

UGANDA / JUDGMENT

Matser v Jingo and Another (Civil Appeal 65 of 2020) [2024] UGHCLD 187 (11 July 2024)

[2024] UGHCLD 187

COURT

HC: Land Division (Uganda)

BEFORE

Basaza Waswa, J

CASE / FILE NUMBER

Civil Appeal 65 of 2020

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

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

ND DIVISIO

CIVIL APPEAL NO. 0065 OF 2020

[ARISING FROM MISC. CAUS ^ENO. 023 OF 2019. IN THE CHIEF
MAGISTRATES COURT OF KA,,JANSI AT KA,IJANSI]

MATSER MICHIEL CORNELIS

(Suing through his Authorized Attorney Mr. Nsubuga Martin) APPELLANT

1. FARID JINGO

2. JANAT WADDA JINGO RESPONDENTS

BEFORE: HON. LADY JUSTICE P. BASAZA 'WASSWA

JUDGMENT

Representation

N,4s. Anena Samantha for the Appellant.

N,4r. Asaph Aqaba for the Respondents

Introduction

t1l This Judgment is in respect of an Appeal by Mr. Matser (the Appellant), against the Decision of the learned lvlagistrate Grade One: Her Worship Nantege Christine, vide Misc. Cause No. 023 ol 2019 - in the Chief Magistrates Court of

ruqnil,-^^^~<tlh

Kajjansi at Kajjansi. Misc. Cause No. 023 of2019 shall hereinafter be referred to as'the original Cause', while the said Decision appealed against shall hereinafter be refened to as 'the impugned Decision').

- 12l The original cause was an app[ication by Mr. lvlatser under sections 2 & 3 of the Access to Roads Actl, an Act that was subsequently Repealed under sec.79 (2) of the Roads Act, 20192, by which he sought the leave of the trial court to construct, and or to open up an access road to a public road - Kigo Road- from his Plot No' 251. Plot 251 is comprised in LRV 3841 Folio 10 Kyadon do Block272 at Mutungo - Wakiso, measuring One (1) acre. (Hereinafter referred to as 'Plot 251').
- t3l Mr. Matser; the Appellant owns Plot 251, while the Jingos; the Respondents and or their successors in title, own the adjoining Plots Nos. 644 and 915, as per the certificates of title attached to their respective pleadings.

Back round

- 14) In the original cause: M. C No. 023 of 2019, Mr. Matser claimed in his affidavit (s) in support sworn on his behalf by his authorised agent: lrzl r. Nusbuga;
- a) That he is the registered proprietor of Plot 251, and that pursuant to ^a lease agreement dated July 25,2001 which he executed with the lessor: ^aone Ms. Magdalena Nabizizi Kalibala, he is entitled to an access road to the Public Road - Kigo road, from his Plot 251.
- Il'.r(l b) That in 2007 the said Ms. Magdalena Nabizizi opened up for him an access road to Kigo Road from Plot 25'1, which he used for twelve (12) *h'

¹Cap. 350 (Now Repealed)

^{'}Act 16 of 2019 (now cap. 346)

years until September 2017 when the Respondents: 'the Jingo's', who own Plots 6,21,4 and 915 blocked his access by erecting a Border fence thereon.

- c) That the Border fence erected by the Jingos was removed after he (Matser) protested. That thereafter the Jingos overloaded huge amounts of soil that covered the entire access road.

- d) That upon his complaint to the Local Council 1 Authorities, the Jingos were summoned but they did not show up. That the LCs then gave him permission to clear the access road, which he did, but the Jingos again overloaded the access road with sand, and again he (N/atser) re-opened it. That the Jingos have since June 2019, blocked the access road with Barbed wire and have constructed a house thereon.
- t5l In answer, the Jingos (the Respondents) denied the said allegations against them, and specifically stated in their own affidavits, and in an affidavit by a one Dr. Colin Sentongo;
- a) That they have never blocked any access road to Kigo Road from Plot 251, and have never been summoned by the LCs, nor have they been given Directions over their Plots Nos. 644 & 915.
- b) That there is no easement registered on their Plots Nos. 644 and 915 at N/lutungo.
- c) That lvr. N/atser has an alternative access road to Kigo Road from his Plot 251, of approximately 3 metres wide, which road runs along the bottom boundary of Plots Nos. 644 and 915. That he is merely seeking to encroach on their said Plots.

r*9,r1J.-,,^ {trh

- d) That when the former registered proprietor of Plot 915: Dr. Colin Sentongo sold that Plot to them (the Jingos), it was free of any easement and had no access road through it, and none existed nor was created for the years that Dr. Sentongo owned it.
- t6l In rejoinder, Mr. N/atser claimed that the said access road to Kigo Road from Plot 251 has always existed, and that the easement over the Respondents' Plots was created by virtue of operation of time, and or by the lease in 2007. That the Respondents' plots are subject to the said subsisting easement over their Plots.

The Impugned Ruling

- 17) Upon hearing the original cause, the learned Trial l/lagistrate delivered the impugned decision on June 30, 2020 and dismissed it with costs in favour of the Respondents.
- t8l She held that there existed no access road to Kigo Road from Plot 251 through Plot No. 644 as alleged. That there was no evidence adduced by the Applicant that any negotiations with adjoining land owners had failed. She reasoned that an access road to Kigo Road from Plot 251 could have been created on part of plot 645 belonging to Ms. Nabizizi (the lessor) on the northern part, south of Plot 644, as shown in the shaded part of plot 645 on the certificate of title of Plot 251. That such an access can be realised through negotiations with Ms. Nabizizi.
- t9l Being dissatisfied with the impugned Decision, lvr. Matser filed Appeal No. 065 of 2020 in this Court, and hence this Judgment.

fl..srr.li,^^ ^^,...,a ltl1.

Grounds of Appeal

- The Appellant raised six (6) grounds of appeal, and subsequently abandoned grounds 5 & 6. The remaining four (4) grounds read:
- 1 That the learned trial Magistrate erred in law and fact when she advised the Appellant to seek an access road from a none party to the suit and disregarded the purpose of the Access to Roads Act, Cap 350, thereby coming to a wrong conclusion'
- 2. That the learned trial Magistrate erred in law and fact when she completely disregarded the evidence led to show that there was an existing road to the Appellant's land through the Respondents' land.
- 3. That the learned trial Magistrate erred in law and fact when she ignored the evidence of failed negotiations between the Appellant and the Respondents over the grant of an access road through the Respondents' land.
- 4. That the learned trial Magistrate erred in law and fact when she disregarded the evidence on record and at the locus visit thereby coming to a wrong conclusion.
- All the four (4) remaining grounds of appeal nos. 1- 4 above, are essentially only one ground. They shall be add ressed .ointly as one ground, combined to read as shown in ground 4: - 'Thatthe learned trial Magistrate erred in law and in fact

tNchlJ^{ltlt

when she disregarded the evidence on record and at the locus visit, thereby coming to a wrong conclusion'

Submissions by Counsel

Learned Counsel for each party filed their respective written submissions, that I \$[12]\$ duly considered. For brevity, I will not reproduce their arguments here, I will only refer to them if / where necessary.

Analysis by this Court:

- In accordance with settled law and practice (see DinKerrai R. Pandya v R³), I have \$[13]\$ dutifully and carefully re-evaluated and weighed the affidavit evidence on the lower court record together with all the supporting documents produced by each party. I have also dutifully and carefully analyzed the impugned decision, looked at the sketch Map of the locus in quo, and considered the arguments for and against this appeal, together with the authorities therein cited, and the pertinent law.
- From the outset, I find that the learned Trial Magistrate misdirected herself and \$[14]\$ erred when she applied the provisions of a non - existent law - The Access to Roads Act, Cap 350 (as it was).

- The Access to Roads Act was repealed under section 79 (2) of The Roads Act, [15] 2019⁴. As it were, under Sec. 2 of the repealed – The Access to Roads Act- land

Masa millimma 117

$\mathbf{6}$

[<]</sup> [1957] E. A at pages 336 - 340

[<]</sup> The Roads Act, 2019 (now Cap 346 of the revised Laws of Uganda – 2023).

tribunals and by implications, Courts of iudicature had jurisdiction to entertain applications for leave to construct access roads over adjoining lands between an applicant's land and a public Highway / road. That Jurisdiction was however ousted by, and upon the commencement of The Roads Act on September 25, 2019. (See sec. 60)

- t16l The iower court record of the original cause shows that the first date of hearing of that matter was on September 3, 2019. The learned trial Magistrate had . Jurisdiction to hear the matter only up to that date. On that date, the matter did not proceed and was adjourned on account that the court issued fresh summons to add a second Defendant - Jingo Janat Wadda - who was not originally sued.
- Ill) By January 21,2020 when the matter was next called for hearing, the trial court had ceased to have Jurisdiction in the matter by virtue ol and pursuant to sec. 60 of The Roads Act' - an Act that had commenced on September 25,2019.
- 118l Sec. 60 of the Roads Act confers .lurisdiction on the Minister responsible for roadt to hear and determine applications for leave to construct an access road through private adjoining property. That section provides (paraphrased) that upon an application, the Minister may, in consultation with the relevant road authority, grant such leave on the following conditions;

rt"chilt^ ^.^--{lllt

[<]5</sup> See Practice Direction No. 1 of 2006 by the Chief lustice, read together with section 95 (7) of the Land Act, Cap 227 (Now revised Cap.236)- which provisions are now since also overtaken. [<]6</sup>Cap. 346

- i) That such applicant was unable, through negotiation with adjoining landowners, to obtain leave from them,
- ii) That such applicant compensates the adjoining landowner
- t]9l The learned trial Magistrate who continued to hear the matter, visit the locus in quo, and write a Ruling on June 30,2020 did so ultra vires, in exercise of Jurisdiction not vested in her, and in futility - without legal effect.

- 120l It is trite law sec. 5 of the Civil Procedure that a Court of law shall have jurisdiction to try all suits of a civil nature except suits of which its cognizance is either expressly or impliedly barred. In this case, the cognizance of the courts of Judicature to try that suit was expressly barred and or overtaken.
- 121l It is also well settled that where a court lacks Jurisdiction over a matter, all its proceedings, Decision and Orders arising out of that matter, are no proceedings at all, and no decision at all. They are a nullity and void ab initio. Such Proceedings, Decision and orders are void and of no legal effect. See *Desai v Warsamae* and also see the decision of Saied, J., in the celebrated case: *Eriazali Bameka v Dodvico Nvirilo*, in which Woodroffe and Ameeralli's Commentary on Civil Procedure was applied

ft*sar.il ,n^ ^,-{lh

The principles of construction of statutes also require that an earlier Act stands impliedly repealed by a later Act. Refer to the decision in *Oavid Ssejjaaka Nalima v Rebecca Musoke* C/A No' 12 of 1985. , [1987] 1 E. A 381

civil Revision No. 1 of 1973 ULR [1973] at 134 - 137

cap. 282 of the Laws of Uganda 2023 (Revised)

2nd ed., at page 477

- 122l Be that as it may, had the learned trial Magistrate been clothed with jurisdiction, I would have concurred with her decision in entirety. Her assessment was sound. She correctly pointed out, albeit without Jurisdiction, that Mr. Matser had failed to produce evidence that the alleged access Road existed through the adjoining Plots belonging to Farid and Janet Jingo. It was not enough for Mr. Matser to simply make the said allegation, he ought to have proved the same. See sec. 101- 103 of the Evidence Act. He could have, for instance, brought Nzi. Iyagdalna Nabizzi as a witness or any other witness, or document, to rebut the averments by Dr. Sentongo that no access road existed through the adjoining Plot No. 915 while he owned it, before selling it to the Jingos. He thus failed to discharge his burden of proof imposed on him by the law.
- 123l In addition, had the learned trial Magistrate been clothed with Jurisdiction, she had also correctly pointed out that Mr. Matser had not produced evidence that negotiations with adjoining landowners (the Respondents or others) had failed.
- 124) A look at the batch of Documents and correspondences produced by both parties show that Mr. Matser opted to be confrontational towards his neighbors over the matter. He threatened his neighbors, gave them deadlines and ultimatums with menaces, and forcefully took physical action on the ground. His actions, sadly, were in total oblivion to his legal obligation to seek his neighbors' consent amicably, through negotiation.

h^ .ahlJrn, ^ ^.-.r llh

^{1&#}x27;z cap. 8 of the Laws of Uganda (Revised)

Decision and Orders of this Court

- t25l By reason of the foregoing:
- A Declaration is hereby made that the proceedings, Ruling and Orders of the learned trial Magistrate in the Original Cause: Misc. Cause No' 23 of 2019, from which this appeal arises, are a nullity, and are void ab initio, and are hereby set aside on account that the learned trial Magistrate exercised a Jurisdiction not vested in a Grade I Magistrate in law. 1
- The Appellant is advised to follow the correct procedure laid down in sec' ² 60 of the Roads Act, Cap 346. He should hold prerequisite negotiations with his neighbors with a view to amicably obtaining their consent to construct an access road to Kigo Road through their private Plots, before he can opt to make an application to the lvinlster responsible for Roads.
- 3. The costs of this Appeal are awarded to the Respondents against the Appellant: Mr. Matser. (Sec. 27 of the Civil Procedure AG applied).

I so Order,

nrsr*la]n ^^^, lth 'P. BASAZA. WASSWA JUDGE

)uly 11,2024.

Judgment delivered electronically on the Judiciary ECCtz'llS Portal and via email to the pa rt ies
Email to. lockealfred@gmail.com, marnsul990@ gmail.com for the Appellant and
aqisaph2@qmarl.com for the Respondents

Source & reproduction note

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

ORIGINAL SOURCE	https://ulii.org/akn/ug/judgment/ughcld/2024/187/eng@2024-07-11
CASE PAGE	https://chat.esheria.ai/case-law/uganda/matser-v-jingo-and-another-civil-appeal-65-of-2020-2024-ughcld-187-11-july-2024-unknown-topic-unknown-court-2024--6a3ea4d93b1caa91297e61f2

Prepared on 13 October 2026 · Esheria