

UGANDA / JUDGMENT

Ashaba v Lwanyaga (Revision Cause 33 of 2021) [2022]

UGHCCD 330 (28 October 2022)

[2022] UGHCCD 330

COURT

HC: Civil Division (Uganda)

BEFORE

Emmanuel Baguma, J

CASE / FILE NUMBER

Revision Cause 33 of 2021

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****(CIVIL DIVISION)****REVISION CAUSE NO. 33 OF 2021**

(Arising From Mengo Chief Magistrate Court Misc. Cause NO. 67 OF 2021)

ASHABA ERIAB ===== APPLICANT

VERSUS

FRANK LWANYAGA ===== RESPONDENT

BEFORE: HON. JUSTICE EMMANUEL BAGUMA RULING.**Background.**

The Respondent filed Misc. Cause No. 67 of 2021 in the Chief Magistrates Court of Mengo for distress for rent amounting to 40,500,000/= (Forty million Five hundred thousand shillings) against the Applicant. The Applicant did not file a reply despite being served but appeared on the day set for hearing the application and applied for time to file a reply. HW Matovu Hood a Magistrate Grade 1 dismissed his application and issued a special certificate for distress for rent against the Applicant. The applicant being dissatisfied with the orders of the trial court applied for revision in this court claiming that the trial Magistrate exercised jurisdiction not vested in

him by law and acted with material irregularities.

The Application.

This application is by Notice of motion under Article 28 of the Constitution of Uganda, section 83 and 98 of the Civil Procedure Act, Section 33 of the Judicature, Order 52 rr. 1, 2 & 3 of the Civil Procedure Rules seeking for orders that;

- a) The order by his Worship Matovu Hood granting Special Certificate for distress for rent under Misc. Cause No. 67 of 2021 against the applicant be revised and set aside.
- b) An order issues restraining the respondent or his agents by whatever name from dealing with the Applicant's premises in any way.
- c) The Applicant be awarded general damages for the unlawful distress
- d) The costs of this Application be provided for.

The application is supported by the affidavit of Ashaba Eriab the applicant in which he deposes inter alia that;

- 1. The Respondent filed an application at Mengo Chief Magistrates' Court for distress for rent against me seeking to recover rent arrears totaling to UGX. 40,500,000/=, (Forty million Five hundred thousand shillings) eviction and possession of the property situate at Mengo Kisenyi Block 12 Plot 385.
- 2. I was never accorded a fair hearing during the hearing and determination of the distress application thus causing a miscarriage of justice.
- 3. The Respondent is not in possession of the suit property as the same has never been legally passed unto him and he does not even know how much rent I pay, the applicant pays 1,000,000/= and not 1,500,000/= being claimed by the Respondent.
- 4. I am informed by my lawyers whose information I believe to be true that the trial Magistrate exceeded his pecuniary jurisdiction in entertaining the matter and awarding a certificate of distress where the monitory value exceeded UGX 20,000,000/=.
- 5. The learned trial Magistrate acted with material irregularity and injustice in allowing that application and granting of special certificate for distress without proof of existence of landlord/tenant relationship between me and the Respondent.
- 6. I have never been a tenant of the respondent herein, neither have I ever been a party to his alleged purchase, transfer and or court proceedings, I am just a business man carrying on business on the land of the late Lubega John Baptist in Kisenyi with whom I have a binding contractual tenancy agreement.
- 7. Neither the late Lubega John Baptist nor his former lawful attorney have ever introduced the Respondent as the new landlord or purchaser.

- 8. I have always and genuinely paid all my rent as it falls due to the rightful landlord and it was wrong for the trial magistrate to order me to pay rent I had already paid and the same amounted to double jeopardy.
- 9. It was only Muwonge Ioannis the late Lubega John Baptist's son who was introduced to me as his father's agent and trustee in charge of collecting rent from me.
- 10. I am not indebted to the respondent and there is no rent arrears accrued to the respondent as I have always paid all my rent dues up to today to Lubega John Baptist and his agent Muwonge Ioannis.
- 11. There is no tenants/landlord relationship that exists by any contract.
- 12. I am informed that there exists a land dispute between the late Lubega John Baptist and the respondent at High Court Land Division.

In a supplementary affidavit deponed by Muwonge Ioannis the administrator of the estate of the late Lubega John Baptist, he deponed that;

- 1. The suit premises are currently occupied by me and my siblings plus the monthly tenants including the Applicant.
- 2. The respondent has no rights/authority whatsoever to deal with the suit land as the same belongs to the estate of the late Lubega John Baptist.
- 3. There exists a tenancy agreement between the applicant and the late Lubega John Baptist entered into in 2017 and the same has never been revoked and the applicant has genuinely paid his rent as it falls due.
- 4. The respondent and the estate of the late Lubega have a land dispute at High Court of Kampala Land Division.
- 5. There is an injunction restraining the respondent from dealing with the suit premises till the hearing and determination of C. S No. 183 of 2015.
- 6. The consent judgment that the Respondent used to claim ownership of the suit land was cancelled for being obtained fraudulently.

In reply, the respondent opposed the application and deponed that;

- 1. The case does not deserve judicial consideration by way of revision.
- 2. The application is brought in bad faith, a wastage of court's time and lacks merit.
- 3. The Chief Magistrates' court of Mengo specifically a magistrate grade one has jurisdiction to adjudicate over a matter for distress for rent.
- 4. The Magistrate did not commit any illegality, irregularity or cause any miscarriage of justice whatsoever when he issued a certificate of distress for rent.

- 5. The applicant was given ample time to defend the suit at Mengo after being cautiously served with court process but he did not file his reply.
- 6. That the applicant has at all material time been aware of my ownership but stubbornly disputed my title.
- 7. The Applicant has no interest in the suit land besides being a tenant and as such cannot restrain me from dealing with my land as I wish.

Legal representation.

Mr. Mulumba Hannington represented the Applicant while Mr. Matovu Robert represented the Respondent.

At the hearing of this application, both Counsel agreed to file written submissions.

Submissions by counsel for the applicant.

Counsel for the applicant in his written submissions raise two issues for court's determination to the effect that;-

- *1. Whether the trial Magistrate grade 1 exercised jurisdiction not vested in him by law and in so doing occasioned an injustice to the applicant.*
- *2. Whether the trial court in exercising jurisdiction acted illegally or with material irregularity.*

ISSUE 1

Whether the trial Magistrate grade 1 exercised jurisdiction not vested in him by law and in so doing occasioned an injustice to the applicant.

Counsel for the Applicant submitted that the trial Magistrate entertained an application for distress for rent above its pecuniary jurisdiction.

Counsel referred to section 207 (1) (b) of the Magistrates Courts Act of 2007 which provides that;

"A magistrate grade I shall have jurisdiction where the value of the subject matter does not exceed twenty million shillings"

Counsel referred to the case of **Hectarage Partnership & another Vs Kesiime Poly HCCA No. 41 of 2015** where court held that;-

"A court cannot entertain a cause which it has no jurisdiction to adjudicate upon. It does not matter even where the defendant filed a defence without objecting to the pecuniary jurisdiction".*

Counsel further referred to the case of **Owners of Motor Vessel Lillian Vs Caltex Oil Kenya Limited [1989] KLR 1** which held that;

"A decision of a court without jurisdiction is futile"

He concluded that the Magistrate Grade had no jurisdiction to entertain an application of distress for rent to recover 40,500,000/= (Forty Millions Five Hundred Thousand Shillings).

ISSUE 2

Whether the trial court in exercising jurisdiction acted illegally or with material irregularity.

Counsel for the Applicant referred to Article 28 of the constitution which provides that;

"In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law".

Counsel for the Applicant then submitted that the trial Magistrate acted illegally in refusing to admit the Applicant's evidence, rejecting the Applicant's plea to file his affidavit in reply to the Respondent's claim and subsequently unfairly awarding the certificate of distress which amounted to an injustice against the Applicant. That matters of law cannot easily be comprehended by laymen more so semi illiterates like the applicant and the Applicant needed to engage a lawyer which opportunity was denied by the trial court.

Counsel further submitted that under the **Distress for rent (Bailiffs) Act Cap 76** and the rules made thereunder provides for distress for rent but the general principle of law requires existence of a landlord tenant relationship which did not exists in this case.

Counsel submitted that there is no landlord tenant relationship between the Applicant and Respondent and the Respondent has never been a landlord. The Applicant rather has a valid tenancy agreement with the late Lubega John Baptist and his administrator Muwonge Ioannis collects rent from him.

Counsel referred to the case of **Angopa Dennis & Anor Vs Moses Atwongere T/A Best Association Auctioneers MA No. 2772 of 2013** where it was held that;

"The law enjoins this Court to investigate any allegation of illegality whenever it is brought to its attention; and in doing so, it must disregard all issues of pleadings.

The right to levy for distress for rent only arises where there is a landlord/tenant relationship between the parties; and there is default in the payment of rent by the tenant".

Counsel Referred to the case of **Makula International Ltd Vs His Eminence Cardinal Nsubuga & another [1982] HCB 11** where it was held that;

"A court of law cannot sanction what is illegal, and illegality once brought to the attention of the court overrides all questions of pleading, including admission made thereon".

Submissions by Counsel for the Respondent.

Counsel for the Respondent submitted that the trial Magistrate grade one had jurisdiction to hear an application for distress for rent of 40,500,000/=.

Counsel referred to section 1 and 2 of the distress for rent Act

Section 1(b)

"certifying officer" means a chief magistrate and a magistrate grade I.

Section 2

No person, other than a landlord in person, his or her attorney or the legal owner of a reversion, shall act as [bailiff](<https://ulii.org/akn/ug/act/ord/1933/8/eng%402000-12-31#defn-term-bailiff>) to levy any distress for rent unless he or she shall be authorised to act as [bailiff](<https://ulii.org/akn/ug/act/ord/1933/8/eng%402000-12-31#defn-term-bailiff>) by a certificate in writing under the hand of a [certifying officer,](https://ulii.org/akn/ug/act/ord/1933/8/eng%402000-12-31#defn-term-certifying_officer) and such certificate may be general or apply to a particular distress or distresses.

Counsel referred to the case of **Mabirizi Kiwanuka & Anor Vs Owere Franco & 3 Ors Miscellaneous Application 2673 of 2014** where court held that;

"In the light of the afore stated provision of the law regarding the issuance of a certificate of levy of distress for rent, the registrar execution had no authority to do so his action was illegal...."

"..... It is unmistakably clear, from the provision of the law cited above, that the jurisdiction to issue a certificate for the levying of distress, and the appointment of the bailiff in that regard, vests solely in a Magistrate's Court; and this mandate is exclusively exercisable either by a Chief Magistrate or by a Magistrate Grade 1. Accordingly, in issuing the certificate to levy distress for rent, the Registrar Execution acted without jurisdiction; for which his act was illegal, and cannot be allowed to stand".

Counsel for the applicant submitted that this application is not fit for revision. He referred to the case of **Nyakiyumbu Growers Co-operative Society Ltd Vs Tembo K. Salongo, Revision Cause No. 01 of 2017** where it was held that;

"*a court is said to exercise Jurisdiction illegally or with material irregularity when such a court is seized with jurisdiction but exercises it wrongly through some procedural or evidential defect"*

"For a matter to qualify for revision, it must be apparent or show that it involves a non-exercise or irregular exercise of jurisdiction. Revision does not concern itself with conclusions of law or fact in which the question of jurisdiction is not involved. Dissatisfaction with a decision by a court with jurisdiction in favour of the other party cannot be a matter of revision. ""

Counsel submitted that there is no sustainable question in the Applicant's instant case so as to warrant a Revision by this court.

In rejoinder, Counsel for the applicant reiterated his submissions in chief.

Analysis of court.

ISSUE 1

Whether the trial Magistrate grade 1 exercised jurisdiction not vested in him by law and in so doing occasioned an injustice to the applicant.

Section 83 of the CPA empowers the High Court to revise decisions of Magistrates' Courts where the Magistrate's Court appears to;

(a) exercised a jurisdiction not vested in it in law;

(b) Failed to exercise a jurisdiction so vested; or

(c) Acted in the exercise of its jurisdiction illegally or with material irregularity or injustice.

Jurisdiction of court is a creature of statute and it is expressly conferred by law. If proceedings are conducted by a court without jurisdiction, they are a *nullity*. See: *Desai vs. Warsaw (1967) EA 351*.

Any award or judgment and or orders arising from such proceedings of a court acting without jurisdiction are also a nullity. Most importantly, jurisdictional issues can be raised at any time or stage and they override all other matters in the proceedings, including pleadings and admissions thereon.

Section 1 of the Distress for Rent Act, provides as follows: –

In this Act –

'Certifying officer' means a Chief Magistrate or a Magistrate Grade 1.

In the case of **Mabirizi Kiwanuka & Anor Vs Owere Franco & 3 Ors Miscellaneous Application 2673 of 2014** court held that;

" jurisdiction is strictly a creature of a specific law; and as such, neither can it be assumed nor be usurped by any Court..... It is unmistakably clear, from the provision of the law cited above, that the jurisdiction to issue a certificate for the levying of distress, and the appointment of the bailiff in that regard, vests solely in a Magistrate's Court; and this mandate is exclusively exercisable either by a Chief Magistrate or by a Magistrate Grade 1. Accordingly, in issuing the certificate to levy distress for rent, the Registrar Execution acted without jurisdiction; for which his act was illegal, and cannot be allowed to stand".

In this instant case, the distress order was issued by a Magistrate Grade One HW Matovu Hood who in this case was a certifying officer. In view of the above therefore, the trial Magistrate Grade One had jurisdiction to hear an application for distress for rent of 40,500,000/= (Forty Million Five hundred thousand shillings).

Counsel for the applicant tried to import section 207 of the Magistrate Court Act into distress for rent which has a specific Act governing distress for rent matters.

I accordingly find that the trial Magistrate had jurisdiction to handle a distress for rent matter.

Issue 1 fails

ISSUE 2

Whether the trial court in exercising jurisdiction acted illegally or with material irregularity.

In the case of **Angopa Dennis & Anor Vs Moses Atwongere T/A Best Association Auctioneers HCMA No. 2772 of 2013** court held that;

"*The right to levy for distress for rent only arises where there is a landlord/tenant relationship between the parties; and there is default in the payment of rent by the tenant....."

Court further stated that;

"*..... Court must always guard against issuing any certificate for levy of distress for rent where there is no clear evidence adduced before it, of a running tenancy between the landlord and a tenant; and further, there is no clear evidence of default in the payment of rent by the tenant....."

In the case before me, according to paragraph 20 of the supplementary affidavit of Muwonge Ionnis stated that the consent judgment the respondent used as proof of ownership when he filed Misc. Cause No. 67 of 2021 for distress for rent had been set aside by High Court Land Division and an order for stay of any dealings on the suit property until Civil Suit No. 183 of 2015 is determined on merit had been issued.

I had an opportunity to read the ruling in Misc. Application No. 1706 of 2020 and indeed Lady Justice Nkonge Rugadya at page 12 paragraph 35 set aside the consent and stayed all dealings on the suit land until the suit is finally heard and determined on its merit.

It is my finding that by the time the Respondent filed Misc. Cause No. 67 of 2021 for distress for rent and obtained the order on 30th April 2021, it was within his knowledge that there was a pending application No. 1706 of 2020 which was under hearing at land division and it was yet to determine the issue of ownership but he rushed to pre-empt the application by distressing and trying to evict the applicant to take possession of the suit property which was under a dispute.

It should be noted that for distress for rent to issue the following conditions must be proved;-

- **1. That the applicant is the owner of the premises (landlord).**
- **2. That there is a landlord tenancy relationship between the applicant and the alleged**

tenant.

- **3. That the specified sum of rent due is outstanding in rent arrears, in other words that the respondent owes rent money to the applicant.**

Where any of the above is missing, a distress for rent order cannot be issued.

In the case before me, the issue of ownership of the suit premises was still under litigation between the Respondent and the estate of the late Lubega. The Respondent did not prove existence of land lord tenant relationship with the applicant by the time the distress application was filed.

I want to associate myself with the findings in the case of Angopa Dennis **supra** that; *"..... Court must always guard against issuing any certificate for levy of distress for rent where there is no clear evidence adduced before it, of a running tenancy between the landlord and a tenant; and further, there is no clear evidence of default in the payment of rent by the tenant....."*

In this instant case, the applicant filed the distress application well aware of the pendency of Misc. Application No. 1706 of 2020 for setting aside the consent order that gave him right over the suit premises. It was wrong for the trial court to grant a certificate of distress for rent when there was a pending dispute over ownership of the suit premises and there was no clear evidence adduced before court showing that there was a running tenancy agreement between the Applicant and the Respondent.

In view of the above, the special certificate for distress for rent issued on 30th April 2021 was null and void.

Issue No. 2 succeeds.

Conclusion.

In the final result, this application succeeds on ground 2 and it disposes off this application with the following orders;

- 1. The ruling and orders of special certificate for distress for rent issued by the trial Magistrate in Misc. Cause No. 67 of 2021 are hereby set aside.
- 2. Basing on the nature and circumstances of this case, I will make no order as to costs.

Dated, signed, sealed and delivered by email at Kampala this **28th** day of **October 2022**

.....

Emmanuel Baguma

Judge

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