

UGANDA / JUDGMENT

Matovu and Another v Anango and 16 Others (Civil Appeal 102 of 2023) [2024] UGHC 734 (1 August 2024)

[2024] UGHC 734

COURT

High Court of Uganda

BEFORE

Adonyo, J

CASE / FILE NUMBER

Civil Appeal 102 of 2023

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The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Civil Appeal No. 102 of 2023

(Arising from Civil Suit No. 19 of 2012 of the Chief Magistrate's Court of Soroti at Soroti)

Matovu Pascal 10 <pre>..... Musana Peter Versus 1. Anango Teddy 2. Eguyu Julius 3. Okello David 15 4. Etoku Joseph 5. Amino Albert 6. Adengo Michael 7. Okupa Alfred 8. Edonu Charles 20 **Respondents** 9. Adongo Florence 10. Olupot Martin 11. Okwaro Stephen 12. Engweddu Richard 13. Okello Simon 25 14. Oriokot Moses 15. Ebamu Steven

Before: Hon. Justice Dr Henry Peter Adonyo

Judgement

(An appeal against the judgment and orders of the Magistrate Grade One of Soroti delivered on 10th November 2023)

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1. Introduction:

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The appellants (then plaintiffs) vide Civil Suit No. 19 of 2012 sued the respondents (then defendants) jointly and severally for recovery of approximately 70 acres of customary land located situated at Kaina village, Kamuda Sub-county, Kalaki County in Kaberamaido District, seeking for; a declaration that the suit land belongs to the appellants, an eviction order against

the respondents and their agents and or servants, a permanent injunction against the respondents, their agents and/or servants from further interference with the suit land, general damages, and costs of the suit.

2. The appellants /then plaintiffs' claim

The appellants pleaded customary inheritance of the suit land from their late father, 15 Musana Petero, who died in 1986, and that he had, inherited the suit land from his late father, Kirya, who died in 1984. The appellants and their relatives have been in occupation of the suit land at all material times but that due to Karimojong and later Lord's Resistance Army insurgencies, the appellants and their relatives fled to Bugiri first in 1987 only to return in 2002, when they found the land intact but again fled in 2003 and returned in 2005 when they found some of the respondents on the suit land.

That the appellants and their elder brother reported the matter to the police and LCs, and in 2005 and 2008, the land was decreed for the appellants by the LCII Court.

The appellants contended that despite the LCII Court decision, the 1st respondent 25 gave and sold off part of the land to some respondents, who also proceeded to sell and gift the same to the other respondents.

- That the respondents had jointly and severally trespassed on the suit land by way of \$ \mathsf{S} \$ cultivation, construction and desecrating of the graves of the appellants' relatives buried on the suit land and thus judgment should be given against them and orders sought issued.
- 3. The respondents' / then defendants' claim:

The respondents denied the appellants' claim and contended that the 1st, 2nd and 10 3rd respondents acquired their respective portions of the suit land by purchase in the presence of LCs without any third-party adverse claims and that they have enjoyed quiet possession.

That the 4th respondent acquired and has been in possession of his portion of land as a gift in 1960's from his uncle called Agari and he had sold part of it.

That the 5th and 6th respondents purchased their respective portions of their land from the 4th respondent.

That the 7th respondent acquired 39 acres of the suit land from his grandfather Agari in 1965, which he has since been using for cultivation, and he distributed part thereof to the 10th, 11th, and 13th respondents.

That the 9th respondent purchased 8 acres from the 7th respondent and thereafter gave acres to the 8th respondent, and that the 12th respondent purchased from the 11th respondent.

That the 15th respondent and the 17th respondent purchased from Ecweu Charles, while the 17th respondent, in turn, bought from the 15th respondent. \$25\$

The respondents contended that they had never been party to any LC proceedings $\$S\%$ and have not been party to any handover of the suit land. They also argued that the admissions alluded to by Epilu Patrick and Ecweu Charles exclude them. The respondents prayed that the suit be summarily dismissed with costs.

At the trial in the lower court, two issues formed the basis of the trial magistrate's determination of the dispute. Who is the lawful owner of the suit land, and the 10 remedies are available to the parties?

The trial magistrate held that the appellants' claim fell outside the jurisdiction of a magistrate grade one because it was not a matter of a civil nature governed by only civil customary law. The trial magistrate struck out the plaint and dismissed the suit with costs, and the appellants/then plaintiffs have now appealed.

4. Grounds of Appeal:

The appellants raised three (3) grounds as follows:

- a) The trial magistrate erred in law and fact in holding that he had no jurisdiction to hear the appellants' case.
- b) The trial magistrate erred in law and fact in failing to evaluate the evidence on record, thereby coming to a wrong conclusion.
- c) The decision of the trial magistrate has occasioned a grave miscarriage of justice on the appellants.

The appellants prayed that the appeal be allowed, the judgment and orders of the lower court be set aside, the appellants be declared the rightful owners of the suit 25 land and the costs be borne by the respondents in this court and below.

5. Duty of the first appellate court

I am cognizant that the duty of the first appellate court is to scrutinise and reevaluate all the evidence on record to arrive at a fair and just decision.

According to the case of Kifamunte Henry vs Uganda SCCA No. 10/1997, it was pointed out that; $\$S\%$

"The first appellate court has a duty to review the evidence of the case and to reconsider the material before the trial judge. The appellate court must then make up its own mind, not disregarding the judgment appealed from but carefully weighing and considering it."

According to the holding in the case of *Father Nanensio Begumisa and three others vs Eric Tiberaga* SCCA 17 of 2000; [2004] KALR 236, the Supreme Court pointed out 15 that the first appellate court is

> "...under an obligation to re-hear the case by subjecting the evidence presented to the trial court to a fresh and exhaustive scrutiny and re-appraisal before coming to its own conclusion."

This position was further emphasised in the case of *Baguma Fred vs Uganda* SCCA 20 No. 7 of 2004.

This appellate court is empowered by Section 80 of the Civil Procedure Act, Cap 71, to determine a case to its finality.

In resolving this appeal, the above legal position regarding the duty and legal obligation of the first appellate court are taken into account. 25

6. Representation:

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Counsel Opio Philip represented the appellants while Counsel Engulu Philip represented the respondents.

The parties filed their submissions, which are on the record and I am grateful to both for the same which have been incorporated into the resolution of this appeal.

As this is a civil suit/appeal, the appellants have the burden of proof as per Sections 10 101 and 102 of the Evidence Act, Cap 6 to prove their case on a balance of probabilities. See: *Nsubuga vs Kawuma* [1978] HCB 307.

Also, in the case of **Erumiya Ebyetu v. Gusberito* [1985] HCB 64*, it was held that;

"where the plaintiff leaves his case in equilibrium, the court is not entitled to 15 incline the balance in his favour. The plaintiff must prove his case against the defendant to the required standard."

7. Determination:

The parties' counsel submitted the grounds in numerical order; I will follow the same numerical style in the determination of the grounds in the instant appeal. 20

The overarching contention in this appeal, which can be extracted from the grounds of appeal, is the question of jurisdiction. Therefore, it is essential to note the following before determining the grounds.

Black's Law Dictionary, 9th Edition, on page 927, defines jurisdiction as the court's power to decide a case or issue a decree.

The said dictionary further notes that;

Rules of jurisdiction in a sense speak from a position outside the court system and S prescribe the authority of the courts within the system.

The Halsbury's Laws of England, Courts and Tribunals (Volume 24A (2019)) ⁵ Edition defines jurisdiction to mean;

The authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision.

Halsbury's Laws of England further note that;

Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing (A-G V Lord Hotham (1827) 3 Russ 415).

In Thompson v Shiel (1840) 3 Ir Eq R 135, it was pointed out that jurisdiction must be acquired before judgment is given.

The Oxford English Dictionary, (<https://doi.org/10.1093/OED/5572476032>), defines jurisdiction as:

Administration of justice; exercise of judicial authority, or of the functions of a judge or legal tribunal; the power of declaring and administering law or justice; legal authority or power. The extent or range of judicial or administrative power; the territory over which such power extends.

The following can be deduced from the foregoing definitions of jurisdiction that;

- The court either has jurisdiction or does not have it. $\mathcal{L}$
- Jurisdiction is a creature of statute, and;
- Parties cannot vest the court with jurisdiction. 25 $\overline{}$
- In making the above summation, I am persuaded by Justice Stephen Mubiru's S observations in the case of **Koboko District Local Government vs Okujjo Swali High Court** Miscellaneous Application No. 001 of 2016, where the learned judge was of the view that;
- "One of the "policies of court" is the question of jurisdiction that is at once fundamental and over-arching as far as any judicial proceeding is concerned. Jurisdiction is the first test in the legal authority of a court and its absence disqualifies the court from exercising any of its powers. Jurisdiction means and includes any authority conferred by the law upon the court to decide or adjudicate any dispute between the parties or pass judgement or order. A court cannot entertain a cause which it has no jurisdiction to adjudicate upon."

I am also alive to the binding decision of the Supreme Court in Mulindwa George *William vs Kisubika Joseph Civil Appeal No 12 of 2014* that;

"... lack of jurisdiction cannot be cured under Article 126 (2) (e) of the Constitution of Uganda."

Furthermore, I am also alive to the holding in *David B. Kayondo v. Co-operative Bank* 20 (U) Ltd.; S. C. C. A No10 of 1991 that;

> "Jurisdiction is conferred on the court or taken away by the express provisions of a statute."

In all, the above observations render the view that jurisdiction is not only essential but the question of jurisdiction of a court is very central in determining the authority to be exercised by a court.

After the issue of jurisdiction as above has been carefully considered and explained \$5\$ have been taken care of, I will now turn to consider this appeal accordingly.

a) Ground 1: That the learned trial judge erred in law and fact in holding that it had no jurisdiction to hear the appellants' case:

The trial court's finding regarding the issue of jurisdiction was:

"Since the plaintiffs' matter was not a matter of a civil nature governed by only civil, customary law, it falls outside the jurisdiction of a magistrate grade one."

In stating the above, the trial magistrate stated so on page 5 of his judgement that in paragraph 4(q) of the amended plaint, the plaintiffs claimed that the defendants are presently trespassing on the plaintiffs' land and continue to bring more people to reside thereon.

In their written submission, the appellants' counsel argued that the learned trial magistrate was wrong in finding that he had no jurisdiction to entertain the appellants' case because it was not a purely civil matter governed by customary law. They submitted that the appellants' claim falls within section 207(2) of the Magistrates Courts Act because it is a purely civil customary matter.

They contended that the reliance on the case of **Wakisa Fred vs Katarbarwa Josephine** Civil Appeal No. 06 of 2021 by the trial court was erroneous since it dealt with a claim based purely on trespass yet the appellants' claim herein hinged on the recovery of land and customary land for that matter as was pleaded in paragraphs 3 and 4(a) of the appellants' plaint.

- The learned counsel for the appellants submitted that the learned trial magistrate \$S\$ had relied on the decision of the High Court in the case of *Koboko District Local Government vs Okujjo Oswaki* HCMA No.01 of 2016, where the court opined that an action for trespass is maintainable under the common law of torts and, in that case, was not based exclusively on civil, customary law.
- That since in that case the respondents had claimed to own land under customary tenure, a claim for contract and trespass, then the appellate court found that grade one had no jurisdiction.

The appellants, however, submitted while relying on the decision of the High Court in *Mildred Akujjo Owot vs Lakony Samuel*, Revision Miscellaneous Cause No. 01 of

- 2023, for the position that the import the provisions of section 207(2) of the MCA 15 should not be narrowly interpreted since doing so would be taking away the jurisdiction conferred to the magistrates courts, and that in the adjudication of customary land disputes, the court should be able to refer to statute or common law principles where applicable in particular proceedings.
- It is clear from the holding in **Mildred Akujjo** (supra) that it is just a reference to 20 statute and common law while dealing with a purely civil customary claim that would give the section a liberal approach and not combine a civil customary claim with another claim based on statute or common law principles.

Be that as it may, to determine whether this matter is purely based on civil customary law, it is important to first determine whether the claim was for both 25 recovery of customary land and trespass.

In the persuasive case of *Kawaga Lawrence & 2 Others vs Ziwa & Sons Property Consultants Limited* Civil Revision No.04 of 2018, Justice Musa Ssekaana distinguished the two actions as follows:

> "... There is a need to draw a clear distinction between an action for trespass to land envisaged under the Magistrates Courts Act section 207 (1) (a) as a common law tort and an Action for recovery of land.

> An action for trespass to land occurs when the person directly enters upon another's land without permission and remains upon the land, places or projects any object upon the land. (See: Salmond and Houston on the Law of Torts, 19th Edition). It is a possessory action where if remedies are to be awarded, the plaintiff must prove a possessory interest in the land. It is the right of the owner in possession to exclusive possession that is protected by an action for trespass. Such possession must be actual and this requires the plaintiff to demonstrate his or her exclusive possession and control of the land. The entry by the defendant onto the plaintiff's must be unauthorised. The defendant should not have had any right to enter into the plaintiff's land. In order to succeed, the plaintiff must prove that he or she was in possession at the time of trespass, there was an unlawful or unauthorised entry by the defendant, and the entry occasioned damage to the plaintiff.

In an action for recovery of land, this is a substantive claim for getting declaratory orders as to the rightful ownership of land. Where there are two competing interests on the land, the duty of the court is to determine between the two parties who is the rightful owner of the said land, i.e., between two titles

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or interests (Lessor and Lessee) (registered proprietor and Kibanja Owner/Lawful Occupant).

In that case, the court found that though the parties pleaded trespass against each other, the action was for recovery of land since both claimed to have obtained title to the land.

The court posited therein thus that: "It is my finding based on the pleadings of both 10 parties that this was not a case for trespass but rather for recovery of land."

Similarly, based on the pleadings of the parties in the trial court, the plaintiffs/appellants were claiming ownership of land, and the defendants were also claiming good title through purchase or inheritance and gift.

In my view, this was a question of ownership of the suit land and not trespass; thus, 15 recovery of land was the cause of action and not trespass. This is why, on page 4 of the judgement of the lower trial court, the issue framed was, "Who is the lawful owner of the suit land?"

The above being so, then I would safely find and concluded that the matter before the lower trial court was of a civil nature governed by only civil customary law, and 20 to this end, the court had jurisdiction to entertain it.

Without prejudice to my finding above, even if the instant case involved trespass, the trial magistrate being under the Soroti Chief Magisterial Area and in the same premises with a Chief Magistrate who administratively allocated the instant file to him, he ought to have brought it to the attention of the Chief Magistrate and the

Chief Magistrate in the exercise of her Supervisory Powers over the Grade One

$\$S$

Magistrate ought to have proceeded to hear the matter if the view was that the facts $\$S$ were therein were of a mixed civil, customary law and other branches of law.

I hold this view because the instant matter is a land matter which has been in the court system since 2012 and is clearly a backlog and ought to have been effectively considered.

Hon Lady Justice Joyce Kavuma in Margret Rwakaino vs. Kakuru Charles & Tumusiime 10 Elias, HCT-05-CV-CR-0016-2023, held that when jurisdictional issues arise, the forwarding of a case within the Magistrates Courts system falls within the procedural and supervisory authority of the Chief Magistrate.

Specifically, a trial Magistrate Grade One, upon recognising a jurisdictional issue, can forward the case to the Chief Magistrate for further management instead of 15 dismissing it outright.

The High Court clarified that this action by the trial Magistrate Grade One does not constitute a "transfer" of the case that could only be exercised by the High Court. Rather, it is a procedural forwarding within the same jurisdiction to the Chief Magistrate, who possesses the supervisory authority to manage and oversee cases.

That being said, the other jurisdictional issue was on the pecuniary jurisdiction which I hereunder address.

On pecuniary jurisdiction, the learned trial magistrate opined thus: "... the plaintiff did not state the value of the subject matter and given the size of the suit land, this court is in doubt as to whether it has jurisdiction to entertain this subject matter as it

appears that the value of the 70 acres forming the suit land is way above 50,000,000 \$5\$ shillings which is the pecuniary jurisdiction of this court"

In arriving at the conclusion that the land value is at 94,500,000 Ugandan shillings, the trial magistrate relied on receipts tendered in court and posited thus;

"In PEX6, each acre was sold at 1,000,000 shillings on 27/09/2011, which would put 70 acres at shs 70,000,000. In PEX7, two acres were sold at Shs. 2,400,000 10 on 19/07/2012, putting the price of each acre at Shs. 1,200,000; the value would then be Shs 84,000,000. In Pex8, one acre was sold at Shs 1,350,000 on 12/11/2012, which would put the value of 70 acres of the suit land at Shs. 94,500,000."

The appellants argued in their submissions that not all the suit land was claimed by 15 the respondents as purchased land but rather the bulk of it was claimed by the 5th respondent as land they had customarily been gifted and inherited.

They further submit that the exhibits PEX6-PEX.11 relied on by the court bring all gardens dealt with by purchase to 14½ acres/gardens at a total cost of UGX 17,670,000 shillings.

In their written submission on this appeal, the respondents' counsel argued that the total sum of all that was sold (14 acres) was Shs. 19,700,000/=. They further argued that if that was the value of only those acres, what would be the value of the other acres?

They argued that it would logically be beyond 20 million. Hence, they submitted that \$ \mathsf{\\$} the learned trial magistrate was right to find that the court had no jurisdiction to handle the matter

The appellants submitted that the court ought to have determined the matter on its merits since the respondents did not contest its jurisdiction to entertain the matter during the trial.

In the case of Kawaga Lawrence & 2 Others vs Ziwa & Sons Property Consultants Limited Civil Revision No.04 of 2018, the court pronounced that the jurisdiction of the Magistrate Grade One is determined by the value of the subject matter of the suit before it.

In that case, the court found that the learned trial Magistrate proceeded as if he 15 were the Chief Magistrate and that actions for trespass without considering the value of the subject matter are confined to the Chief Magistrate only.

Section 207(3) of the MCA provides that;

Whenever for the purposes of jurisdiction or court fees it is necessary to estimate the value of the subject matter of a suit capable of money valuation, the plaintiff shall in 20 the plaint, subject to any rules of court, fix the amount at which he or she values the subject matter of the suit.

In my view, when the plaintiff deliberately fails to indicate the value of the subject matter in the plaint, as argued by the appellants, the other avenue could have been for the trial magistrate to return the plaint for amendment to ascertain the value

pursuant to Order 7 Rule 1(i) of the Civil Procedure Rules so that even proper court $\$$ fees are paid.

The last and final question would then be the question of whether the trial court had pecuniary jurisdiction was relevant.

Having found above the cause of action which the court must have dealt with was a

matter of a civil nature governed by only civil customary law, it was inconsequential 10 to determine the pecuniary jurisdiction of the court.

This is because, under section 207(2) of the Magistrates Courts Act, Cap 16

Where the cause or matter of a civil nature is governed only by civil customary law, the jurisdiction of a chief magistrate and a magistrate grade 1 shall be unlimited.

See also: Mildred Akujjo Owot vs Lakony Samuel (supra). 15

This means that a Grade 1 Magistrate court has unlimited pecuniary jurisdiction in a matter governed only by civil customary law which the instant case is.

As I have already found above, this matter was not based on the civil tort of trespass but solely on the recovery of customary land.

The learned trial magistrate therefore erred in both law and fact when he found that 20 the court had no jurisdiction to entertain the matter. Ground 1 of this appeal thus succeeds.

- b) Ground 2: The learned trial Magistrate erred in law and fact in failing to evaluate the evidence on record, thereby coming to a wrong conclusion.

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I note that the above ground of appeal was not properly formulated as its wording are not precise yet Order 43 Rule 1(2) of the Civil Procedure Rules, requires that;

The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative, and the 10 grounds shall be numbered consecutively.

The same is so general and vague because it does not point to the specific evidence before the court that the appellants are alluding to upon which the trial magistrate erred in law and fact to be judiciously upon.

I state this because in *Celtel Uganda Limited T/A Zain Uganda v Karungi* (Civil Appeal 15 No 73 of 2013) 2021 UGCA 93, it was pointed out that a ground of appeal such as -"the learned trial magistrate erred in law and fact when she failed to properly evaluate the evidence on the court record, leading to a miscarriage of justice" when assessed in the purview of Rule 86(1) of the Court of Appeal Rules which is similarly worded as Order 43 rule 1(2) of the CPR, does not specify in what way and in what 20 specific aspect of the decision being appealed against did the court that made the decision go wrong.

In arriving at that holding, the appellate court in the *Celtel Uganda Limited T/A Zain Uganda* case above relied on the Supreme Court decision in *Ranchobhai Shivabhai*

Patel Ltd and Another vs Henry Wambuga and Another Civil Appeal No. 06 of 2017 25 (unreported), where the Supreme Court considered the import of Rule 82(1) of the Supreme Court Rules, which is also similarly worded as Rule 86(1) of the Rules of the

Court of Appeal and quoted Mugamba, JSC, who wrote the lead Judgment, with $\$ \text{mathsf{S}} \$$ which other members of the Court concurred, holding that:

"This ground is too general and does not specify in what way and in which specific areas the learned Justices of Appeal failed to evaluate the evidence. It does not set out the particular wrong decision arrived at by the learned Justices of Appeal."

Given the Supreme Court decision above, which decries the rejected ground of appeal that was clearly similar to the impugned ground one herein, I am of the considered opinion that ground one of this appeal, which faults the trial magistrate's failing to evaluate the evidence on record, thereby arriving at a wrong conclusion, without specifying the subject matter of the case to which this evidence relates, is merely a narrative and not concise and does not show how the trial magistrate failed to evaluate such evidence.

Since no instances of evidence are pointed out in which the trial magistrate is alleged to have erroneously evaluated, then ground one of this appeal unmistakably contravenes Order 43 rule 1 (2) of the CPR and for that reason it struck out. This 20 Ground fails since it is struck out.

- c) Ground three: The decision of the trial magistrate has occasioned a grave miscarriage of justice on the appellants.

Because I found merit in Ground One and I have agreed with the appellants that the learned trial magistrate erred in both law and fact when he found that the court had 25 no jurisdiction to entertain the matter which decision occasioned a grave miscarriage of justice, Ground Three would invariably succeed since the trial

magistrate ought to have determined the matter on its merits as unmistakably he $\$ \backslash \mathrm{mathsf{S}} \}$ had jurisdiction.

8. Conclusion:

It is important to note that since the finding on Ground One is to the effect that the Magistrate Grade One had jurisdiction and the fact is that the trial was complete and the matter was awaiting judgment on the merits.

Consequently, as a first appellate court, this is clothed with the power to appraise the evidence on record and determine the matter as the trial would have done.

This, however, is not possible in the instant case because there is no decision by the trial magistrate on the merits of the case. The matter is, therefore, fit to be referred back for retrial.

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I am fortified in my view by the Supreme Court decision of Metropolitan Properties Limited vs Mayimuna Muye Amin, SCCA No04 of 2022 the Supreme Court, at great length, discussed when to exercise discretion to entertain an issue as a preliminary objection or point of law, that when a point of law is interlaced with other matters, then it should be determined as an issue on the merits together with other issues to avoid a situation where on appeal court finds that the determination was wrong and a matter is sent back for retrial which may delay justice.

The question to be determined then is always whether the preliminary point or objection is pure.

In this instant appeal, the magistrate went into an arena of calculations and 25 speculations about the value of the land to determine his pecuniary jurisdiction.

He also found that there was a claim for trespass, but as this court has found, there \$5\$ was no cause of action for trespass.

Therefore, where a magistrate's court fails to determine from the pleadings the value of the subject matter, he/she should follow the Civil Procedure Rules regarding the absence of a value and be mindful of the cause of action.

If that is not possible, he/she should then frame as an issue on that preliminary point 10 and then also determine all the other issues in line with *Metropolitan Properties* Limited vs Mayimuna Muye Amin (supra).

As said above, it is important to avoid remitting matters that have long stayed in the courts for re-trial; in such a case, the appellate court will re-appraise the evidence on the other issues and give justice to the parties which the trial magistrate did not do.

In the instant case, the parties had presented both their cases on the merits; therefore, sending them for retrial because the court's hands are tied, arising from the trial court's failure to determine the other issues on the merits, is not serving justice to the Ugandans. However, since I do not have an option, this court remits the file to the trial court for retrial before a different magistrate.

This instant appeal, therefore, succeeds to a great extent with each party to bear their costs.

The judgment and orders of the trial magistrate dismissing Civil Suit No. 19 of 2012 of the Chief Magistrate's Court of Soroti at Soroti with costs delivered on 10th 25

- November 2023 by His Worship Okiror Edmond Okwii, Magistrate Grade One, are \$ \mathsf{\\$} hereby set aside.
- 9. Orders;
- a) The appeal is allowed substantially since Ground One succeeds on the basis that Trial Magistrate had Jurisdiction To Entertain the matter.
- b) The judgment and orders of the trial magistrate dismissing Civil Suit No. 19 of 2012 of the Chief Magistrate's Court of Soroti at Soroti with costs delivered on 10th 25 November 2023 by His Worship Okiror Edmond Okwii, Magistrate Grade One, are hereby set aside.
- c) Civil Suit No. 19 of 2012 is sent back to the Chief Magistrate's Court of Soroti at Soroti, to be put before another Magistrate Grade One, for retrial on its merits and must be done so without any haste and in any case given top priority as it is a serious backlog.
- d) Each party shall bear their own costs.

I so order.

Hon. Justice Dr Henry Peter Adonyo

Judge 01/08/2024

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