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**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA  
(LAND DIVISION)**

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**CIVIL APPEAL NO. 174 OF 2019  
(ARISING FROM CONSOLIDATED MISCELLANEOUS CAUSES 15  
& 16 OF 2019 NAKAWA CHIEF MAGISTRATE’S COURT)  
(APPEAL ARISING FROM THE RULING OF HIS WORSHIP DATED  
25<sup>TH</sup> NOVEMBER 2019)**

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**ALLEN MAYENDE :::  
APPELLANT**

**VERSUS**

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**1) AKENA GEORGE WILLIAM  
2) SSEJOONGO GEOFFERY :::  
RESPONDENTS**

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**(BEFORE: LADY JUSTICE IMMACULATE BUSINGYE  
BYARUHANGA)**

**RULING**

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This Appeal arises out of a Ruling of the Magistrate Grade One delivered by His Worship Odwori Ponsiano Romans in Nakawa Consolidated Miscellaneous Cause 15 & 16 of 2019. The background of this Appeal is as follows;

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The Respondents filed Miscellaneous Application Nos. 15 & 16 of 2019 which were later consolidated by way of Notice of Motion under **Section 98** of the **Civil Procedure Act** and **Order 52 Rules 1 & 3** of the **Civil Procedure Rules** praying for orders that the Appellant be directed to give consent of ownership in respect of Block 243 Plot 701 land at Mutungo and if the Appellant failed to comply court would issue an order directing Uganda National Roads Authority (UNRA) to go ahead and compensate the Respondents.

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The grounds of the Applications were the following;

1. The Respondents were rightful owners of the bibanja with houses on Block 243 Plot 701 after purchasing the said land.
  2. The Respondents properly fell within the demarcation of a road project which was to be constructed as a Kampala - Jinja Express Highway by Uganda National Roads Authority.
  3. The Appellant was delaying the compensation of the Respondents by UNRA since the Appellant had legal possession of the suit land.
- 10 In the affidavit in support of their Applications, the Respondents deponed that they were purchasers of the suit land. The first Respondent indicated that he purchased from one Peterson Kabuye on 31<sup>st</sup> July 2007 while the second Respondent indicated that he purchased from Nasur Yiga on 13<sup>th</sup> March 2005. The Respondents  
15 who were the Applicants then attached their sale agreements which were in Luganda.

The Appellant (then Respondent) filed an affidavit in reply indicating that she bought the interests of Musisi Peter and Ssemakula Francis in the suit land and thereafter bought the legal interest from Frank  
20 Serumu. According to the affidavit of the Appellant (then Respondent), she first purchased the Kibanja of Ssemakula Francis Muzungu and Musisi Peter Serugo since its Frank Serumu who told her that he had sold a Kibanja to the two. That after making payments to the Kibanja holders, the Appellant went ahead and  
25 purchased the legal title from Franklin Serumu who was the holder of the Certificate of Title registered on the title as the Administrator of the Estate of the Late Julius Bicwa. That Franklin Serumu transferred the legal title to the Appellant and she got registered on the suit land and stated that she did not know the Respondents (then Applicants)  
30 as lawful occupants on her land. The Appellant referred to the Respondents as unlawful occupants without any legal claim or right and indicated that the Respondents had never paid to her any Busulu.

The Appellant indicated that the Respondents wanted to get  
35 compensation from UNRA yet they had no interest in her land. On 25<sup>th</sup> November 2019, the Magistrate Grade One at Nakawa delivered his Ruling in favour of the Respondents and made the following orders;

1) Uganda National Roads Authority was directed to compensate the Respondents without the consent of the Appellant.

5 2) The Appellant was directed to pay for the costs of the Applications.

The Appellant being dissatisfied with the Ruling of His Worship Odwori Ponsiano Romans filed this Appeal.

10 At the hearing of this Appeal, the Appellant was represented by Nambejja Ruth of Signum Advocates while the Respondents were represented by Mututa Martin of T. Odeke & Co. Advocates.

The Memorandum of Appeal before this Honourable Court contains the following grounds: -

15 1) The Learned Trial Magistrate erred in law and fact when he held that the Respondents were rightful owners of the suit land.

2) The Learned Trial Magistrate erred in law and fact when he based his findings on the ownership of the suit land on evidence that was not translated in English - the official language of court.

20 3) The Learned Trial Magistrate erred in law and fact when he penalized the Appellant with costs yet the Respondents had abandoned their claims against her.

25 4) The Learned Trial Magistrate erred in law and fact when he failed to evaluate the Appellants evidence relating to ownership of the suit land.

30 5) The Learned Trial Magistrate erred in law and fact when he dispensed with the statutory requirements for the Appellant's consent to the Respondents before securing compensation from the Uganda National Roads Authority.

35 6) The Learned Trial Magistrate erred in law and fact when he made orders against Uganda National Roads Authority who were neither parties to the consolidated land Miscellaneous Causes No. 15 & 16 of 2019 nor represented at the hearing.

The Appellant prayed that the Appeal be allowed and the Ruling of the Trial Magistrate be set aside with costs to the Appellant.

Counsel for the Appellant filed written submissions, Counsel for the Respondent filed submissions in reply while Counsel for the Appellant filed submissions in rejoinder.

5 While replying to the Appellant's Counsel's submissions, Counsel for the Respondents raised a preliminary point of law by submitting that the Appellant's Appeal is incompetent, unsustainable and barred in law. Counsel for the Respondents submitted that an Appeal is a creative of statute and a right of Appeal is not inherent. Counsel for the Respondents contended that the law governing Appeals from  
10 decisions of Magistrates' Courts to the High Court does not grant the Appellant an automatic right of Appeal. Counsel cited the provisions of **Section 76** of the **Civil Procedure Act** and **Order 44 Rule 1** of the Civil Procedure Rules indicating circumstances under which one can appeal as of right to the High Court from the Magistrate's Courts  
15 from orders arising out of the rulings. Counsel submitted that the order passed by the trial court fell outside the realm of the Statutory provisions and the Appellant ought to have sought leave of the trial court before filing the Appeal. Counsel further cited Section 16 (1) of the Judicature Act which provides that the High Court has jurisdiction  
20 to hear and determine appeals which lie to it by any enactment from the decisions of the Magistrate's Courts and other Subordinate courts in exercise of their original appellate jurisdiction.

Counsel for the Respondent submitted that the High Court only entrains appeals that legally lie to it by virtue of Constitutional or  
25 statutory enactment and where there is no such provision under the Statute, the High Court cannot confer upon itself jurisdiction to entertain appeals. It was Counsel's argument that the instant appeal lies squarely outside the ambit of the legal requirements and he invited this court to strike out the Appeal with costs to the  
30 Respondents.

In reply to this preliminary point of law, Counsel for the Appellant submitted that there is no provision under statute that confers jurisdiction on this Honourable court to hear the appeal before hand but Order 44 Rule 1 qualifies Section 76(1) of the Civil Procedure Act  
35 with some exceptions. Counsel submitted that the exception is in Section 220 of the Magistrate's Courts Act which provides as follows:

*“..... an appeal shall lie from the decree and from orders of a Magistrate’s court presided over by a Chief Magistrate or a Magistrate Grade 1 in the exercise of its original civil jurisdiction to the High Court.”*

5 According to Counsel for the Appellant **Section 220** of the **Magistrate’s Courts Act** creates an automatic right of appeal to the High Court from the decrees and orders of the Magistrates.

It should be noted that the Applications 15 and 16 of 2016 which were later on consolidated in the Magistrate’s Court of Nakawa were  
10 filed under **Section 98** of the **Civil Procedure Act** and **Order 52 Rules 1 & 3** of the **Civil Procedure Rules**. Appeals from orders are governed by **Section 76** of the **Civil Procedure Act** and **Order 44** of the **Civil Procedure Rules**. **Section 76 (1)** of the **Civil Procedure Act** sets out the orders upon which the right of appeal is  
15 given by a statute and it spells out the orders upon which there is an automatic right of appeal. The orders which are spelt out in **Section 76 (1) (a - h)** are clear and the orders of the Magistrate in respect of Miscellaneous Applications 15 & 16 of 2019 do not fall under any of the categories outlined in Section 76 (1) of the Civil Procedure Act.

20 **Section 76 (1) (h)** of the Civil Procedure Act provides as follows:

*“An appeal shall lie from the following orders and except as otherwise expressly provided in this Act or by any law from the time being in force from no other orders \_\_\_\_ any order made  
25 under rules from which an appeal is expressly allowed by the rules.”*

**Section 76 (1)** of the **Civil Procedure Act** provides for a statutory right of appeal in matters relating to arbitration, compensation from arrest, attachment or injunction on insufficient grounds, and orders imposing a fine or directing the arrest or detention of any person  
30 except where the arrest or detention is in execution of a decree.”

The orders passed by the Magistrate Grade One, Nakawa do not fall within the provisions of Section 76 (1) of the Civil Procedure Act, hence the Appellant did not have an automatic right of appeal under the Civil Procedure Act.

Order 44 of the Civil Procedure Rules operationalizes the provisions of Section 76 (1) (h) of the Civil Procedure Act by detailing the orders from which there is a direct right of appeal not necessitating an application for leave to appeal. Order 44 Rule 1 sub-rule 1 spells out  
5 circumstances under which there is a right of appeal from specific orders without the requirement of seeking leave of court.

**Order 44 Rule 2** provides that *“an appeal under the Civil Procedure Rules shall not lie from any other order except with leave of court making the order or the court to which an appeal would lie if leave  
10 were given.”* This rule indicates that orders arising from **Order 52** upon which the consolidated Applications were filed have to be appealed from with leave of court. In the instant Appeal, leave of court was not obtained as required by **Order 44 Rule 1 sub-rule 2** of the Civil Procedure Rules. **Order 44 Rule 1 sub-rule 3** goes on  
15 to provide that applications for leave to appeal have to first be made in court making the order sought to be appealed from.

In the instant appeal, no application for leave to appeal was made in the Magistrate’s Court of Nakawa. The Appellant just filed a Memorandum of Appeal without leave of court. Failure to obtain  
20 leave to appeal makes this appeal incompetent and it cannot be heard since the provisions of **Section 76 (1)** of the **Civil Procedure Act** and **Order 44 Rule 1 sub-rule 2** have not been complied with.

Therefore, the Appeal is **dismissed** with costs to the Respondents.

25 I So Order.

Dated at Kampala this 22<sup>nd</sup> day of January 2021

30 **IMMACULATE BUSINGYE BYARUHANGA**  
**JUDGE**

