

THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA
MISC. APPLICATION NO. 37 OF 2020

(Arising from Court of Appeal Civil Application No. 111 of 2020)

5 *(Arising from Civil Appeal No. 240 of 2013)*

SEKYANZI SEMPIJJA ::: APPLICANT

VERSUS

PROF. GORDON WAVAMUNNO ::: RESPONDENT

10 **CORAM: HON. JUSTICE ALFONSE C. OWINY-DOLLO, CJ**
HON. JUSTICE LILIAN EKIRIKUBINZA TIBATEMWA, JSC
HON. JUSTICE MIKE CHIBITA, JSC
HON. JUSTICE ELIZABETH MUSOKE, JSC
HON. JUSTICE STEPHEN MUSOTA, JSC

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RULING OF COURT

This application was brought under Section 6(2) of the Judicature Act and Rules 39(1) (b) of the Judicature (Supreme Court Rules) Directions seeking for orders that:

20 (a) Leave be granted for the Applicant to file an Appeal against the judgment and orders of the Justices of the Court of Appeal delivered on 19th June 2020

(b) Costs be provided for.

25 The application is supported by the affidavit of the Applicant, in which he states the grounds upon which this application is premised. The applicant briefly states that:

1. He filed Civil Suit No. 028 of 2007 in the Chief Magistrates Court of Entebbe at Entebbe for a declaration, among other orders, that he is a bonafide occupant on the suit land and ordered the respondent to compensate him with the sum of Ug. Shs 59.879.350/= while relying on the evidence of PW1 and PW2.
2. The Respondent Appealed to the High Court which upheld the judgment of the Chief Magistrate that the applicant is a *bonafide* occupant on the suit land and should be compensated at a rate to be determined by the government valuation surveyor.
3. The Respondent Appealed to the Court of Appeal which overturned the judgments of the High Court and the Chief Magistrates Court of Entebbe at Entebbe.
4. Upon perusal of the judgment, the Applicant discovered that the learned Justices of the Court of Appeal misinterpreted the law governing *bonafide* occupancy *vis a vis* the facts of the case and wrongly held that the Applicant is not a *bonafide* occupant on the suit land.
5. The holding of the Court of Appeal raises serious questions of law of public importance which require further interpretation by the Supreme Court as to whether the applicant is a *bonafide* occupant on the suit land, having inherited the same from his father who stayed on the land for more than 12 years before promulgation of the 1995 Constitution.

6. The applicant filed Miscellaneous Application No. 111 of 2020 before the Court of Appeal for a certificate of public importance to file an Appeal to the Supreme Court and the same was denied.

5 7. The Applicant's Appeal raises serious questions of general or great public importance warranting determination by this court as to whether the meaning of a *bonafide* occupant is only limited to Section 29(2) (a) of the Land Act.

The Respondent filed an affidavit in reply sworn by Prof. Gordon
10 Wavamuno in which he gave the background of this Application and stated that where an Appeal emanates from the judgment or orders of the Chief Magistrates Court exercising its original jurisdiction, the Court of Appeal is the final appellate court on matters of law and of fact. That the applicant filed a similar application before the
15 Court of Appeal and the same was dismissed for failure to demonstrate that the matter is of great public or general importance.

Representation

When this application came up for hearing, Mr. Martin Kakuru appeared for the Respondent while the Applicant was
20 unrepresented. Both parties had already filed their written arguments which this court adopted and shall duly consider.

Applicant's submissions

Counsel for the Applicant submitted that this Application for a certificate of great public importance, made under Section 6(2) of

the Judicature Act and Rule 39(1) (b) of the rules of this court, is a fit and proper Application for this court to hear the Appellants' third Appeal. Counsel relied on the affidavit in support of the Application and submitted that the Applicant was declared a *bonafide* occupant of the suit land which position was confirmed by the High Court. Counsel submitted that the Applicant inherited the suit kibanja from his late father who passed on in 1985 and is thus a *bonafide* occupant on the land having stayed there for more than 12 years before the coming into force of the 1995 Constitution. That the Justices of Appeal erred in finding that the Applicant's father died in 1985 before the promulgation of the 1995 Constitution. **Article 237(8) and (9) of the 1995 Constitution and Section 29(5) of the Land Act** extended the protection of the law to any person to whom that interest may be transferred either by purchase, inheritance or otherwise.

Counsel argued that the court ought to have taken into consideration the time when the Applicant's father acquired the interest in the suit land, which interest was confirmed by the testimonies of PW1 and PW2. Counsel relied on the decision in **Kampala District Land Board & another Vs Venansio Babweyaka and others S.C.C.A No. 2 of 1997** on the notion that any person who has purchased or otherwise acquired the interest of the person qualified to be a *bonafide* occupant shall be taken to be a *bonafide* occupant.

Counsel argued that the decision of the Court of Appeal in Civil Appeal No. 240 of 2013 conflicts and if left to stand, is bound to affect a multitude of persons who inherited interests of persons who died before the coming into force of the 1995 Constitution. Counsel contended that this makes this Appeal to the Supreme Court one of great public or general importance. Counsel submitted that the matter of great importance or general importance referred to in Section 6(2) of the Judicature Act was defined by the Kenyan Supreme Court in **Hermanus Phillippus Steyn Vs Giovanni Gnechi Ruscone Supreme Court Civil Application No. 04 of 2010** cited with approval in **Civil Application No. 125 of 2009 Charles Lwanga Masengere Vs God Kabagambe & ors** to mean amongst others a matter of law which may affect a considerable number of people in their commercial practice or in their enjoyment of fundamental or contractual rights.

Counsel argued that there is a considerable section of the public in Uganda occupying land as *bonafide* occupants having acquired interest by inheritance from persons who passed on before the coming into force of the 1995 Constitution. Counsel further relied on this court's decision in **Namuddu Christine Vs Uganda Criminal Appeal No. 03 of 1999** in which Wambuzi, CJ noted that; "this Court will grant leave if it considers that in order to do justice the Appeal should be heard. Anything relevant to doing justice will be considered including questions of law of general or public importance". Counsel argued that the applicant cultivated the said

land, made bricks and earned a livelihood until the respondent got registered on the land and defeated his unregistered interest.

Counsel prayed that this court exercises its discretion and find this to be a fit and proper case to grant leave to the applicant to file his
5 Appeal.

Respondent's submissions

For the Respondent, counsel submitted that for this court to grant a certificate to the Applicant to file a third Appeal in this court, the intended Appeal must raise one or more matters of great public or
10 general importance which should be proper for the court to review in order to see that justice is done. Counsel relied on the case of **Atai Hellen Doreen Vs Uganda Criminal Application No. 19 of 2020** in which this court cited the case of **Kenya Plantation and Agricultural Workers Union Vs Kenya Export Florence, Horticulture and Allied Workers Union (KEFHAU) Civil Application No. 5 of 2017** while dealing with an application of this
15 nature and laid down principles to determine whether a matter was of general public importance.

Counsel submitted that among the principles for determination in
20 grant of such an Application is that where the matter in respect of which certification was sought raised a point of law, the intending Appellant ought to have demonstrated that such a point was a substantial one, the determination of which would have a significant bearing on the public interest. In addition, such a
25 question must have arisen in the lower courts and must have been

the subject of judicial determination and where the certification had been occasioned by a state of uncertainty in the law arising from contradictory precedents, the Supreme Court could either resolve the uncertainty as it may determine or refer the matter to the Court of Appeal for its determination.

Counsel relied on the decision in **Asumani Mugenyi Vs M. Buwuule Civil Application No. 0245 of 2011** in which the Court of Appeal held the matter to be of general or public importance because about 50,000 people who claim to have their bibanja holdings on the Respondent's titled land would be affected by a decision of court. Counsel argued that in regard to the present case, the Applicant's assertion that a considerable section of the public in Uganda occupying land as *bonafide* occupants acquired interests by inheritance before the coming into force of the 1995 Constitution and that the decision of the Court of Appeal would affect those people, is a speculative argument that is not based on any cogent evidence.

Whereas the present applicant claims that he inherited his interests in the land from his late father who died in 1985, his father was found not qualifying to be a *bonafide* occupant by the Court of Appeal since at the time of his death, the law which provides for *bonafide* occupancy was not in existence. That the issue of *bonafide* occupancy which is the main ground for grant of this application was duly canvassed by all the lower courts. Counsel submitted that the Applicant's intended Appeal is for his personal benefit as the

same would only involve the determination of facts in contention between the Applicant and the respondent. Counsel prayed that this Application be dismissed with costs.

Consideration of the Application

5 This application was brought under Rule 39 (1) (b) of the Judicature (Supreme Court Rules) Directions SI 13-10 and it provides;

39. Application for certificate of importance or leave to appeal in civil matters

(1) In civil matters—

10 *(b) if the Court of Appeal refuses to grant a certificate as referred to in paragraph (a) of this subrule, an application may be lodged by notice of motion in the court within fourteen days after the refusal to grant the certificate by the Court of Appeal for leave to appeal to the court on the ground that the intended appeal*
15 *raises one or more matters of great public or general importance which would be proper for the court to review in order to see that justice is done.*

The dispute between the parties arises out of the judgment and orders of the Chief Magistrates Court exercising its original
20 jurisdiction, in which case the Court of Appeal is the final appellate court on matters of law and of fact. A third appeal to this Court can only be entertained on a certificate given by the Court of Appeal or on leave being granted by this court to the effect that the intended Appeal raises one or more matters of public or general importance

which would be proper for this Court to review in order to see that justice is done.

This court, in the case of **Namuddu Christine Vs Uganda Criminal Appeal No. 03 of 1999** in granting leave to appeal held that;

5 *Under subsection (5) of S.6, this Court will grant leave if the court, in its overall duty to see that justice is done, considers that the appeal should be heard. In other words this court is not bound by the restrictions placed on the Court of Appeal, when that court is considering an application for a certificate. The Court of Appeal*
10 *grants a certificate where it is satisfied:*

(a) that the matter raises a question or questions of law of great public importance; or

(b) that the matter raises a question or questions of law of general importance.

15 *On the other hand, this Court will grant leave if it considers that in order to do justice the appeal should be heard. Anything relevant to doing justice will be considered including questions of law of general or public importance.*

20 *It appears to us that in deciding whether or not to grant leave we are not restricted to questions of law like the Court of Appeal. We have power to consider other matters.*

In other words, this court will grant leave if it considers that in order to do justice the appeal should be heard and is not restricted to questions of law like the Court of Appeal.

Whereas the Respondent argues that the Applicant has not raised any grounds to show that the Applicant's Appeal raises matters of great general or public importance, the courts have not discussed what amounts to a question of great general or public importance.

5 In this regard, this court in **Namuddu Christine Vs Uganda (supra)** while relying on the decision in **Rex vs. Mohamed Shah S/O Lal Shah (1939) 6 EACA 103** held that; *the court did not discuss what is a question of great general or public importance to be of help. But the inference we draw from the brief ruling is that the question*
10 *should be sufficiently general or public in application, as would need settlement or clarification by a higher appellate court.*

In the present case, the applicant sued the respondent in the Chief Magistrates Court of Entebbe for grabbing and alienating his kibanja measuring about 3 acres located at Vubufu village Katabi
15 sub-county, Wakiso District. The applicant claimed to have lawfully acquired the suit *kibanja* through inheritance under Ganda Custom in 1995 from his late father Sempijja George. The Chief Magistrates Court held the Applicant to be a *bonafide* occupant having inherited his interest from his father. On appeal to the High Court, the Chief
20 Magistrate's court decision was upheld and the applicant was held to be a *bonafide* occupant and the Respondent's appeal was dismissed. On appeal to the Court of Appeal, the Respondent's Appeal was allowed and the judgment and orders of the trial court and the first Appellate courts were set aside. The Court of Appeal
25 held that a *kibanja* holding is not a customary holding under Article

237(3) of the Constitution. That a *kibanja* falls under *mailo* tenure and is separately recognized under Article 237(8) of the Constitution.

It is our considered view that in order to do justice in this case, in the light of the provisions of Article 237 of the Constitution on land ownership and in light of the fact that the Applicant stayed on the land for a number of years, having inherited the same from his father, we think that the Applicant should be granted leave to file a third Appeal so that this court considers the question,

“Whether the applicant is a *bonafide* occupant on the suit land having acquired his interest through inheritance from his father who died in 1985 but had lived on the suit land for more than 12 years before the promulgation of the 1995 Constitution.”

This application is therefore allowed. The Applicant is granted leave to Appeal against the decision of the Court of Appeal delivered on 19th June 2020 in Civil Appeal No. 240 of 2013, in accordance with the law. Costs shall be in the cause.

We so order.

Dated this 27th day of July 2023



Alfonse C. Owiny-Dollo

CHIEF JUSTICE

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Lillian Ekirikubinza Tibatemwa

JUSTICE OF THE SUPREME COURT

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Mike Chibita

JUSTICE OF THE SUPREME COURT



Elizabeth Musoke

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JUSTICE OF THE SUPREME COURT



Stephen Musota

JUSTICE OF THE SUPREME COURT

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