

UGANDA / JUDGMENT

Bikiriza v Batenda (Revision Cause 25 of 2023) [2024] UGHCLD 77 (18 March 2024)

[2024] UGHCLD 77

COURT

HC: Land Division (Uganda)

BEFORE

Rugadya, J

CASE / FILE NUMBER

Revision Cause 25 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

REVISION CAUSE NO.0025 OF 2023

(Arising from Kajjansi Chief Magistrates Court Civil Suit No.0027 of $\$2021$)

BIKIRIZA AUGUSTINE:::

VERSUS

BATENDA JAMES:::

Before: Lady Justice Alexandra Nkonge Rugadya. 10

Ruling.

This application brought by motion under **Article 28 of the Constitution** of the Republic of Uganda, Sections 17 (1) & 33 of the Judicature Act Cap. 13, Sections 83 & 98 of the Civil Procedure Act cap. 71, and Order 52 rule 1 of the Civil Procedure Rules SI 71-1 seeks orders that;

- 1. This court does call for and examines the record of proceedings in the Chief Magistrates of Kajansi at Kajansi Land Civil Suit No.0027 of 2021 for purposes of satisfying itself as to:

- 20 a. The correctness, legality and propriety of the order of the presiding magistrate Grade I H/W Birungi Phionoh proceeding to entertain and deliver judgment in Land Civil Suit No 027 Of 2021 without the requisite vested jurisdiction.
- b. The regularity of the entire proceedings and the manner in which the entire proceedings have been handled.
- 2. Chief Magistrates Court of Kajjansi Holden at Kajjansi land Civil Suit No. 022 of 2021 be revised and the judgement in the same

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dellaered on the 73th ddg oJ Jttlq 2023 bg Hfil Blntngt Phlonoh learned Maglstrate Grdde I be declared a nulllty.

3. Costs be provlded. Jor.

5 Grounds o.f the a.pplication,

The grounds upon which this application is premised are contained in the affrdavit in support, deponed by Mr. Bikiriza Augustin, the applicant.

Briefly, the parties hereto were parties to Ctull Sult No. 027 o;f 2027 w};,ic};, was instituted by the respondent herein at the Chief Magistrates Court of Kajjansi in Kajjansi seeking, among others orders that a declaration that he was the iawful owner of the suit property, and that the applicant was a trespasser on the suit land, vacant possession, an order to vacate the caveat lodged on the certificatc of titlc, a permanent injunction against the applicant, eviction orders, general damagcs, intcrest as well as costs of the suit. 10

- 15 That while court presided over by Her Worship Birungi Phlonah issued a default judgment, the applicant only got to know of the suit when the LC1 chairperson brought him a letter for a locus visit on the suit land but he had never been served with court process.
- 20 That the applicant then frled an application to set aside the judgement and subsequent orders, which appiication was granted, and was allowed to file a written statement of defence while he was also ordered to pay costs of the application to the rcspondent.

25 That the applicant in his writtcn statement of dcfncnc, contested the jurisdiction of thc trial court to try thc matter on grounds that the suit property was about Ug.x 56,000,000/= (Uganda Shilltngs fifr.y-slx mllllon onl3r,f thus the trial magistratc did not have the pecuni.ary jurisdiction to entertain the suit.

That the applicant who on account of his indigent character was unable to pay costs of the application of the application to set aside the ex-pdrte judgment was arrested and committed to civil prison.

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Because his plight became more onerous, the applicant was unable to meet the costs of his lawyers to visit him in prison so as to take further instructions to handle the matter which resulted in court proceeding ex-parte, and further entertaining counsel for the respondent's oral application to strike out the applicant's written statement of defence which application was granted, and the defence was struck out.

That although the trial magistrate in her judgment dated 13th July 2023 noted that she did not have jurisdiction in so far as the prayers for trespass, vacant possession and vacating the caveat on the suit land were concerned, she irregularly proceeded to award general damages arising from the same suit and also went ahead to award interest as well as costs in spite of the fact that the facts upon which the award of damages, interest, and costs was based, are the same as the facts from which the respondent's claim in trespass, the order to vacate the caveat on the suit property as well as eviction orders was based.

That while the applicant has a proprietary interest in the suit property as well as a constitutional right to protection from deprivation of property, he was not granted the opportunity to defend his suit before a court of competent jurisdiction yet he has a constitutional, and natural justice rights to be heard before any decision affecting his property is made.

Thus the determination on pecuniary jurisdiction was a violation of the applicant's rights, and that the omission to subject all substance in the suit land in Civil Suit No. 0027 of 2021 was also a violation of the applicant's constitutionally guaranteed rights to a fair hearing and protection of property.

- Further, that the decision to strike out the applicant's written statement of defence and order for the prompt payment of costs, as well as the subsequent remand of the applicant to civil prison was in itself a violation of his right to a fair hearing and that it is the applicant's contention that evidence was led in a court lacking jurisdiction and he was condemned on the basis thereof 25
- thus the manner in which the hearing and determination of Civil Suit No. 30

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0027 of 2022 proceeded offends the civil procedures as well as the applicant's constitutional rights.

That because, the applicant's right to property has been diminished by a court that declined to declare him a trespasser, he has been gravely prejudiced as

5 the trial process in Civil Suit No. 0027 of 2022 occasioned a miscarriage of justice to the applicant who not only stands to lose his property but also risks committal to civil prison on grounds of failure to pay general damages, interests, as well as costs as decreed by court hence it is just, and equitable that this court calls for, and examines the record of the trial court so as to

satisfy itself of the correctness, legality, and of the orders made therein. 10

Respondent's reply.

The respondent opposed the application through his affidavit in reply wherein he stated inter alia that he intended to raise a preliminary objection for the

- application to be dismissed and that while the applicant was through his lawyers m/s Barenzi & Co. Advocates directed to file a written statement of defence on 3rd May, 2022, the applicant and his counsel instead filed the written statement of defence and counterclaim on 19th May 2022 and the same was never served on either the respondent or their counsel. 15
- That when the matter came up for hearing on 14th July, 2022, the respondent's counsel informed court that he had not yet been served with court process and that when it came up again for hearing on 1st September 2022, counsel for the applicant informed court that he would serve the defence on the respondent's lawyers, and the matter was adjourned to 22nd 20
- November 2022. 25

But when the matter next came up for hearing on 19th January 2023, neither the applicant nor his counsel entered appearance, and court went ahead to grant the applicant another chance to serve the defence on the respondent, which he did not comply with.

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That the respondent's lawyers then prayed that the applicant's defence be struck off the record but court declined to grant the said prayer, and ordered the applicant to serve the defence and adjourned the matter to 13th April 2023, and that when the matter next came up for hearing on 18th May 2023, the written statement of defence was struck off the record on grounds that the same had not been served on the respondent.

That Miscellaneous Application No. 27 of 2022 seeking to set aside the ex parte judgment and allow the applicant to file a written statement of defence did not at any one time contest the trial court's jurisdiction.

The applicant who had before being committed to civil prison instructed his lawyers who never put it on record that they no longer had jurisdiction to represent the applicant in court. 10

In addition, that even after the judgement in the lower court was delivered, the respondent through his lawyers continued effecting service on the

- applicant through his lawyers who received the bill of costs, letter for pretaxation hearing, taxation hearing notice, application for execution as well as the notice to show cause why execution should not issue, but they never at any one time intimated to this court that they no longer had instructions to represent the applicant in the matter and t1.at according to the record from 15
- the lower court, the trial court only pronounced itself on the ownership of the suit land, vacant possession thereof, general damages, interest and costs of the suit, and the judgement of court touching the same has never been appealed against. 20

25 That because the suit property falls well within the pecuniary jurisdiction of the trial court, all matter that did not fall within 11:re court's jurisdiction were disregarded in the final judgment, and that thcre is also no evidence whatsoever even in the intended written statement of defence showing that the estimated value of the suit land was beyond the jurisdiction of the trial court.

That no illegality or unfairness was caused to the detriment of the applicant herein by the decision of the trial court, ald that the process of execution has 30

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since commenced as the applicant is already in civil prison for non-palznt of costs, and that a noticc of vacant posscssion has since been served on t1le applicant who wants to sneak this application contesting the jurisdiction of the trial court yet the same ought to have been put before the trial court flrst.

From t1le record, the applicant did not file an affidavit in rejoinder to the averments set out in the respondcnt's affidavit in reply. 5

Representation,

The applicant was represented by m,/s Barenzi & Co. Adaocates while the respondent was represented by m/s Lrtzlge, Lubega, Kanruma & Co.

10 Adaocates. Both counsel filed written submissions in support of their respective clients' cases.

Consid.eratlon bu court.

I have carefully perused the evidence, and read the submissions of both counsel, ttle details of which are on court record, and which I have taken into consideration in determining whether or not this application warrants the grant of the prayers sought.

- Section 83 of the Clvil Procedure Act provides that the High Court may call for the record of any case which has been determined by any subordinate court and may revise the case if that court appears to have done any or one
- 20 of three things;
- a.) exercised. a jurisdiction not uested. in it bg lana;

- b) Jailed to exercise a jurisdiction vested in that court;
- c) acted in the exercise of its jurisdiction illegally or with material irregularity or injustice,
- 25 The trial magistrate in her judgment dated 13th July 2023 stated at page 2 stated that:

'As earlier noted, this court had issued Judgment to the plaintiff's set aside in Miscellaneous Application No. 027 of 2022. The plaintiff prayed for the following reliefs:

1. To set aside the judgment of the trial magistrate dated 13th July 2023.

Declaratory orders that :

- a) The plaintiff was the lawful owner of the suit land;
- b) The plaintiff is granted vacant possession
- c) The defendant is a trespasser on the suit land;
- d) An order to award the costs on the certificate of title, eviction orders, general damages, and interest, as well as costs of the suit.'

She went on to state that

'The said prayers are reinstated. Since for the plaintiff's prayers grounded in trespass, an order to award the costs as well as eviction orders,'

At page 3, paragraph 2, the learned trial Magistrate stated that;

'Referring to the question of trespass, I shall refrain from pronouncing myself thereon. This court lacks jurisdiction to hear matters of trespass; see S. 20(1) (a). To purport to adjudicate a question of trespass would be to act illegally,.... Consequently, I am unable to issue orders of eviction of the Defendant, which are a natural consequence of declaring someone a trespasser.

The question therefore for this court to determine is whether or not the respondent's claim, and subsequent award of damages relate to trespass. Simply put, trespass refers to the unauthorized entry onto someone's land. 20

It is apparent from the record that the respondent's claim against the applicant herein in the lower court was not merely a trespass claim. It was about the determination of competing rights to the ownership of the suit land

and the reliefs sought therein to wit eviction, vacant possession, and general damages as well as interest further point to the monetary aspect of what was at stake. 25

This is also evident from the trial magistrate's decision to reinstate the declaratory orders of ownership earlier awarded.

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The Court of Appeal in the case of **Kiwanuka Fredrick Kakumutwe versus Kibirge Edward CACA** 272 OF 2017 observed that the tort of trespass to land deals squarely with possessory rights to land, and an action for trespass falls squarely within the scope of actions for recovery for land.

It is settled law that the jurisdiction of court should not only be determined $\$ \{S\}$ from the cause of action, or value of the subject matter but also from the remedies sought from court as well. *Opedo Patrick & others versus Kiconco Medard* Civil Revision No. 33 of 2018.

Section 11 (2) of the Civil Procedure Act provides that;

10 Whenever for the purposes of jurisdiction or court fees it is necessary to estimate the value of the subject matter of a suit capable of a money valuation, the plaintiff shall, in the plaint, subject to any rules of court, fix the amount at which he or she values the subject matter of the suit; but if the court thinks the relief sought is wrongly valued, the court shall fix the value and 15 return the plaint for amendment.

The trial court was therefore under the duty to establish the value of the subject matter and whether or not she had jurisdiction to adjudicate over the same.

The court was justified in its decision to give the applicant a chance to have 20 the matters heard **interpartes**. It is also noted however that the applicant failed to serve his defence within time.

Indeed if he had justifiable reasons for his failure to do so, the law is clear. He ought to have applied for leave to file the defence/counterclaim out of time.

The court in its judgment clearly took into consideration the issue of 25 jurisdiction; and upon finding that it had no jurisdiction over some aspects of the dispute decided to consider only a few areas; and even proceeded to grant orders which were now pending execution.

That is where this court finds a problem, which merits the orders of revision. The proper thing would have been for the court to refer the entire file to the 30

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Chief Magistrate who by virtue of section 20Z of the Magistrates' Court's Act, has unlimited jurisdiction to handle disputes relating to trespass.

Thus when the trial court made declaratory orders that the respondent/ plaintiff was the lawful owner of the suit land, granting him an order of vacant possession/ eviction; and declaring the defendant a trespasser thereof, in effect it dealt with and made conclusions on matters it had cautioned itself against in respect of its competence/jurisdiction to deal with the entire dispute.

It is the opinion of this court that when a trial court is faced with such dilemma, where it feels that it has no jurisdiction to hear some aspects of the dispute and/or grant part of the prayers sought; or that some of the reliefs sought would be dealt with by a court ranking higher in jurisdiction, then the proper thing would be for the trial court to hand over the file to that court.

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What the trial court did in this instance was to deal with some aspects and omit the rest, without even drawing the attention of the Chief Magistrate to the question of competence to handle the entire dispute. 15

As it also turned out, the judgment itself did not bar the respondents from taking steps to have the orders executed when part of the dispute remained unresolved. The orders as crafted and granted as a matter of fact, rendered the determination of the pending issues on trespass nugatory.

The dangers also lie in having two separate courts granting varying orders; tying the hands of the more competent court to which the matter is later referred; or making it appear to preside over the same dispute, more or less as an appellate court.

In the worst case scenario which in the interest of justice ought to be avoided, having separate orders may entail separate executions of those orders, over the matters arising out of the same dispute. 25

Decision of court:

In the premises, I tend to agree that section 83 of the CPA is applicable in the present circumstances. 30

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The main suit is therefore referred to the Chief Magistrate for proper management.

It also lies within the discretion of this court to order a stay of the pending execution of the orders of the trial court, until all pending matters are fully

and finally resolved by the court presided over by the Chief Magistrate. S

Each party to bear its own costs.

Abboy.

Alexandra Nkonge Rugadya.

Judge 10

18th March, 2024.

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