

UGANDA / JUDGMENT

Awati v The Microfinance Support Centre Limited (Miscellaneous Application 7 of 2015) [2023] UGHC 346 (21 February 2023)

[2023] UGHC 346

COURT
High Court of Uganda

BEFORE
Ajiji, J

CASE / FILE NUMBER
Miscellaneous Application 7 of 2015

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT LIRA MISC.
APPLICATION NO.007 OF 2015 IARISING FROM CIVIL SUIT NO.0076 OF 2014] AWATI
SANTA.....

VERSUS

THE MICROFINANCE SUPPORT CENTRE LTD..... RESPONDENT

RULING

BEFORE: HON. JUSTICE ALEX MACKAY AJIJI

This application is arising out of a suit filed that touches on sections 33, 34, 35 and 36(1) of the Mortgage Act of 2009.

The applicant is seeking to implore this Honourable court in Civil Suit No.0076 of 2014 to review the mortgage by declaring the same void; that the recovery process under the mortgage is declared void; under valuing of the suit property, special and general damages; and costs of the suit beyond the Ugsh.20,000,000 million pecuniary jurisdiction of Grade 1 magistrate's court.

The applicant/plaintiff's affidavit in support and rejoinder brings out the fact that the property the subject matter in Civil Suit No.076 of 2014 in the lower court is specifically used to provide for family income to cater for school fees of their children. She was shocked to learn that the property was the subject of a mortgage under the purported spousal consent from an imposter one Akoli Christine Otim, which is an absolute fraud or illegality that this Court has powers to review during the trial.

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In reply counsel in their submissions Counsel for the applicant and Respondent in disagreement with each other framed independent issues different which are summed up as below respectively:

- 1. Whether this court has powers to call, withdraw any suit or proceeding pending in the Magistrate Grade 1 Court to try and dispose of the suit or proceeding of the lower court.
- 2. *Whether or not the Applicant has shown sufficient reason/cause for the grant of this application.*

I have examined the record and also internalised the arguments by the lawyers for each party.

However I will personally frame the following issues for determination

- 1. Whether the Magistrate Grade 1 has the jurisdiction to try the case
- 2. What are the remedies available in the circumstances?

I now resolve the issues as here below

<u>Issue 1: Whether the Magistrate Grade 1 has the jurisdiction to try the case.</u>

In law no court or person assumes jurisdiction. Jurisdiction is a creation of statute.

In Uganda, all courts derive their power from the Constitution under Article 126. The Constitution provides for the establishment of the Courts of Judicature under Article 129. Judicial Power is exercised by the courts which consist of;

- a) The Supreme Court of Uganda
- b) The Court of Appeal.
- c) The High Court of Uganda.
- d) Such subordinate courts

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As Parliament may by law establish including Qhadis courts, marriage, divorce, inheritance of property and guardianship as may be prescribed by Parliament. (See Article 129 of the Constitution).

Under the subordinate courts are the following hierarchy of courts.

- a) Chief Magistrate
- b) Magistrate Grade I
- c) Magistrate Grade II
- d) Magistrate Grade III

In spite of all courts above, jurisdiction is specifically granted to each court by law. The jurisdiction for instance of the High Court is unlimited in civil matters except Constitutional matters. However the Magistrates Courts Act makes provision for the nature of civil suits that are to be instituted in respect of a subject matter in accordance with the grade of a Magistrate.

In selecting a court with power over the type of litigation, regard must be made to the pecuniary limitation of such courts and the enabling law which empowers such court to hear such a case (see Section 4 and 12 of the Civil Procedure Act). The litigant must before choosing where to file a matter be informed by the subject matter of dispute. The question to consider before choosing the court is;

- What is the pecuniary value of the subject matter? \$i)\$
- ii) Which court is within the local limits where the property is situate?

The question which arises now is, if the Grade 1 Magistrate's court, sitting as a first court of instance can handle a matter beyond its pecuniary jurisdiction.

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Under paragraph 4 of the affidavit in support of application, the applicant stated that the value of the suit land is at 335,000,000 (three hundred thirty five Million Uganda

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shillings) and there is a copy of the evaluation report on record marked as annexure C on the affidavit which clearly collaborates the averments of the applicant.

Further paragraph 3 the applicant contends that the said land was illegally mortgaged by her husband Otim Ben without her consent, power of attorney and without independent legal advice and she attached a copy of her marriage certificate dated 15th/08/1995 vide No.00626.

She further states that it was an error of counsel C/o Ayena Odong & Co. Advocates and upon change of Advocates to Ms Oyugi Onono & Co. Advocates, they realised the mistake on jurisdiction and filed in this application.

It is trite law that if a court has no jurisdiction its decision is a nullity. Jurisdiction cannot be conferred on court by consent of the parties. A court cannot give itself jurisdiction in a case otherwise outside its jurisdiction on the ground that it would be for the convenience of the parties and witnesses. Therefore in case the provisions of Section 208 of the MCA which require; "a suit to be instituted in the lower grade of court competent to try and determine it." Combined with section 4 and 12 of the CPA, requiring suits to follow subject matter in terms of pecuniary and territorial jurisdiction all dictated the fact that the Chief Magistrates Courts were the wrong courts for the trial. Therefore, I find this issue in affirmative on the side of the applicant and this first issue succeeds.

Issue 2. What are the remedies available in the circumstances?

According to Section 207(b), Magistrates Courts Act Cap 16, as amended, a Grade One Magistrate has jurisdiction where the value of the subject matter does not exceed Ugshs.20,000,000/-. I have already noted hereinabove that the subject matter of the suit was Ugshs.335,000,000/-. In her affidavit under paragraph 3 of the application, the applicant indicated that the value of the subject matter was Ugshs. 335,000,000/-.

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Further, there is also no proof to confirm the Respondent's allegation in the affidavit in reply. Ultimately, I shall stick at the value of Ugshs. 335,000,000/- as indicated on the report attached from the annextures on the application. What is clear now is that this value is beyond the pecuniary jurisdiction of the trial Magistrate. He therefore had no jurisdiction to hear the dispute.

What then should she have done?

According to the law, the trial Magistrate ought to have dismissed the suit because a suit filed in a Court without jurisdiction is a nullity. However the applicant has seen the error and then filed for the transferring the suit to this Court. According to her, a suit filed in a Court without jurisdiction can be transferred since there is nothing to be determined by the trial court. Much as I agree with the Applicant's Counsel on principle, I see the present case could face such a consequence.

It is clear that the main suit was filed in the Chief Magistrates' Court of Lira at Lira. According to Section 207(1)(a) Magistrates Courts Act Cap 16, as amended, a Grade 1 Magistrate has no jurisdiction to handle a dispute of a subject matter exceeding Ugshs.20,000,000/- (twenty million shillings).

I have already noted that the subject matter in this case is Ugshs. 335,000,000/- at the time of filing. It can then be said that the suit was filed in a Court with no relevant jurisdiction, and therefore invalid. As such, it cannot be heard by a Grade one Magistrate at that Court.

According to *Uganda Civil Justice Bench Book – 1st Edn, Jan. 2016 – page 46, "If* Court finds that it has no jurisdiction to handle the matter, the proceedings should be halted and transferred to the relevant Court where possible."

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Consequently, the option of transferring the suit to a Court presided over by a High Court is available. Ultimately, I find that this application succeeds. The following orders are hereby given;

That the case file be transferred to the High Court of Lira Holden at Lira for hearing before the High Court.

That each party bears its own costs.

Dated and delivered at Lira, on this

ALEX MACKAY AJIJI**JUDGE**

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Prepared on 13 October 2026 · Esheria