

UGANDA / JUDGMENT

Byarugaba v Kagweri (Revision Cause 21 of 2023) [2024] UGHC 267 (29 April 2024)

[2024] UGHC 267

COURT

High Court of Uganda

BEFORE

Mugabo, J

CASE / FILE NUMBER

Revision Cause 21 of 2023

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT FORTPORTAL
HCT-01-CV-CR-021 OF 2023 (ARISING FROM MISC. APPLICATION NO. 028 OF 2022)
(ALL ARISING FROM KJJO-21-CV-CS-045 OF 2022)

RONALD BYARUGABA :::::::::::::::::::::::::::::::::::APPLICANT

VERSUS KAGWERI ALLAN :::::::::::::::::::::::::::::::::::RESPONDENT

BEFORE: HON. JUSTICE VINCENT EMMY MUGABO

RULING

Introduction

This ruling arises out of a revision cause registered by this court vide HCT-01-CV-CR-021 of 2023 upon a complaint by counsel for the respondent, *M/S Ngamije Law Consultants & Advocates*, lodged in this court on 28th of August 2023.

Background

The background to this Revision Cause is that the respondent herein instituted a summary suit against the applicant in the Chief Magistrate's Court of Kyenjojo at Kyenjojo, vide Civil Suit No. 45 of 2022, seeking the recovery of UGX. 14,766,000/= as money advanced to the applicant for a joint business venture.

Upon being served with the summons, the applicant sought leave to appear and defend vide Misc. Application No. 28 of 2022. The respondent also filed an affidavit in reply together with written submissions.

On the 6th of June 2022 when both matters came up for hearing, the trial chief magistrate dismissed both matters for lack of prosecution under Order 17 Rule 5 of the Civil Procedure Rules. Dissatisfied with the decision of the trial chief magistrate, the applicant complained to this court, leading to the registration of a civil revision cause so that the parties could be heard before reaching any decision.

Consideration of Court

Under section 83 of the Civil Procedure Act, this court is clothed with powers to call for any record of any case which has been determined by any magistrate's court and make any orders as it thinks fit.

Section 83 of the Civil Procedure Act provides thus:

"*83 Revision*

The high court may call for the record of any case which has been determined under this act by any Magistrates Court, and if that court appears to have –

- a. *exercised the jurisdiction not vested in it in law;*
- b. *failed to exercise the jurisdiction so vested; or*
- c. *acted in exercise of its jurisdiction illegally or with material irregularity or injustice, the High Court may*

revise the case and make such order in it as it thinks fit:

The term revision is also defined in **Black's Law Dictionary, 8 th edition, page 1346** as **"a re-examination or careful review for correction or improvement."***

From the wording of section 83 of the Civil Procedure Act, it is apparent that revision applies to jurisdiction alone, the irregular exercise or non-exercise of it, or illegal assumption of it. The section is not directed against the conclusions of law or fact in which the question of jurisdiction is not involved.

Where a court has jurisdiction to determine a question and it determines that question, it cannot be said that it has acted illegally or with material irregularity because it has come to an erroneous decision on a question of fact or even law, which error would then qualify to be rectified on appeal. (*See: Matemba versus Yamulinga [1968] EA 643, 645*.)

The duty of the court in that regard would be to revise the case and make such order as it deems fit. Therefore, the subject of reexamination by the High Court sitting in its revision jurisdiction would be the lower court record for purposes of ascertaining whether or not such court did perpetuate the misnomers spelt out in subsections (a), (b) and (c) of section 83 of the Civil Procedure Act. This court revises the record of the lower court to satisfy itself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of

any proceedings.

In the instant case, the complaint is that the trial cheif magistrate acted in the exercise of its jurisdiction illegally or with material irregularity when she declined to make a ruling in Misc. Application No. 28 of 2022 and instead decided to dismiss both matters for want of prosecution.

The trial court record shows that the applicant herein applied for leave to appear and defend together with the submissions on the 24th of November 2022 while the respondent filed his affidavit in the reply together with written submissions on the 11th of January 2023.

The record further shows that both the application and the main suit were fixed for hearing on 13th January 2023, 22nd February 2023, and the 6th of June 2023. On all the occasions, the parties did not appear in court. The trial chief magistrate, in exercising her jurisdiction, dismissed both the application and the main suit for want of prosecution under Order 17 Rule 5 of the Civil Procedure Rules.

Order 17 Rule 5 of the Civil Procedure Rules provides thus:

"If the plaintiff does not within eight weeks from the delivery of any defence, or, where a counterclaim is pleaded, then within ten weeks from the delivery of the counterclaim, set down the suit for hearing, then the defendant may either set down the suit for* *hearing or apply to the court to dismiss the suit for want of prosecution, and on the hearing of the application the court may order the suit to be dismissed accordingly, or may make such other order, and on such terms, as to the court may seem just."*

The question for this court to determine is whether the trial chief magistrate exercised her jurisdiction illegally or with material irregularity when she dismissed both matters for want of prosecution.

Essentially, want of prosecution means that the plaintiff or the applicant has failed to move forward with the case, for instance by not attending court hearings whenever required, submitting required documents, or taking other necessary steps to advance the legal proceedings. When a court determines that there has been a want of prosecution, it may dismiss the case or take other appropriate actions. In this case, the trial chief magistrate dismissed both the matters.

In the instant case, however, when the parties to the application filed their respective pleadings, including the affidavit in reply and the submissions, they had discharged their duty as litigants and done what was sufficient for the trial chief magistrate to make a ruling.

All that was left was for the trial chief magistrate to give a ruling for the application which would have determined the next course of action for the main suit. Sadly, the trial magistrate chose to dismiss both the application and the main suit.

Having dismissed the application for want of prosecution when the parties had discharged their duty of attending court and filing necessary pleadings, it is the finding of this court that the trial chief magistrate exercised her jurisdiction with material irregularity. She equally acted with material irregularity when she dismissed the main suit without determining the application for leave to appear and defend on its merits.

It is thus the finding of this court that the decision of the trial chief magistrate occasioned a miscarriage of justice to the parties. The foregoing establishes sufficient ground for this court to revise both cases per section 83 of the Civil Procedure Act.

Accordingly, the decision of the trial chief magistrate in both Misc. Application No. 28 of Civil Suit No. 45 of 2022 is set aside for having been reached with material irregularity.

Both matters are hereby reinstated and shall be determined on their own merits subject to the law.

The Deputy Registrar shall send back the files to the trial court for appropriate action.

It is so ordered.

Dated at Fort Portal this 29th day of April 2024.

Vincent Emmy Mugabo Judge 29/APRIL/2024

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