

UGANDA / JUDGMENT

Matanda & 11 Others v Patel & Another (Civil Appeal 360 of 2020)

[2024] UGCA 226 (29 August 2024)

[2024] UGCA 226

COURT

Court of Appeal of Uganda

BEFORE

Kiryabwire, JA, Muzamiru, JA, Gashirabake, JA

CASE / FILE NUMBER

Civil Appeal 360 of 2020

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rHE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

[Coram: Geoffrey Kryabwie, Muzamiru M. Kbeedi and Christopher Gashirabake, JJA)

CIVIL APPEAL NO, 360 OF 2()20

(Appeal from the declslon of the Hon. Mr. Justice Kaweesa Henry Isabirye in Miscellaneous Application No. HCT-04-CV-MA- 207-2015 of the High Court of Uganda at Mbale dated l?h July 2017 and delivered on the 14th of July 2017)

JUDGMENT OF MUZAMIRU MUTANGULA KIBEEDI. JA

Introduction

1l This is an appeal against the Ruling and Orders of the High Court of Uganda at Mbale (Henry Kaweesa Isabirye, j.) in High Court Miscellaneous Civil Application No. 207 of 2015, dismissing the Appellants' application for review of the Judgment of the High Court of Uganda at Mbale dated the 28rh May 2015 in High Court CivilAppeal No. HCT-04-CV-CA-0066-2012.

Poge 1of 15

Back ground facts

21 This dispute has had a checkered history. The subject matter of the dispute is Plot 11 Republic Street, Mbale (Suit property).

31 From the Record of Appeal, Mr. P. R. Patel (the first Respondent) appears to have purchased the suit property in an auction sale conducted pursuant to High Court District Registry Suit No. 23 of 1983 Uganda Commercial Bank (UCB) Vs John Matanda T/A Nkokonleru Constructors. Thereafter, the first Respondent appears to have entered into a tenancy with Mr. John Nalemu (second Respondent) in respect of the suit property. When the second Respondent defaulted in rent payment, the first Respondent, in exercise of his right of re-entry, caused Mr. Oyugi, a Court bailiff to lock up the suit property. In response, the second Respondent commenced court action against the first Respondent and Oyugi, the Court Bailiff, in the Chief Magistrate's Court of Mbale alleging trespass to the suit property and seeking a declaration that he was the rightful owner of the suit property, vide: Civil Suit No. 1 51 of 1996.

- 41 He also sought a permanent injunction, general and special damages suffered as a result of the alleged trespass with costs of the suit. The claims against the bailiff were subsequently dismissed by the Chief Magistrate on the ground that he was acting on orders of court which were later nullified.
- 51 In his written statement of defence, the first Respondent denied the claims of trespass and stated that the second Respondent was his tenant who breached the tenancy agreement. He counter claimed against the second Respondent for vacant possession of the suit property.
- 61 Initially, the case was dismissed on the 25th of September, 2006, by His Worship Muse Musimbi under Order 17 Rule 4 of the Civil Procedure Rules (CPR). The second Respondent appealed against the dismissal to the High Court of Uganda at Mbale under Civil Appeal No. 66 of 2006. The appeal was allowed by the Hon, Justice E. K Muhanguzi (as he then was), the dismissal order of the Chief Magistrate set aside, and the suit restored for hearing on its merits.
- 71 The suit was re-registered as Civil Suit No. 445 of 2012 of the Chief Magistrate's Court of Mbale sitting at Mbale. An amended Plaintiff was filed by which Mr. J. W Matanda (now

Page 2 of 75

deceased) was added as the second plaintiff. Both plaintiffs were represented by the same Law Firm, M/S Nagemi & Co. Advocates of P. O. Box 7744, Kampala. Thereafter, the matter was heard on its merits and judgment was entered in favour of the plaintiffs on the 20th April, 2012 by the then Chief Magistrate, Her Worship Lillian Bucyana.

Decision of the trial Court

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In her judgment, the Chief Magistrate decreed that the suit property was the property of J. W. 81 Matanda and that the second Respondent was his tenant. The court then issued an injunction against the first Respondent and also condemned him in the costs of the suit.

Appeal to the High Court

- The first Respondent was dissatisfied with the decision of the Chief Magistrate, and he 91 appealed to the High Court of Uganda at Mbale vide: Civil Appeal No. HCT-04-CV-CA-0066-2012 P. R Patel Vs John Nalemu.
- In his judgment dated the 28th of May 2015, Hon. Justice Henry I. Kawesa found that the first \$10¹ Respondent purchased the suit property following a court auction sale conducted pursuant to High Court District Registry Suit No. 23 of 1983 Uganda Commercial Bank (UCB) Vs John Matanda T/A Nkokonjeru Constructors. As such, he was the owner of the suit property. He accordingly allowed the appeal, and set aside the judgment and orders of the trial Court. He Clart also granted the first Respondent herein the costs of the appeal and the trial court.

Review application

11] In August 2015, the Appellants filed *High Court Miscellaneous Application No.* 207 of 2015 Robinah Matanda & 11 Others Vs P. R. Patel and Nalemu John in Mbale High Court seeking an order to review and set aside the judgment in *High Court Civil Appeal No. HCT-04-CV-CA-*0066-2012 P. R Patel Vs John Nalemu & Anor. The application was stated to have been brought under sections 48, 83 and 98 of the Civil Procedure Act, Cap. 71 of the 2000 edition of the Laws of Uganda (CPA), sections 14 and 36 of the Judicature Act, and Order 46 of the Civil Procedure Rules (CPR).

- 121 The grounds upon which the application was based were stated to be:
- 1) That the Appellants are children and beneficiaries of the estate of the Late J. W. Matanda, who was not a pafty in the Avil Appeal No. 0066 of 2012.
- 2) That the Judgment in Civil AppealNo. 0066 of 2012 had an effect on the Appellants who were not parties to the proceedings to the extent that it affecls thei beneficial interest in the Suit propefty.
- 3) That the addition of the late J. W. Matanda on appeal was irregular as he was not given an oppoftunity to be heard.
- 4) That the purpofted purchase of the suit propely by the fist Respondent P. R Patel from the defunct Uganda Commercial Bank in execution of a decree was tainted with illegalities.
- 131 The appllcation was supported by the Affidavit of the first Respondent.

The first Respondent opposed the application and filed his Affidavit in reply setting out the reasons and evidence for opposing the application.

- '141 In his Ruling rendered in July 2017, the Hon. Justice Henry I. Kawesa held that the Appellants failed to prove that they had capacity to sue as "aggrieved persons". Further, that the grounds upon which the application was based did not pass the test for the exercise of the court's mandate to review its own decision. And that the appropriate remedy for redress in respect of the complaints raised by the Appellants was filing an appeal and not a review application.
- 151 The Court accordingly dismissed the application with costs

Leave to appeal to the Court of Appeal

161 Dissatisfied with the decision of the High Court dismissing the application for review, the Appellants filed an application for leave to appeal against the ruling/order of dismissal of their application. Leave was granted on the 28th August 2020 by the Hon. Mr. Justice Jesse Byaruhanga Rukyema.

Page 4 of 75

The appeal to the Court of Appeal

- 171 From their Memorandum of Appeal, the Appellants fault the first appellate court on three grounds, namely:
- 1. The learned Judge erred in law and fact when he held that the Appellants were not aggrieved parties.
- 2. The learned Judge erred in law and fact when he held that the Appellants had no grounds for review.
- 3. The learned Judge erred in law when he ignored the errors/illegalities that had tainted the whole case.

Representations

- 181 When this appeal came up for hearing before us on the 30th of July 2024, the Appellants were represented by Mr. Mustapha Watuwa Songon, while the first Respondent was represented by Mr. Deogratious Obedo. Leave was granted to the Appellants to withdraw and discontinue the appeal against the second Respondent.
- 191 Further, leave was also granted to the parties to adopt the written submissions which were already on the court record as their respective legal arguments in the matter.

Resolution of the appeal

Ground one - locus standi of the Appellants

- 201 In ground one, the Appellants fault the first Appellate Judge for holding that the Appellants were not "aggrieved parties". It was the Appellants' submission that as children and beneficiaries of the deceased, they had locus standi to apply for review of the judgment even if they were not parties to it. The Appellants cited the authority of Mohammed Allibhai Vs Bukenya, SCCA IVo. 56 of 1996 reported in [1996] 111 KLR 92, in support of their submission.
- 211 The Appellants faulted the High Court judge for holding that they did not prove that they were aggrieved parties on the basis of absence of a death certificate of J. W. Matanda, a letter from

the Registrar of birth and death, or letters of administration or probate, or record of the Appellants as children of the deceased.

- 221 The Appellants prayed to this court to find that they had locus to file the application for review.
- 231 The first Respondent disagreed with the Appellants' submissions and supported the findings of the first Appellate Court. The first Respondent argued that the Appellants failed to prove that they are aggrieved persons. That the Affidavit of Robinah Matanda was purportedly made on her own behalf and on behalf of others but no written authority was attached to it, which rendered the application incompetent for lack of authority.
- The first Respondent further argued that the main ground for review was in respect of the Judgment from which the current first Respondent purchased the suit property, namely Suit MM 23 of 1983 UCB Vs John Wasike Matanda. The first Respondent contended that the Appellants were guilty of laches by filing their application for review after the passage of a period of eight months. Counsel cited the case of Muyode Vs Industrial and Commercial Development Corporation & Another [2000] 1 EA 246 where it was held that an application for review must be made without unreasonable delay. 241
- The first Respondent concluded by appealing to this court to uphold the finding of the first Appellate Court in this aspect. 251
- From the submissions of the parties, there is no doubt that the Appellants were strangers to the Judgment and decree in High Court Civil Appeal No. HCT-04-CV-CA-0066-2012 P. R Patel Vs John Nalemu & Anor which they sought to have reviewed by the first Appellate Court. Nonetheless, they contended before this court that as children and beneficiaries of the Late Matanda's estate, they had locus standi to apply for the review of the impugned judgment and orders. to)

- Order 46 Rule 1 of the Civil Procedure Rules, S.I No. 71-1 of the 2000 edition confers the right to apply for review upon "any person considering himself or herself aggrieved by a decree 27) or order"

Page 6 of 75

281 The legal position of the locus standi of a non-party to a suit to apply for review of a judgment or decree or order was settled by the Supreme Court of Uganda in Mohammed Allibhai Vs Bukenya, SCCA IVo. 56 of 1996 where Odoki JSC (as he then was) stated thus:

> 'It is well established that while a third party may apply for review under the above provisions, the party must establish that he is an aggrieved person. A person considers himself aggrieved if he has suffered a legal grievance. See Yusufu Vs Nokrah [1971] EA 104, and in Re Nakivubo Chemists (U) Ltd [1971] HCB 12, Ladak Abdulla Mohamed Hussein Vs Grlffrths Isingoma Kakiiza and Others Civil Appeal No. I of 1995 (unreported).

> A person suffers a legal grievance if the judgment given is against him or affects his interest."

- 291 From the aforesaid, I can authoritatively state that being children and beneficiaries of the estate of the Late Matanda did not automatically confer locus to the Appellants to apply for review. They had to go a step further and prove that not only did they have a beneficial interest in the subject matter of the judgment and orders complained about, but also that the impugned Judgment and orders wrongfully affected that beneficial interest. And this is a matter of both law and fact.
- 301 A review of the Record of appeal reveals that the contested Judgment and Decree of the High Court in Civil Appeal No. HCT-04-CV-CA-0066-2012 P. R. Patel Vs John Nalemu was rendered on the 28th May 2015. At that time, Matanda was still alive, and as such, the Appellants had no legal interest in the suit property. Their interest as beneficiaries arose only after the demise of Matanda and acquisition of letters of administration to his estate in 2016. In these circumstances, can the subsequent acquisition of a beneficial interest in the estate of their late father's estate qualify them to be persons aggrieved by the contested Judgment?
- 311 A similar scenario was considered at length in the Judgment of Hon. Justice Wambuzi, CJ in the case of Mohammed Allibhai Vs Bukenya (Supra), In that case, the interest of the Appellant in the suit property arose out of the grant of letters of administration to him on the 28th of June 1994. The Judgment which he sought to be reviewed by the Court was rendered on the 24th day of February 1994 which was about four months before the Appellant obtained his

Page 7 of 75

letters of administration to enable him to have any say in the affairs of the deceased. Court held that in the circumstances he could not have been an aggrieved party.

- 321 In the same way, at the time the High Court rendered its Judgment in Civil Appeal No. HCT-04- CV-CA-0066-2012 P. R. PatelVs John Nalemu on the 28rh May 20'15, the Appellants had no interest whatsoever, whether beneficial or otherwise, in the suit property to be affected by the contested Judgment. As such, they could not have been "aggrieved parties" in the terms of Order 46 Rule 1 CPR. The beneficial interest of the Appellants in the estate of the Late John Wasike Matanda, which is the basis of their interest in the suit property and the review application, was acquired after the death of the Late Matanda. By that time, the High Court had already pronounced itself on the ownership of the suit property and decided that it belonged to the first Respondent and NOT Mr. John Wasike Matanda. It is equally important to note that while Mr. Matanda was still alive at that time, he did not appeal against that decision.
- 331 As such, I find that the Appellants had no /ocus slandl to bring the application for review. Ground one would accordingly be rejected.

Grounds two and three - Appellants' grounds for the judgment review

341 Grounds two and three were couched thus:

Ground two - The Learned Judge ened in law and fact when he held that the Appellants had no grounds for review.

Ground three - The Learned Judge erred in law when he ignored the errors/illegalities that had tainted the whole case.

351 It is settled that the jurisdiction of the court to review is granted by Section 82 of the CPA, while Order 46 CPR lays down the procedure and grounds for making the application for review. See: Ladak Abdulla Mohamed Hussein Vs Gruffith Isingoma Kakiiza & 2 Others, SCCA A/o. 8 of 1995.

Page 8 of 15

- 36/ For the Appellants to succeed in their application for review of the impugned Judgment and decree, their application had to be hinged upon any one of the three grounds set out in Order 46 Rule 1(1)(b)of the CPR, namely:
 - 1. The discovery of new and important matter of evidence which, after the exercise of due diligence, was not within [the applicant's] knowledge or could not be produced by him or her at the time when the decree was passed or the order made; or
 - 2. Some mistake or error apparent on the face of the record; or
 - 3. For any other sufficient reason.
- 3ZJ From the Notice of Motion and Supporting Affidavit filed in High Court Miscellaneous Cause No. 207 of 2015 by the Appellants, the first ground upon which the application for Review was founded was stated to be that the Late Matanda was not a party to the appeal

which gave rise to the impugned Judgment, and that he was irregularly added at the time of delivery of the impugned judgment which infringed upon his right to be heard. And from their written submissions, the Appellant's second complaint arising out of grounds Mo and three is that the first Appellate Court did not address itself to the illegalities that were brought to his attention. ^I will analyse the two complaints separately.

Addition of pafi to the appeal

38J In their submissions before this court on this ground, the Appellants argued that the Memorandum of Appeal filed in Civil Appeal No. 6601.2012 was between P. R. Patel Vs John Nalemu as the Appellant and Respondent respectively. However, in his Judgment, the learned Judge stated that: "...this Court thereby invokes its inherent powers under Section 98 of the Civil Procedure Act and Section 100 of the Civil Procedure Act to rectify the record by having the name of Matanda added on the pleadings as a co-respondent. This is not at all prejudicial to him since he has been all along represented by Nagemi. Also Order 43 r.3 of the Civil Procedure Rules cover this."

Page 1 of 75

- 39] The Appellants further referred to the record of the Chief Magistrate's Court in Civil Suit No. 151 of 1996 and contended that the parties were John Nalemu Vs P. R. Patel and Oyugi Court Bailiffs. They argued that the record of proceedings from the Chief Magistrate's Court does not contain any Order granting leave to the Plaintiff to amend the Plaintiff and include J. W. Matanda as a Co-Plaintiff. As such, submitted the Appellants, it was illegal for the Chief Magistrate to have made orders affecting J. W. Matanda when he was illegally made a party to the case. In the same vein, the learned Judge erred by invoking Order 43 rule 3 CPR to justify making orders against J. W. Matanda who was illegally made a party to civil suit No. 151 of 1996.
- The first Respondent disagreed. He contended that the Appellants' claim is simply an afterthought. That Matanda himself testified in the Chief Magistrate's Court and based on his testimony, the Chief Magistrate decreed the suit property to him.
- When dealing with this matter, the High Court Judge stated thus:

"The matters which Counsel for the applicant has made reference to in my view are not errors. The fact that Matanda was added as a party was a matter argued in submissions, and Court made its decision on it having listened to arguments. If Counsel finds the conclusions by Court erroneous, his remedy is not review-but appeal."

42] For the complaint of the Appellants to amount to a "mistake or error apparent on the face of the record" in the terms of Order 46 Rule 1(1)(b) of the CPR, it must be one which is clearly evident and does not require any extraneous matter to show its incorrectness. See: **Edison Kanyabwera v Pastori Tumwebaze** [2005] UGSC 1 (21 February 2005).

In Nyamogo and Nyamogo Advocates v Kogo [2001] 1 EA 173 at 174 – 175, the meaning of 431

the clause "mistake or error apparent on the face of the record" was stated thus:

"An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which as to be established by a long-drawn process of reasoning or on points where there may conceivably be two opinions, can

Page 10 of 15

hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the Court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal."

441 From the above, I am satisfied that the High Court judge cannot be faulted in his resolution of the Appellants' complaint. The alleged error complained about in the instant matter was a decision of the first Appellate Court in exercise of judicial discretion which was made after the appellate court's evaluation of the evidence and the submissions before it. Even if such a decision were wrong or erroneous, this by no means renders it a ground for a review, although it may qualify to be a ground for an appeal. Accordingly, I find that the Appellant's complaint in that aspect is without any valid basis.

Illegality of the auction sale of the suit property

- 451 As I have already stated in this Judgment, the Appellant's second complaint arising out of grounds two and three is that the High Court Judge did not address himself to the illegalities that were brought to his attention. The first illegality raised by the Appellants relates to the auction purchase of the suit land by the first Respondent in 1983. It was the Appellants' contention that the auction sale did not comply with the procedure prescribed by Section 48 of the Civil Procedure Act under which the registered proprietor is required to take to Court the duplicate certificate of title and hand it over to Court before the sale of immovable property. The Appellants argued that there was no Order by the Registrar of the Court to the Late Matanda to deliver up the Certificate of title or any notice to show cause. Equally, there was no Order for a special certificate of title to be issued by the Registrar to enable the sale of the suit property. The Appellants submitted that these errors and illegalities rendered the auction sale illegal, and they cited the case of Julius Ochi Vs Moses Kirunda, Court of Appeal Civil Appeal No. 35 of 2008 in support of their submission.

- 461 The Appellants faulted the learned Appellate Judge for ignoring the said errors and illegalities which led him to make an erroneous decision to dismiss the application for review

Page 17 of 75

- 471 The Appellants concluded by appealing to this court to find the learned Appellate Judge to have erred in ignoring the Appellants' complaint about the irregular or illegal sale of the suit property to the first Respondent and making an erroneous declaration that the suit property belongs to the first Respondent.
- 481 The first Respondent disagreed and submitted that the Appellants were raising new grounds based on the sale of the suit property to the first Respondent. The first Respondent contended that the suit property was sold off to him in execution of the Court decree in High Court Suit No. MM 23 of 1983, which decree is not the subject of the appeal in this matter. Furthermore, by their application, the Appellants were in effect seeking to review the decision of the Court in Suit No. MM 23 of 1983 in contravention of the common law doctrine of immutability of judgments. The first Respondent accordingly appealed to this Court to dismiss the appeal with costs to him.
- 491 When dealing with the alleged illegality of the auction sale of the suit property for noncompliance with Section 48 of the Civil Procedure Act, the Appellate Court held that the complaints raised by the Appellants did not qualify to be termed as a "mistake or error apparent on the face of the record". The Appellate Court went ahead and found thus:

"This finding was so reached by the Court exercising its jurisdiction of adjudication. If the decision according to Counsel for Appellant offended Section 48, then again the right course to take is appeal and not review."

501 It is apparent that the resolution of the complaints of the Appellants in respect of the alleged illegality in the auction sale of the suit property would inevitably have required the first Appellate Court to review the court record in High Court District Registry Suit No. 23 of 1983 Uganda Commercial Bank (UCB) Vs John Matanda T/A Nkokonjeru Constructors and confirm the bona fides of the Appellants' claims. That would be stretching the term "error apparent on the face of the record" too far. The Court record in High Court District Registry Suit No. 23 of 1983 Uganda Commercial Bank (UCB) Vs John Matanda T/A Nkokonjeru Constructors was not the subject matter for the consideration by the Appellate Court before arriving at its decision in Civil Appeal No. 66 of 2012. The record considered by the Appellate Court was that of the trial Court in Civil Suit No. 445 of 2012 of the Chief Magistrate's Court of Mbale at Mbale. The Ruling from Suit

Page 12 of 75

No. 23 of 1983 Uganda Commercial Bank (UCB) Vs John Matanda was simply part of the trial Court's record since it was exhibited as "Exhibit 2". Any complaints about errors or mistakes in the record of High Court District Registry Suit No. 23 of 1983 Uganda Commercial Bank (UCB) Vs

John Matanda T/A Nkokonjeru Constructors would properly be addressed by way of an appeal or review proceedings arising from the said suit itself. It would be erroneous for this court to stretch the meaning of the term "court record" in the clause "mistake or error apparent on the face of the court record" to include a court record in respect of a matter from which the contested appeal did not arise, and whose parties like UCB (or its successors-in-title) are not parties to the instant appeal.

511 I would accordingly reject the Appellants' claims of illegality of the auction sale of the suit property to the first Respondent. They do not fall within the ambit of "mistake or error on the face of the court record" in High Court Civil Appeal No. HCT-04-CV'CA-0066-2012 P. R Patel Vs John Na/emu & Anor.

Illegality of the declaration of ownership of the suit property

- 521 The other matter of illegality raised by the Appellants is that at the time the first Respondent bought the suit property through the auction sale, the leasehold title in respect of the same had already expired and the suit property reverted to Mbale District Land Board in 2002. Thereafter, contended the Appellants, Mbale District Land Board in 2006 under Min MDLB 0710212006la) (ii) 28129 March 2006 in exercise of its constitutional mandate, granted to J. W. Matanda a redevelopment lease of the suit property for 10 years with an option to extend to 49 years. The Appellants referred to the oral testimony of the Secretary of Mbale District Land Board before the trial Court, and PEXG at pages 312 and 313 of the Record of Appeal.
- 531 The Appellants then submitted that in the circumstances, the declaration by the first Appellate Court in 2012 that the first Respondent has an interest in the suit land amounted to Court interference with the constitutional powers of the District Land Board in the allocation of public land as set out in Article 241(1)(a) (b) and (2) of the Constitution of the Republic of Uganda, 1995, and also created two interests in the same land which is an illegality.

Page 13 of t5

- 541 The Appellants concluded by appealing to this court to find the learned Appellate Judge to have erred in making an erroneous and illegal declaration that the suit property belongs to the first Respondent.
- 551 There is no doubt that once again, the Appellants' complaint is without any basis. The decision of the first Appellate court was based on its re-evaluation on the evidence before the trial court. Whether the decision was wrong or not can only be determined by way of appeal and not by way of review on account of a "mistake or error apparent on the face of the record". As was held in the case of Nyamogo and Nyamogo Advocates v Kogo (supra) a decision of court, whether erroneous or not, arrived at by a long-drawn process of reasoning or on points where there may conceivably be two opinions, can hardly be said to be an error

apparent on the face of the record.

- 561 Needless to add, the evidence of the Secretary of Mbale District Land Board who testified during the trial as CW1 indicated that Matanda does not have a title to the suit property. That the lease offer given to Matanda in 2006 for the re-development of the suit land was expressly stated to be subject to the suit property being available and free of disputes. That at the time the Lease offer was granted to Matanda, the first Respondent's documents indicating that he had purchased the suit property before the expiry of its lease were not on the file of the District Land Board. Otherwise, the Board would not have made the lease offer to Matanda. That when the Board learnt of the dispute between Matanda and the first Respondent, they halted the lease processing as they awaited the outcome of the court dispute. CW1 (the Board Secretary) confirmed that at the time she gave evidence in 2012, Matanda had no registered lease in respect of the suit property.
- 571 In the circumstances above, whether the first Appellate Court ened to conclude that the first Respondent was the owner of the suit property when the land Board had given a lease offer to Mr. Matanda is not a question whose resolution is so apparent from mere look at the court record without a deeper analysis. Its resolution entails the court intenogating whether in the post 1995 Constitutional order where land belongs to the people and the District Land Board's

Page 14 of 75

role is to facilitate the registration and transfer of interests in land, the District Land Board can give a lease offer to a third party without giving the previous leaseholder the right of first refusal. This is an issue that that is outside the scope of the review jurisdiction of the first Appellate Court.

581 The upshot ofthe aforesaid is that grounds two and three fail.

Conclusion

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- 5el I would dismiss the appeal with costs to the first Respondent.
- 601 I would set aside and vacate the injunctive orders issued against the first Respondent restraining him from taking over the physical possession of the suit property pending the disposal of this appeal.

I so order.

day of tul4 Delivered and dated at Kampala this

MUZAMIRU MUTANGULA KIBEEDI Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE CONSTITUTIONAL COURT OF UGANDA AT KAMPALA

Coram: Geoffrey Kiryabwire, Muzamiru M. Kibeedi and Christopher Goshirobake, JJ

CIVIL APPEAL NO. 360 OF 2020

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JUDGMENT OF GEOFFREY KIRYABWIRE, JA

I have had the opportunity of reading the lead Judgment of the Hon' Mr' Justice Muzamiru Kibeedi, JA in draft.

I agree with it and I have nothing more useful to add

That being the case we now make the following Final Orders;

..

- 1. The Appeal is dismissed with costs to the first Respondent.
- 2. The injunctive Orders issued against the first Respondent restraining him taking over the physical possession of the suit property are set aside pending disposal of this appeal.

Done at Kampala this day of 2024.

GEOFFREY KIRYABWIRE JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Geoffrey Kiryabwire, Muzamiru M. Kibeedi, Christopher Gashirabake, JJA)

CIVIL APPEAL NO. 360 OF 2020

| 1. ROBINAH MATANDA |

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| 2. SUSAN MATANDA |

| 3. SARAH MATANDA |

| 4. BETTY KAKAYI |

| 5. ESTHER NAMBUYA |

| 6. JUNIOR MATANDA |

| 7. NIGHT KAKAI MATANDA |

| 8. MICHEAL WASEKE |

| 9. PAUL WAFULA |

| 10. DEDRICK WALTAULA |

| 11. BABERI NAKHAIMA |

12. FLAVIA MUTONYI MATANDA

..... APPELLANTS

VERSUS

1. P. R. PATEL

2. JOHN NALEMU

JUDGMENT OF CHRISTOPHER GASHIRABAKE, JA.

I have read in draft the judgment of Hon. Justice Muzamiru M. Kibeedi, JA.

I concur with the analysis, conclusions and the orders proposed. I have nothing useful to add.

Dated at Kampala the $\frac{2gH}{\sqrt{2}}$ day of $\frac{4ugusb}{\sqrt{2024}}$.

Christopher Gashirabake JUSTICE OF APPEAL.

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