

UGANDA / JUDGMENT

Bulamu & Another v Zubayiri (Civil Appeal 16 of 2023) [2024] UGHC 1177 (15 October 2024) [2024] UGHC 1177

COURT

High Court of Uganda

BEFORE

Oyuko Anthony Ojok, J

CASE / FILE NUMBER

Civil Appeal 16 of 2023

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MPIGI

CIVIL APPEAL NO. 16 OF 2023

(Arising from Mpigi Civil Suit No. 042 of 2019)

1. BULAMU VICTORIA S
2. LUTAKOOME MARTIN BENEDICT .. APPELLANTS

VERSUS

RESPONDENT ZUBAYIRI WAMPONA.....

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK 10

Judgment

The appellant brought this appeal against the decision of Her Worship Koburunga Patience, the Ag. Senior Magistrate Grade one delivered on the 6th March, 2023 and the grounds of appeal are as follows;

- 1. That the trial court erred in law and fact in holding that it lacked jurisdiction to handle the appellant's claim.

- 2. That the trial court erred in law and fact when it determined jurisdiction on the basis of a valuation report dated 11th November, 2022.
- 3. That the learned trial Magistrate erred in law and fact in holding that the appellants' by hiding under a claim of trespass was an illegality whereas not.
- 4. That the learned trial Magistrate erred in law and fact when she did not properly evaluate the evidence on record relating to the progress of the matter hence reaching a wrong decision.

Brief Background:

- The appellant's claim against the respondents was for declaratory orders of \$25\$ ownership of the kibanja situate at Bulamazzi, Mawokota, Mpigi District, a declaration that the respondent was a trespasser on the suit land, an eviction order/vacant possession, general damages, permanent injunction as well as interest and costs.
- The respondent filed a defence submitting to jurisdiction of court and alleging that 30 he purchased the suit kibanja from one Yozefu Ola.

At the commencement of trial, the parties filed a joint scheduling memorandum where two issues were raised to wit; whether the respondent was a trespasser on the suit land and whether the appellant is entitled to the remedies sought?

At trial the appellants produced 3 witnesses who testified and at the closure of the appellant's case, the trial magistrate contested jurisdiction relying on the value of \$ $\$$ the subject matter pursuant to a valuation report dated 11th November, 2022 and dismissed the appellant's suit on that account. Hence, this appeal.

Representation:

Counsel Allan Tumwe

sigye appeared for the Appellants while Counsel Nabirizi Caleb appeared for the \$10\$ respondent. Both parties filed written submissions.

Submissions:

Grounds 1 and 3 are discussed jointly then grounds 2 and 4 together.

Grounds 1 and \$3\$:

1. That the trial court erred in law and fact in holding that it lacked jurisdiction to \$15\$ handle the appellant's claim.

3. That the learned trial Magistrate erred in law and fact in holding that the appellants' by hiding under a claim of trespass was an illegality whereas not.

Counsel for the appellants submitted that the appellants' claim in the lower court was for trespass to land whose value could not be estimated and whose claim was \$20\$ about interfering with the appellant's possession. That Section 207 of the Magistrates' Court Act as amended provides that; a magistrate grade one shall have jurisdiction where the value of the subject matter does not exceed 20 million. That where it is not possible to estimate the monetary value of the subject matter, where a declaration of ownership is made, a decree cannot be issued for an amount on \$25\$ the claim, exceeding the pecuniary limits of the ordinary jurisdiction of the court passing the decree. That in the instant case, the trial court was wrong to hold that it lacked jurisdiction to handle the matter because, since the claim was based on trespass whose value could not be estimated and was never pleaded in the plaint.

Secondly, if the trial court thought that the relief sought was wrongly valued, it 30 would have fixed the value and returned the plaint to the appellants for amendment instead of dismissing the suit on account of pecuniary jurisdiction. That had the plaint been returned for amendment, the appellants would have pleaded the value of the subject matter as it was in 2019 and not the value of 2022 indicated in the impugned valuation report of 11th November, 2022.

However, this 35

was necessary in a claim of trespass. (See: Munobwa Muhamed v. Uganda Muslim, Supreme Council, H. C. Civil Revision No. 001 of 2006).

Thirdly, that PW1 and PW2 had testified that the respondent's kibanja was initially about 2 acres but at the time of institution of the suit, that he is now claiming 10 acres of his kibanja on the appellants' land, which clearly showed that the trespass continued thereby disturbing the appellants' possession or interfering with it.

Fourthly, the rules of court provide for the manner of objecting to jurisdiction of a magistrate grade one, which were not followed by the respondent for unknown reasons. That the respondent in this case did not object to the pecuniary jurisdiction of court as such he submitted to the court's jurisdiction. (See: Order 9 Rule 3 of the

Civil Procedure Rules and the case of Mildred Akullu Owot v. Lakony Samuel, H. C. Miscellaneous Cause No. 01 of 2023).

Counsel for the respondent on the other hand cited Section 207 (2) of the Magistrates' Court Act which provides that; notwithstanding **subsection 1** where the cause or matter of a civil nature is governed only by civil customary law, the 15 jurisdiction of the Chief Magistrate and a magistrate grade 1 shall be unlimited. And that this position was reiterated in the case of **Mujib Juma v. Adam Musa and 8 Others**, Civil Appeal No. 0053 of 2015, where it was stated that; in instances where an action is based on civil customary law exclusively, then the grade one magistrate's court does not have unlimited jurisdiction but rather its pecuniary \$20\$ jurisdiction is limited to UGX.

20,000,000/= as stipulated by Section 207 (1) (b) of the Magistrates' Court Act in civil matters. That in paragraph 3 of the appellants' pleadings in the plaint it is clearly stated that the claim against the defendant is for a declaration that the plaintiffs (appellants) are lawful owners of the kibanja measuring approximately 10 acres, further paragraph \$4(a)\$ that they are 25 beneficiaries and lawful administrators of the estate of the late Benwa Kisalita who formerly owned vast land in Bulamazzi Village and subject Kibanja is currently Plot 18 Mawanda Block 60 hence the action before the magistrate court was not one of a civil customary nature.

Further, that an illegality was brought to the attention of court and this overrides 30 all matters and such illegality cannot be allowed to stand. That the trial Magistrate requested for the valuation report to ascertain the value of the suit land. That the report indicated that it was valued at UGX 180,000,000/ \$=\$ and the same was admitted by counsel for the appellant as per page 11 of the certified record of proceedings having ascertained that the magistrate court had no powers to 35 proceed with the case and dismissed the same. Counsel cited the case of **Opendo and 16 others v. Kiconco Medard**, Civil Revision No. 33 of 2018, where court held that; jurisdiction of the court should not only be determined from cause of action

3 | Page

\$10\$

\$\mathsf{S}\$

or value of the subject matter where it applies, but also the remedies being sought from the court, in this case the appellant sought remedies to include declaration as to ownership, eviction/ vacant possession which were not ignored by the trial Magistrate. That the trial court was right to hold that it lacked jurisdiction to handle the matter having clearly looked at the remedies sought as it was not only about trespass since the plaint sought other remedies.

Grounds \$2\$ and \$4\$:

\$\mathsf{S}\$

2. That the trial court erred in law and fact when it determined jurisdiction on the basis of a valuation report dated 11th November, 2022.
4. That the learned trial Magistrate erred in law and fact when she did not properly 10 evaluate the evidence on record relating to the progress of the matter hence reaching a wrong decision.

Counsel for the appellants submitted that it was wrong for the trial Court to rely on a valuation report dated 11th November, 2022 to arrive at a conclusion that it did not have jurisdiction to handle the appellants' claim. That the value report indicated the value of titled land in 2022 and not untitled land in 2019.

Further, that the valuation report that was relied on was never tendered and admitted as an exhibit in court. That dismissing the appellants' suit in the circumstances was a miscarriage of justice. And court cannot rely on such kind of

- evidence. (See: *Kasifa Namusisi & 2 Others v. Francis M. K Ntabaazi, S. C. C. A No. \$20\$ 04 of 2005*). That the case had reached advanced stages since the appellants had closed their case and the respondent was to open his defence when the issue of value of the subject matter was raised. That the court could have raised it as issue and be determined at the end of the trial after receiving evidence. That had the
- trial court exercised this discretion, it would have reached a different conclusion \$
\overline{25}\$ and the report relied upon would have been subjected to cross examination through its author thereby rendering it useless to determine the value of the subject matter.

Resolution of the appeal:

Duty of the first appellate court: \$30\$

It is trite law that the duty of the 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.

The powers of an appellate court and the principles for consideration of an appeal 35 are statutory and provided for under Section 80 of the Civil Procedure Act. The

power of the appellate court inter alia includes the power to determine a case finally. This may require a thorough consideration of the evidence and the law. Each case has to be considered on the basis of its own peculiar facts and upon application of the relevant law. And, 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. (See: *Pandva v. R. (1957) E. A.*)

Grounds 1 and \$3\$:

The appellants in the instant case claim that the trial magistrate erred in dismissing the suit for lack of pecuniary jurisdiction yet the matter in the lower court was purely on trespass.

Section 207(1) of the Magistrate Courts Act provides that;

"(1) Subject to this Act and any other written law, the jurisdiction of Magistrate presiding over Magistrate's Courts for trial and determination of causes, and matters of a civil nature shall be as follows:

- (a) A Chief Magistrate shall have jurisdiction where the subject matter of the matter of the dispute does not exceed fifty million shillings and shall have unlimited jurisdiction in matters relating to conversion, damage to property and trespass.

- (b) A Magistrate Grade I shall have jurisdiction where the value of the subject matter does not exceed twenty million shillings".

Section 207(3) of the Magistrates Court Act provides thus:

"Whenever for the purposes of jurisdiction or Court fees it is necessary to estimate the value of the subject matter of a suit capable of money valuation, the Plaintiff shall in the Complaint, subject to any rules of the Court, fix the amount at which he or she values the subject matter of the suit".

In *Tarema Justus v. Kiteteyi Robina & 2 Others*, High Court Revision Application No. 001 of 2017, it was observed that:

"Jurisdiction is a very crucial aspect in litigation. Without it a Court has no power to make any step. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction".

Section 11(2), (3) and (4) of the Civil Procedure Act provides;

- (2) Whenever for the purposes of jurisdiction or court fees it is necessary to estimate the value of the subject matter of a suit capable of a money,

5 | Page

$\$$

valuation, the plaintiff shall, in the complaint, subject to any rules of court, fix the amount at which he or she values the subject matter of the suit; but if the court thinks the relief sought is wrongly valued, the court shall fix the value and return the complaint for amendment.

- (3) In any class of suits where the subject matter does not admit of being satisfactorily valued, it may be prescribed by rule that suits of that class shall be treated as if their subject matter were of such value as may be specified in the rule.

(4) In any suit where it is impossible to estimate the subject matter at a money value in which by reason of any finding or order of the court a declaration of ownership of any money or property is made, no decree shall be issued for an amount on the claim exceeding the pecuniary limits of the ordinary jurisdiction of the court passing the decree.

In the instant case the trial magistrate ordered for a valuation to be carried so that the value of the subject matter could be ascertained before she could go ahead and determine the matter. The same was done and the suit land was valued at UGX 180,000,000/ \$=\$ which is way above the pecuniary jurisdiction of a magistrate grade one.

In the case of *Prince Keffa Wasswa & Anor v. Joseph Kiyimba*, H. C. C. S. No. 0482, it was stated that; whether the subject matter value is pleaded or not, the trial 20 Magistrate ought to inquire and establish the value of the estate involved first before determination of the matter.

In this case the appellants under paragraph 3 of the plaint stated inter alia that the claim against the defendant was for a declaration that the plaintiffs (appellants) are the lawful owners of the kibanja measuring approximately 10 acres situate at Bulamazzi, Mpigi District which means that the appellants were also seeking for orders on ownership of the suit land. Thus, the suit was not only on trespass and the trial magistrate was right to order for a valuation to ascertain the value of the claim on the suit land so as not to award remedies beyond her pecuniary jurisdiction.

Secondly, according to paragraph 4(a) of the plaint the appellants stated that they are beneficiaries and lawful administrators of the estate of the late Benwa Kisalita who formerly owned vast land in Bulamazzi Village and subject Kibanja was on Plot 18 Mawanda Block 60 which is registered land falling under the governance of the Registration of Titles Act. Therefore, the action before the magistrate court

was not one of a civil customary nature.

\$\mathsf{S}\$

\$10\$

\$25\$

In the case of Wakisa Fred & Others v. Katarwa Josephine. H. C. C. A No. 0006 of 2021, it was held that:

"The instant case was before the Magistrate Grade 1. Under S.207 (2) MCA (as amended), the Magistrate Grade 1 has unlimited jurisdiction with regard to disputes, relating to a cause or matter of a civil nature governed only by civil customary law. In the instant case, the suit in question is besides, governed by the Registration of Titles Act and therefore, the Magistrate Grade I does not have that unlimited jurisdiction. As per S.207 (1) (a) MCA, it is only the Chief Magistrate who has unlimited jurisdiction in trespass and not the Grade 1 Magistrate".

It is my considered view based on the law cited above and authorities quoted that the trial magistrate in this case did not err in reaching her decision to dismiss the suit for want of jurisdiction.

These grounds of appeal hereby fail.

Grounds 2\$ and 4\$: 15\$

\$\mathsf{S}\$

\$10\$

\$25\$

In the instant a case the trial magistrate upon coming to the realization that among the declarations sought was one on ownership she ordered for valuation of the subject matter to be done and the suit land was found to be at UGX 180,000,000/ \$=\$ which is over and above the pecuniary jurisdiction of a magistrate grade one. The appellants argued that at the time the suit was filed the suit land was unregistered land yet when it was valued, it was assessed as registered land and following the market value of 2022 as opposed to 2019.

Having considered the submissions of both parties in regard to these grounds, I still find no fault in the decision of the trial magistrate whose pecuniary jurisdiction is UGX 20,000,000/ \$=\$. How do the appellants want this court to reconcile a valuation report of UGX 180,000,000/ \$=\$ which they claim was the market value as at 2022 yet the suit was filed in 2019 and this is only a difference of three years.

In my opinion the suit land is said to approximately measure 10 acres whether registered or unregistered if valued in 2019 would still not be within the 30 jurisdiction of the Magistrate grade one. The valuation report need not have to be tendered in court as evidence for the trial Magistrate to rely upon it because it was conducted at court's directive. I therefore find no merit in these two grounds of appeal. They do hereby fail.

In a nutshell this appeal fails on all grounds and is accordingly dismissed with 35 costs.

The decision of the lower court is hereby upheld.

I so order.

Right of appeal explained.

$\overline{} \mathbf{\$} \mathbf{\$}$

OYUKO ANTHONY OJOK JUDGE 15/10/2024

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughc/2024/1177/eng@2024-10-15>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/bulamu-v-zubayiri-civil-appeal-16-of-2023-2024-ughc-1177-15-october-2024-and-others-unknown-topic-unknown-court-2024>

Prepared on 14 October 2026 · Esheria