

UGANDA / JUDGMENT

Sande v Babumba and Others (Civil Appeal 4 of 2022) [2023] UGHC 167 (16 November 2023) [2023] UGHC 167

COURT

High Court of Uganda

BEFORE

Wolayo, J

CASE / FILE NUMBER

Civil Appeal 4 of 2022

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT LUWERO

CIVIL APPEAL NO. 004 OF 2022

**(ARISING FROM LUWERO CHIEF MAGISTRATES COURT AT NYIMBA CIVIL SUIT
NO. 003 OF 2019)**

**SANDE GODFREY (Administrator of the estate of late Mweyamwa Peteralina)
APPELLANT**

VERSUS

- **1. BABUMBA GODFREY**
- **2. WALUGEMBE KAKUNGULU SULAIMAN**
- **3. MUSA JUUKO**
- **4. BENGO MUHAMMAD KARYOWA..... RESPONDENT**

BEFORE: LADY JUSTICE HENRIETTA WOLAYO**RULING****Introduction**

1. By a memorandum of appeal dated 20.9.2022, the appellant Sande Godfrey who was unrepresented, appealed the Ruling of Magistrate Grade One Her Worship Kayaga Salima delivered on the 25th of May, 2022 on seven grounds of appeal to which I shall revert later in the Ruling.

Background facts

- 2. By a plaint filed on 15.01.2019, the appellant Sande Godfrey sued Babumba Godfrey and three others for trespass to a kibanja located on **Bulemezi Block 21, Plot 1543 at Busika**. He sought declaratory orders that:
 - a. The suit property falls under the estate of the late Mweyanwa Peteralina;
 - b. The first, second and third defendants' dealings with the suit land is illegal, unlawful and should be nullified;
 - c. The plaintiff is the lawful occupant of the suit land;
 - d. Defendants are trespassers on the suit land and a permanent injunction against the defendants.
- 3. The plaintiff/appellant also sought a permanent injunction, special damages quantified at 3,523,910/= against the first defendant for the value of destroyed crops, general damages and costs.
- 4. In the written statement of defence for the fourth defendant Juuko Musa, it is evident he dissociates himself from the first and second defendants (Babumba and Bengi) whom he says never completed payment for the land and moreover, the plaintiff and other beneficiaries of the estate of Peteralina have rights in the suit land. In other words, he does not contest the plaintiff's claim.
- 5. The second defendant Bengo also admitted in the written statement of defence that he has no claim to the suit land. The third defendant Walugembe also admits that he has no claim to the suit land. The first defendant Babumba denies the plaintiff's claim and asserts a right to the suit land.
- 6. Counsel for the 1st Defendant raised a preliminary objection and averred that the trial court had no jurisdiction to entertain a dispute in respect of the suit property given its value which is **Ushs. 60million** as per the defendant's valuation report dated **11th January 2022**.

- 7. Hearing of the case had begun way back on 27.8.2020 and by the time the objection was raised, the plaintiff had closed his case while the second defendant Bengo Moahamad and third defendant Walugembe Kakungulu had testified.
- 8. On 26.7.2021, the plaintiff applied to withdraw the suit against the fourth defendant which was done. Surprisingly, the trial magistrate then recorded that the defendants had closed their case yet Babumba Godfrey, the first defendant had not testified. The trial magistrate then adjourned the case for visit to the locus in quo on 28.10.2021.
- 9. On 28.10.2021, Mugerwa Robert for the first defendant appeared and made an oral application for the court to stay proceedings since another suit was pending in the Land Division over the same land

but he seemed to back down when the plaintiff countered that the Land Division Civil Suit No. 403 of 2020 was in respect of Block 71 Plot 15 while the instant suit was in respect of Block 21 Plot 1543.

- 10. Counsel Mugerwa then applied for an adjournment to get a valuation report for the suit kibanja. On 13.1.2022, the plaintiff claimed to have filed his own valuation report and the first defendant also claimed have one. Plaintiff's valuation report filed dated 8.11.2021 puts value of the kibanja at on Block 21 Plot 1543 at 18,000,000/-. The first defendant's valuation report puts the value of the kibanja which it is located on Plots 141 and 1543 Block 21 at 60,000,000/.
- 11. The learned trial Magistrate in her ruling dated 25th of May, 2022 found that there existed a glaring disparity between two survey reports in respect of market value of the suit land and sustained the objection that the court has no jurisdiction but went ahead to order for a joint valuation report. The Appellant being dissatisfied with the Ruling, the plaintiff obtained leave to appeal on 19.9.2022 hence this appeal.
- 12. At the hearing of this appeal, the Appellant was represented by Wamimbi Jude advocates while the Respondent was selfrepresented and written submissions were filed for both parties. Counsel for the appellant filed written submissions and counsel for the Respondent filed submissions in reply. I have carefully considered all submissions.

Ground one

The learned trial Magistrate erred in law and fact when she did not take cognizance of the fact that the value of the Kibanja at the time the suit was filed was low and definitely the grade one magistrate court had the jurisdiction but now it is urbanized with roads opened up and the value definitely up.

Ground two

The learned trial Magistrate erred in law and fact when she failed to consider the evidence on court record that at the time the main suit was filed the respondent hereof bought the mailo land of over 4 acres at Ushs 55million only which means that 2 acres of Mailo land would be Ushs 13,750,000/= and for a kibanja definitely lower.

Ground three

The learned trial Magistrate erred in law and fact in sustaining the preliminary objection.

Submissions of counsel for the appellant

- 13. Counsel for the Appellant submitted that the value of the subject matter should be considered at the time of instituting the suit and not in the course of its hearing. And that given the judicial delays in hearing suits, the subject matter – land appreciates. He further submitted that the suit was filed in 2019 and at that time the area within which the suit land was situate was a rural area but as it is now, the area transformed into a town council. Therefore, at the time the case was filed, the value of the subject matter was low and court had jurisdiction.
- 14. Counsel for the Appellant further submitted that at the time within which the main suit was filed, the respondent bought the mailo land worth 4 acres at UGX. 55,000,000/ and in relation to the appellant's claim of 2 acres in respect of the same land, the said 2 acres are valued at UGX.13,750,000/ each implying that court had the jurisdiction over the subject matter.
- 15. He argued that sustaining the preliminary objection would dispose of the suit and this was done without properly evaluating the evidence on record and that issuing subsequent orders in respect of the subject matter was all together a nullity.

Submissions of the respondent

16. Babumba Godfrey stated in his statement the trial court did not have jurisdiction. He relied on **Section 11 of the Civil Procedure Act Cap.71** stating that as the appellant did not include the value of the subject matter in his suit filed before the trial court, he was in breach of section 11(2) of the CPA.

Resolution of the appeal.

17. I will resolve grounds one, two and three together. The Supreme Court in **Kifamunte Henry v Uganda SC Criminal Appeal No. 10 of 1997** held inter alia;

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

Determining pecuniary jurisdiction

20. Under **Section 207(1) (b) of the Magistrate's Courts Act Cap. 16**, the pecuniary jurisdiction of a magistrate grade one is not more than 20,000,000/-. The monetary value of a subject matter is determined by the monetary claims in the suit. It is evident from paragraph 7 of the plaint that the plaintiff sought special damages of 3,523,910/= from the defendants. This in my view was sufficient basis to determine jurisdiction of the grade one magistrate.

Determining jurisdiction when it is impossible to ascertain the monetary value of a subject matter

- 21. In the instant case, in addition to special damages, the plaintiff also prayed for declaratory orders that:
- *a. The suit property falls under the estate of the late Mweyanwa Peteralina;*
- *b. The second and third defendants' dealing with the suit land is illegal, unlawful and should be nullified;*
- *c. The plaintiff is the lawful occupant of the suit land;*
- *d. Defendants are trespassers on the suit land and a permanent injunction against the defendants.*
- *22.* Evidently, it is impossible to determine the monetary value of declaratory orders. This means **Section 207(4) of the MCA** kicks in to confer jurisdiction on the court. Under this subsection prescribes that where it is impossible to determine the value of the subject matter as is in this case where a plaintiff

seeks declaratory orders, the trial court will not make orders for payment of money that exceeds its pecuniary jurisdiction. In effect both **Section 207(1) (b) and section 207(4) of the MCA** conferred jurisdiction on the magistrate grade one to determine this dispute.

Magistrates to try all suits unless expressly or impliedly barred 23. The law takes a liberal approach to jurisdiction of magistrates courts. **Section 208 of the MCA** is instructive in this regard. It provides that

> *'Every magistrate's court shall, subject to this Act, have jurisdiction to try all suits of a civil nature except suits where its jurisdiction is expressly or impliedly barred but every suit instituted in a magistrate's court shall be instituted in the court of the lowest grade competent to try and determine it.'*

Jurisdiction determined at the filing of the suit

24. More importantly, jurisdiction arises upon institution of a suit or claim in respect of that subject matter and not in the course of trial. This means, jurisdiction should be determined at the institution of the suit. The issue of jurisdiction in a suit that was filed in 2019 and where the defence case had commenced should not have cropped up at all.

Valuation report for purposes of assessing court fees .

25. If any valuation is required if at all, it is at the commencement of the suit to facilitate assessment of court fees only. **Section 205 (3)** of the MCA envisages such a situation and mandates a valuation which can be ordered by the court to determine court fees. Although such a value is simply a guide to the assessment of fees, it will automatically determine the pecuniary jurisdiction of the subject matter at the time of filing the suit. This means, the duty falls on the plaintiff to provide this valuation where the subject matter of the suit is land. In the instant case, it was not done but this was not fatal to

ascertaining pecuniary jurisdiction of the trial magistrate because the plaintiff prayed for special damages which formed an adequate basis for assessing fees and determining pecuniary jurisdiction. Moreover, the plaintiff sought declaratory orders which placed the suit squarely within the jurisdiction of the magistrate grade one.

Ordering valuation of subject matter to determine jurisdiction when the case is part heard

- 26. Where the issue of jurisdiction arises long after a suit is filed, ordering a valuation report is counter-productive because the value of land is always on the upward trajectory and therefore it would simply stall proceedings and protract litigation as in this case.
- 27. I note that the learned trial magistrate required both parties to file valuation reports and then found a disparity in the quantum. She relied on **Muhumuza v Centenary Bank Ltd & Another (Civil Suit No. 415 of 2011) [2013] UGCommC 21(8 February 2013)** where Madrama J as he then was and ordered for an independent valuer to value the property after both parties produced different values of the property in issue.
- 28. The facts of the Muhumuza case were that the plaintiff Muhumuza sought to recover value of land unlawfully sold by the bank and he filed the suit with a valuation report of 296m while the banks countered with a value of 12m. The court then directed an independent valuer to value the property and the report was binding on all parties under Section 27 of the Judicature Act. In the Muhumuza case, the value of the property was material to the determination of the dispute and hence an independent valuation report was essential.

- 29. In the instant case, I have found that the monetary value of the subject matter was contained in the prayer for special damages so there was no need for a valuation report at all as these special damages alone were sufficient to determine pecuniary jurisdiction along with the declaratory orders sought.
- 30. As counsel for the appellant submitted, the learned trial magistrate acted with material irregularity when she sustained the objection and then ordered both parties to produce a valuation. She ought not to have made the order for joint valuation at all.

Similar dispute pending in the High Court

- 31. Counsel for the respondent had submitted before the trial magistrate that a similar dispute between the parties was pending in the High Court. On calling for the record, I ascertained that **High Court Civil Suit No. 0311 of 2023 (formerly Land Division Civil Suit No. 403 of 2020)** between the same parties is pending in Luwero High Court. Sande Godfrey seeks cancellation of title in the High Court case because he was not given the first option to purchase the mailo interest which was acquired by Bengo Kalyowa and Walugembe Sulaiman.
- 32. Regarding **Nyimbwa Civil Suit No. 003 of 2019**, Sande Godfrey complains that he is a lawful occupant of **Block 21 Plot 1543** where the mailo interest was purchased by the second and third defendants (Bengo Kallyowa and Walugembe Sulaiman). The only difference between the two suits is that in Civil Suit No. 0311 of 2023, he seeks cancellation of title while in Civil Suit No. 003 of 2019, he does not and the similarity between the two suits is that Sande claims unregistered interest only on the two plots of land.
- 33. In order to avert possible conflicting findings on the status of Sande on the two plots of land which previously belonged to late Kakungulu, and because the two suits involve same parties, **High Court Civil Suit No. 0311 of 2023** will be transferred to Nyimbwa magistrate's court for further management. In the event the trial court agrees with Sande Godfrey to cancel the certificate of title, the learned magistrate will remit the file to the High Court to make that order after rendering her /his judgment.
- 34. In conclusion, the appeal is allowed on the grounds that the learned magistrate had jurisdiction to try the case for the following reasons:
 - a) She had pecuniary jurisdiction on account of 3,500,000/ claimed as special damages.
 - b) The suit sought declaratory orders only along with the special damages
 - c) Pecuniary jurisdiction is determined at the filing of the suit and not in the middle of hearing the case.

Orders.

- a) Civil Suit No. 003 of 2019 is returned to Nyimbwa grade one court to continue with the hearing.
- b) HCCS NO. 0311 of 2023 is transferred to Nyimbwa court for further management.
- c) The first respondent Babumba will pay costs to the appellant in any event after the conclusion of the case.

DATED AT LUWERO THIS 16TH DAY OF NOVEMBER 2023

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LADY JUSTICE HENRIETTA WOLAYO

Legal representation

Wamimbi Jude for the appellant

Respondent was self –represented in the appeal.

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Prepared on 13 October 2026 · Esheria