

UGANDA / JUDGMENT

Faustine Ntambara v Benon Sebuji Shio (Civil Appeal No. 08 of 2021) [2025] UGSC 19 (14 May 2025)

[2025] UGSC 19

COURT

Supreme Court of Uganda

BEFORE

Catherine Bamugemereire, JSC, Christopher Madrama Izama, JSC, Elizabeth Musoke, JSC, Stephen Musota, JSC, Monica K. Mugenyi, JSC

CASE / FILE NUMBER

Civil Appeal No. 08 of 2021

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THE REPUBLIC OF UGANDA IN THE SUPREME COURT OF UGANDA AT KAMPALA CIVIL APPEAL NO. 08 OF 2021

FAUSTINE NTAMBARA: r: i: APPELLANT**vERSUS****BENON SUBUJISHO: r: RESPONDENT**

(Appeal from the decision of the Court of Appeal (Egonda-Ntende, Muhanguzi and Tuhaise, A) dated 22d October, 2019 in Civil Appeal No. 61 of 2012.)

CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JSC HON. MR. JUSTICE STEPHEN MUSOTA, JSC HON. MR. JUSTICE CHRISTOPHER MADRAMA IZAMA, JSC HON. LADY JUSTICE CATHERINE BAMUGEMEREIRE, JSC HON. LADY JUSTICE MONICA K. MUGENYI, JSC

JUDGMENT OF ELIZABETH MUSOKE, JSC

I have had the benefit of reading in draft the respective judgments of my learned brother and sister Madrama and l'4ugenyi, JJSC. Before stating my conclusion in this appeal, I would like to add a few words of my own on the question of whether an appeal can be preferred against a decision of the High Court in a civil revision application.

Revision is a mechanism through which the High Court exercises its supervisory powers over Magistrates' Courts under Section 17 of the Judicature Act, Cap. 16. Revision is further provided for under Section 83 of the Civil Procedure Act, Cap. 282 ("the CPA") which provides for the grounds for revision, namely; first, that a Magistrate's Court exercised a jurisdiction not vested in it in law, or secondly, that a Magistrate's Court failed to exercise a jurisdiction vested in it, or thirdly, that a Magistrate's Court acted in the exercise of its jurisdiction illegally or with material irregularity. Section 83 of the CPA further provides that where the High Court is satisfied that any of the above grounds exist, it may revise the case and make such order in the record as the court considers fit.

On the point of whether, under the CPA, an appeal is allowed against a decision in a revision application, the approach to answering the same is by taking into consideration the well-established position that an appeal is a creature of statute and the right to prefer an appeal, whether as of right or with leave, has to be expressly stated in the statute. In **Attorney-General vs. Shah** (No 4) [1971] 1 EA 50, it was held that appellate jurisdiction springs only from statute. There is no such thing as inherent appellate jurisdiction. This position has been approved by this Court in various decisions such as **Baku Raphael Obudra vs. Attorney General, Constitutional Appeal No. 1 of 2005**. In relation to revision decisions, it will be noted that Section 83 of the CPA makes no provision for an appeal against a revision decision. Furthermore, it should be noted that under Article 134 (2) of the 1995 Constitution, an appeal lies to the Court of Appeal only against such decision as may be prescribed by law. In this case since Section 83 of the CPA does not prescribe an appeal against a revision decision, and no other law was shown as prescribing an appeal against a revision decision, the inevitable conclusion is that a revision decision is final and not appealable. Therefore, in this case, the decision by Murangira, J dismissing the revision application in this case was final and the Court of Appeal should not have entertained an appeal against it. Consequently, the present appeal against the decision of the Court of Appeal cannot also be preferred.

The next question to determine is what course should be taken considering the above findings which indicate that the Court of Appeal entertained and made a decision in an appeal against a decision that was not appealable. Does the Court of Appeal, and by extension this Court, have discretion to overlook the applicable legal provisions mentioned above, which do not provide for an appeal against a revision decision, and proceed to entertain such an appeal? The authorities establish that whether a matter is appealable is a jurisdictional point so that if a matter is not, under the relevant law, appealable, a court is barred from entertaining it. In this case, it can be argued that there were glaring irregularities in the manner in which the original trial was conducted in that the learned trial Magistrate made his/her judgment without hearing evidence but relying only on attachments to the pleadings and a dubious survey report from a survey which was conducted only at the Court's volition. In my view, the defendants in the original trial were justifiably aggrieved with the unjust manner in which the proceedings in the trial Court were conducted. However, in using the revision procedure to address their grievance, the original defendants should have known that, under the law as explained above, whatever decision the High Court gave in the revision application was final and not appealable to the Court

of Appeal. Therefore, whereas the original defendants deserve all the sympathy for being the victims of an unjust decision, their appeal to the Court of Appeal was not provided for and no exceptions can be made for them,

In view of the above reasons, I would agree with Madrama, JSCt conclusion that the High Court's revision decision was not appealable to the Court of Appeal and ought to have been struck out. Similarly, the appeal to this Court is incompetent and also ought to be struck out. Accordingly, by majority decision (Musoke, Musota, Madrama and Bamugemereire, JJSC; Mugenyl, JSC dissenting) this Court makes the following declarations and orders:

- 1. Revision decisions of the High Court made under Section 83 of the Civil Procedure Act, Cap. 282 are final and are not appealable to the Court of Appeal.
- 2. The decision in Court of Appeal Civil Appeal No. 61 of 2012 which arose from an incompetent appeal against a revision decision is hereby nullified.
- 3. The appeal in this Court arising from the Court of Appeal's decision in an incompetent appeal is also incompetent and is struck out.
- 4. No order is made as to costs of this appeal and the appeal in the Court of Appeal.

Dated at Kampala this day of 2025. lAll}'

Elizabeth Musoke

Justice of the Supreme Court

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THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPEAL NO. 14 OF 2023

[CORAM: MUSOKE, MUSOTA, MADRAMA, BAMUGEMEREIRE & MUGENYI; JJSC]

FAUSTINE NTAMBARA ::::::::::::::::::::::::::::::

VERSUS

BENON SEBUJISHO

(Appeal from the decision of the Court of Appeal (Egonda Ntende, Muhanguzi & Tuhaise, JJA) in Civil Appeal No. 61 of 2012)

JUDGMENT OF STEPHEN MUSOTA, JSC

I have had the benefit of reading the judgment of my learned brother, Justice Christopher Madrama Izama, JSC, and I entirely agree with his reasoning and conclusion that the present appeal is incompetent before this Court.

This appeal arises from a sequence of proceedings that were fundamentally revisionary in nature. It is trite that revisionary jurisdiction is discretionary and supervisory, and distinct from appellate jurisdiction. The refusal to revise does not constitute a decision made in the exercise of original or appellate jurisdiction, nor does it determine the substantive rights of the parties in ^a manner that gives rise to a right of appeal.

The Civil Procedure Act does not confer a right of appeal from a High Court's decision refusing to exercise revisionary powers. As my learned brother aptly observes, there is no statutory provision in civil procedure akin to Section 451 of the Criminal Procedure Code, which deems certain revision proceedings as appeals only for the purpose of procedure, and not for conferring a substantive right of appeal.

Section 6(1) of the Judicature Act provides that an appeal lies to this Court as of right where the High Court has exercised original jurisdiction and the decision is confirmed, varied, or reversed by the Court of Appeal. However, in the present case, the High Court never exercised original jurisdiction, nor did it issue a substantive order upon which the Court of Appeal's decision could be rooted in appellate jurisdiction. Instead, the High Court's refusal to revise is an exercise or more precisely, a non-exercise of supervisory jurisdiction, which falls outside the purview of Section 6(1) of the Judicature Act.

The Court of Appeal, in taking up the matter and exercising revisionary jurisdiction where the High Court had declined to do so, effectively assumed original supervisory jurisdiction. While it is within the Court of Appeal's mandate to ensure justice is done, it cannot, by such assumption, give rise to a right of second appeal to this Court that is not otherwise provided for by law.

To hold otherwise would effectively expand the appellate jurisdiction of the Supreme Court beyond what is permitted by statute, and would open the door to appeals in all manner of interlocutory or supervisory decisions, contrary to the spirit and structure of our appellate framework.

I therefore concur with Justice Madrama Izama, JSC, that the appeal is incompetent. It does not arise from a decision made in the High Court's original or appellate jurisdiction, nor is it authorized by any statutory provision. The law is clear that the jurisdiction of this Court must be exercised strictly in accordance with statute, and no right of appeal exists in the circumstances of this case.

Accordingly, I would dismiss this appeal as incompetent and without merit.

Dated this 14th day of May . 2025

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Delivered in open court this 14th may 2005

Amulto Eizabeth Ogsal
Amulto Eizabeth Ogsal
Deputy Refighen-Supreme Court.
14/05/2025

THE REPUBLIC OF UGANDA,

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: MUSOKE, MUSOTA, MADRAMA, BAMUGEMEREIRE & MUGENYI, JJSC)

CIVIL APPEAL NO 8 OF 2021

¹⁰ FAUSTINE NTAMBARA} APPELLANT

VERSUS

BENoN SEBUJTSHo) RESpONDENT

((Appeal from the decision of the Court of Appeal (Egonda Ntende, Muhanguzi & Tuhaise, JJA) in Civil Appeal No. 61 of 2012)

JUDGMENT OF CHRISTOPHER MADRAMA IZAMA, JSC

I have read in draft the Judgment of my learned sister Mugenyi, JSC and respectfully do not agree with the decision that the appeal before this court is competent. I would therefore express myself only on the question whether the appeal before this court is incompetent.

²⁰ The issue of competence firstly arises from my interpretation of section 6 (1) and (2) of the Judicature Act as well as the provisions on appeals from orders under section 76 of the Civil Procedure Act which bar second appeals in interlocutory matters. In the alternative, where there is a right of appeal, the issue is whether it should be with leave to appeal first obtained under provisions of the Judicature (Court of Appeal Rules) Directions or of the Supreme Court under the Judicature (Supreme Court Rules) Directions before any appeal in from revision order is lodged and finally whether a right of appeal exists at all in the circumstances. 25

30 The facts which are material for consideration of the issue of competence have been set out by my learned sister Mugenyi, JSC but for purposes of

⁵ this judgment, I will set out the gist of the facts necessary for resolution of the issue of competence of the appeal.

The appeal before the Supreme Court originated as a suit by the appellant for trespass in a Magistrates Court in Civil Suit No. 47 of 2003, which suit succeeded. The respondent did not appeal and instead applied for revision in the High Court, Nakawa Division in HCMA No. h of 2007 and their application was dismissed on 30th of September 2010. The respondent sought for leave to appeal to the Court of Appeal against the dismissal and this was granted in July 2010. The respondent's appeal which is entitled as Court of Appeal Civil Appeal No. 61 of 2012 was allowed. The appellant was aggrieved and appealed to this court without an order granting Leave to appeal.

My learned sister Mugenyi, JSC considered the revision order as an order issued in the exercise of the untruncated original jurisdiction of the High Court thereby giving the Supreme Court second appellate jurisdiction under section 6 (1) of the Judicature Act. The fact is that there was no order by the High Court in revision as the application for revision was declined with an order of dismissal. The power of the High Court to revise proceedings of a Magistrates Court in civil proceedings is statutory and is founded on section 83 of the Civil Procedure Act. There are similar powers conferred on a Chief Magistrate under section 221 of the Magistrates Courts Act to revise judgment and orders of a subordinate court. In this matter the High Court decline to exercise revisionary jurisdiction. On appeal, the supervisory powers of revision were exercised by the Court of Appeal which revised the case and made consequential orders.

Section 83 of the Civil Procedure Act deals with revision and provides that: 30

83. Revision.

The High Court may call for the record of any case which has been determined under this Act by any magistrate's court. and if that court appears to have-

- (a) exercised a jurisdiction not vested in it in law;
- (b) failed to exercise a jurisdiction so vested; or
- (c) acted in the exercise of its jurisdiction irregularly or with material irregularity or injustice, the High Court may revise the case and may make such order in it as it thinks fit; but no such power of revision shall be exercised-
- (d) unless the parties shall first be given the opportunity of being heard; or
- (e) where, from lapse of time or other cause, the exercise of that power would involve serious hardship to any person.

Revision occurs where the High Court calls for the record of a case which has been determined by a Magistrates Court so that it revises the proceedings to establish whether the Magistrate's court, (a) exercised a jurisdiction not vested in it in law or whether, (b) it failed to exercise a jurisdiction so vested; or whether (c) it acted in the exercise of its jurisdiction irregularly or with material irregularity or injustice. Any of the three grounds for revision can stand on their own and the power of the High Court to revise the proceedings of the subordinate court is discretionary. It

may revise the case and may make such order in the suit as it thinks fit. The High Court declined to exercise this jurisdiction and the respondent sought leave and leave was granted to appeal the refusal to the Court of Appeal. 20

I note that revision is an alternative remedy to an appeal where the power can be exercised under special statutory grounds as I have set out above. I further observe that the power of revision rhymes with the power of the High Court to exercise supervisory control over Magistrates Courts under section 17 of the Judicature Act which provides that:

17. Supervision of magistrates courts

- (1) The High Court shall exercise general powers of supervision over magistrates courts.
- (2) With regard to its own procedures and those of the magistrates courts, the High Court shall exercise its inherent powers to prevent abuse of the process of the court by curtailing delays, including the power to limit and stay delayed prosecutions as may be necessary for achieving the ends of justice.

In criminal matters this jurisdiction is exercised inter alia through revisionary powers under sections 50 to 51 of the Criminal Procedure Code Act. Section 50 (1) provides that:

50. Power of High Court on Review.

(1) In the case of any proceedings in a magistrate's court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, when it appears that in those proceedings an error material to the merits of any case or involving a miscarriage of justice has occurred, the High Court may-

- (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 34 and 41 and may enhance the sentence;
- (b) in the case of any other order, other than an order of acquittal, affirm or reverse the order.

The High Court has no power to convert an order of acquittal to one of conviction under section 50 (4). The High Court may be moved to exercise its revisionary powers by the petition of an aggrieved party under section 50 (5) of the Criminal Procedure Code Act. Further under section 50 (5) no petition for revision by the High Court shall be entertained where the petitioner could have appealed against the finding, sentence or order and has not appealed. The remedy of revision in criminal matters is therefore restricted to situations where the petitioner could not have appealed. Section 45 of the Criminal Procedure Code Act deals with second appeals and provides in subsection I thereof that: 20 25

45. Second appeals

- (i) Either party to an appeal from a magistrate's court may appeal against the decision of the High Court in its appellate jurisdiction to the Court of Appeal on ^a matter of law, not including severity of sentence, but not on a matter of fact or of mixed fact and law.

Several subsections of section 45 of the Criminal Procedure Code Act make provisions on the orders that may be made in second appeals but what

stands out is section 45 (7) of the Criminal Procedure Code Act which provides that:

> (7) For the purposes of this section, the proceedings of the High Court on revision shall be deemed to be an appeal.

My understanding of this section is that the proceedings in revision (which is not an appeal) shall be taken to be an appeal for purposes of the orders and procedure provided therefor under section 45 of the Criminal Procedure Code Act. This section particularly sets out the kind of orders that may be issued where there is an acquittal or conviction order by the subordinate court. Section 45 (7) of the Criminal Procedure Code Act adopts 10

- the law on second appeals stipulated therein to revisionary proceedings. It does not per se confer any right of appeal and deals with situations where the petitioner could not have appealed. It envisages revision proceedings forwarded from a Chief Magistrate's Court after revision by the Chief Magistrate. 15
- In civil matters on the other hand there is no single statutory provision that confers a right of appeal from an order made in revision. The general power of supervision over subordinate courts under section 17 (1) of the Judicature Act is exercised by the High Court through application of section 83 of the Civil Procedure Act. Section 83 of the CPA confers power on the High Court 20

- while section 221 confers power on a Chief Magistrates Court to call for the record of a completed case in a subordinate magistrate's court to establish whether the magistrate exercised a jurisdiction not vested in it in law or whether it failed to exercise a jurisdiction so vested; or whether it acted in the exercise of its jurisdiction illegally or with material irregularity or injustice. The High court after revision may issue an appropriate order inclusive of quashing the proceedings for illegality or want of jurisdiction. 25 30

In considering whether an order of the High Court in revision in civil proceedings is appealable to the Court of Appeal and ultimately to the Supreme Court, I have set out below section 6 (1) (2) of the Judicature Act which defines the civil appellate jurisdiction of the Supreme Court:

6. Appeals to the Supreme Court in civil matters.

5 (1) An appeal shall lie as of right to the Supreme Court where the Court of Appeal confirms, varies or reverses a judgment or order, including an interlocutory order, given by the High Court in the exercise of its original jurisdiction and either confirmed, varied or reversed by the Court of Appeal.

Under section 6 (1) there is a right of appeal to the Supreme Court from the final decision of the Court of Appeal only where the Court of Appeal confirms, varies or reverses a judgment or order, including an interlocutory order, given by the High Court in the exercise of its original jurisdiction. The defining question is whether the Court of Appeal confirmed, reversed or varied a judgment or order of the High Court in the exercise of its original jurisdiction. Was the dismissal of the application for review made in the exercise of original jurisdiction? My answer is in the negative. Before I expand on that I need to emphasize that this court has no jurisdiction except where the High Court had exercised original jurisdiction in the matter in

terms of section 6 (1) of the Judicature Act. In *Attorney General Vs Hajj 20 Swaibu Nuweaine Kikwanzi*, Civil Applications Nos 013 of 2019 and 0'15 of 2020: [2024] UGSC 14 (13 June 2024), the Supreme Court held that section 6 (i) of the Judicature Act only confers jurisdiction on the Supreme Court in cases where the Court of Appeal exercised appellate jurisdiction and confirmed, varied or reversed the judgment or order of the High Court in the exercise of its original jurisdiction. They highlighted the fact that the Supreme Court exercises the jurisdiction of a second appellate court and the law emphasizes that the High Court must have exercised original jurisdiction in the matter.

30 In my judgment, the application for revision heard by the High Court and dismissed was not dismissed in the exercise of original jurisdiction but only using inherent jurisdiction. Black's Law Dictionary Ninth Edition has a concise definition of the term original jurisdiction and states that,

> original jurisdiction. (17c) A Court's power to hear and decide a matter before any other court can review the matter.

Further, the Concise Oxford Dictionary of Potitics (3 ed.) Iain Mclean and Atistair McMittan define original jurisdiction as: 35

original jurisdiction The right of a court, usually a minor or trial court, to hear a case at its inception.

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By definition, the exercise of original jurisdiction by a court refers to the court's power to hear and determine a case for the first time. This means the court is the initial forum where the dispute is brought for adjudication. The manner of commencement of a suit depends on the procedure. The court receives pleadings from the parties and then takes evidence, hears arguments, and makes findings of fact and law to reach a decision on any controversy or controversies disclosed in the pleadings. The distinguishing characteristic of exercise of original jurisdiction is that the court exercising the power is the primary decision-maker in the matter. It is where the case originates or where proceedings are commenced and where the initial judgment or order is made.

Conversely, the exercise of jurisdiction to revise a completed judgment or order of a subordinate court is fundamentally different. Revisionary jurisdiction involves a higher court reviewing a decision already made by a 20 lower court. The higher court is not hearing the case for the first time. Instead, it examines the record of the proceedings and the judgment or order of the subordinate court to determine if there were any wrong exercise of jurisdiction not vested in the court, failure to exercise jurisdiction so vested or illegal use of jurisdiction with material irregularity 25 of injustice in the proceedings, or improprieties that warrant intervention in terms of section 83 of the Civil Procedure Act. The higher court can only exercise revision jurisdiction after a suit, petition or other cause or matter was commenced and determined by a lower court. The exercise of revision jurisdiction is therefore ancillary or consequential upon the exercise of 30 original jurisdiction of a subordinate court.

The key elements of original jurisdiction include, the commencement of proceedings. Commencement involves initiating or commencing a new case by a party or parties, paying court fees and serving the respondent or defendant. Revisionary jurisdiction on the other hand involves reviewing an

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⁵ existing case that has been completed and a judgment or order issued by a subordinate court.

Secondly, the scope of inquiry is not the same. In the exercise of original jurisdiction, the court hears the merits of the case, including reception of evidence and arguments. In revisionary jurisdiction, the court's inquiry is limited to examining the legality, regularity, and propriety of the subordinate court's decision. It does not typically re-evaluate the facts or evidence unless there is a clear error of law or procedure.

Thirdly the nature of the decision varies. Exercise of original jurisdiction results in a primary decision on the matter. On the other hand, exercise of revisionary jurisdiction results in a decision to uphold, modify, or set aside the subordinate court's decision.

Fourthly, it can be distinguished on the basis of purpose. The exercise of original jurisdiction aims to resolve a dispute by making an initial determination of issues in controversy in the suit. On the other hand, exercise of revisionary jurisdiction aims to ensure the correctness, legality, and fairness of decisions made by subordinate courts.

In essence, original jurisdiction is about starting and deciding a case, while revisionary jurisdiction is about reviewing and correcting a case that has already been decided. This distinction is crucial for understanding the different roles and powers of courts within a hierarchical judicial system and for reaching the conclusion that revision jurisdiction is not original jurisdiction. It follows that section 6 (1) of the Judicature Act, does not confer any jurisdiction on the Supreme Court in this matter which had been commenced as a suit in a magistrate's court which exercised original jurisdiction in the original suit and an appeal was lodged subsequently against refusal by the High Court to review the judgment issued in the exercise of original jurisdiction of a magistrate's court. Moreover, the basis of revision is an alternative remedy to an appeal from the decision of a subordinate court. That means that no appeal was lodged against the decision of the Magistrates Court. 30 35

Further the Chief Magistrates Court also has supervisory powers over subordinate courts. The supervisory powers are enabled further by the power of revision of a Lower court's decision. Section 221 of the Magistrates Courts Act is self-explanatory and provides that:

221. Supervisory powers of chief magistrates.

- (1) A chief magistrate shall exercise general powers of supervision over all magistrates courts within the area of his or her jurisdiction.
- (2) Without prejudice to the generality of subsection (1), a chief magistrate may call for and examine the record of any proceedings before a magistrate's court inferior to the court which he or she is empowered to hold and situate within the limits of his or her jurisdiction for the purpose of satisfying himself or herself as to the correctness, legality or propriety of any finding, sentence, decision, judgment or order recorded or passed, and as to the regularity of any proceedings of that magistrate's court.

- (3) If a chief magistrate acting under subsection (2) is of the opinion that any finding, sentence, decision, judgment or order is ittegat or improper, or that any proceedings are irregutar, he or she shall forward the record with such remarks therein as he or she thinks fit to the High Court.
- (4) Where a chief magistrate forwards a record of criminal proceedings to the High Court under subsection (3), he or she may release any person serving ^a sentence of imprisonment as a result of those proceedings on bail, pending the determination of the High Court, if he or she is of the opinion that it is in the interests of justice so to do.

Firstly, revisionary proceedings before a Chief Magistrate can further be forwarded to the High Court under section 221 (3) of the MCA. This ties up with section 45 (7) of the Criminal Procedure Code Act that proceedings thereunder can be considered for purposes of application of that section as an appeal. It follows that the statutory provisions thus far examined allow for a revisionary proceeding to be forwarded by a Chief Magistrate to the High Court. There is no provision for such proceedings to be forwarded to the Court of Appeal. Moreover, these are proceedings where no appeal was

possible and therefore they are not appellate proceedings but proceedings in the exercise of supervisory powers over subordinate courts' There is no 35

⁵ constitutional power or statutory provision that enables the Court of Appeal to exercise supervisory jurisdiction or powers over the High Court by way of revision in civil proceedings. What is available is the exercise of appellate jurisdiction and appellate jurisdiction is a creature of statute and as we note below, there is no provision conferring a right of appeal from decisions and orders of the High Court in the exercise of its powers of revision. Conversely, an application for revision of a High Court judgment or order made to the Court of Appeal under section 83 of the Civil Procedure Act 10

The second aspect I deal with involves [leave to appeal]. The respondent sought for and was granted leave to appeal the refusal of the High Court to exercise revisionary power. The High Court advised the applicant to pursue an appeal (albeit the appeal was out of time). The exercise of revisionary power is a discretionary power under section 83 of the Civil Procedure Act even if the statutory grounds for revision do exist. The wording of the 15

would be incompetent.

section upon establishing the grounds for revision is that: "re High Court may revise the case". Therefore, even if there are grounds for revision, the High Court may, in its statutory discretion, decline to revise. In this matter, when the High Court declined to revise, the respondent sought leave to appeal the refusal to the Court of Appeal and the application for Leave to 20

appeal was allowed. This rests on the premises that the respondent needed leave to appeal to the Court of Appeal and therefore leave was necessary to further appeal to the Supreme Court. 25

Appellate jurisdiction is a creature of statute and appeals from orders are governed by the Civil Procedure Act or the Judicature Act. The rules demonstrate that an order refusing revision does not fall under Order 44 (1) (a) - (u) of the Civil Procedure Rules as an order where appeal lies as a right. Instead, if there is a right of appeal at all, (something which I will determine below) it would fall under Order 44 rule (2) of the Civil Procedure Rules and therefore it required leave of the High Court or the Court of Appeal for the order refusing to revise the decision of the Magistrates Court to be appealable to the Court of Appeal. 30 35

An application for leave to appeal is enabled by rule 39 (2) of the Rules of this Court which provides that.

39. Application for certificate of importance or leave to appeal in civil matters

(1) In civil matters-

- (a) where an appeal lies if the Court of Appeal certifies that a question or questions of great public or general importance arise,...
- (2) Where formerly an appeal lay from the High Court to the court with leave of either the High Court or the court, the same rules shall apply to appeals from the Court of Appeal to the court-
 - (a) where an appeal lies with leave of the Court of Appeal, application for the leave shall be made informally at the time when the decision against which it is desired to appeal is given; or failing that application or if the court so orders, by notice of motion within fourteen days after the decision; and
 - (b) if the Court of Appeal refuses to grant leave, or where an appeal otherwise lies with leave of the court, application for the leave shall be made by notice of motion within fourteen days after the decision of the Court of Appeal refusing leave or, as the case may be, within fourteen days after the decision against which it is desired to appeal.

Under rule 39 (2) of the Rules of this Court, leave is necessary to be sought where an appeal lies to the Court of Appeal with the leave of the High Court or the Court of Appeal. Secondly the order granting leave should be part of the record of appeal. Rule 83 (2) (c) of the Rules of this Court sets out items which shall be included in a record of appeal and provides that the order if any, giving leave to appeal should be included. 25

Where an appeal lies with leave to the Court of Appeal, it follows that leave appeal to the Supreme Court is necessary and ought to have been sought but was not and the appeal on that basis is incompetent. The above notwithstanding, appeals from orders are governed by section 16 and 77 of the Civil Procedure Act (CPA). Section 76 (1) of the CPA sets out the orders from which an appeal lies and it states that: 30

35 Orders from which appeal lies

(1) An appeal shall lie from the following orders, and except as otherwise expressly provided in this Act or by any law for the time being in force from no other orders-

- (a) an order superseding an arbitration where the award has not been completed within the period allowed by the court;
 - (b) an order on an award stated in the form of a special case;
 - (c) an order modifying or correcting an award;
 - (d) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration;
 - (e) an order affirming or refusing to affirm an award in an arbitration without the intervention of the court;
 - (f) an order under section 65;
 - (g) an order under this Act imposing a fine or directing the arrest or detention in prison of any person, except where the arrest or detention is in execution of a decree,
 - (h) any order made under rules from which an appeal is expressly allowed by rules
- (2) No appeal shall lie from any order passed in appeal under this section

Section 76 (1) is explicit and provides that an appeal shall lie from certain orders listed as (a) - (h) and from no other orders except as otherwise provided for by any other law. It provides that to appeal from an order, a party must appeal from an order resulting from the matters set out in subsection (1). The appeal from a revision order does not even fall under section 76 (1) (a) - (h) of the Civil Procedure Act as it is not an appeal under the Civil Procedure Rules from which an appeal lies as of right under Order 44 rule 1 (a) - (u) of the Civil Procedure Rules. I have already determined that section 6 (1) of the Judicature Act does not confer jurisdiction on the Supreme Court where the matter appealed from is an order issued by the High Court in revision proceedings. This flows from the determination made that the matter did not arise from the exercise of original jurisdiction by the High Court. Section 6 (1) is therefore a bar to an appeal to the 25 30 35

Supreme Court in the circumstances. Further section 76 (1) of the Civil $\mathcal{S}$ Procedure Act applies and excludes the order issued in revision proceedings from being appealed. Moreover, section 76 (1) is entrenched by section 77 of the CPA which stipulates that:

77. Other orders.

- (1) Except as otherwise expressly provided, no appeal shall lie from any order made by a court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order affecting the decision of the case may be set forth as a ground of objection in the memorandum of appeal.

- Section 77 of the Civil Procedure Act makes it crystal clear that no appeal shall lie from any order except as provided for under the Civil Procedure Act and we have noted that appeals from orders are provided for under section 76.

In the final analysis, there is no right of appeal to this Court or to the Court of Appeal in the circumstances. In any case an appeal cannot lie without leave to this Court. There is no right of second appeal to the Supreme Court from the refusal of the High Court to exercise powers of revision in a case decided by a Magistrate and we have no jurisdiction in this matter.

In the premises, I would make an order striking out the appeal in this court for want of jurisdiction. I further declare that the Court of Appeal acted without jurisdiction and its proceedings are a nullity. In the circumstances both parties acted without proper advice on jurisdiction and I would make an order that each party shall bear its own costs of the appeal.

Dated at Kampala the 14 day of May 2025

Christopher Madrama Izama

Justice of the Supreme Court

entered in open court this 14th day of May 2025. Amilio Fizabeth Ogoal. Deputy Legitim -
Supreme court 1405/2025

THE REPUBLIC OF UGANDA

THE SUPREME COURT OF UGANDA AT KAMPALA

(Coram: Musoke, Musota, Madrama, Bamugemereire & Mugenyi, JJSC)

CIVIL APPEAL NO. 8 OF 2021

BETWEEN

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FAUSTINE NTAMBARA

APPELLANT

AND

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BENON SUBUJISHO

RESPONDENT

(Appeal from the decision of the Court of Appeal (Egonda Ntende, Muhanguzi & Tuhaise, JJA) in Civil Appeal No. 61 of 2012)

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JUDGMENT OF MONICA KALYEGIRA MUGENYI, JSC

A. Introduction

- Mr. Faustine Ntambara ('the appellant') lodged this Appeal in this Court contesting the decision of the Court of Appeal in Civil Appeal No. 61 of 2012. The background to the Appeal is that the appellant had vide Civil Suit No. 47 of 2003 sued Mr. Benon Subujisho ('the respondent') and others that are not party to this Appeal in the Chief Magistrates Court of Mubende at Kiboga for trespass to his land comprised in plot 7 Block 647 Kapeka, Kiboga. Judgment was entered in his favour in that case.
- 2. The respondent filed Miscellaneous Application No. 4 of 2007 in the High Court seeking the revision of the Magistrates Court's decision in Civil Suit No. 47 of 2003 but that application was dismissed by the Nakawa High Court. This prompted the filing of Miscellaneous Application No. 248 of 2010, an application for leave to appeal the decision of the High Court in Miscellaneous Application No. 4 of 2007. That application was allowed hence the filing of Civil Appeal No. 61 of 2012 in the Court of Appeal by the respondent.
- 3. The Court of Appeal allowed the respondent's appeal, declared a mistrial of Civil Suit No. 47 of 2003 and ordered a retrial of the matters in contention between the parties before another magistrate. Dissatisfied with that decision, the appellant lodged the present Appeal that proffers the following grounds of appeal:
 - I. The Court of Appeal erred in law when it failed to determine whether CACA No. 61 of 2012 complied with s. 76 of the Civil Procedure Act.
 - II. The Court of Appeal erred in law and failed to properly evaluate evidence on record in entertaining CACA No. 61 of 2012 that is barred by law.
 - III. The Court of Appeal erred in law and failed to properly evaluate evidence on record in entertaining CACA No. 61 of 2012 filed beyond the 14 days ordered by court for filing the appeal without seeking leave to appeal out of time.
 - IV. The Court of Appeal erred in law and failed to properly evaluate evidence on record in entertaining CACA No. 61 of 2012 filed in violation of the order granting leave to appeal thereby condoning an illegality.
- 4. At the hearing, the appellant was represented by Messrs. Alex Candia and Akuku Saviour Olikare, while Mr. Enoch Bwesigye appeared for the respondent. The parties relied upon written submissions filed in the matter,

B. Determination

- 5. Arguing Ground 1 of the Appeal, learned Counsel for the appellant fault the Court of Appeal for not determining the competence of the appeal that was before it in relation to the provisions of section 76 of the Civil Procedure Act, Cap.282 (CPA). In their view, the High Court's ruling that revisionary orders are not appealable as of right was not itself appealable to the Court of Appeal. This position is anchored in the decision in *Joy Tumushabe & Another v Anglo-African Ltd & Another* 119991 UGSC 5, where it was observed that failure to consider and resolve matters in contention would be a failure on the part of a court in the discharge of its duty and necessitates an appellate court (including a second appellate court) to intervene to ensure that no miscarriage of justice is occasioned by such failure.
- 6. In relation to Grounds 2, 3 and 4, it is argued that the fact that revisionary orders are not appealable as of right, as well as the appeal itself having been filed beyond the '14-day limit that had been ordered by the High Court in Miscellaneous Application No.248 of 2010, renders the appeal that was before the Court of Appeal inherently incompetent. The respondent is faulted for falsifying the court record in that application by purportedly extracting an order that materially contradicts the ruling of the High Court in that matter. The failure of the respondent to file the notice of appeal that was before the Court of Appeal within the time stipulated in rule 76(2) and (4) of the Court of Appeal Rules and without validation as supposedly required under rule 5 of the same rules of procedure is opined to have had the effect of invalidating the entire Appeal.
- 7. Conversely, in response to Grounds 1,2 and 4 of the Appeal, the respondent concedes that orders emanating from revision proceedings are not envisaged among matters from which an appeal may ensue as of right. It is nonetheless asserted that the respondent did comply with the applicable procedural rules by bringing an application under Order 44 rules 2 - 4 of the Civil Procedure Rules (CPR) for leave to appeal the decision in Miscellaneous Application No. 4 of 2007. With regard to Ground 3, the respondent maintains that the appeal was filed within the 14-day period directed by the High Court in Miscellaneous Application No. 248 of 2010, the Notice of Appeal having been filed on 13th July 2011 - seven days after the date of the applicable court ruling. Similarly, the Memorandum of Appeal is opined to have been lodged within the 60-day period prescribed under rule 83(1) of the Court of Appeal Rules, excluding the period taken to secure the record of proceedings from the lower court as stipulated under section 79(2) of the CPA.
- 8. In any event, it is argued that the points of law raised in the appeal that was before the Court of Appeal highlighted grave illegalities that the court could not ignore and rightly addressed. Reference in that regard is made to *Makula International Limited & Another v Cardinal Nsubuqa & Another* 119821 UGSC 2 and *Ham Enterprises Limited & Others v DTB Ltd & Another* [2023] UGSC 15. It is further argued that the appellant ought to have raised the points of law he now raises in relation to the competence of the appeal that was before the Court of Appeal in that court, rather than belatedly before this Court.

- 9, By way of relorder, the appellant cites this Court's decision in *Ham Enterprises Limited & Others v DTB Ltd & Another* (supra) for the proposition that an appeal is filed in court by the lodging of a memorandum of appeal (as opposed to a notice of appeal) and therefore the memorandum of appeal that was filed on 1st June 2012 was way out of the time allotted in Miscellaneous Application No. 248 of 2010, which lapsed on 20th July 2011. It is further argued that in the absence of an automatic right of appeal, the appellant had no recourse to rule 83(2) of the Court of Appeal Rules. Furthermore, rule 83(2) would neither over-ride the timelines for the filing of the appeal issued by the High Court in Miscellaneous Application No. 248 of 2010, nor in any event did the appellant possess the mandate to enlarge the time for the filing of his appeal under the pretext of a delayed record of appeal. Citing *Drake Lubega v Attorney General & Others*, Consolidated Miscellaneous Application No. 31 & 32 of 2011 (unreported), it is proposed that a contemnor cannot be entertained in a matter in relation to which s/he is in contempt of court orders,
 - 10. Two broad issues arise from the foregoing legal arguments: first, the competence of the appeal (Civil Appeal No. 61 of 2012) that was before the Court of Appeal vis-d-vis the provisions of section 76 of the CPA; and, secondly, the effect of the respondent's alleged violation of the orders issued in Miscellaneous Application No. 248 of 2010, which granted leave to appeal the High Court's decision in Miscellaneous Application No. 4 of 2007. The first issue is canvassed under Grounds 1 and 2 of the Appeal, while the latter issue ensues under Grounds 3 and 4 thereof. The Appeal shall therefore be determined on that basis.
 - 11. Section 76 of the CPA, read together with Order 44 rule 1(1) of the Civil Procedure Rules (CPR), makes provision for orders from which appeals would lie as of right. No provision is made thereunder for revisionary orders or orders that emanate from the High Court in exercise of its revisionary powers
- under section 83 of the CPA. In this case, however, this is a moot question given that the respondent conceded as much and filed Miscellaneous Application No. 248 of 2010, an application for leave to appeal the decision of the High Court in the revision proceedings. To the extent that the respondent did seek leave from the High Court to appeal that decision, he duly comply with the imperative in Order 44 rule 1 (2) of the CPR that an appeal shall not lie from any other order 'except with the leave of the court making the order.' I therefore find no merit whatsoever in Grounds 7 and 2 of this Appeal.
- 12. Grounds 3 and 4, on the other hand, essentially fault the Court of Appeal for entertaining an appeal that had been lodged out of time either as by law established or by order of court in Miscellaneous Application No. 248 of 2010. It is common ground herein that the High Court (Mwondha, J as she then was) did on 6th July 2011 grant the respondent leave to appeal the same court's decision in Miscellaneous Application No. 4 of 2007 (Murangira, J), and directed that the appeal be filed in the Court of Appeal within fourteen days of her ruling. A notice of appeal was subsequently filed on 13th July 2011, while the memorandum of appeal was lodged in the Court of Appeal on 1st June 2012.

- 13. Before interrogating the competence of the appeal that was before the Court of Appeal, I consider it necessary to address the jurisdiction of this Court to entertain the present Appeal. The crux of the matter is whether a decision of the Court of Appeal in respect of a decision of the High Court in the exercise of the lower court's civil revisionary powers attracts an automatic right of appeal to this Court.
- 14. Article 132(2) of the Constitution restricts the jurisdiction of the Supreme Court to 'such decisions of the Court of Appeal as may be prescribed by law.' Section 6(1) of the Judicature Act then grants an automatic right of second appeal to the Supreme Court from decisions made by the Court of Appeal sitting as a first appellate court in decisions of the High Court made 'in the exercise of its original jurisdiction.' However, subsection (2) of the same section delimits third appeals to the Supreme Court from the decision of a chief magistrate or grade I magistrate to matters of law of great public or general importance, on the one hand, or where the Supreme Court considers it necessary in the interest of justice. For ease of reference section 6 of the Judicature Act is reproduced below.
- (1) An appeal shall lie as of right to the Supreme Court where the Court of Appeal confirms, varies or reverses a judgment or order, including an interlocutory order, given by the High Court in the exercise of its original jurisdiction and either confirmed, varied or reversed by the Court of Appeal.
- (2) Where an appeal emanates from a judgment or order of a chief magistrate or ^a magistrate grade I in the exercise of his or her original jurisdiction, but not including an interlocutory matter, a party aggrieved may lodge a third appeal to the Supreme Court on the certificate of the Court of Appeal that the appeal concerns a matter of law of great public or general importance, or if the Supreme Court considers, in its overall duty to see that justice is done, that the appeal should be heard.
- 15. This begs the question as to whether or not the High Court sits in exercise of its original jurisdiction when it undertakes its civil revisionary powers. The notion of original jurisdiction is defined in Black's Law Dictionary as 'a court's power to hear and decide a matter before any other court can review the matter.'
- 16. Article 139 of the Constitution delineates the jurisdiction of the High Court to include 'unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by this Constitution or other law.' A literal interpretation of that constitutional provision would suggest that the High Court is vested with unlimited original jurisdiction in all matters but does concurrently enjoy appellate jurisdiction and such other jurisdiction (being presumably neither original nor appellate jurisdiction) as may by law be conferred upon it.

- '17. The High Court's appellate jurisdiction is clearly outlined in section 16 of the Judicature Act and need not be belaboured here. It ensues in respect of decisions of magistrates' courts and other subordinate courts in the exercise of their original or appellate jurisdiction. On the other hand, section 83 of the Civil Procedure Act (CPA) vests the High Court with revisionary power as follows:

The High Court may call for the record of any case which has been determined under this Act by any magistrate's court, and if that court appears to have-

- (a) exercised a jurisdiction not vested in it in law;
- (b) failed to exercise a jurisdiction so vested; or
- (c) acted in the exercise of its jurisdiction illegally or with material irregularity or injustice,

the High Court may revise the case and may make such order as it thinks fit; but no such power of revision shall be exercised-

- (d) unless the parties shall first be given the opportunity of being heard; or

^t8th Edition at p. 869

(e) where, from lapse of time or other cause, the exercise of that power would involve serious hardship to any person.

- 18. The High Court's revisionary power is thus exercised in respect of a decision of a magistrate's court that appears to have violated that lower court's jurisdictional authority. The trial court or court of first instance in the substantive dispute would be the magistrate's court, and it is therefore that court that is the court of original jurisdiction in that matter. The High Court's intervention under its revisionary powers would be restricted to the interrogation of the lower court's compliance with its jurisdictional mandate, and does not extend to a determination of the factual merits of the substantive dispute.
- 19. However, the situation is entirely different once an appeal is lodged in respect of the High Court's decision in exercise of its revisionary powers. Section 83 of the CPA is couched in terms that designate the High Court's revisionary function as an intervention to redress a jurisdictional lapse by a magistrate's court. That revisionary mandate is the exclusive domain of the High Court and should, in my considered view, be understood within the context of the High Court's unlimited jurisdiction.
- 20. Mulla's Code of Civil Procedure, as cited with approval by this Court in Paul Semwoqerere & 2 Others v Attorney General t20041 UGSC 49 (per Oder, JSC), contextualizes the notion of unlimited jurisdiction in the following terms:

By jurisdiction is meant authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way, for its decision. The limits of this authority are imposed by statute, charter or commission under which the Court is constituted and may be exercised or restricted by the like means. If no restriction or limit is imposed the jurisdiction is unlimited. (my emphasis)

- 21. It thus follows that insofar as article 139 of the Ugandan Constitution explicitly confers unlimited original jurisdiction on the High Court, that jurisdiction can only be restricted by either the Constitution itself or an Act of Parliament that is enacted under the Constitution.
- 22. I draw fortitude for this view from the contextual rule of statutory interpretation whereby words are interogated within their legislative context, including the comparison of a law with other laws, that are made by the same legislator, that have some affinity with the subject, or that expressly relate to

thesamepoint.2 Inthatregard, I am alive to the provisions of section 45(7) of theCriminal Procedure Code Act (CPC), which equate criminal revisions to appeals in the following terms:

> For the purposes of this section, the proceedings of the High Court on revision shall be deemed to be an appeal.

- 23. It is clear from the wording of that statutory provision that the equating of revision proceedings to an appeal is restricted to second appeals under section 45 of the CPC, and by implication applies only to criminal revisions that are covered by that statute. So that, the High Court's criminal revision proceedings in respect of a decision of a magistrate's court would under section 45(7) of the CPC be deemed to be a first appeal from the lower court's decision, and an appeal arising therefrom would be a second appeal to the Court of Appeal. I am hard pressed, however, to find an equivalent provision in the civil procedure laws.
- 24. Consequently, on the authority of Mulla's Code of Civil Procedure, I take the view that the High Court's unlimited original jurisdiction extends to its exclusive jurisdiction over civil revision as delineated in section 83 of the CPA. Indeed, had it been the intention of the legislature that civil revisions be tantamount to first appeals, it would have stated so as unequivocally as is the case in the criminal law regime. Appeals being creatures of statute, I would refrain from reading equivalence of appeal into civil revision in the absence of express statutory provision therefor.
- 25. In the result, I find that the Court of Appeal rightly entertained an appeal from an order in revision proceedings as a first appellate court, and the present Appeal is properly before this Court as a second appellate court.

- 26, Turning to the competence of the appeal that was before the Court of Appeal, rule 33 of the Court of Appeal Rules provides for the institution of appeals in that court by the filing of a memorandum of appeal and record of appeal within sixty days from the date that the notice of appeal in a matter was lodged. For ease of reference, that procedural rule is reproduced below.
- (1) Subject to rule 113 of these Rules, an appeal shall be instituted in the court by lodging in the registry, within sixty days after the date when the notice of appeal was lodged-
 - (a) a memorandum of appeal, in six copies, or as the registrar shall direct;

<sup> See Blockstone, William, 1723-1780, Commentaries on the Laws of England. Boston: Beacon Press, 1962, vol. 7, para. 60.

- (b) the record of appeal, in six copies, or as the registrar shall direct;
- (c) the prescribed fee; and
- (d) security for the costs of the appeal.
- (2) Where an application for a copy of the proceedings in the High Court has been made within thirty days after the date of the decision against which it is desired to appeal, there shall, in computing the time within which the appeal is to be instituted, be excluded such time as may be certified by the registrar of the High Court as having been required for the preparation and delivery to the appellant of that copy.
- (3) An appellant shall not be entitled to rely on sub-rule (2) of this rule, unless his or her application for the copy was in writing and a copy of it was served on the respondent, and the appellant has retained proof of that service.
- 27. The record of appeal referred to in sub-rule (1)(b) above would include the proceedings in the High Court or indeed any other court, the decision of which is the subject of the appeal. It should be applied for within thirty days from the date of the decision sought to be appealed, the time taken for its preparation and delivery to be excluded from the computation of time within which the appeal should be lodged, See section 79(2) of the CPA and rule 83(2) of the Court of Appeal Rules,
- 28, I have carefully considered the memorandum and record of appeal that were lodged in the Court of Appeal in Civil Appeal No. 61 of 2012. They include a record of appeal that was lodged in the Court of Appeal on 26th March 2021, as well as the supplementary record of appeal filed in the same court on 12th April 2021. Both records do not include a record of proceedings in respect of the matter appealed from, Miscellaneous Application No. 4 of 2007. Whereas the supplementary record of appeal indicates that Counsel for the respondent did request for the record of proceedings in respect of that application for revision, the record of proceedings enclosed in pages 84 - 86 of the same record of appeal pertains to a different matter, Miscellaneous Application No. 248 of 2010.

- 29. Consequently, having appended the wrong record of proceedings to the supplementary record of appeal, it is incorrect for learned counsel for the respondent to suggest that the appeal that was before the Court of Appeal was lodged within the prescribed time. To the extent that the memorandum of appeal that was lodged in that court on 1st June 2012 was accompanied by a record of appeal that contained the wrong record of proceedings, there was no properly instituted appeal before the Court of Appeal. Certainly, recourse cannot be made to rule 83(2) of the Court of Appeal Rules to justify the late filing of that appeal when the appeal itself was defective.
- 30. Be that as it may and without in any way hifling the defects in the appeal that was before the Court of Appeal, as shall be demonstrated forthwith, the nature of this case brings to the fore the constitutional imperative of substantive justice that is highlighted in article 126(2)(e) of the Constitution. The parties framed only one issue for determination before the Court of Appeal, to wit, 'whether the ruling of the judge (in revision) constituted an error in law and fact when he ruled that the matter was not tenable for revision but should have been an appeal.' No mention whatsoever was made to the incompetence of that appeal either in the present appellant's submissions before that court or by way of preliminary objection at the brief hearing held in respect of that appeal. Indeed, no reference whatsoever was made in the submissions that were before that court to rule 83(2) of the Court of Appeal Rules in relation to the impugned record of proceedings or at all. So that, in effect, the present respondent had no fair notice of the incompetence of the appeal that was before the Court of Appeal.
- 31. I am alive to the position in *Warehousing & Forwarding Co. of East Africa Ltd v Jafferli & Sons Limited* 119631 EA 385, as cited with approval by this Court in *Ham Enterprises Limited & Others v DTB Ltd & Another* (supra), to which we were referred by learned Counsel for the appellant. Those cases propound the view that a question of law may be raised for the first time in a court of last resort such as the Supreme Court. Similarly, in *Makula International Ltd v His Eminence Cardinal Nsubuqa & Another* [19821 UGSC 2 this Court observed that 'whether an appellant can on appeal raise a new point of law not argued before the lower court is a matter for the discretion of the appellate court.' The exercise of that discretion is nonetheless subject to settled rules as invariably laid down by the courts. Thus, in *Tanqanvika Farmers Association Limited v Unvamwezi Development Corporation Limited* [19601 EA 620 at 626 (also cited with approval by this Court in the *Ham Enterprises Ltd* appeal), it was held that 'an appeal court has discretion to allow a new point to be taken on appeal but it will permit such a course only when it is assured that full justice can be done to the parties.'
- 32. Stated differently, the justice of the matter before a court is one of the factors that inform the exercise of an appellate court's discretion to allow a new point of law on appeal. In principle, therefore, this Court enjoys the discretion to entertain the point of law raised by the appellant on the (in)competence of the appeal that was before the Court of Appeal, provided that the point of law would realistically facilitate substantive justice between the

parties. I take the view that the circumstances of the Appeal presently before us bespeak to the contrary.

- 33. To begin with, the appellant's conduct denotes the undesirable practice of trial by ambush. No attempt was made to raise the issue of the appeal's competence at the stage of the pleadings, framing of issues or at the hearing of the appeal. Pleadings such as memorandum of appeals in appellate courts serve a dual function of, on the one hand, informing parties of the case against them to enable adequate preparation and, on the other hand, clarifying the real issues in controversy between the parties that a court is called upon to adjudicate. See *Intertreight Forwarders U) Limited v East African Development Bank* 119931 UGSC 16. The framing of issues arising from pleadings then narrows down with precision the specific matters in contestation and gives the parties fair notice thereof. See *Bhaq Bhari v Mehdi Khan* t19561 EA 94. Over and above these procedural arrangements, at the commencement of the hearing, parties are at liberty to raise preliminary objections that articulate points of law that would dispose of a matter without recourse to the evidence or with recourse to issues of fact that are not in contention. See *Mukisa Biscuit Milubg IDseo. Ltd v West End Distributors Ltd* t19691 EA 696.
- 34. The appellant did not raise the defect in issue presently in his pleadings before this Court but belatedly sought to address it orally at the hearing of this Appeal. It seems to me that had the fact of the wrong record of proceedings been pointed out before the court in which the first appeal was lodged, the present respondent would have had the opportunity to remedy it by filing the correct record of proceedings. This brings to bear the notion of estoppel by conduct, of which Halsbury's Laws of England postulates that 'parties to litigation who have continued the proceedings with knowledge of an irregularity of which they might have availed themselves are stopped from afterwards setting it up.' I am reminded of the observation in *Attorney General of the Republic of Uganda & Another v Omar Awadh & 6 Others* t2012-2015 EACJ LR 214, that 'he who claims a right, must not (like Rip Van Winkle) sleep or slumber on his right.'
- 35. Secondly, and perhaps more importantly, the determination of the appeal that was before the Court of Appeal without the missing record did not of itself occasion a miscarriage of justice. As a first appellate court, the Court of Appeal is under rule 30(1)(a) of its Rules of Procedure enjoined to reappraise the material on record and arrive at its own conclusions, thus essentially conducting a rehearing of the matter that was before the trial court.
- 36. It is blatantly apparent from the record of proceedings before the trial court that Civil Suit No. 4/ of 2003 was decided in the present appellant's favour without the calling of any evidence whatsoever

³Volume 16(2), p.8, para. 1058.

by either party, or any indication that either or both the parties had waived their right to do so. On 6m July 2005 an interim injunction that had been previously issued by the court was extended with the consent of both parties, pending the conclusion of a survey of the land that was the subject of that dispute, When the matter next came up for hearing on 2no November 2005, it was adjourned to 16tr November 2005 at the request of one of the advocates. On 16th November, the defendants (including the present respondent) did not appear but, owing to the absence of proof of service of the hearing notice upon them, the matter was adlourned to 28th November 2005. However, in amost bewildering twist of events, on 28th November 2005 (in the absence of either the defendants or their advocate) the learned trial magistrate decided suo molo that their seemed to be no further evidence expected from either party and fixed the matter for judgment on 27th December 2005, albeit 'graciously' ruling that both parties were at liberty to file their submissions before 16tt' December 2005.

- 37. In the event, the suit was decided in the present appellant's favour on 1st March 2006. In his judgment, the learned trial magistrate relied on the survey report, the court's visit to the locus in quo and the written statement of defence. There is no record of the /ocus in quo visit nor is there any indication in the ludgment as to who of the parties (if any) pailcipated in that exercise. Dissatisfied with that judgment, the third and fourth defendants (including the present respondent) invoked the High Court's revisionary powers vide Miscellaneous Application No. 4 of 2007, but the matter was dismissed with costs on the premise that the proper course of action should have been to appeal against the trial court's decision.
- 38. The trial court's conduct of the proceedings before it is most aptly addressed by the Court of Appeal in its decision in Civil Appeal No, 61 of 2012 as follows: 'it is amazing how the trial magistrate chose to make assumptions for the defendants instead of calling for thei oral evidence which would then be subjected to cross examination by the plaintiff through a proper hearing.' The appellate court then held:

Based in the findings, and after subkcting the evidence to frcsh appraisal and scrutiny, the grievances raised in Miscellaneous Application No. 42007 passed the requirements under section 83(c) of the Civil Procedure Act. It is very clear that there were illegalities, mateial irregularities, and inlustice regarding the way the leaned tial nagistrate conducted the trial, to the prejudice ot the appellants.

39. To compound matters, the Court of Appeal observed that even the survey report that was relied upon by the trial court was irrelevant to the dispute before it, addressing as it did an entirely different property, block 647 plot'19 rather than block 647 plot 7 that was the property in contention between

the parties. The Court of Appeal thereupon declared a mrstrial before the trial court and ordered a retrial before another magistrate.

40. It thus becomes glaringly apparent that we have before us a gross miscarriage of justice by a trial court, which was compounded by the inexplicable disregard for both procedural and substantive justice by the High Court in exercise of its revisionary powers. This is a case that

would require this Court to be as concerned about the ends of justice as it should be with the dictates of procedural law. That is the import of the enkeaty in *Besiqye Kiiza v Museveni Yoweri Kaquta & Another* [200'11 UGSC 3 that 'rules of procedure should be used as handmaidens of justice but not to defeat it,' In *The Iron & Steelwares Limited v C. W. Martvr& Comoanv* 11956] EACA 175, where a trial court rendered its judgment without hearing the legal arguments of one of the parties or its response to the arguments of the opposite party, the principle on the purpose of procedural rules was more succinctly stated as follows:

> Procedural rules are intended to serve as handmaidens of justice, not to defeat it, and we think that the (Court) in its inherent jurisdiction to control its own procedure, ... has a duty to ensure that each party is given a fair opportunity to state its case and answer the case made against it.

- 41. To my mind, that now settled legal maxim aptly emphasises that rules of procedure are not an end in themselves but rather are formulated with the over-riding objective of engendering authentic and just outcomes from litigation, as opposed to delivering superficial miscaniages of justice. This is the essence of substantive justice or justice that is grounded in substance rather than form, So that, the procedural defects in the appeal that was before the Court of Appeal, which in any case were never brought to that court's attention, should not whittle down the gravity of the flagrant miscarriage of justice by the trial court in the conduct of its proceedings.
- 42. I therefore take the view that the lustice of the matters in controversy in this Appeal would require that the most regrettable passage of time notwithstanding, the parties' conflicting claims to the land in dispute be determined on their merits in a trial de novo. In the result, I would uphold the Court of Appeal's order for the retrial ol Civil Suit No. 47 of 2003 before another magistrate, I would accordingly resolve Grounds 3 and 4 of the Appeal in the negative.
- 43. Before taking leave of this matter, I am constrained to observe that it is extremely disheartening that a judicial officer at the level of a Magistrate Grade I would be so unconversant with basic judicial process as to deny pa(ies their right to be heard in their respective cases. This could speak to the

nature of induction extended to newly appointed magistrates in preparation for their judicial office but would, in any event, be a matter of concern to the Judiciary's Inspectorate of Courts.

C. Conclusion

- 44, The upshot of my judgment is that this Appeal substantially fails with the following orders
- L The judgment and orders of the C out ol Appealin Civil Appeal No. 61 of 2012 are hereby upheld, and accordingly Civil Suit No. 47 of 2003 should undergo retrial before anolher magistrate.

- ll. By copy of this judgment, the Inspectorate of Courts is directed to interest itself in the conduct of the trial magistrate in Civil Suit No. 47 of 2003 with a view to appropriate corrective action,

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Ill. Costs in this Court and the lower court to abide the event.

I would so order

Dated and delivered at Kampala *,i. /f*.y "r,2025.

\ I I

Monica K. Mugenyi Justice of the Supreme Court

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THE REPUBLIC OF UGANDA SUPREME COURT OF UGANDA AT KAMPALA CIVIL APPEAL NO. 8 OF 2021

(*Coram: Musoke, Musota, Madrama, Bamugemereire, Mugenyi, JJSC*)

| <table> FAUSTINE NTAMBARA:.....</table> |

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| AND |

| BENON SEBUJISHO:..... |

JUDGMENT OF THE HON. LADY JUSTICE CATHERINE BAMUGEMEREIRE JSC

I did consider the draft opinion of my learned brother Christopher Madrama JSC. I would wish to associate myself with him and would agree that revisional orders are not amenable to appeal under the Civil Procedure Rules. I also agree with the other orders my learned brother Madrama makes.

I would accordingly dismiss this appeal.

Catherine Bamugemereire Justice of the Supreme Court

Delivered in open count this 14th day of may, 2025.
Adulto Tizaleth Ofsal
Adulto Tizaleth Ofsal
Deputy Registran - Sepreme Count
14/05/2025

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Prepared on 14 October 2026 · Esheria