THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASAKA

CIVIL APPEAL NO. 25 OF 2014

(ARISING FROM CIVIL SUIT NO 10 OF 2013)

MUKWAYA MOSES.....................................................................................APPELLANT

VS

1. MWESIGYE ABDULLAH
2. NAMULI HADIJAH......................................................................................RESPONDENTS

**JUDGEMENT**

**BEFORE**: HON JUSTICE DR. FLAVIAN ZEIJA

This is an appeal from the Judgement of the Magistrate G1 His Worship Matovu Hood sitting at Masaka. The Appellant was represented by Matovu, Kamugunda and Co. Advocates while the respondents were not represented. Both parties filed written submissions.

The facts constituting this appeal are that the appellant purchased a Kibanja at Masambatya LC1 Masaka from the respondent at 30,000,000/=. A sale agreement was executed accordingly. It was agreed that payments be made in 5 instalments. The appellant claims to have paid all the instalments according to his pleadings (Plaint). The appellant took possession of the land. The second respondent counterclaimed that the Kibanja was family land that the 1st respondent had no powers to sell. According to the record of proceedings, the Magistrate did not hear the case. After conducting a scheduling, he proceeded to make a ruling and entered Judgement in favour of the plaintiff for 20,000,000/=. The counterclaim was never heard. The appellant was dissatisfied with this decision hence this appeal.

The Appeal is anchored on the following grounds:

1. The learned trial Magistrate erred in law and fact in that he handled a matter whose subject matter was beyond his Jurisdiction.
2. The learned trial Magistrate erred in law and fact when he decided the matter in a summary manner whereas the matters were contentious
3. The learned trial Magistrate erred in law and fact when he ordered the 1st respondent to refund Sh. 20,000,000/= whereas the available evidence showed that the respondent owed the appellant Shs. 30 Million shillings.
4. The learned trial Magistrate erred in law and fact when he held that the value of the suit land was exaggerated whereas he had no knowledge of the same and the developments thereon.
5. The trial Magistrate erred in Law and Fact when he ordered for a refund of only 20,000,000/= without considering the developments put on the land by the appellant.

It is my duty as the first appellate court to scrutinize and re evaluate the evidence on record and come to a fair decision. **S. 80** of the **Civil Procedure Act Cap 71** is alive to this fact. The same position was stated in ***Fredrick******Zaabwe VS Orient Bank Ltd C/A NO.4 of 2006*. See also *Kifamunte Henry VS Uganda SCU CR. Appeal No.10 of 1997*.** The responsibility of the Appellate court was more clearly states in the case of ***Baguma Fred VS Uganda SCC in appeal No7 of 2004*** Justice Order stated that

***First, it is trite law that the duty of a first appellate court is to reconsider all material evidence that was before the trial court, and while making allowance for the fact that it has neither seen nor heard the witnesses, to come to its own conclusion on that evidence. Secondly, in so doing it must consider the evidence on any issue in its totality and not any piece in isolation. It is only through such re-evaluation that it can reach its own conclusion, as distinct from merely endorsing the conclusion of the trial court***

**Ground 1**

***The learned trial Magistrate erred in law and fact in that he handled a matter whose subject matter was beyond his Jurisdiction.***

Counsel for the appellant argued that the subject matter of the case was 30 Million shillings which was beyond the jurisdiction of the Magistrate Grade 1. He referred to S 207(1)(b) of the MCA, and the case of ***National Medical Stores Vs Penjunes Ltd HCT-00-CC-29-2010*** .

The respondents not being represented did not make specific averments to the ground but made general responses.

The MCA provides:

***207. Civil jurisdiction of magistrates.***

***(1) Subject to this section and any other written law, the jurisdiction of magistrates presiding over magistrates courts for the trial and determination of causes and matters of a civil nature shall be as follows—***

***(a) …;***

***(b) a magistrate grade I shall have jurisdiction where the value of the subject matter does not exceed Twenty million shillings;***

The plaint Paragraph 6 thereof states:

***On or about the 17ht day of January 2013, the plaintiff bought or purchased the suit Kibanja from the 1st defendant at a consideration of Uganda Shillings 30 Million as per the photocopy of the sale agreement hereto attached”***

Clearly, this suit was beyond the jurisdiction of the Magistrate G1. The magistrate attempted to fit himself into the Jurisdiction by ordering a refund of 20 Million to the plaintiff. This was illegal. Once an illegality is brought to the attention of court, court cannot close its eyes. (see **Makula International Limited v His Eminence Cardinal Nsubuga and another Civil Appeal Number 4 of 1981.** Jurisdiction is determined from the claim not the decision. Jurisdiction is a creature of statute. Counsel for the appellant should have raised this issue of Jurisdiction in the lower court. However, failure to raise it does not confer jurisdiction on the Magistrate. See **Pulkeria Nakaggwa v. Dominiko Kiggundu [1978] HCB 310.**

**In Desai v. Warsama (1967) EA 351** it was held that:

“lack of jurisdiction goes far beyond any error, omission, or irregularity nor can it be regarded as a mere technicality......”

**In Umar Asuman v. Olila Moses HCCR No. 1/2006** J. Musota observed that:

“Jurisdiction of courts is a creature of statute and a judicial officer worth the name must keep abreast with developments in our laws and ensure jurisdiction.... for..... It is trite law that where a suit is filed in a court without jurisdiction, it is a non-existent suit. Whatever is decided in such a suit amounts no decision.”

I couldn’t agree less

I therefore find that the Magistrate handled a case for which he had no Jurisdiction. His decision is therefore null and void.

**Ground 2**

***The learned trial Magistrate erred in law and fact when he decided the matter in a summary manner whereas the matters were contentious.***

Counsel for the appellant argued that the the matter before the magistrate was contentious and many of the pertinent issues were not tackled at all since the Magistrate was in a rush.

The respondent did not specifically address this issue.

Looking at the record of proceedings, I cannot understand what informed the Magistrate to behave in the manner he did. He did a scheduling of the case but the documents which formed the annextures were never admitted in evidence/exhibited because the case was not heard. After the scheduling, the Magistrate proceeded to make what he called a “ruling”, not a judgement. But in the body of his ruling, he states that he entered judgement on admission. There was a counter claim which was never heard. The plaintiff did not lead evidence to prove his case. He ordered each party to meet their costs without giving reasons why he denied the plaintiff who was a successful party costs. He rejected part of the claim which he stated was “exaggerated and abnormal”. He did not explain why it was exaggerated and abnormal and what he meant by that statement. This was not in evidence. He concluded that there was lack of spousal consent in selling the Kibanja without taking evidence. No issues for trial were raised.

It is safe to conclude that there was no trial and this violated the Civil Procedure Rules. The Magistrate misconducted himself and managed the case akin to a Kangaroo Court.

Or 9 Rule 11 Provides:

***11. Setting down suit for hearing.***

***(1) At any time after the defence or, in a suit in which there is more than one defendant, the last of the defences has been filed, the plaintiff may, upon giving notice to the defendant or defendants, as the case may be, set down the suit for hearing.***

This was not done. I find merit in this ground

**Ground 3 and 4**

***The learned trial Magistrate erred in law and fact when he ordered the 1st respondent to refund Sh. 20,000,000/= whereas the available evidence showed that the respondent owed the appellant Shs. 30 Million shillings.***

***The learned trial Magistrate erred in law and fact when he held that the value of the suit land was exaggerated whereas he had no knowledge of the same and the developments thereon.***

I have already indicated that there was no trial and there is no reason why I should delve into these grounds. There was no basis upon which the magistrate made the orders.

In the result, I uphold the appeal, with the following orders

1. set aside the orders of the Trial Magistrate
2. The case should be tried before another Magistrate and a full and fresh trial should be conducted
3. The respondents should meet the costs of this appeal to the respondent.

**I so order**

Dr Flavian Zeija

Judge

6/10/2017