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THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 01 OF 2014

1. ROSEMARY BINWOMUKAMA

2. OLIVIA BUSOBOZI BAHWAYO APPELLANTS

10

VERSUS

UGANDA WILDLIFE AUTHORITY RESPONDENT

*[Appeal from the decree of his Worship Kawesa Godfrey, Magistrate Grade
1 dated 24th of June 2009, in FPT-LD- Civil Suit No. 10 of 2008]*

CORAM:

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Hon. Mr. Justice Remmy Kasule, JA

Hon. Mr. Justice Kenneth Kakuru, JA

Hon. Mr. Justice Geoffrey Kiryabwire, JA

JUDGEMNT OF THE COURT

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This is a second appeal. It arises from the Judgment and decree of the *Hon. Mr. Justice Alfonse Chigamoy Owiny-Dollo, J* (as he then was) dated 11th March 2013 in High Court *Civil Appeal No.1 of 2014* at Fort Portal, which arose from Chief Magistrates Court , Fort Portal *Civil Suit No. 10 of 2008*.

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The Background to this appeal is set out by the appellate Judge briefly as follows:-



5 The appellants instituted a suit against the respondent at the Chief Magistrate's
Court in Fort Portal in 2008 for trespass on land comprised in plots 7 and 9
Tibaitwa Road, Fort Portal Municipality. The defendant now respondent denied
the allegations contending they own the land properties in which they were in
occupation. The Magistrates Court found for the appellants herein. The
10 respondent appealed to the High Court Fort portal, on the following grounds:-

1. *The learned Magistrate erred in law and fact when he held that
the Respondents acquired the suit property lawfully.*

15 2. *The learned Magistrate erred in law and fact when he held that the suit
land was available for leasing to the Respondents at the time of the grant.*

3. *The learned Magistrate erred in law and fact when he held that that
the Appellant was not a lawful occupant.*

20 4. *The learned Magistrate erred in law and fact when he held that that
the Respondents were bonafide purchasers for value without notice.*

25 5. *The learned Magistrate erred in law and fact when he awarded eviction
order, costs and rent arrears to the Respondents.*

The appellate Judge upheld the appeal and issued the following orders
declarations:-

30 "(i) *The suit properties are vested in the appellant by law, hence
were not in the category of properties intended for disposal under
the scheme for sale of Government pool houses.*



5 (ii) *The respondents acquired certificates of title to the suit properties in contravention of the rules for disposal of non-core Government pool houses, hence contrary to the rule of natural justice and so the acquisitions are each null and void.*

10 (iii) *The certificates of title to the suit properties in the names of the respective respondents are hereby each cancelled.*

15 (iv) *The Registrar of Titles is hereby ordered to effect the registration of the suit properties in the name of the appellant (Uganda Wildlife Authority)*

 (v) *The respondents shall pay the appellant's costs of this appeal and of the trial Court.*

20 (vi) *Interest on costs in (v) herein is at Court rate from the date of this Judgment."*

25 Being dissatisfied with the decision of the High Court the appellant appealed to this Court. The memorandum of appeal first filed at this Court appeared to offend the law and was with leave of Court amended, leaving for determination only two grounds of appeals, set out as follows:-

30 1. *The learned appellate Judge erred in law when he failed to make a finding on the preliminary point of law raised by Counsel for the respondents then, now appellants that the appeal was time barred.*

 2. *The learned appellate Judge erred in law when he made a finding on fraud when fraud was not proved at all.*



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When this appeal came up for hearing learned Counsel *Mr. Emmanuel Twerabireho* appeared for the appellants while learned Counsel *Mr. Chemonga Sabit* and *Ali Ruzinda* jointly appeared for the respondent.

10 In respect of ground one it was argued for the appellant that the Civil Appeal No. 0054 of 2009 to the High Court was time barred having been filed outside the 30 days provided for under the Civil Procedure Act. It was submitted that, the Judgment by the Grade I Magistrate in Civil Suit No. 010 of 2008 having been delivered on 24th June 2009, the prescribed 30 (thirty) days allowed for filing an
15 appeal under *Section 79* of the Civil Procedure Act lapsed on 24th of July 2009, and as such the appeal which was filed on 21st of August 2009 was out of time.

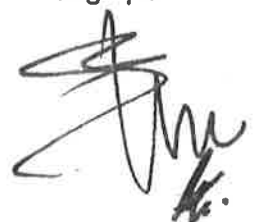
Further that the appellants had neither sought or been granted extension of time within which to file the said appeal out time.

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In respect of ground 2 Counsel faulted the appellate Judge for having made a finding that the appellants had acquired the title to the disputed property fraudulently whereas fraud had not been pleaded.

25 Counsel asked Court to allow the appeal.

The respondent opposed the appeal. They submitted that, although the Judgment was delivered on 24th June 2009, the decree and proceedings were not prepared on that day. He contended that by 22nd July 2009, the proceedings were not
30 ready necessitating the appellant to write to the Court seeking the same. Therefore, Counsel argued that by 22nd July 2009 the decree and the proceedings

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5 were not ready and as such time allowed for the appellant had not begun to run, as provided for under *Section 79(2)* of the Civil Procedure Act.

10 In respect of the second ground Counsel argued that, the appellate Judge did not make any findings on fraud, but rather, referred to it in passing. He argued that the decision of the Judge was not based on a finding on fraud, but rather on the fact that at the time the respondents were granted lease to the suit land, the same was not available for leasing as the Uganda Land Commission only held the lease for and on behalf of the respondents who were at all material times in effective occupation.

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Without prejudice to the above, Counsel supported the findings of the appellate Judge, that, Uganda Land Commission had no land to lease to the appellants, because the lease on the suit land was issued to it only in its capacity as a trustee for and on behalf of the respondent. Further that, the appellants were not entitled to be allocated the said properties as they did not qualify and the properties were not available for lease.

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Both Counsel asked Court to dismiss the appeal.

25 **Resolution by Court**

This being a second appeal we are concerned with only matters of law. We have no duty to re-evaluate the evidence adduced itself at the trial as that is the duty of the first appellate Court unless we determine that, it failed to carry out the said duty. See: *Kifamunte Henry vs Uganda, Supreme Court Criminal Appeal No. 10 of 1997.*

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5 The first ground is whether, the appeal was filed out of time. This issue was raised as a preliminary objection by the Counsel for the respondent, then the appellant in the written submissions filed in the High Court Civil Appeal No.0054 of 2009. The learned appellate Judge ought therefore to have resolved the same in his Judgment. He did not. This was an error on the part of the Judge.

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It is common ground that Judgment of the Magistrates Court was delivered on the 26th June 2009. Under *Section 79(1) (a)* of the Civil Procedure Act, an appeal from a Magistrates Court to High Court has to be filed within 30 (thirty) days of the date of the decree sought to be appealed from. The appeal was lodged on 21st August 2009 well out of the time prescribed by the law. This is conceded by the respondent. However, the record indicates that on 22nd July 2009 the respondent wrote to the Court requesting for record of proceedings. The letter was received at the Chief Magistrates Court on 24th July 2009. The time of appeal did not start to run until the record of proceedings was ready under *Section 79(2)* of the Civil Procedure Act. Although we have not been able to ascertain when the record was ready, from the above evidence it is clear that by the 22nd July 2009, the record was not ready. The appeal was filed on 21st of August 2009 which was within the 30 days the time prescribed by the law.

25 This ground therefore fails.

In respect of the 2nd ground, the appellate Judge did not base his decision on fraud. But rather on the fact that the Uganda Land Commission had no lease to offer to the appellants because:-

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- 1) The lease it held was held in trust of Uganda Wildlife Authority. *Black's Law Dictionary (8th Edition)* defines "a trust" as the right, enforceable



5 solely in equity, to the beneficial enjoyment of property to which another person holds the legal title

10 2) The lease being issued by the District Land Board without giving Uganda Wildlife Authority and its employees who were in physical occupation priority, offended the rule of natural justice under *audi alteram partem*

3) The appellants did not qualify ~~for~~ under the Public service guidelines to be granted pool houses

15 In order not to repeat ourselves, we are constrained to reproduce in *extenso* the pertinent parts of the High Court Judgment on appeal. The learned appellate Judge stated as follows:-

20 *“The appellant’s employees were in physical possession of the suit properties all that time. This being so, as was stated by Ssekandi J (as he then was) in the case of John Katarikawe Vs William Katarikawe & Anor [1977] HCB 187, it served as notice to anyone dealing with the same land, of some adverse interest therein, hence the acquisition of the suit properties by the respondents without notice to the occupants, was*

25 *evidence of fraudulent dealings in the land. The Court of Appeal, citing the Katarikawe Vs Katarikawe case (supra) with approval, in the case of Matovu & 2 others Vs Sseviri & Anor [1979] HCB 174, held that anyone who procures registration to defeat any unregistered interest which he had knowledge of, is guilty of fraud.*



5 *The Court in that celebrated case, emphasised the importance of 'audi alteram partem' (hear all parties) natural justice rule in the process of alienation of land; and pointed out that any grant of land made without hearing the occupant of that land, is an exercise made in violation of that rule of natural justice, hence it is void, in the same manner a decision made*
10 *without jurisdiction is a nullity. It urged Courts of law to quash any decision of an administrative body which has been arrived at in breach of the principles of natural justice, when presented with a situation. It also clarified that breach of any rule of natural is an exception to the provision of Section 56 of the R.T.A, that a certificate of title is conclusive evidence of*
15 *title, and is not impeachable for reason of any informality and irregularity*

The Court of Appeal, Okello JA (as he then was), stated quite clearly in Venansio Bamweyaka & 5 others vs Kampala District Land Board & Another Civ. Appeal No.20 of 2001 (CA) that under the Land Regulations 2004, made pursuant to the Land Act of 1998, any alienation of land by a
20 *controlling authority done without involving the occupants of the land must not be allowed to stand, notwithstanding that the Regulations are worded in language which appear to make consultation of the occupants of such land discretionary on the part of the Land boards. The rationale here is quite simple. Without involving the occupants of such land in the process*
25 *leading to alienation, they would be denied the opportunity to put their case to the controlling authority, and it is this that contravenes the cardinal rule of natural justice which confers on all persons the right to be heard before a decision which might impact on them is made.*

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5 Applying these principles of law to the instant matter now before me, it follows that failure by the respondents to either deal with the Chief Administrative Officer, or to establish physically on the ground, whether or not anyone was in occupation of the suit premises, and if so under what authority such persons were in occupation, denied the appellant the right to be heard, and this gravely offended the cardinal rule of natural justice. 10 Indeed, it is quite evident from the circular of the Permanent Secretary, tendered in evidence, that the Chief Administrative Officers were to play an advisory role akin to that exercised by Land Committees under the Land Regulations 2004, which provides that the Committee has to notify anyone 15 who may be affected by the acquisition of the land in issue.

Accordingly, even if the suit properties had fallen under the category of properties meant for disposal under the Government Scheme for sale of pool houses, failure by the respondents and Uganda Land Commission to follow the rules of natural Justice in the alienation of these properties, as 20 was clearly set out in the circular for disposal, would still have rendered their acquisition by the respondents a nullity. It might have been otherwise if the Chief Administrative Officer had included the suit properties in an inventory of properties for disposal under the scheme and the occupants had failed to exercise their rights either to apply for properties, or to 25 protest the inclusion of these properties in an inventory

From this then, the finding made by the learned trial Magistrate in his judgment that the respondents were bonafide purchasers of the suit properties for value without notice of any adverse proprietary interest in

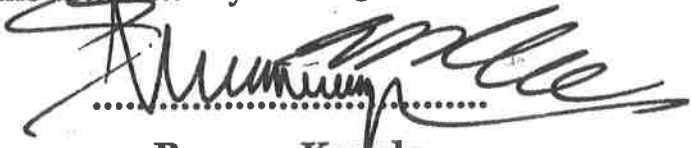


5 *them has no legal basis, notwithstanding that the appellant had not safeguarded its interest by registration when the properties vested in it by law. For the same reason, the appellant was no trespasser onto the suit properties since in any case it had physical possession through its employees at the time the properties were alienated..”*

10 We entirely agree with the above findings of the learned appellate Judge and uphold the decision in that regard. We find no merit whatsoever in this ground which we accordingly dismiss.

This appeal fails and is hereby dismissed with costs to the respondent.

15 Dated at Kampala this 25th day of Oct:..... 2018.




Remy Kasule
AS JUSTICE OF APPEAL

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Kenneth Kakuru
JUSTICE OF APPEAL

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Geoffrey Kiryabwirwe
JUSTICE OF APPEAL