

UGANDA / JUDGMENT

Kampefu Farm Ltd v Bunkedeko (Civil Appeal No. 28 of 2009) [2013] UGHCLD 18 (22 February 2013) [2013] UGHCLD 18

COURT

HC: Land Division (Uganda)

BEFORE

Murangira, J

CASE / FILE NUMBER

Civil Appeal No. 28 of 2009

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

CIVIL APPEAL NO. 28 OF 2009

(Arising out of Mpigi Chief Magistrates Court, Civil Suit No. 10 of 2003)

KAMPEFU FARM LIMITED ::::: APPELLANT

VERSUS

BUNKEDEKKO LIVINGSTONE :::: RESPONDENT

JUDGMENT BY HON. MR. JUSTICE JOSEPH MURANGIRA

1. Introduction

1. The appellant through his lawyers Bossa Tumwesigye and Sozi Advocates brought this appeal against the judgment and decision of His Worship Cohens Okulu, delivered on 16th April, 2009 on the following grounds of appeal:-
2. That the trial Court erred in law and fact in holding that the respondent who had hitherto never occupied the suit land had better title thereto than the defendant who had all along been in occupation thereof.
3. That the trial Court erred in law and fact in holding and coming to a finding that there had been no fraud on the part of the respondent.

4. That the trial Court erred in law and fact in holding and coming to a finding that the appellant was trespasser on the suit land.
5. That the trial Court erred in law and fact when it failed to consider and properly and adequately scrutinize and evaluate the evidence of the appellant's witnesses and in so failing thereby came to a wrong decision.
6. That the trial Court erred in law and fact in holding that the respondent whose lease had expired and was never renewed had an interest in the suit land.
7. That the trial court erred in law and fact in ordering that possession of the suit land be delivered to the respondent who had hitherto never lawfully occupied the suit land at all.
8. That the trial Court erred in fact and law in dismissing the appellant's counterclaim.
9. That the trial Court erred in law and fact when it failed to consider and determined the case without considering the issue of pecuniary jurisdiction.
1. The respondent is represented by M/s Mpeirwe & Co. Advocates. The respondent vehemently opposes this appeal. The respondent in his submissions supported the judgment of the trial Chief Magistrate.
2. **Facts of appeal.**

The facts of appeal are as gathered from the judgment of the trial court. They are:-

The plaintiff (now respondent in this appeal) brought this suit against the defendant (appellant in this appeal) for a declaratory order that he is the rightful owner and lessor of land on Block 384 Gomba at Bujamanyo Maddu approximately 88.70 hectares. That the defendant is a private company with a cattle farm who had utilized the suit land for 2 years without the consent of Claimant/plaintiff.

The defendant/appellant denied the claim and contended that he is the lawful registered owner of the suit land. That the plaintiff/respondent is the registered owner of part of that land through fraud. That the plaintiff's Certificates for title ought to be cancelled and that the plaintiff be treated as a trespasser. The plaintiff also denied the counterclaim by the defendant/appellant

The trial Court gave judgment in favour of the respondent (plaintiff) in the main suit; and dismissed the counterclaim with costs.

The appellant (defendant) being aggrieved by the judgment and decree of the trial Court preferred this appeal against the whole decision of the trial Chief Magistrate, sitting at Mpigi Chief Magistrate's Court, on eight (8) grounds of appeal as hereinabove stated in item 1.1.

1. Preliminary observations on this appeal by Court

2.1 According to Section 220 (1) (a) of the Magistrates Courts Act, as amended an appeal from the Magistrate's Court to the High Court of Uganda shall lie:

“From the decrees or any part of the decrees or from orders of a Magistrate’s court presided over by a chief Magistrate or a magistrate Grade 1 in the exercise of its original civil jurisdiction, to the High Court.”

In the instant appeal and according to the record of appeal the decree from which the appellant would be appealing from was not extracted nor is it filed in Court together with the record of appeal. It is my considered view, therefore, that since the above law was never followed by the appellant, the appellant’s appeal has a legal problem. The aggrieved party in an appeal ought to follow the law. Failure of that, such appeal filed without a decree is a nullity.

2.2 The memorandum of appeal, at page 2 of the record of appeal according to the received stamp by High Court, the same was received on 4th May, 2009, yet according to the Registrar of the Court, the same memorandum of Appeal was lodged in this Court on 3rd August, 2009. It is also noted that the judgment of the trial Court was delivered on 24th April, 2009. And if that is the true position, then the appeal was filed out the prescribed time of thirty (30) days within which to lodge an appeal (see Section 79 (1) (a) the Civil Procedure Act, Cap. 71. The appellant never sought leave to appeal out of time. In that regard, the appellant’s appeal would be a nullity.

2.3 At page 96 of the record of appeal, the appellant lodged a notice of appeal in this High Court on 7th May, 2009. This means that he commenced this appeal with the Notice of Appeal. Pursuant to Order 43 rule 1 of the Civil Procedure Rules, an appeal is commenced with the lodging of the memorandum of appeal. A notice of appeal, therefore, is not an appeal. In the circumstances, this appeal that was commenced with a notice of appeal would be a nullity.

1. Resolution of the grounds of appeal by Court.

1. The observation in item 2 above notwithstanding, since Counsel for the respondent did not raise them during the hearing of the appeal nor in his submissions, I have to resolve the grounds of appeal as argued by the parties.

The appellant’s Counsel Mr. Sozi Roscoe argued in his submissions grounds 1, 3, and 6 of appeal together; then grounds 2, 4, 5, 7 and 8 of appeal separately. Counsel for the respondents Mr. Arthur Mpeirwe followed the same pattern when arguing this appeal in favour of the respondent.

In resolving the grounds of appeal I shall follow the same pattern of argument as submitted by Counsel for the parties. I will analyse issues 1, 3, 4 and 6 of appeal together.

*** 1. Issue no.1 : That the trial Court erred in law and fact in holding that the respondent who had hitherto never occupied the suit land had better title thereto than the defendant who had all along been in occupation thereof.**

Issue no. 3: That the trial Court erred in law and fact in holding and coming to a finding that the appellant was trespasser on the suit land.

Issue no. 4: That the trial Court erred in law and fact when it failed to consider and properly and adequately scrutinize and evaluate the evidence of the appellant's of the appellant's witnesses and in so failing thereby came to a wrong decision.

Issue no. 6: That the trial Court erred in law and fact in ordering that possession of the suit land be delivered to the respondent who had hitherto never lawfully occupied the suit land at all.

Counsel for the appellant in his submissions argued that the guist of the above grounds is that the trial Chief magistrate held that the appellant's occupation of the suit land was unlawful and that further that it was the respondent entitled to possession of the suit land. Counsel for the appellant respectfully submitted that the trial Court erred in law and fact in holding so; and that the said holding was not supported by evidence on record. He then evaluated the evidence on record in his submissions. He relied on the following cases in support of the appellant's case:-

1. **Uganda Posts and Telecommunications Ltd vs A. K. M Lutaaya SCCA no. 36 of 1996.**
2. **Kampala District Land Board vs National Housing Construction Company SCCA no.2 of 2004**
3. **Matovu vs Seviru [1978] HCB 171.**
4. **Peters vs Sunday Post Limited [1958] E. A 424; and**
5. **Section 29 of the Land Act, an amended, Cap. 227 Laws of Uganda.**

In reply, Counsel for the respondent does not agree with the submissions by Counsel for the appellant. He supported the findings of the trial Chief Magistrate on the said grounds of appeal. He, too, relied on a number of authorities. He further argued that the authorities cited by Counsel for the appellant are not applicable in this appeal.

I agree with the submissions by both counsel that this Court as an appellant Court has powers to re-evaluate the evidence of the parties and to make its own finding of fact. See the case of **Peters vs Sunday Post Ltd (supra)** for the aforesaid proposition.

In his judgments, the trial Chief Magistrate at pages 93 and 94, of the record of appeal held that:

“(1) as to who is the owner of the LRV 2879 of the record of appeal Folio Block 384 plot 4 at Bugamanyo;

Under S. 59 of the Registration of Titles Act, a certificate of title is conclusive evidence of ownership and cannot therefore be impeached where it's covered by the exception under Section 64 and 176 of RTA one of which is of course fraud.

From the evidence of both parties, the plaintiff is the registered proprietor of plot 4, block 384 land at Bujamanyo just liked the defendant is the proprietor of block 393 , 385, 395 plot 5 at Kampefu. Therefore both the plaintiff and defendant are the legitimate owners of their respective lands registered into their names and in answer to issue 1, the plaintiff is the legitimate owner of plot 4 block 384 land a Bujamanyo.

On issue 2: As to whether the defendant's certificate of title relates to the suit land in dispute that is plot 4 block 384 land at Bujamanyo, the defendant has alleged fraud on the side of the plaintiff. The defendant's case is that the plaintiff has fraudulently surveyed out of its existing plot 5 blocks 385, 393 and 395 with a Certificate of title and relied on the report of the late Kiggundu the then surveyor.

This position was however contradicted by all the expert witnesses called by Court like the Cartographer, the Registrar of Titles and the District Staff Surveyor.

All the three testified that the plaintiff's land is about 4 kilometres away from the defendant's land. That the lands are in different estates. The plaintiff's at Bujamanyo and the defendants at Kampefu.

The re-opening of the boundaries of the two plots ordered by the land tribunal showed that the two pieces of land are 3.8 Kilometers apart.

It was also the testimony of the Cartographer and the Registrar of Titles that the Deed plan in the plaintiff's Certificate of title seem more authentic as it relates to the real acreage, area and location, including the size and shape of plot 4 block 384 at Bujamanyo. They however, doubted the defendant's deed plan in his certificate of title which was parched up and if added as presented, the acreage would total to 1260 acres instead of 510. It was their conclusion which I have no reason to deviate from that whereas both certificates of titles are genuine, the deed plan in the defendant's Certificate of title was not genuine. It was exaggerated.

It lacked a seal, date of certification etc and was patched up which is not the practice. The practice is that instead of alterations or rubbings, a new Deed Plan would be issued and imposed onto the one that was altered due to some mistakes.

Therefore the defendant's title does not related to the plaintiff's land. His extension of the land to cover the plaintiff's land was based on a mistake in the Deed Plan of his Certificate of Title that seemed to have been tampered with. So instead of restricting themselves to 510 acres leased to them, the defendants now occupy 1,260 acres. This does not make the case for fraud on the side of the plaintiff which has not been proved but rather it points to a case of trespass on the side of the defendant.

Hence since fraud is not proved, the defendant cannot be entitled to the reliefs claimed but the plaintiff shall be entitled to the relief's claimed."

Further, during the trial, there was no scheduling conferencing. However, the trial Court framed three issues for determination, (see page 90 last paragraph of the record of appeal):-

- * Who is the rightful owner of the suit land?
- * Whether the defendant's certificate of the title relates to the suit land.
- * Remedies available to the parties.

The grounds of appeal and submissions of the appellant seem to introduce another issue, to wit, “which of the two lands is the suit land?”

The respondent sued the appellant for trespass on his land comprised in LRV 2879 Folio 3 Gomba Block 384 plot 4 registered in the names of Bunkeddeko Livingstone (the respondent). The defendant in his defence and counterclaim stated that he is the registered owner of LRV 1057 Folio 8 Gomba Block 385, 393 and 395, plot 5. In the counter claim, the defendant claimed that the respondent had registered a portion of land out of his title, that is, Block 385, 393 and 395 plot 5.

The suit land, in my view is LRV 2879 Folio 3 Gomba Block 384 plot 4 which the trial Court had to determine whether it was part of LRV 1057 Folio 8 Gomba Block 385, 393 and 395 plot 5 and which it established that it was an independent piece of land distinct and distant to the appellant’s aforesaid land.

The appellant claims that the respondent’s title was apportioned from his lease and that it has been occupying the whole parcel of land including block 384 plot 4. No evidence was adduced to show that the appellant was in occupation of the land comprised in LRV 2879 Folio 3 Gomba Block 384 plot 4. All the defence witnesses indicated that the appellant was in possession of LRV 1057, Folio 8 Gomba Blocks 385, 393 and 395 Plot 5 at Kampefu from 1977 and that it measures 510 hectares. See the testimony of DW1 at page 32 of the record of appeal, para 4 last line. This evidence is uncontroverted. None of the witnesses stated that LRV 2879 Folio 3 Gomba Block 384 plot 4 was an independent portion which the appellant occupied under a different tenure.

DW2 claims (see page 36 of record of appeal) that the land in dispute was part of the land which was inspected for purposes of granting the appellant lease. The learned trial magistrate scrutinized the evidence of the defence witnesses and found contradictions in the testimony of DW4 and DW5 watering down the evidence to support the claim of occupancy by the appellant.

Further, the evidence of DW1, DW2, DW3 and DW4 on the contrary indicates that the appellant applied for the land he occupied in 1977 and was granted a lease. Which means that it was never in occupation of the portion that was later leased to the respondent. Had it been in occupation, there would be no reason for it to apply for one portion and leave out another.

The respondent testified that he saw the land in 1999 when it was unoccupied and applied for it. After applying for it, the appellant trespassed on it and later started grazing his cows on it.

The testimonies of PW1, PW2, PW3 and PW4 (page 10 last paragraph, page 18 paragraph 2, page 19 paragraphs 1 and 3) all show that the land applied for and granted to the respondent does not form part of the land belonging to the appellant.

PW3 and PW4 testified that the title of the appellant was tampered with to appear as if the appellant’s land included the respondents land (page 18 last line). This would ordinarily point to the fraud on the part of the appellant but Court did not dwell on that as it was not in issue.

The trial chief magistrate at page 93, 4th paragraph line 3 of the record of appeal ably evaluated the evidence and was in no doubt that the defendant's (now appellant) land did not relate to the plaintiff's (now respondent) land. The trial Chief Magistrate compared the evidence of the deceased surveyors report (D Exh III) and the reports of the experts invited by Court and rightly found that the appellant's claims were false. (See page 93 paragraph 4 last line and paragraph 5 of the record of appeal).

By the time the respondent saw the land in 1999, it was not occupied by any one as there were no crops, kraals or wells. The case of **Marko Matovu & ors vs Mohammed Seviru & Anor (1978) HCB 171** cited by Counsel for the appellant is not applicable in the facts of this case. No evidence was led to prove unregistered interests of the appellant in the portion failing outside his registered interests in LRV 1057 Folio 8 Block 385, 393 and 395 plot 5 at Kampefu. No evidence was adduced to prove knowledge of any unregistered interests nor the intention to defeat any unregistered interest.

Has the appellant been in occupation, no inspection and survey would have taken place unnoticed and unchallenged? That the survey of the suit land went on unchallenged to the level of the title issuance is clear indication that the land was vacant. That while applying for lease the appellant limited himself to what he occupied appeals to logic. Otherwise what would compel him to apply only for 510 hectares which covers its LRV 1057 block 385, 393 and 395 plot 5 and leave the rest unregistered?

The trial chief magistrate's holding that both parties were owners of their respective lands cannot be faulted. It is my considered view that the trial magistrate's finding that the respondent was the rightful owner of plot 4 and that the appellant was a trespasser thereon was proper. The trial magistrate was also right in ordering the delivery of possession of the suit land to the respondent. I find no merit in grounds 1, 3 and 6. They ought to fail.

3.3 Ground 4: That the trial chief magistrate erred in law and fact when he failed to consider and properly and adequately scrutinize and evaluate the evidence of the appellant's witnesses and in so failing thereby came to a wrong decision.

Counsel for the respondent submitted that the trial magistrate evaluated the evidence of all the witnesses adequately thereby arriving at the right decision. From the judgment, it is clear that trial magistrate scrutinized the evidence of each witness. All witnesses were confirming that the two lands were of different particulars. The expert evidence was overwhelming on the fact that the two lands were separate and distinct. Instead, they raise suspicion on the appellant's title. He further said that the evaluation of evidence was adequate and that the findings were the right ones. I hereby say that this ground 4 too has no merit and it ought to fail.

In the premises, I find no justification to fault the trial chief magistrate in his findings in his judgment. Wherefore, grounds 1, 3, 4 and 6 of appeal lack merit. They are accordingly dismissed.

3.4 Ground no.2: That the trial Court erred in law and fact in holding and coming to a finding that there had been no fraud on the part of the respondent.

It is the submissions by Counsel for the appellant that in acquiring registration of the suit land, the respondent committed fraud. In his submission, counsel for the appellant gave particulars of fraud, to include:-

1. The respondent was a former LCII chairman in the area where the land is located and was himself aware of the existence of the appellant's farm and the land it occupied.
2. By virtue of the respondent's said former position as LCII Chairman in that area, he also ought to have known that the land was in Lusozi Ntalagi where he ought to have got the LCI, LCII and the LCIII letters endorsing his application for a lease. Instead, he deliberately decided to get letters from elsewhere that is the LCI of Kabusenene village.
3. By refusing to follow the law and get the application for a lease endorsed by the LCI-III of the actual area where the disputed land is located, the respondent was being evasive and fraudulent.

Counsel for the appellant summarized in this submissions that the respondent's conduct in the case presently before this Court fits squarely within the definition of fraud. Counsel for the respondent in reply does not agree with the submissions by Counsel for the appellant.

In support of the appellant's appeal, Counsel for the appellant relied on the following cases:-

1. **John Wiliam Kihuku & 2 others vs Personal Representative of the Rt. Rev. Eric Sabiiti [1995] KALR 674** where it was held that where a person procures registration to defeat an unregistered interest on the part of another person of which he is proved to had knowledge then such person is guilty of fraud.
2. **Assets Co. vs Mere Roihi [1905] Ac 176**, where it was held that actual fraud constitutes an act of dishonesty.

In reply, Counsel for the respondent supports the judgment of the trial Chief Magistrate. He maintains that the respondent was not dishonest in his dealings in the suit land.

In his judgment, the trial chief magistrate found that the respondent committed no fraud in his dealings in the suit land.

The appellant adduced no evidence at the trial to prove that the respondent knew of the appellant's unregistered interest in the suit land. PW1 testified that when he saw the land in 1999, it was unoccupied. That he did not know that the appellant was grazing there. He further stated that at inspection, the LCI Chairman was present. The inspection and subsequent survey did not find the appellant in occupation. The appellant came in only after the respondent had applied for the lease which was processed to finality without the appellant complaining. The case of **John William Kihutu & 2 ors vs Personal Representative of Rt. Rev. Eric Sabiiti** cited by the appellant requires proof of knowledge if a person is to be guilty of fraud. It does not apply in the instant case. There was no evidence to prove that the appellant owned or occupied the suit land. The

surveyors and local council authorities would otherwise not have allowed the process to go on. The trial Court rightly found that there was no fraud on the part of the plaintiff (now respondent) as the two lands were unconnected.

This ground 2, too, ought to fail. It is accordingly dismissed.

*** 1. Issue no.5: That the trial Court erred in law and fact in holding that the respondent whose lease had expired and was never renewed had an interest in the suit land.**

Counsel for the appellant submitted that it is trite law that for one to have a cause of action, he must be possessed of a subsisting legal right. That in the instant case the respondent's purported claim was over a piece of land over which a lease was granted to him vide LRV 2870 Folio 3, Gomba Block 384. The Respondent's certificate of title appears at page 47 of the Record of Appeal.

Counsel for the appellant further submitted that this lease had been granted erroneously on 1st September, 2000 for a period of five years. That the lease was never renewed nor extended. The position of the law on such matters was settled in the case of **Adeodata Kekitinwa & 3 others vs Edward Wakida [1999] KALR 632** in which the Court of Appeal held:

“that upon the expiry of the lease, it automatically reverts to the controlling authority and the lessee or tenant no longer has any legal right on the property and is a mere trespasser.”

This case is distinguishable. There is no evidence on record showing that upon expiry of the respondent's lease, that the lessor gained re-entry on the suit land. The lessor had never challenged the respondent's equitable interests in the suit land.

In reply Counsel for the respondent submitted that though the lease of the suit land had expired, the respondent's interests in the suit land were still continuing. In his arguments he supported the judgment of the trial Chief Magistrate. I agree with this submission on that legal point.

I have read the evidence and judgment of the trial Chief Magistrate and I find his decision on the issue valid and convincing. A holder of an expiry lease has superior interest in the land than a third party. In the case of **Gabriel Rugambwa & anor vs Ezron Bwambale & anor [1997] I KALR 72**, Byamugisha J. (as she then was) held that:-

“even where a lease has expired the lessee remains with some interest in the land till the same is dealt with by the controlling authority. Court went a head to state that the expiry of the lease did not turn the land into public land as defined by Section 54 of the Public Lands Act nor did it make the 1st defendant tenant at sufferance. The estate remained vested in him (lessee).

In the instant appeal, the case in the trial Court commenced when the lease was subsisting. Possession by the respondent was made impossible by the trespass of the appellant. It would be against the principles of a natural justice for the appellant to take advantage of his own illegality. Moreover, PW3 testified that in practice when there is a dispute, the renewal of a lease is frozen till the determination of the dispute. The magistrate was a right in not addressing this issue because in my considered opinion it was irrelevant to the issues in contention.

This ground 5 of appeal, also, ought to fail. It is accordingly dismissed.

*** 1. Issue no 7: That the trial Court erred in fact and law in dismissing the appellant's counterclaim.**

Counsel for the appellant submitted that in addition to the fact that the trial Court unjustly and erroneously failed to find that there was fraud on the part of the respondent, that the trial court also failed to find that the respondent has no legal written statement of defence filed to the appellant's counterclaim.

The appellant had filed his written statement of defence along with a counterclaim on 25th June, 2004 within the time prescribed in the summons. That the respondent, however, did not file a reply to the counterclaim until 7th January, 2004, almost 6 months after the time prescribed by law had expired. The said reply should have been filed latest by 17th June, 2003. Instead, it was filed out of time and without leave of Court. That the reply to the counterclaim was therefore a void pleading. He relied on the case of **Westmont land Asia vs Attorney General [1999] KALR 785 whereby it was held** that failure to comply with the mandatory requirements of filing a defence in the time prescribed by law automatically entitles the other party to judgment in its favour. I would not agree with this holding. In such circumstances, the plaintiff by counterclaim would apply for *ex parte* judgment. Then thereafter, the suit by counterclaim would be set down for hearing on the formal proof on the balance of probabilities. From the evidence on record, even the counterclaim could not be sustained by the defendant/Counterplaintiff, since the respondent was found by the trial Court to be the rightful owner of the suit land. The counterclaim would have been heard if the respondent's suit was to be dismissed.

In reply, counsel for the respondent supports in his submissions the judgment of the trial chief magistrate.

On this ground of appeal, I considered the evidence on court record of appeal and the judgment of the trial Chief Magistrate. And I find no reasons to fault his decision on that ground of appeal.

Counsel for the respondent argued that it is on record that the reply to the defence and counterclaim was filed out of time. That this happened before the trial chief magistrate took conduct of the matter. I do not find anything on record to explain the circumstances under which the pleadings were admitted. However, this was before the land Tribunals which were not very strict on technicalities. No objection was raised at the commencement of the trial Court and Court in its discretion proceeded. The learned trial chief Magistrate found it, in my view, not fair to throw out documents that had been admitted by the Land Tribunal. It is to be noted that the trial chief magistrate only took over the case after the Practice Direction that was issued by the Chief Justice of Uganda when it was part heard and no objection had been raised.

Even Counsel for the appellant never raised an objection when he took over conduct of the matter. It would occasion a miscarriage of justice if it was to be revisited on appeal resulting in entering judgment for appellant. It is a technicality in the meaning of Article 126 (2) (e) of the Constitution and should not impede the delivery of justice. It occasioned no injustice as the case

was heard on its merits. In the case of **General Parts (u) ltd & anor vs Non Performing Assets Recovery Trust**, SCCA No. 9 of 2005, the. Mulenga JSC ,in the lead judgment confirmed the holding in **Cloud 10 vs Standard Chartered Bank (U) Ltd**, [1987] HCB page 64 when he held that **the non –compliance with the procedure in filing a suit was not fatal if no parties were prejudiced and no miscarriage of justice occasioned.**

In the instant case, the parties agreed to proceed with the hearing of the case on its merits with the blessing of the Court and no party was prejudiced. The appellant does not show how he was prejudiced or what miscarriage of justice resulted.

This ground ought to fail too. Thus, ground no.7 is dismissed.

3.7 Ground no. 8: That the trial Court erred in law and fact when it failed to consider and determined the case without considering the issue of pecuniary jurisdiction.

At page 4 of the record of appeal there is a statement of claim by the respondent (plaintiff). In that statement of claim, the respondent is seeking for declarations of his rights over the suit land. He is not claiming the recovery of the suit land from the appellant. The appellant in its written statement of defence did not dispute the jurisdiction of the Land Tribunal. In it's counterclaim, the appellant never stated the value of the subject matter. By interpretation of the appellant's pleadings in its defence and counterclaim, the appellant submitted to the jurisdiction of the said court.

In the course of the proceedings, the tribunals were disbanded and all cases were allocated to the Chief Magistrate's Courts vide practice directive no. 1 of 2006. During the hearing, counsel for the defendant (now appellant) raised an objection challenging the legality of then practice, directive and the pecuniary jurisdiction of the trial Court. After arguments by both counsel, the trial magistrate overruled the objection and proceeded to hear the case. The submission of Counsel for the appellant was still under the mistake that the suit land was LRV 1057, Folio 8 Blocks 385, 393 and 395 plot 5, which definitely was of higher value. But it later came to pass that the suit land was LRV 2879 Folio 3 Block 384 plot 4 which was less than 50 million in value by then.

There is no way how I can fault the trial Chief Magistrate on this ground no.8.

The trial chief magistrate, therefore was right in overruling, the objection. Even if the reasons advanced were different, if the suit land is plot 4, then the appellate Court would occasion a miscarriage of justice to hold that the trial Chief Magistrate erred in law in overruling the objection because the land forming the basis of the objection was not the suit land. This ground therefore fails. Wherefore, ground no.8 is dismissed as it has no merit at all.

1. Conclusion

4.1 In conclusion, all the eight (8) grounds of appeal fail and are dismissed.

4.2 In the result and for the reasons given hereinabove, in this judgment I make a finding that this appeal has no merit. The appeal is therefore, dismissed with costs. Judgment is entered in favour of the respondent on the following orders; that:-

1. (i) The judgment and all orders therein of the trial Chief Magistrate are upheld.
- (ii) The respondent shall enjoy the remedies granted to him by the trial Chief magistrate with immediate effect but not later than 10 (ten) days from the date of this judgment.
1. The appellant is ordered to give vacant possession of the suit land comprised in Block 384 LRV 2879 Folio 3 plot 4 to the respondent as soon as practicable but not later than ten (10) days from the date of this judgment.
2. Costs here and in the lower Court are awarded to the respondent.

Dated at Kampala this 22nd day of February, 2013.

sgd

Murangira Joseph

Judge

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