

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MPIGI  
CIVIL APPEAL NO. 004 OF 2020

*{Arising from chief Magistrate’s Court of Mpigi at Nsangi, Civil Suit No. 008 of  
2018}*

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**SSENGENDO ASSE:..... APPELLANT**

**VERSUS**

**SSEKYONDWA DAVID:.....RESPONDENT**

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**BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK, JUDGE**

**JUDGMENT**

This appeal arises out of a decision of Her Worship Pamela Muhwezi B. Grade  
15 One Magistrate, at Nsangi in land civil suit No. 008 of 2018.

The Appellant, **Ssengendo Asse**, who was a Plaintiff in the lower court lost against  
the Respondent **Sekyondwa David** and being dissatisfied with the decision  
appealed on

The following grounds :-

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- 1) The learned trial Magistrate erred in law and fact when he failed to  
evaluate the evidence on record thereby coming to a wrong decision.
  - 2) The trial Magistrate erred in law and fact when she held that the Plaintiff is  
the lawful owner of the suit land without recognizing that the appellant  
had a kibanja interest which he acquired from the late Suzanna Musoke.

- 3) The learned trial Magistrate erred in law and fact when she declared the Appellant a trespasser yet at locus she discovered that the appellant had sprayed the suit kibanja/land preparing to plant his crops on the suit land/kibanja.
- 5 4) That the learned trial Magistrate erred in law and fact when she believed the falsehoods in the plaintiff's /Respondent's evidence, ignored the appellant's genuine evidence, decided basing on mere assumptions that the suit land was bushy and that there was no sign of activity on the land such as preparing to plant crops on the suit land and came to a wrong finding and conclusion.
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**Representation:**

The Appellant was represented by Mr. Mukasa Patrick, while the Respondent was represented by Mr. Orone Solomon.

**Submission:**

- 15 Both counsel made oral submissions.

Before the matter would proceed ,Counsel for the Respondent raised a preliminary objection and submitted that Judgment was delivered on the 24<sup>th</sup> June, 2020, the record of appeal was filed on the 14<sup>th</sup> September 2020, after a period of 2 months when Judgment was passed. The record of appeal stated that

20 Judgment was passed on 3<sup>rd</sup> July, 2020. Counsel submitted that they were never served with a notice of appeal.

That service of Process on alignment is an essential requirement of an appeal and if it's not done the appeal is rendered null and void, unless leave of court for extension of time to serve is obtained. Counsel referred to **Order 49 Rule 2** and

25 **Order 5 Rule 1** of the Civil Procedure Rules respectively. And, prayed that the appeal be struck out.

Counsel for the Appellant in reply to the preliminary objection submitted that proceedings on Page 4 indicate that there was a letter drafted by M/s Sebanja and co. Advocates whereby they only received instructions last year in 2020.

5 Therefore, mistake of Counsel should not be visited onto an innocent litigant. That an appeal commences with a memorandum of appeal which was filed within the time frame and would not prejudice the other party. He prayed that the preliminary objection be overruled.

Counsel for the Respondent in rejoinder stated that the respondent was not  
10 served. That none service of court process makes the appeal null and void. Counsel added that this matter was handled by another advocate called Karungi for the Defendant; counsel for the appellant Mr. Mukasa is the 3rd Counsel, who has just come in on Appeal. Counsel having known that there was an illegality, being an officer of court, would have brought it to the attention of court but he  
15 chose to keep quiet and therefore when court finds out that there is an illegality, there is nothing else that court can do but to strike off the appeal. He reiterated his earlier prayer of striking out this appeal with costs.

Having carefully listened to the submissions of both Counsel, it is not in dispute that the request for the record of proceedings in the Lower Court Civil suit No. 8  
20 of 2018 in the case of **Ssekyondwa David v. Ssendendo Asse** was never served on the Respondent and the Counsel for the Appellant admits it but blames it on the former advocate Sebanja. When he was given instructions last year, he never sought leave of Court. Counsel for the Respondent raised a preliminary objection in that regard.

25 I agree with the ruling in **National Housing and Construction Co. Ltd v. Solome T.B Kyomukama Civil Application No.133 of 2009**, where the Justices of the Court of Appeal said that; the Court therefore has no option but to hold that the

letter applying for the record was never served and that therefore, the notice of appeal is null and void. I accordingly strike out the appeal with costs.

The fact that the record of appeal was served on the 10th September, 2020 does not cure the defect.

5 I so order.

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**OYUKO. ANTHONY OJOK**

**JUDGE**

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Dated, this **03<sup>rd</sup>** day of **May** 2021.

Ruling read and delivered in open court in the presence of both parties and their Lawyer.