

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT GULU

CIVIL APPEAL No. 014/2023

(ARISING FROM CIVIL SUIT No. 122/2012: CHIEF MAGISTRATE'S
COURT HOLDEN AT KITGUM).

OBOTE DAVID

APPELLANT

Versus

ODORA YASONI

RESPONDENT

BEFORE HON. MR. JUSTICE PHILIP W. MWAKA.

RULING.

Factual Background.

[1]. This Ruling arises from the proceedings of the Court of the 20th September, 2023. Both the Appellant and the Respondent, through their Counsel, briefed the Court on the status of the instant Civil Appeal and prayed that the duly certified copies of the Record of Proceedings and Judgment as well as the duly constituted Trial Court file of the Chief Magistrate's Court, Kitgum required to hear the Appeal are obtained to enable the Appeal proceed with hearing the submissions of the respective parties.

[2]. The subject matter of the litigation is the ownership of land variously described as being at Pagwacaba or Pagwa Shamba Village in Ibakara Parish, Kitgum Matidi Sub County, Kitgum District. The area of the suit land is estimated at Thirty (30) Acres.

[3]. As far as can be discerned from the Appeal file of the Court Record in the instant matter being Civil Appeal No. 014/2023, the Memorandum of Appeal filed on the 24th February, 2023 indicates that the Appeal arises from and is in respect of Civil Suit No. 122/2012.

- 30 [4]. However, a review of the Trial Court file from the Chief Magistrate's Court, Kitgum and documents therein including the Proceeding of the Trial Court, the Judgment of the Trial Court provided as well as the Pleadings and Submissions of the respective Parties on the File indicate that the Civil Suit Number is 112/2012 between the same parties. Not Civil Suit No. 122/2012.
- 35 [5]. The Court Files also include references and documents relating to Civil Appeal No. 44/2015 arising from Civil Case No. 05/2013 originating from re-instated by the Hon. Justice George Okello *vide* Ruling in Miscellaneous Application No. 50/2023 dated 27th January, 2023 between the same parties. The Ruling is on the Court File together with the Decree extracted on the 2nd March, 2023.
- 40 [6]. Judicial Notice is taken of the Proceedings and Ruling in Civil Appeal No. 44/2015 as well as Civil Case No. 05/2013. In any case, they are public documents of wide publication accessible to the general public.
- [7]. Curiously, the description of the suit land in contention in Civil Appeal No. 14/2023 initiated by the Memorandum of Appeal filed on the 24th February, 2023 and that in Civil Appeal No. 44/2015 reinstated *vide* Miscellaneous Application No 50/2023 are similar in all material particulars, if not the same.
- 45 [8]. The issues of the commonality of the Parties and the Subject Matter in the respective Civil Appeals and suits cited were raised by the Court as it considered the state of preparedness of Civil Appeal No. 14/2023 to proceed to hearing and it will have to be considered, determined and resolved, at the appropriate time, whether there were Two (2) parallel suits with Judgments and whether there are now Two (2) parallel Appeals in respect of the same
- 50 Parties and the same Subject Matter before this Court.

Representation.

- [9]. At the proceedings, Counsel, Ms. Listowell Atto and Counsel, Mr. Okello Oryem represented the Appellant. The Appellant was absent.
- 55 [10]. Mr. Okidi Ladwar represented the Respondent. The Respondent was absent.

Proceedings of the Court.

- 60 [11]. Ms. Listowell Atto, Counsel for the Appellant, informed the Court that the Memorandum of Appeal filed on the 24th February, 2023 was served on the Respondent on the 2nd March, 2023 and that Civil Appeal No. 14/2023 arises from Civil Suit No. 122/2012 from the Chief Magistrate's Court, Kitgum. Counsel prayed for time to obtain the duly signed and certified copies of the Record of Proceedings and Judgment of the Trial Court. She further prayed that the Court gives Directions for Filing Written Submissions.
- 65 [12]. Counsel for the Appellant could not say with certainty whether the subject matter in Civil Appeal No. 44/2015 between the same parties is in respect of the same subject matter as Civil Appeal No. 14/2023.
- 70 [13]. During the course of the proceedings, it transpired that an individual who initially claimed to be the Respondent was not in fact the Respondent and he was duly cautioned by the Court against misrepresenting himself as being the Respondent.

Considerations of the Court.

- 75 [14]. The High Court derives its powers to hear Appeals from Magistrates Courts – Lower Courts and other Subordinate Courts primarily from **Article 139 of the Constitution** reinforced by Statutes and other enactments including **the Judicature Act, Cap. 13, the Civil Procedure Act, Cap. 71 and the Magistrate's Courts Act, Cap. 16.**
- 80 [15]. **Order 43 Rule 10 of the Civil Procedure Rules, SI 71-1** provides for the mechanism for the High Court to obtain the Record of Proceedings and Judgment as well as the main file of the Trial Court – being a Lower Court or Subordinate Court - with the documents the Trial Court relied on for consideration during Appeals to the High Court. The same Rule makes provision for the parties and their Counsel to also obtain the same documents for purposes of pursuing and conducting their Appeals to the High Court.

85 [16]. It is a dual mechanism which enables the Court and litigants before the Court access to the Record of Proceedings, Judgment and other documents on the Trial Court file to ensure preparedness for commencement of the Appeal when it is due for hearing.

90 [17]. Section 75 of the Evidence Act, Cap. 6 provides for certification of Public Documents while Section 76 of the Evidence Act, Cap. 6 provides that certified copies may be produced in proof of the contents of Public Documents of which they purport to be copies.

[18]. Needless to say that the proceedings and Judgments of Courts in Uganda are recognized public records and the Courts are obliged to presume as to the genuineness of certified copies of documents. See: Sections 62, 64, 73, 78, 95 79 of the Evidence Act, Cap. 6

[19]. The importance of an Appellate Court obtaining an accurate and complete Record of Proceedings, Judgments and documents relied on by the Trial Court cannot be overemphasized. These constitute the Record of Appeal.

100 [20]. This Court has observed and expressed concern in numerous matters in respect of shortcomings in the integrity and completeness of certified copies of documents, provided, which appears not to be uncommon, for numerous reasons including; - unsigned Judgments, unsigned Proceedings, certified copies of Judgments which are unsigned, certified copies of drafts of documents with ongoing and, or uncompleted edits of the documents
105 apparent, two (2) different Judgments in the same suit with differences in form and material, Judgments indicating the date of delivery as being prior to the date of the Judgment itself, certification of the Proceedings and Judgment each by different certifying Officers and at different times, absence of material particulars in Records of Proceedings most especially in relation to *Locus in*
110 *Quo* visits which are integral to the Record of Proceedings, Decrees and Orders not tallying with the contents of Judgments and Rulings and inconsistencies, among numerous others.

- 115 [21]. This serves to reveal that inspite of the presumption of genuineness of certified copies of public documents - in this instance certified copies of Records of Proceedings and Judgments, diligence is still required of a Court exercising an Appellate function before it entirely places reliance on documents provided. The Court exercising an Appellate function should to the extent possible be in no doubt as regards the veracity of the Record of Appeal.
- 120 [22]. A Court exercising an Appellate function must be cautious in admitting Records which do not pass muster or scrutiny and may render injustice to the parties and damage to its reputation including those improperly obtained referred to in Section 42 of the Evidence Act, Cap. 6.
- 125 [23]. In Civil Appeal No. 23/2005: Maniraguha Gashumba Vs. Sam Nkundiye, the Court of Appeal held that: -
"A Judgment must be signed and dated by a Judge or Magistrate who wrote it at the time of pronouncing it. A Judgment that is not signed and dated in accordance with Order 21 Rule 3(1) of the Civil Procedure Rules is no Judgment at all and is therefore invalid neither oral evidence of the Judicial Officer who wrote it nor certification could validate such an unsigned Judgment. If the Trial Judge had properly re-evaluated the evidence he would have found that the Trial Magistrate had erred in admitting an unsigned and uncertified document purporting to be a valid Judgment of Court."
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135 See: Civil Application (Court of Appeal of Kenya) No. 328/2005: Captain Musa Hassan Bulhan Vs. Kenya Airways Ltd & Anor.
- 140 [24]. The certification of the Record of Proceedings and Judgment requires the certifying officer to diligently ensure that prior to certification he has duly inspected the original of the document and satisfied himself as to its authenticity and completeness including, but not limited to, the required endorsements by the executing or endorsing officer.

[25]. This may be aided by making reference to the hand written notes of the Presiding Judicial Officer. The Trial Court must own its Proceedings and Judgment.

145 [26]. There is a wide body of authority from the National Court, Regional Courts and other Courts in respect of instances where the Record of Proceedings is unclear, incomplete or otherwise defective and also where the Judgment of a Trial Court is in doubt.

150 See: Criminal Appeal (Court of Appeal) No. 0470/2015: Obirai Andrew Francis Vs. Uganda, Civil Appeal (Court of Appeal) No. 101/2011: Ephraim Mwesigwa Kamugwa Vs. Management Committee of Nyamirima Primary School, Civil Appeal (Gulu High Court) No. 50/2018: Nyero Jema Vs. Olweny Jacob & 4 Others (Hon. Justice Stephen Mubiru), High Court (South Africa – Western Cape Division, Cape Town) Ref. No. 43/2021: The State Vs. Benjamin Woelf & Anor, 155 Miscellaneous Criminal Application (High Court Kenya at Kericho) No. 7/2016: Justus Cheruiyot Chumba Vs. Republic.

[27]. From the authorities cited, the Appellate Court is put in a position where it may either elect to consider the Record of Appeal as it is and form an opinion 160 on whether the material is sufficient to proceed with hearing the Appeal or the Appellate Court may remit the file to the Trial Court and order its reconstruction as far is ascertainable or alternatively and as a drastic final option may where the Record of Appeal is fatally and incurably defective order a Trial *De Novo* or a Re-Trial in civil proceedings and criminal 165 proceedings respectively, as the case may be.

[28]. See: Civil Appeal (Court of Appeal of Kenya) No. 252/1999: United Finance Ltd Vs. Joel Muthui Kyambu, Election Petition Application No. 266/2011 (Court of Appeal): Muriisa Nicholas Vs. George Ruyondo & Anor.

170 [29]. On the polar opposite, this Court has observed Judgments in Appeals arising
from the decisions of Lower or Subordinate Courts based on the original
hand written Record of Proceedings, Judgments, Rulings or other decisions.
While there may be no apparent bar to placing reliance on the original hand
written Record of Proceedings and Judgment, Ruling or Decision being the
175 primary documents on the Trial Court file; this should not be considered to
constitute the standard of the Court. It is the very accuracy and completeness
of the primary record of the Trial Court that would be the basis of
reconstituting the Record of Appeal.

Determination of the Court.

180 [30]. Having considered the prayers and the submissions of Counsel and the
circumstances of the matter before Court, it is incumbent on the Court and
Counsel, as Officers of the Court, to ensure with absolute certainty that the
duly signed and certified Record of Proceedings and Judgment of the Trial
Court are obtained in order to enable the hearing of the Appeal to commence.

185 [31]. In the instant case, the requirements for true and correct certified copies of
the Judgment and Record of proceedings of the Trial/Originating Courts
could not be more apparent.

[32]. The Court has observed with concern that there seem to be Two (2) sets of
Trials and Appeals in contention between the same parties and in respect of
190 the same subject matter being Civil Appeal No. 14/2023 arising from Civil
Suit No. 122/2012 or 112/2012 and Civil Appeal No. 44/2015.

[33]. The foregoing shall have to be considered, established and disposed of by this
Court as a preliminary matter before commencing with other proceedings in
the instant Appeal including the application and effects of *Res Judicata* and
195 other Statutory bars which may not have been previously considered. This
would have the effect of eliminating any likelihood of duplicity and, or
multiplicity of Appeals and, or other litigation in respect of the same parties
and subject matter and avoid any resultant absurdities.

200 [34]. No Record of Proceedings or Judgment has been obtained and provided to this Court in Civil Appeal No. 14/2023 in which the Memorandum of Appeal reference that it arises from Civil Suit No. 122/2012. Neither has the main Trial Court file been provided.

205 [35]. Similarly, no Record of Proceedings or Judgment has been obtained and provided to this Court in Civil Appeal No. 44/2015 arising from Civil Case No. 5/2013. Neither has the main Trial Court file been provided.

[36]. Previously referred to, on the Court file are a Record of Proceedings in Civil Suit No. 112/2012 with an undated old certification stamp and a Judgment in Civil Suit No. 112/2012 with a different more recent certification stamp with the date of the 21st March, 2023. The Court observes with concern the hand written edits of the suit number by use of a black pen over the typed format in both the said Record of Proceedings and Judgment.

210 [37]. Therefore, before consideration of the Appeal can proceed any further, the Court shall require that the duly signed and properly certified copies of the complete and accurate Record of Proceedings and Judgments/Rulings as well as the Main Files of the Trial Courts listed hereunder are obtained from the Chief Magistrate's Court, Kitgum and, or Gulu High Court Registry: -

1. Civil Suit No. 122/2012.
2. Civil Suit No. 112/2012.
3. Civil Case No. 5/2013.
- 220 4. Civil Appeal No. 44/2015 & Miscellaneous Application No. 50/2023.

[38]. The Deputy Registrar shall ensure compliance prior to the next hearing date.

225 [39]. It is also incumbent on the Litigants and Counsel to ensure that the Record of Appeal is correct, accurate and complete in order to ensure preparedness for hearing of the Appeal. **See: Section Order 43 Rules 10(3) of the Civil Procedure Rules SI 71-1.**

[40]. Civil Appeal No. 14/2023 – which is the matter before the Court – is adjourned to **Tuesday, the 24th October, 2023 at 09:00 am.**

Orders of the Court.

[41]. Accordingly, the Court makes the following Orders: -

- 230 1. The duly signed and properly certified copies of the complete and accurate Records of Proceedings and Judgments/Rulings as well as the Main Files of the Trial Courts shall be obtained and provided to this Court in the following suits originating from the Chief Magistrate's Court, Kitgum and, or Gulu High Court Registry: -
- 235 i. Civil Suit No. 122/2012.
ii. Civil Suit No. 112/2012.
iii. Civil Case No. 5/2013.
iv. Civil Appeal No. 44/2015.
v. Miscellaneous Application No. 50/2023
- 240 2. The Deputy Registrar shall ensure compliance prior to the next hearing date.
3. Civil Appeal No. 14/2023 – which is the matter before this Court – is adjourned to **Tuesday, the 24th October, 2023 at 09:00 am.**
4. Each party shall bear its own costs.

245 It is so Ordered.

Signed, Dated and Delivered at the High Court, Gulu on the 20th day of September, 2023.



Philip W. Mwaka

250 Acting Judge of the High Court.

In Attendance.

255 Ruling delivered on the 20th day of September, 2023 in the presence of: -

1. Ms. Listowell Atto and Mr. Okello Oryem, Counsel for the Appellant.
2. The Appellant is absent.
3. Mr. Louis Odongo, Counsel for the Respondent.
4. The Respondent is absent.

260 5. Mr. Manano Davis, Court Clerk, present.



Philip W. Mwaka

Acting Judge of the High Court.

20th day of September, 2023.

