

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**LAND DIVISION**

**CIVIL APPEAL NO. 70 OF 2023**

**ARISING FROM KASANGATI LAND CIVIL SUIT NO. 006/ 2020**

**WANJI MUSA**

**(Administrator of the estate of**

**The late Sekitayira Sulumani ..... APPELLANT**

**VERSUS**

**THE SCHOOL MANAGEMENT COMMITTEE**

**OF DAMALIE NABAGEREKA**

**PRIMARY SCHOOL ..... RESPONDENT**

**BEFORE HON. LADY JUSTICE FLAVIA NASSUNA MATOVU**

**JUDGEMENT**

**1. INTRODUCTION**

This appeal arose from the decision of court in Kasangati land civil suit No. 006 of 2020 that was passed on 1<sup>st</sup> June 2023. The appellant being dissatisfied with the said decision lodged this appeal against the same. The grounds of appeal were laid in the memorandum of appeal that was lodged at court on 20<sup>th</sup> June

  
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2023 and endorsed by the Registrar on 26<sup>th</sup> July 2023. Briefly the grounds were that;

- a) the trial magistrate erred in law and in fact when she failed to properly evaluate the evidence on record thereby arriving at a wrong conclusion that the respondent was an adverse possessor.
- b) The trial magistrate erred in law and in fact when she substantially departed from the defendant's pleadings and relied on new and unpleaded facts to reach her findings.
- c) The trial magistrate erred in law and fact when she substantially relied on hearsay evidence to reach her findings.
- d) The trial magistrate erred in law and fact when she substantially relied on a purported sales agreement of 2004 without any substantial evidence adduced to that effect to reach her findings.
- e) The trial magistrate erred in law and fact when she held that the defendants were in possession of the suit land for 70 years.
- f) The trial magistrate erred in law and fact when she held that the plaintiff suit was time barred.
- g) The trial magistrate erred in law and fact when she imported facts she referred to as defendant's facts and subsequently relied upon them to reach her findings.
- h) The trial magistrate erred in law and fact when she ignored glaring contradictions from the defendant's witnesses.
- i) The trial magistrate erred in law and fact when she accepted the defendant's submissions filed outside the directed time.

  
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- j) The trial magistrate erred in law and fact when she held that the plaintiff's cause of action arose in or about 2004 whereas not.
- k) The trial magistrate erred in law and fact when she held that the appellant should have brought the suit before obtaining letters of administration as a beneficiary.

The appellant thus called upon this court to set aside the judgment and decree of the lower court with costs to him.

## **2. BACKGROUND**

- a) The appellant filed Kasangati land civil suit no. 006 of 2020 against the respondent in his capacity as administrator to estate of late Sekitayira Sulumani. By the said suit he sought for declaration that he was the beneficial owner of the suitland comprised in Kyaddondo Block 156 Plot 3088 at Kavule; that the defendant was a trespasser; an order of vacant possession /eviction against the defendant; permanent injunction; mesne profits; general damages; interest and costs of the case. He claimed that the suit land belonged to late Sekitayira Suluman who died in 1992. He dies intestate and the appellant acquired letters of administration to his estate. After the death of Sekitayira Suluman, the defendant without the consent or approval of the beneficiaries trespassed on the suit land by carrying out cultivations . The appellant thus filed the said suit seeking for the above mentioned remedies.
- b) The respondent on the other hand denied any act of trespass. It maintained that it had a lawful interest in the suit land



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which was duly and lawfully acquired from the previous registered owner and that it was in actual possession of the same. That it had occupied the suit land for over 70 years without any interference .

- c) The case went to full trial and at the trial court two issues were considered i.e.
  - i. Whether the defendant had a legal interest in the suit land
  - ii. What remedies were available to the parties?
- d) The court delivered judgment and found that the appellant/plaintiff's action was time barred and thus dismissed the same with costs to the respondent/defendant.
- e) The appellant was not satisfied with the above decision and thus lodged the instant appeal on the aforementioned grounds.

3. Both parties filed written submissions which I have carefully studied and need not reproduce them here.

#### **4. Decision of court.**

After carefully studying the entire record of pleadings and proceedings of the lower court I noted as follows:

In the plaint that was filed at the lower court on 20/2/2020, paragraph 9 thereof, it was clearly stated that the value of the subject matter was above Ug.shs. 50 million. Indeed, in the written statement of defence that was filed on 18/3/2020, paragraph 6 thereof, the defendant intimated that it would raise a preliminary objection about the jurisdiction of court.

However, the record does not show whether or not the said objection was raised. That notwithstanding S.207(1) of the Magistrate's courts Act which provides for civil jurisdiction of magistrates provides;

“a chief magistrate shall have jurisdiction where the value of the subject matter in dispute does not exceed 50 million Uganda shillings and shall have unlimited jurisdiction in disputes relating to conversion, damage to property or trespass”.

In the case before court, the value of the subject matter was clearly reflected to be above 50 million and this fact was brought to the attention of the trial magistrate in the pleadings. The pleadings clearly showed that the suit was not merely a trespass claim. It was about determination of competing rights to the ownership of the suit land by the plaintiff who owned the title and the defendant who claimed to have acquired the same from the previous registered owner and to have been in possession for over 70 years. The reliefs sought included inter alia vacant possession and or eviction. In my view this was an action for recovery of land disguised as trespass. Certainly, the suit was outside the ambit of S.207 (1) of the Magistrates court Act because it was not purely trespass.

It is not clear why the trial magistrate ignored this salient fact that was brought to her attention in the pleadings. The case of **Byekwaso Pafula and 9 others vs. Cecila Lwanga, Mubende Civil Appeal No. 027 of 2023** is on all fours with the instant case except that in that case the value of the subject matter was not disclosed in the pleadings. Nonetheless the court found that the

remedies that were being sought by the plaintiff clearly put the suit outside the jurisdiction of the chief magistrate. In that case (Byekwaso (supra)), the plaintiffs claimed inter alia for eviction and vacant possession and the judge found, rightly so, that this claim was not merely for trespass but also for recovery of land and the since the value of the land was beyond jurisdiction of chief magistrate, the decision of court was set aside for being null and void.

Similarly in the instant case among the remedies that were being sought by the plaintiff, was vacant possession and or eviction. Since the pleadings clearly stated that the value of the subject matter was above 50 million, the chief magistrate had no jurisdiction. It was therefore erroneous for the chief magistrate to entertain a matter over which she had no jurisdiction.

It is thus clear that the trial magistrate did not have jurisdiction to entertain this case.

Any decision by a court without jurisdiction is a nullity and cannot be left to stand. The proceedings and judgement of the lower court are accordingly hereby set aside for lack of jurisdiction by the trial court.

Parties are accordingly advised to file the case in a court with proper jurisdiction if they so wish. Since this was an error of court each party shall bear their costs for this appeal.

**DATED at Kampala this 28<sup>th</sup> day of November 2024.**



**JUDGE.**