as a Court of  
Appeal and endorse a Consent Order on the merits of the rights of the  
parties. The agreement remains a mere agreement between the parties and  
25 cannot be issued as a decree of the Court of Appeal. The parties are free to  
pursue their agreement elsewhere.

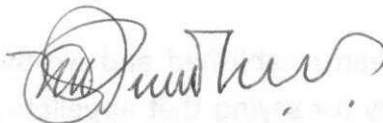
In the premises we set aside the Consent Judgment issued by the Registrar  
on the 14<sup>th</sup> of June, 2011 with costs.

Dated at Kampala the 14 day of August 2018

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**F.M.S EGONDA-NTENDE**  
**JUSTICE OF APPEAL**

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**STEPHEN MUSOTA  
JUSTICE OF APPEAL**

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**CHRISTOPHER MADRAMA,  
JUSTICE OF APPEAL**