

UGANDA / JUDGMENT

Kasukali v Kadoma and 3 Others (HCT-00-CV-CR 2 of 2023) [2023] UGHCLD 272 (24 August 2023)

[2023] UGHCLD 272

COURT

HC: Land Division (Uganda)

BEFORE

Wagona, J

CASE / FILE NUMBER

HCT-00-CV-CR 2 of 2023

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

\$HCT-CV-CR-002 OF2023\$

ABEL KASUKALI ::::::::::::::::::::::::::::::::::

 $\$S\S

\$10\$

VERSUS

1. FAITH KADOMA

- 2. FELISTA NSUNGWA
- 3. ROSEMARY MASIKO
- 4. GERTRUDE NYAMATA ::::::::::::::::::::::::::::::::::

BEFORE: HON. JUSTICE VINCENT WAGONA**RULING****Introduction:**

The applicant brought this application under section 83 and 98 of the Civil Procedure Rules for orders that:

- 1. This honourable court revises the judgment of his Worship Kaggwa John 15 Francis in Civil Suit No. 062 of 2021 and sets it aside.
- 2. That the costs of taking out the application be provided for.

Grounds of the Application:

The application was supported the affidavit of the applicant herein who averred as follows: \$20\$

- 1. That he is a co-proprietor of the suit-land comprised in Block 62, Plot 16, FRV 1196, Folio 1, measuring 27.38 acres whose estimated value is Ugx 400,000,000/= as per the valuation report (annexure A).
- 2. That the respondents sued him claiming ownership of the suit land but did not plead its value, contrary to the law.
- 3. That on 19th October 2022, the trial Chief Magistrate passed a ruling and decreed the suit land to the respondents/plaintiffs where he had no pecuniary jurisdiction to try the matter beyond Ugx 50,000,000/=
- 4. That the judgment and orders passed by the trial magistrate were without jurisdiction and exercised jurisdiction not vested in him.

Reply of the Respondents:

The application was opposed by the Respondents through the affidavit of Rosemary Masiko (3rd Respondent) who contended as follows:

- 1. That at the time of filing the suit in 2012, and the applicant's counter claim,
- 15 the land was not valued and the applicant only states its value in 2023.
- 2. That the suit was based on trespass which the Chief Magistrate had jurisdiction to hear.

Representation and Hearing:

M/s Rwabogo & Co. Advocates represented the applicant while Ms. Ruth Ongom

20 of M/s Kaahwa, Kafuuzi, Bwiruka & Co. Advocates represented the Respondents. Both parties filed written submissions.

Issue:

Whether this is a proper case for revision.

Submissions for the Applicant:

It was pointed out for the applicant that Sections 83 and 98 of the Civil Procedure Act governs revision and that revision entails a re-examination or careful review, for 5 correction or improvement of a decision of a magistrate's court after satisfying

- oneself as to the correctness, legality or propriety of the findings, order or any decision and the regularity of any proceedings of a Magistrate's Court. (See **Wadri & 4 others Vs. Dranilla, Civil Revision No. 7 of 2018**). That the parameters of revision as set in section 83 of the Civil Procedure Rules include;
- 10 (a) Exercise of jurisdiction not vested in it in law.
- (b) Failed to exercise jurisdiction so vested.
- (c) Acted in the exercise of its jurisdiction illegally or with material irregularity or injustice.

It was pointed out that in the case of **Mabalaganya Vs. Sanga (2005) E. A 152**, it 15 was observed that where the High Court exercises its revisional powers, it entails examination of the record of any proceedings before it satisfies itself as to the correctness, legality or propriety of the any proceedings before the high court; that therefore decisions are revised when the trial magistrate failed to exercise his or her jurisdiction or where he or she acts illegally or with material irregularity or illegality.

20 It was pointed out that under Section 207 of the Magistrate's Court Act the pecuniary jurisdiction of a Chief Magistrate does not exceed 50,000,000/=. That Under Section 207(3) of the Magistrate's Court Act, for purposes of jurisdiction or it is necessary to state in the plaint the estimated value of the subject matter.

It was submitted that in this case, the government valuer's (annexure A) put the value of the suit land at Shs 400,000,000/=. That as such the trial magistrate lacked the jurisdiction to try the matter as such the resultant decision passed in Civil Suit No. 062 of 2012 is a nullity.

5 Submissions for the Respondents:

It was submitted for the respondent that the claim against the applicant was for trespass over which under Section 207 of the Magistrate's Court Act the Chief Magistrate had jurisdiction (**Ajuna Francis & others Vs. Lake View Enterprises & anor, Misc. Cause No. 002 of 2019**).

10 It was submitted that whereas the respondents did not plead the value of the subject matter, the applicant included a counter claim confirming that the court had jurisdiction.

CONSIDERATION BY COURT:

Section 83 of the Civil Procedure Act provides that: **The High Court may call for**

- 15 **the record of any case which has been determined under this Act by any magistrate's court, and if that court appears to have—**
- **(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**
- 20 **injustice, the High Court may revise the case and may make such order in it as it thinks fit; but no such power of revision shall be exercised— (d) unless the parties shall first be given the opportunity of being heard; or**

****(e) where, from lapse of time or other cause, the exercise of that power would involve serious hardship to any person.****

Jurisdiction is a creature of statute and it is what gives court the power or capacity 5 to act in relation to a subject matter under investigation by court. In **Desai v. Warsama (1967) EA 351** it was observed that: *"*lack of jurisdiction goes far beyond any error, omission, or irregularity nor can it be regarded as a mere technicality and that there is in law nothing to be reversed or altered and there is a complete absence of any material from which an appeal can be heard....."* 10 Further in **Pulkeria Nakaggwa v. Dominiko Kiggundu [1978] HCB 310**, Odoki J (as he then was) observed that: *"*Jurisdiction of courts is a creature of statute and a judicial officer worth the name must keep abreast with developments in our laws and ensure jurisdiction.... for..... It is trite law that where a suit is filed in a court without jurisdiction, it is a non-existent suit. Whatever is decided in such a suit* 15 *amounts no decision."** In **Owners of Motor Vessel Lillian v. Caltex Oil Kenya Limited [1989] KLR 1**, relied upon by the Hon. Justice Stephen Mubiru in **Ozuu Brothers Enterprises v. Ayikoru Milka CS 0064 of 2011**, Nyarangi JA said: *"*By jurisdiction, is meant the authority which a Court has to decide matters that are before it or take cognizance of matters presented in a formal way for its decision.* 20 *The limits of this authority are imposed by statute, charter or commission under which the Court is constituted and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be*

unlimited. A Limitation may be either as to the kind and nature of the actions and matters which the particular Court has cognizance or as to the area over which the jurisdiction* 25 *shall extend, or it may partake both these characteristics. If the jurisdiction of an*

inferior Court or tribunal depends on the existence of a particular state of facts, the Court or tribunal must inquire into the existence of the facts in order to decide whether it had jurisdiction, but, except where the Court or tribunal has been given power to determine whether the facts exist. Where the Court takes it upon itself to

5 *exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before Judgment is given*." The Court went on to hold that: "Jurisdiction is everything. Without it; a Court has no power to make one more step. Where a Court has no jurisdiction there would be no basis for continuation of proceedings pending other evidence. A court of law downs its* 10 *tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction*."

In the instance case, the question of want or lack of jurisdiction was not raised by the applicant at trial. The plaint filed by the respondents indicated under paragraph 15 9 that the court had jurisdiction to try the matter. The applicant in his written statement of defense in paragraph 13 indicated that "Paragraph 11 of the plaint is denied save that the defendant admits to the jurisdiction of this honourable court..".* Therefore, the question of jurisdiction was an admitted fact. The trial Chief Magistrate could not have investigated the same since it was not raised during trial. 20 To raise it now is an afterthought that cannot be entertained.

Further to the above, the suit at hand was filed on 3rd May 2012 and the valuation report sought to be relied upon now, was obtained in 2023 (the valuation report is dated 22nd February 2023). It is my view that pecuniary jurisdiction is determined 25 by the value of the subject matter prevailing at the time of filing of the suit and

thereafter, the increase in value of the subject matter does not affect the jurisdiction that the court had in the first instance. The valuation report dated 22nd February 2023 does not assist the court in ascertaining whether the value of the suit land was above the pecuniary limit of the Chief Magistrate in 2012.

If the applicant was aggrieved by the decision of the Chief Magistrate, the proper remedy would be an appeal. I therefore find that this is not a proper application for revision. The application lacks merit and it is accordingly dismissed with costs awarded to the Respondents. It is so ordered.

Vincent Wagona

High Court Judge / FORT-PORTAL**DATE:**24/8/23

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughcld/2023/272/eng@2023-08-24>**CASE PAGE** <https://chat.esheria.ai/case-law/uganda/kasukali-v-kadoma-and-3-others-hct-00-cv-cr-2-of-2023-2023-ughcld-272-24-august-2023-unknown-topic-unknown-court-2023>

Prepared on 14 October 2026 · Esheria