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The Republic of Uganda

In the High Court of Uganda at Soroti

Miscellaneous Application No. 0101 of 2023

(Arising from Soroti Civil Suit No. 077 of 2019)

10 Chemao Charles Applicant

Versus

Mulumba Mathias Respondent

Before: Hon Justice Dr Henry Peter Adonyo

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Ruling

1. Introduction.

This application was brought under Order 44 rule 1 (1) (2) (3) & (4), Order 52 Civil Procedure Rules, section 33 of the Judicature Act and Section 98 of the Civil Procedure Act for orders that;

- 20 a) The Applicant be granted an order for leave to appeal against the ruling and orders dismissing a preliminary point of law on pecuniary jurisdiction of the court to entertain Civil Suit No. 77 of 2019.
- b) Costs of this application be awarded to the Applicant.

2. Grounds.

- 25 The grounds of this application as set out in the application and the supporting affidavit sworn by the applicant are that;



- 5 a) That the applicant is the defendant in Civil Suit No.77 of 2019 of the Chief Magistrate's Court of Soroti at Soroti.
- b) That when the suit came up for further hearing of the defence case, a preliminary point of law was raised on the competency of the court to try the suit on grounds of pecuniary jurisdiction.
- 10 c) That the court dismissed the preliminary point of law on grounds that it was *res judicata* and that the applicant did not provide a valuation report for court to rely on.
- d) That however, the applicant had prayed court to exercise its inherent powers to order for the valuation of the suit land to inform itself whether it is clothed with the pecuniary jurisdiction to entertain the suit, which prayer court did not consider.
- 15 e) That the applicant first filed an application for leave to appeal against the ruling dismissing the preliminary point of law before the trial court but was dismissed.
- 20 f) The applicant is aggrieved with the ruling and order dismissing the preliminary point of law and wishes to appeal against the same.
- g) That he has arguable grounds of appeal which require serious judicial consideration and that the appeal has reasonable chances of success. The intended grounds of appeal include;
- 25 i. The Learned Trial Magistrate erred in law and fact when he dismissed the preliminary point of law on ground that it is *res judicata* whereas not and thereby occasioned a miscarriage of justice.
- ii. The Learned Trial Magistrate erred in law and fact when he dismissed the preliminary point of law on ground that the applicant
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5 had not attached a valuation report to guide court, yet it was already a court case and thereby occasioning a miscarriage of justice.

10 iii. The Learned Trial Magistrate erred in law and fact when he ignored a prayer that it exercises its inherent powers in the interest of justice to order for the valuation of the suit land to inform itself whether it is clothed with pecuniary jurisdiction to entertain the suit and thereby occasioning a miscarriage of justice.

The respondent in his affidavit in reply to the application opposed the same on the following grounds;

- 15 a) That this application is brought in bad faith and it is an attempt to delay proceedings in Civil Suit No. 77 of 2019 which is in its final stages in the Chief Magistrates Court at Soroti.
- b) That this application is incompetent as it does not disclose what questions of law the applicant wants this honourable court to resolve.
- 20 c) That the intended grounds of appeal are not sustainable and that the learned trial magistrate did not misdirect himself in law but rather based his ruling on law which fact cannot be used as a basis for the grant of the instant application.
- 25 d) That there is no single ground for appeal in the applicant's application or supporting affidavit that conforms to the known legal standards for granting such an application for leave to appeal the ruling of the Learned Trial Magistrate.
- e) That the applicant is on a fishing expedition with the aim of frustrating the trial of civil suit no. 77 of 2019 for which the applicant is left with only one witness.

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5 f) That there will be gross injustice occasioned to the respondent if this application is allowed as the applicant is only abusing the court system to unnecessarily prolong litigation.

10 g) That in the event that this honourable court is inclined to grant this application, the applicant should be conditioned to deposit security for costs.

The applicant in rejoinder stated that the application discloses questions of law and is brought in good faith and therefore not meant to delay proceedings in civil suit no. 77 of 2019. That the intended grounds of appeal are sustainable and the application is not meant to frustrate the course of justice in civil suit no. 77 of 15 2019.

3. Representation.

The applicant was represented by M/s Asire & Co. Advocates while the respondent was represented by M/s Engulu & Co. Advocates.

20 This matter proceeded by way of written submissions and the same have been duly considered in its determination.

4. Determination.

This court has the discretion to grant leave to appeal an order it has granted under Order 44 Rules 2 and 3 of the Civil Procedure Rules which provide thus;

25 (2) An appeal under these Rules shall not lie from any other order except with leave of the court making the order or of the court to which an appeal would lie if leave were given.

(3) Applications for leave to appeal shall in the first instance be made to the court making the order sought to be appealed from.

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5 The applicant herein first applied for leave to appeal the ruling and order of the Chief Magistrates Court to the Chief Magistrates Court but the trial magistrate found that the application did not raise any grounds that merit serious judicial consideration by the High Court or any arguable case with likelihood or prospect of success.

10 He further found that the matters presented by the applicant have long been settled in a multiplicity of applications but the applicant had continued to raise the same. The same was dismissed and the suit set down for further defence hearing.

In the current application counsel for the applicant submitted that the
15 considerations for grant of leave to appeal are that the applicant must demonstrate that there are arguable grounds of appeal and further that it is intended to protect the applicant's right to appeal in order to attain the ends of justice. Counsel relied on *Sbeity & Anor v Akello (Miscellaneous Application No. 249 Of 2018) [2018] UGHCCD 94.*

20 That the applicant in this instance has demonstrated that he has arguable grounds of appeal and he will not have attained the ends of justice if his right to appeal is curtailed.

Counsel for the respondent in reply submitted that in an application for leave to appeal, the applicant is required to outline clearly and concisely the points of law
25 that such applicant would want the court of appeal to decide. (*Kengazi Angella vs Metl (U) Ltd Misc. Application No. 723 of 2014.*)

Counsel further submitted that in the instant cases, the applicant merely aggrieved with the decision of the lower court which in itself does not suffice for

5 the grant of an application of this nature. What the applicant states in his affidavit are factual issues disguised as points of law.

Counsel relied on *Ekisa George & Omukenyo George Cosmos and 50,000 Ors Versus Bank of Africa (U) Ltd and 20 Others Misc. Application No. 632 of 2015* at High Court Commercial Division where Hon. Mr. Justice B. Kainamura declined to
10 grant an application of this nature on grounds that the applicants had not shown the point of controversy in the ruling that they sought the court of appeal to determine.

Counsel submitted that in the instant case the applicant has not raised any arguable grounds in the ruling of the lower court that merit granting leave as
15 pointed out in the two authorities above.

The applicant raised an objection which had already been determined by the trial court in 2020 and there is nothing to appeal on this.

Counsel finally submitted that the Constitution of Uganda under Article 28 enjoins courts of law to dispense justice without unreasonable delay and what
20 the applicant is trying to do is to unnecessarily prolong litigation without any just cause.

The applicant's counsel Amodoi Samuel of M/s Ogire & Co. Advocates on the 14th of February 2020 raised a point of law that the Chief Magistrate had no jurisdiction to handle Civil Suit No. 77 of 2019 because the land subject to the suit
25 is registered land which is governed by the Registration of Titles of Act.

The essence of counsel's submissions was that magistrate court could only hear matters which were limited to civil customary law.

His Worship Watyekere George Wakubona in his ruling relying on section 207(1)(b) and (2) of the Magistrates Courts Act found that the law does not bar a

5 Magistrate Grade 1 from entertaining a matter simply because it is not governed by civil customary law and having considered the plaint, the trial Magistrate further found that it did not state the value of the subject matter so as to determine whether it exceeds the limit of the pecuniary jurisdiction of a magistrate grade 1.

10 This preliminary point of law was thus dismissed on the 26th of June 2020.

After that ruling, Civil Suit No. 77 of 2019 proceeded to hearing with the plaintiff, now respondent leading 6 witnesses and closing his case.

The defendant, now the applicant led the evidence of 3 witnesses before he changed his advocate to M/s Asire & Co. Advocates with Counsel Amulen from
15 that firm first entering appearance on the 13th of December 2022 when the suit was coming up for further defence hearing, objecting to further hearing of the matter on the grounds of a preliminary point of law which she raised on competence of the trial court to hear a matter above its pecuniary jurisdiction which is estimated to be well over 60,000,000/=.

20 On the 10th of March 2023, His Worship Okiror Edmond Okwii in his ruling on the preliminary point of law found that counsel for the applicant was relying on a land sales agreement as proof of value of the land, no valuation report was attached to guide court.

He further noted that the objection raised by counsel was determined and
25 dismissed by the trial court on the 26th of June 2020.

The trial magistrate then dismissed the preliminary point of law observing the same as an abuse of court process.

It is this ruling that the applicant seeks to appeal on the following grounds;



- 5 i. The Learned Trial Magistrate erred in law and fact when he dismissed the preliminary point of law on ground that it is *res judicata* whereas not and thereby occasioned a miscarriage of justice.
- 10 ii. The Learned Trial Magistrate erred in law and fact when he dismissed the preliminary point of law on ground that the applicant had not attached a valuation report to guide court, yet it was already a court case and thereby occasioning a miscarriage of justice.
- 15 iii. The Learned Trial Magistrate erred in law and fact when he ignored a prayer that it exercises its inherent powers in the interest of justice to order for the valuation of the suit land to inform itself whether it is clothed with pecuniary jurisdiction to entertain the suit and thereby occasioning a miscarriage of justice.

The legal foundation for the requirement to seek leave before a party can appeal in certain cases is premised on the need to check unnecessary and/or frivolous appeals. See: *Lane v. Esdaile [1891] A.C. 210 at 212* and *Ex parte Stevenson [1892] 1 Q.B. 609*.

It is also the general rule that in as much as possible appeals should arise only from final decrees and orders of courts and not interlocutory orders. See: *Incafex (U) Ltd Vs Kabatereine [1999] KALR 645*.

Further, the legal test for grant of an application for leave to appeal to a court of appeal was succinctly put by Spry V.P in the leading case of *Sango Bay Estate Ltd & Others vs. Dresdner Bank A.G [1971] 1 EA 17 (CAK)*, thus;

30 "As I understand it, leave to appeal from an order in civil proceedings will normally be granted where *prima facie* it appears that there are grounds of

5 *appeal which merit serious judicial consideration but where, as in the present case, the order from which it is sought to appeal was made in the exercise of a judicial discretion, a rather stronger case will have to be made out."*

This court therefore needs to consider whether the appeal would have prospect of success; or there is some compelling reason why the appeal should be heard.

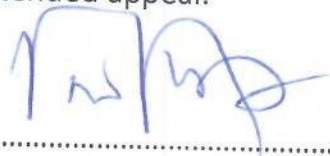
10 The grounds of appeal as noted above revolve around jurisdiction of the trial court to hear Civil Suit No. 77 of 2019.

The trial court in dismissing the preliminary point of objection found that it was *res judicata* as a similar objection had been raised and dismissed, it further found that no valuation report had been given for it to determine the pecuniary
15 jurisdiction of the court.

Given the contention as to jurisdiction which is a creature of statute and the need to establish whether the trial court is rightly clothed with the powers to hear Civil Suit No. 77 of 2019, I would, taking into account the holding in *Incafex (U) Ltd Vs Kabatereine [1999] KALR 645* and in that interest of the justice of this matter,
20 allow the applicant leave to appeal the lower trial court order arising from the dismissed preliminary point of law relating to the jurisdiction of the trial court to hear and determine Civil Suit No. 77 of 2019.

For that reason, this application is granted with the costs of this application to abide the outcome of the intended appeal.

25 I so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

10th July 2024