REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

(CORAM: KATUREEBE, CJ; ARACH-AMOKO; MWANGUSYA; MUGAMBA, JJ.S.C. TUMWESIGYE, AG. J.S.C)

CIVIL APPEAL NO: 016 OF 2014

BETWEEN

BITAMISI NAMUDDU :: APPELLANT

AND

RWABUGANDA GODFREY :::::::::::::::::::: RESPONDENT

[Appeal from the decision of the Court of Appeal sitting at Kampala (Buteera, Kakuru, Tibatemwa-Ekirikubinza, JJ.A) in Civil Appeal No. 87 of 2010]

JUDGMENT OF TUMWESIGYE, AG. JSC

This appeal raises the question of when summons issued under Order 5 rule 1(1) and (2) of the Civil Procedure Rules should be served and the consequences of failure to serve them within the timelines provided under the Rules. The brief facts of the case are as follows:

Bitamisi Namuddu, the appellant, instituted legal proceedings against Rwabuganda Godfrey, the respondent, and the Registrar of Titles in the Kiboga District Land Tribunal (hereinafter referred to as "the Land Tribunal") in respect of land comprised in Leasehold Register 645 Folio Singo Block 783 Plot 3 Nakatakuli (the suit land) for conversion and trespass. The appellant was the holder of letters of administration for the estate of her deceased father. Her claim was that the suit land which at the time of her filing the suit was registered in the name of the respondent, belonged to her deceased father.

She sought from the Land Tribunal for, among other things, a declaration that she was the rightful owner of the suit land and an order of eviction of the respondent from the suit land.

On 12th November, 2004, the Land Tribunal issued the appellant with summons to serve on the defendants ordering them to file their defence. The appellant gave the summons to a process server to effect the service. However, the process server was unable to effect the service because, according to the process server, the LC 1 Chairman of the area informed him that the respondent was not known in the area where the process server went to serve him with summons. The return of service was made on 27th December, 2004.

On 21st June, 2005, the appellant filed a formal application by chamber summons for substituted service. The Land Tribunal granted the appellant leave to effect summons by substituted

service, and on 24th August 2005 a notice appeared in the New Vision newspaper headed "Summons/Hearing Notice" requiring the respondent to attend the hearing of the matter at the Land Tribunal on 27/10/2005 at 9:00 O'clock in the forenoon.

The Tribunal being satisfied that the summons/hearing notice had been served on the respondent allowed the appellant to formally prove her case ex parte. In its judgment, the tribunal found that the appellant was the rightful owner of the suit land. It referred the matter to the High Court for the necessary consequential orders of cancelling the title of the respondent under s.30(d) of the Land (Amendment) Act, 2004 and entering the name of the appellant on the register. Consequently the respondent was evicted from the suit land and the appellant took possession of it.

The respondent then filed Miscellaneous Application No. 44 of 2007 in the Chief Magistrates Court at Kiboga (Land Tribunals in the country had ceased to operate) for orders that the ex parte judgment, orders and decree passed by the Land Tribunal in November 2006 be set aside on the ground that the service of summons was not effective, proper and in accordance with the Land Tribunal (Procedure) Rules S.1.33 of 2002 or Civil Procedure Rules S.1.71-1. A grade one magistrate heard the application and dismissed it.

The respondent then appealed to the High Court at Nakawa (Mwondha, J,) (as she then was) and the High Court dismissed the

appeal. The respondent then appealed to the Court of Appeal on the grounds that-

1. The trial magistrate erred in law when she refused to set aside the ex parte judgment against the respondent.
2. The trial judge erred in law when she failed to rule that the respondent was never served with court process.
3. The trial judge erred in law when she held that service of court summons in the New Vision newspaper was effective service on the appellant who resided in Kiboga.
4. The trial judge erred in law when she held that the appellant had failed to disclose triable issues and to establish a prima facie case.

The Court of Appeal allowed the appeal and found that the order for substituted service was a nullity ab initio having been made by a court which had no jurisdiction, and made orders as follows:

"1. The judgment of the High Court is hereby set aide and substituted with this judgment dismissing the suit for non compliance with Order 5 Rule (2) of the Civil Procedure Rules.

2. The consequential orders made by the High Court on 20th September 2007 are hereby set aside.

3. The Commissioner of Land Registration is hereby ordered to cancel the respondent's (Bitamisi's) name on L.H.R Volume

645 Folio 9 Singo Block 783 Plot 3 and reinstate thereon the name of the appellant (Rwabuganda).

4. The respondent (Bitamisi) is hereby ordered to vacate the suit land described in paragraph 3 above immediately, and to handover vacant possession to the appellant (Rwabuganda).

5. The respondent (Bitamisi) is hereby ordered to pay costs in this appeal, the High Court and in the Land Tribunal."

Being dissatisfied with the decision of the Court of Appeal, the appellant applied in that same court for leave to appeal to this court since the appeal would be a third appeal. The application was declined by the Court of Appeal. The appellant then applied to this court for leave to appeal which application was granted.

Grounds of Appeal

The appellant's grounds of appeal in this court were as follows:

(i) The learned Justices of Appeal erred in law when they held that substituted service was not good service and not effective.

(ii) The learned Justices of Appeal erred in law when they held that the respondent was not duly served with court process.

(iii) The learned Justices of Appeal erred in law when they set aside the ex parte judgment against the appellant and did not re-open the suit to be heard inter parties.

(iv) **The learned Justices of Appeal erred in law when they ordered the cancellation of the appellant's name from the suit land thereby ordering the reinstatement of the respondent to the suit land.**

The appellant prayed Court to allow the appeal, set aside the ruling of the Court of Appeal and for costs of the appeal.

The respondent filed a notice of grounds affirming the decision of the Court of Appeal which consisted of among other grounds the following:

1. That the respondent was never served with any summons to file a defence in the District Land Tribunal.
2. The respondent's application to set aside the ex parte judgment in lower Magistrate's Court and that of the District Land Tribunal disclosed triable issues and a good defence.
3. That the learned Justices of Appeal had inherent discretion to set aside the ex parte judgment on the aforementioned grounds.

The respondent prayed court for orders that:

1. The ex parte judgment of the District Land Tribunal and ruling of His Worship Ssekaggya, Magistrate Grade 1, be affirmed.
2. The respondent be confirmed as registered proprietor of the suit land.
3. That vacant possession of the suit property be yielded to the respondent.
4. A declaration that the said Kakungulu John Matovu is not a bona fide purchaser for value without notice.
5. The Court of Appeal decision in respect of the principles of the case of Geoffrey Gatete & others William Kyobe be varied.
6. The respondent be awarded costs of the appeal in the Supreme Court and lower courts.

Submissions of counsel

At the hearing of the appeal, Mr. Abaine Jonathan appeared for the appellant while Mr. Mugenyi Jesse appeared for the respondent. Both counsel filed written submissions and gave highlights on the same at the hearing.

Learned counsel for the appellant argued grounds 1 and 2 together then grounds 3 and 4 together. Counsel submitted that it was important for this court to determine the question as to whether substituted service is deemed good service and effective following the decision of this court in the case of **Geoffrey Gatete & Anor. vs. William Kyobe**, SCCA No. 7 of 2005, and whether the

respondent was effectively served with summons to file a defence in the tribunal it being a matter of great public importance and a point of law. He cited the case of **Namuddu Christopher vs. Uganda** SCCA No. 3 of 1996 to support his contention.

Counsel also cited rule 17(5), 20(1) & (2) of the Land Tribunal Rules and Order 5 r. 18 of the Civil Procedure Rules which allows a court to make an order for substituted service if it is satisfied that for any reason, summons cannot be served in the ordinary manner, and that the effect of such service would be as effectual as if it had been made on the defendant personally. He further referred court to the affidavit of service deponed by Godfrey Malobo, a process server, who stated that the respondent was served personally and that he endorsed on the summons/hearing notice by his own thumb print. He therefore argued that the respondent was effectively served and made aware of the suit against him in the Land Tribunal and chose not to defend the suit. Counsel for the appellant also argued that efforts to serve the respondent personally were made in vain because the respondent's physical address could not be found.

Grounds 3 & 4

Counsel contended that the Court of Appeal erred when it determined issues that were not pleaded. He stated that the respondent's case was for setting aside the ex parte judgment and reinstatement of the suit to be determined on its merits. He thus prayed this court to allow the appeal, set aside the ex parte

judgment and orders of the Court of Appeal and reinstate the judgment and orders of the High Court and costs of the suit.

In his response, learned counsel for the respondent argued ground 2 and 1 separately and 3 & 4 together in that order.

Ground 2

Learned counsel for the respondent supported the decision of the Court of Appeal that the respondent was not duly served with court process. Counsel referred this court to the Court of Appeal judgment where the court stated the application for an order for substituted service was made on the 21st June 2005, 6 months after the issuance of summons and yet the summons had expired which warranted the Land Tribunal to dismiss the case without notice in accordance with Order 5 rule 3 of the Civil Procedure Rules. He stated that the Justices of Appeal properly invoked rule 62 of the Land Tribunal (Procedure) Rule 2002 S.I 33 which allows the application of the Civil Procedure Rules where the Land Tribunal rules are silent on any matter.

He stated that the essence of Order 5 rule 3 is that in lieu of an application for extension of time within the stipulated time of 21 days the suit stands dismissed without notice and that all subsequent applications for substituted service are a nullity as the suit had abated.

Ground 1

On the issue of effectiveness of service, counsel for the respondent contended that the Court of Appeal already held that it was a hearing notice that was advertised in the newspapers and not summons to file a defence and that these were not the summons issued by the Tribunal on the 12th day of November, 2004. He argued that for substituted service to be effective, the notice had to be advertised in a newspaper having wide circulation. He argued that the appellant did not furnish the court with any evidence that the New Vision was a newspaper with wide circulation in the area where the appellant resided.

He contended that whereas the appellant argued that she could not serve the respondent because his physical address was not known, when it came to the time of execution of the decree, the respondent was arrested, his house and property destroyed, and his cattle attached and sold. This therefore cast doubt as to whether the appellant genuinely failed to serve court process to the appellant or merely refused to serve the respondent in order to deny him an opportunity to be heard.

Grounds 3 & 4.

Counsel for the respondent supported the Court of Appeal's decision to nullify the proceedings rather than setting aside the decision of the tribunal and allowing the case to be heard inter partes.

Counsel contended that the learned Justices of Appeal found that the whole process was not only marred by irregularities but also illegalities for non- compliance with Order 5 of the Civil Procedure Rules and the Land Tribunal (Procedure) Rules. Counsel argued that failure to serve the summons within the prescribed 21 days and the non extension of the time within which to serve the summons rendered the case dismissed without notice as prescribed under Order 5 r. 3 of the Civil Procedure Rules.

On the issue of third party interests as alleged by the appellants, counsel for the respondent stated that no third party interests were ever lodged and registered on the respondent's title. He argued that the transfer document by Kakungulu John dated 29th November 2009 in the supplementary record was not registered.

Relating to the same issue, counsel referred this court to its ruling in the same matter dated 16th June 2016 in which the court stated that third party interests were affected by the Court of Appeal decision and yet counsel for the respondent had failed to address this court on that issue. He stated that Miscellaneous Application No. 174 of 2015 that relates to third party interests basically relies on the affidavit of Kakungulu John Matovu whose claim is based on a sale agreement dated 13th September, 2004 in which the appellant purportedly sold the suit property long before the consequential orders of the High Court which were dated 13th September 2007. Counsel argued that at that time the appellant

sold this land in her personal capacity and not as administrator to the estate of the late Musa Muswangali.

Resolution of the grounds

The appellant's complaint in grounds 1 and 2 is that the Court of Appeal erred when it held (1) that the respondent was not duly served with court process and (2) that substituted service was not good and effective service.

The Court of Appeal found that the Land Tribunal ought to have dismissed the suit without notice as is required under O.5 r. 1 (3) of the Civil Procedure Rules and that the Tribunal had no jurisdiction to issue fresh summons to a party that had failed to comply with the stipulated procedure. The court, therefore, held that the issuance of substituted service by the Land Tribunal was a nullity ab initio and that the ex parte judgment and decree of the Tribunal that followed the substituted service were also a nullity.

Counsel for the appellant's contention is that even if it were to be agreed that the Tribunal failed to comply with Order 0.5 r. 1(3), the Tribunal had jurisdiction to entertain the application for substituted service and to grant it under Rule 17(5) of the Land Tribunals (Procedure) Rules, 2002, and that the Court of Appeal erred to declare the judgment of the Tribunal a nullity as it emanated from due process, and that setting it aside would adversely affect third parties.

The Land Tribunals (Procedure) Rules, 2002, Statutory Instrument No. 33 of 2002, which were then in operation as the Tribunals' rules of procedure did not have specific provisions for the serving of summons. However, Rule 62 of the Tribunals' rules provided that **"where these Rules are silent on any matter, the Civil Procedure Rules S 1 65-3 shall apply with necessary modifications."**

Accordingly, the law relating to the service of summons which the Tribunal was required to apply but which it did not is O. 5 r.1(1), (2) and (3) of the Civil Procedure Rules. Rule 2 of these rules provides as follows:

" 1. Summons.

(1)When a suit has been duly instituted a summons may be issued to the defendant –

(a)ordering him or her to file a defence within a time to be specified in the summons; or

(b)ordering him or her to appear and answer the claim on a day specified in the summons.

(2)Service of the summons issued under sub rule (1) of this rule shall be effected within twenty one days from the date of issue; except that the time may be extended on application to the court, made within fifteen days after

the expiration of the twenty one days, showing sufficient reasons for the extension." (My emphasis)

Order 5 rule 1 (3) provides:

"(3) Where summons have been issued under this rule, and –

(a) service has <u>not</u> been effected within twenty one days from the date of issue; and

(b) there is no application for extension of time under sub rule (2) of this rule; or

(c) the application for extension of time has been dismissed, the suit <u>shall</u> be dismissed without notice." (My emphasis)

The Court of Appeal found that summons were issued by the Tribunal on 12th November, 2004 and so the appellant was required to have served the summons within 21 days from the date of issue and that the service of summons ought to have been effected by 3rd December, 2004, which was not done. The court further found that the return of service was made on 27th December, 2004 well after the 21 days within which service ought to have been effected. The court also found that there was no application by the appellant to extend time within which to serve the summons and that this ought to have been made within 15 days after the expiration of the 21 days.

These findings of fact by the Court of Appeal were not contested by the appellant in her grounds of appeal or in her counsel's

submissions to this court. They must, therefore, be taken to be true. Indeed, nowhere in Counsel for the appellant's submissions is there any denial that both the Tribunal and the appellant breached the provisions of Order 5 Rule 2 and 3 of the Rules of Procedure as the Court of Appeal found. Counsel's argument is that even if the Tribunal and the appellant may be said to have breached the rules, the ex parte judgment and decree of the Tribunal should not have been declared a nullity by the Court of Appeal because both were a result of due process.

I do not think that the words of 0.5 r. 1 (2) and (3) are ambiguous and require any interpretation. The Order is written in plain, clear and unambiguous words and indeed counsel for the appellant does not argue in his submissions that the Court of Appeal misinterpreted them. O. 5 r. 1 (3) clearly states that where summons are issued and service is not effected within 21 days from the date of issue and no application for extension of time is made **"the suit shall be dismissed without notice."** The consequences of failure to serve the summons within 21 days from the date of issue and of not making application for extension of time in the prescribed period are clear and straight forward - the suit stands dismissed without notice. The provision does not give court discretion to decide whether to dismiss or not to dismiss the suit. The court's action is dictated by law and it is mandatory. The dismissal is also effected without notice to the plaintiff.

The Land Tribunal did not dismiss the suit as Rule 1 (3) of Order 5 dictated but instead illegally decided, six months from the time when it should have dismissed the suit, to issue fresh summons/hearing notice to the appellant for service on the respondent. The Court of Appeal found that by doing so, the Tribunal acted without jurisdiction. The Court of Appeal rightly dismissed the appellant's suit in accordance with O. 5 r.1 (3), an action that the Tribunal should have taken in the first place. Once the suit is dismissed the parties to the suit must be restored to their original position, i.e to the state in which they were before the suit was filed (their status quo ante).

I agree with the Court of Appeal that the Tribunal's proceedings and the resultant orders thereof were a nullity ab initio and of no effect.

Similarly the consequential orders made by the High Court emanating from the ex parte judgment of the Tribunal were a nullity. Having found as I do that the Court of Appeal was right to allow the respondent's appeal because of the appellant's and Tribunal's failure to comply with the provisions of O. 5 r. 1 (2) and r. (3) in serving the summons I would dismiss this appeal.

I have found the appellant's appeal rather strange because the appellant's main ground of appeal and her counsel's submissions were largely on whether the substituted service was good or effective service which issue, with respect, was not the basis for the decision of the Court of Appeal. Surprisingly, even counsel for the

respondent criticised the Court of Appeal in his submissions for the court's alleged holding that substituted service was not good service or effective service.

After allowing the respondent's appeal and making orders nullifying the ex parte ruling and decree of the Tribunal and the consequential orders of the High Court the learned Justices of Appeal stated. "**Before we take leave of this matter, we would like to clarify some important issues that were raised in this appeal but did not form the basis of our decision.**"

These words of the learned Justices of Appeal seem to have been lost on both counsel because both of them treated the subsequent remarks of the learned Justices of Appeal concerning substituted service as if they formed the basis of the court's decision. Clearly, the statements of the learned Justices of Appeal were obiter dicta because they were made after the Court of Appeal had already decided the appeal in favour of the respondent. Both counsel were, therefore, wrong to treat what was the court's obiter dicta as the decision of the court.

Counsel for the appellant entreated this court to make clarification on whether the provisions of the law on substituted service were still relevant in view of this court's holding in the case of **Geoffrey Gatete & Anor vs. William Kyobe** (supra). Counsel for the respondent also prayed this court to closely examine the manner in which the substituted service (summons and hearing notice) was

advertised in the newspaper. Like the Court of Appeal, I will state my views briefly on the two requests since they were extensively submitted on by the two counsel.

Substituted service is provided for under O. 5 r. 18 of the Rules of Procedure. It was also provided for under Rule 17(5) of the Land Tribunals (Procedure) Rules, 2002, which were in operation when the suit was lodged in the Tribunal by the appellant. In **Geoffrey Gatete & Anor vs. William Kyobe**, (supra) Justice Mulenga, JSC, stated:

> **The court may order substituted service by way of publishing the summons in the press. While the publication will constitute lawful service, it will not produce the desired results if it does not come to the defendant's notice. In my considered view, these are examples of service envisaged in O. 36 r. 11 as "service (that) was not effective." Although the service on the agent or the substituted service would be "deemed good service" on the defendant entitling the plaintiff to a decree under O. 36 r. 3 if it is shown that the service did not lead to the defendant becoming aware of the summons, the service is "not effective" within the meaning of O. 36 r. 11 (see Pirbhai Lalji vs. Hassanali [1962] E.A. 306"...**

In my view, the expression "service that is deemed to be good service" is so broad that it includes service that might not produce the intended result, which therefore is not effective."

The holding in **Geoffrey Gatete** by this court is sound because it is based on a fundamental principle in our administration of justice – the right to be heard. Article 28(1) of the Constitution provides:

"In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law."

The fundamental right to fair hearing is entrenched in our Constitution (See Article 44 of the Constitution). No person should be condemned unheard. Consequently, an ex parte judgment or decree is **voidable** at the instance of a party that did not attend court if that party shows that he or she had sufficient cause for not appearing at the hearing. O. 9 r. 27 of the Civil Procedure Rules provides:

"In any case in which a decree is passed ex parte against a defendant, he or she may apply to the court by which the decree was passed for an order to set it aside; and if he or she satisfies the court that summons was not served, or that he or she was prevented by any sufficient cause from appearing when

the suit was called for hearing, the court shall make an order setting aside the decree as against him or her upon such terms as to costs, payment into court or otherwise as it thinks fit...." (my emphasis)

Substituted service can be good service because it is lawful but it is liable to be rendered ineffective if the defendant satisfies court that he or she did not receive it and was not aware of it. In short, substituted service while good will not be effective unless it produces the desired results as the case of **Gatete** (supra) clearly lays down. A judge making an ex parte judgment may have at the back of his or her mind the idea that he or she will probably set it aside at a future date.

In the instant case there were a number of signals in the manner the summons were effected that should have put the Tribunal on inquiry and restrained it from conducting the ex parte hearing. When the process server went to the area where the respondent was residing and where the suit land was located, he was told by the LC 1 Chairman of the area that no person by the name of the respondent was known to reside in the area. Why, then, did the process server not go back to establish where exactly the respondent lived before the appellant resorted to apply for substituted service?

The respondent was known to be illiterate and that was why he was asked by the process server to endorse the summons/ hearing

notice by his thumb print. How then was the respondent expected to read the advertisement of the summons/hearing notice in the New Vision newspaper if he could not read or write let alone do so in the English language of the newspaper? It is noteworthy that the appellant resorted to serve the respondent by substituted service because she could not locate him yet when it came to the time of executing the Tribunal's decree, the respondent was conveniently found and arrested, his cows attached and sold, and he and his family evicted from the land.

All this should have been carefully considered by the Grade 1 magistrate court and the High Court that dismissed the respondent's application to set aside the ex parte ruling and decree. The Court of Appeal rightly found that the substituted service was good but not effective. However, it did not set aside the Tribunal's ex parte judgment and decree because its decision was rightly based on the fact that the tribunal lacked jurisdiction to conduct the ex parte hearing.

As I stated above, the Court of Appeal was right to dismiss the appellant's suit because the appellant had failed to comply with O.5 r. 1(2) of the Rules. The effect of dismissing the suit was to restore the parties to their original position which existed between the parties before the suit was filed. A judgment which is void ab initio cannot confer any right or impose any obligation on a party. In my view the Court of Appeal was therefore justified to order for

cancellation of the appellant's name from the land register and to reinstate the respondent's name because the appellant's name had been entered on the register pursuant to an order that was a nullity.

On the issue raised by counsel for the appellant concerning Misc. Application No. 174 of 2014 **John Katungulu Matovu vs. Rwabuganda and Bitamisi Namuddu** regarding third party interests in the suit land, I am of the view that the said claims raise triable issues which cannot be decided by this court. Furthermore, these are new matters that were not part of the parties' pleadings and which cannot, therefore, be considered at this level.

In the result, I would dismiss the appeal, confirm the decision and orders of the Court of Appeal, and order that the appellant pays costs in this court and the courts below.

Dated at Kampala this 19th day of December 2018

Jotham Tumwesigye

AG. JUSTICE OF THE SUPREME COURT

REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT KAMPALA

(CORAM: [KATUREEBE, CJ; ARACH-AMOKO; MWANGUSYA; MUGAMBA, JJ.S.C TUMWESIGYE, AG.J.S.C])

CIVIL APPEAL NO: 016 0F 2014

BETWEEN

BITAMISI NAMUDDU :: **APPELLANT**

AND

RWABUGANDA GODFREY :: **RESPONDENT**

[Appeal from the decision of the Court of Appeal sitting at Kampala (Buteera, Kakuru, Tibatemwa-Ekirikubinza, JJA) in Civil Appeal No. 87 of 2010]

I have read the judgment prepared by my brother, Tumwesigye, JSC and I fully agree with him that this appeal should fail.

I also agree with the orders he has proposed as to costs.

As all the other members of the Court agree, this appeal is hereby dismissed with costs to the respondent in this court and the courts below.

We confirm the decision and orders of the Court of appeal.

Dated at Kampala this 19th day December 2018

Bart M. Katureebe

CHIEF JUSTICE

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

CORAM: (Katureebe, CJ, Arach-Amoko, Mwangusya, Mugamba, JJSC, Tumwesigye, A.G. JSC)

CIVIL APPEAL NO 016 OF 2014

Between

BITAMISI NAMUDDU ..... APPELLANT

And

RWBUGANDA GODFREY..... RESPONDENT

(Appeal from the decision of the Court of Appeal of Uganda sitting at Kampala before Buteera, Kakuru, Tibatwemwa-Ekirikubinza, JJA Civil Appeal No. 87 of 2010)

JUDGMENT OF MWANGUSYA, JSC

I have had the benefit of reading in draft the judgment of my brother, Jotham Tumwesigye, Ag. JSC.

I agree with his decision dismissing the appeal, confirming the decision and orders of the Court of Appeal and an Order that the appellant pays costs in this Court and the Courts below.

Dated at Kampala this 19th Day of December 2018.

Mwangusya Eldad
JUSTICE OF THE SUPREME COURT

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 016 OF 2014

BITAMISI NAMUDDU::: APPELLANT

VERSUS

RWABUGANDA GODFREY ::: RESPONDENT

CORAM: KATUREEBE, CJ; ARACH-AMOKO; MWANGUSYA; MUGAMBA; JJ.S.C. TUWESIGYE, AG.J.S.C

JUDGMENT OF PAUL. K. MUGAMBA JSC

I have read in draft the lead judgment of my brother Justice Jotham Tumwesigye. I am in agreement with his reasoning and conclusion.

Given that this appeal lacks merit it should be dismissed and the attendant order for costs is pertinent.

Dated at Kampala this 19th day of December 2018

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Paul K. Mugamba
JUSTICE OF SUPREME COURT

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

(CORAM: Katureebe CJ, Arach-Amoko, Mwangusya, Mugamba, JJSC, Tumwesigye, Ag. JSC.)

CIVIL APPEAL NO. 16 OF 2014.

BETWEEN

BITAMISI NAMUDDU::APPELLANT

AND

RWABUGANDA GODFREY::RESPONDENT

{Appeal arising from the decision of the Court of Appeal at Kampala (Buteera, Kakuru and Tibatemwa-Ekirikubinza, JJA), in Civil Appeal No. 87 of 2010}.

JUDGMENT OF M.S.ARACH-AMOKO, JSC

I have had the benefit of reading in advance the draft Judgment prepared by my learned brother, Hon. Justice. Tumwesigye, Ag. JSC, and I agree with his findings and decision that this Appeal should be dismissed with costs to the respondent for the reasons he has given in his Judgment.

Dated at Kampala this 19th day of December 2018

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M.S. ARACH-AMOKO
JUSTICE OF THE SUPREME COURT