

**Katongole & 2 Others v Katongole
(Revision Application 14 of 2022)
[2023] UGHC 418 (17 August 2023)**
[2023] UGHC 418

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- 1. The Judgement and orders of His Worship Ziraba Arthur vide Civil Suit No. 28 of 2020 delivered on the 16th day of October 2020 be revised and set aside.
- 2. Costs of the Application be provided for.

The Application was supported by an affidavit deponed by the 1st Applicant wherein he states as follows that;

- 1. Civil Suit No. 28 of 2019 was a land matter before His Worship Ziraba Arthur, Magistrate Grade one, Masaka and the suit was determined against the Applicants as Defendants therein.
- 2. The Defendants in the suit were also ordered to pay Ugx. 1,000,000 /= in general damages and also vacate the suit property. A permanent injunction was also issued against the Defendants.
- 3. The Magistrate Grade one did not have jurisdiction to entertain the matter because based on a surveyor, the suit land is valued at Ugx. 215,000,000/= which is beyond the pecuniary jurisdiction of the trial Court.
- 4. They had filed an appeal to this Court but they have since withdrawn the same through consent of the Parties.

An affidavit in reply was deponed by the Respondent, where he states as follows that;

- 1. The Applicant filed a written statement of defence in which he claimed to have bought the suit property at Ugx. 50,000/= and attached a copy of an agreement dated 26th July 1985.
- 2. In the same pleadings, the 2nd Applicant attached a file for grant of letters of administration vide Administration cause No.153 of 2007 where the suit land was valued at Ugx. 100,000/=.
- 3. Throughout the proceedings at the trial court, the Applicants did not raise the issue of pecuniary jurisdiction and only obtained a valuation after the suit has been determined.
- 4. The Applicants sought an appeal which was heard but withdrawn by the Applicants before it could be determined.
- 5. The trial Court had jurisdiction to entertain the matter.

I note that there was an affidavit in rejoinder but the same reiterates the averments in the affidavit in support.

The Parties filed written submissions.

The following issues were raised for determination however, it is my observation that one of the issues was a preliminary point of law;

1. Whether the Respondent's affidavit in reply in properly before the Court. The issue raised for determine is; Whether there are sufficient grounds for the Court to make a revision order.

Submissions for the Applicants.

1. Whether the Respondent's affidavit in properly before the Court.

Counsel submitted that the Respondent's affidavit is barred in law. The gist of Counsel's contention is that the Respondent did not file his affidavit in reply within the 21 days stipulated by law. It was submitted that the Applicant sought leave and was granted the same to serve court process through substituted service which was done vide Bukedde news paper dated 19th November 2022. Counsel submitted that the Respondent ought to have filed the reply 15 days after 19th November 2022 but the Respondent filed his reply on 11th January 2023 which was beyond the 15 days and as a result, the Respondent's affidavit in reply ought to be struck out for having been filed out of time.

Counsel relied on the cases of Patrick Senyondwa and another versus Rose Nakato, HCMA. No.1103 of 2018, Uganda Revenue Authority versus Uganda consolidated properties Ltd, CA. No.31 Of 2000 and Kitaka Peter and 12 others versus Muhamood Thoban, CA. No.20 of 2021 to support his submissions.

2. Whether there are sufficient grounds for Court to make a revision order.

In relying on Section 83(a) of the Civil Procedure Act Cap 71, Counsel submitted that the High Court may exercise revisionary powers over magistrates Courts, where it appears that the magistrates court exercised jurisdiction not vested in it.

Counsel submitted that the land that was subject to the suit is valued at Ugx. 215,000,000/= which is beyond the trial court's pecuniary jurisdiction. Counsel further submitted that having determined the suit without jurisdiction, the decision of the trial Court is therefore a nullity. Counsel also relied on Section 4 and 12 of the Civil Procedure Act as well as Section 207 of the Magistrates Court Act to support his submissions.

Counsel then submitted that at trial, there was no indication in the pleadings as to the value of the suit land and the Court ought to have put itself on notice and gone ahead to order a valuation of the subject matter. Counsel further submitted that Section 207(3) of the Magistrates Courts Act makes it incumbent on the Plaintiff to state the value of the suit land. Counsel relied on the case of Wadri Mathias and 4 others versus Dranilla Angella, Civil Revision No.07 of 2019 to support his submission that in all matters, Court must first ascertain whether it has the required jurisdiction before determining the case.

Counsel submitted that the evidence at trial and at locus was sufficient to support the fact that the value of the suit land was beyond Ugx.20,000,000/= and as a result, the trial Court should have been put on notice to order a valuation of the land. It was further submitted that failure to do so resulted in the trial Court exercising jurisdiction in a suit where the subject matter exceeded its pecuniary jurisdiction.

Submissions for the Respondent.

1. Whether the Respondent's affidavit in reply is properly before this Court.

Counsel submitted that the Respondent was served Court process through substituted service and that Counsel received instructions on 15/03/2023. He further submitted that failure to file a reply is

attributed to the negligence or mistake of the Respondent's previous lawyers and the same should not be visited on the Respondent.

2. Whether there are sufficient grounds for Court to make a revision order.

Counsel submitted that when the Defendants filed a written statement of Defence, they submitted to the jurisdiction of the trial Court and they are therefore estopped from challenging the jurisdiction of the Court through this Application. Counsel relied on Order 9 Rule 3(g) and Rule 6 of the Civil Procedure Rules as well as the case of Mark Graves versus Balton (U) Ltd HCMA No.158 of 2008.

Without prejudice to the above, Counsel also submitted that although the value of the subject matter may not expressly be stated, the value could be derived from the pleadings and attachments as a whole. Counsel relied on Lukyamuzi Kalyango Abubaker versus Ibrahim Balikuddembe, HCCA. No.98 of 2019 to support this submission.

Counsel then submitted that in the suit, the Applicant attached a copy of a sale agreement which indicated the value of the land as Ugx.50,000/= and there was further evidence by the Applicants as Defendants at trial which indicated that the estate was valued at Ugx.100,000/=.

Counsel submitted that the valuation report was not part of the evidence at trial and cannot therefore be relied on.

Having carefully considered the affidavits to this Application, the annexures thereto and the submissions of both parties, I hereby proceed to determine the issues raised in this Application. I shall resolve the preliminary point of law first.

Determination of preliminary point of law.

1. Whether the Respondent's affidavit in reply in properly before the Court.

The Applicant's main contention is that the Affidavit in reply was filed out of time. The Respondent conceded that the Affidavit was filed out of time but further contended that the delay in filing is attributed to the negligence of the Respondent's previous lawyers. I also observe that there is no dispute to the fact that the Respondent was served by way of substituted service.

On record is an affidavit of service deponed by Jjemba Francis. The gist of the affidavit is that the Applicants were not able to effect service upon the Respondent personally. As a result, the Applicants sought leave to summon the Respondent by way of substituted service.

The general rule is that once an application is served on a Respondent, the Respondent is supposed to file a defence (affidavit in reply) within 15 days from receipt of the Application. (See: *Ramgarhia Sikh Society and others versus Ramgarha Sikh Education Society Limited and others, HCMA. No.352 of 2015*).

However, it is my opinion that the above general rule does not entirely apply to circumstances involving substituted service. In considering the supreme Court cases of *Goffrey Gatete and Another versus William Kyobe, SCCA. No.7 Of 2005* and *Namuddu Bitamisi versus Rwabuganda, SCCA. No.16 of 2014*, it was observed that substituted service can be good service because it is lawful but it is liable to be rendered ineffective if the defendant satisfies court that he or she did not receive it and was not aware of it. In short, substituted service while good will not be effective unless it produces the desired result.

From the above holding, it is my opinion that substituted service is a special kind service and the rules on time lines within which to file a response slightly differ from those in a situation where there has been actual service on the person. From the foregoing decisions, it is clear that substituted service has the potential to be declared ineffective if it does not achieve the desired result, the desired result being that the Respondent becomes aware of a pending matter against him/her. Therefore until the Respondent becomes aware of the suit against him, it would not be practical or logical to require the Respondent to file a response to the claim within 15 days of substituted service and yet there is no proof that the Respondent is aware of the claim against them. The circumstances would be different if there was evidence to support that upon substituted service, the Respondent became aware of the claim against them but they still did not proceed to file a response. It is therefore my finding that upon substituted service, the Respondent could not be expected to file his response within 15 days from the date of substituted service and yet he was not aware of the claim against him.

The purpose of service of Court process is to protect and promote the right to fair hearing, that is; it is intended to inform the Respondent of a pending matter against them in Court. (See: *Nakiberu versus Kibuuka, HCMA. No.82 of 2021*). Therefore, where a Respondent files a response albeit service having been through substituted service, the only conclusion can be that the service achieved the desired result and in this case, the substituted service duly fulfilled its purpose because the Respondent filed a response.

Be that as it may, the Court has the power to admit an affidavit out of time. (See; *Ramgarhia Sikh Society and others versus Ramgarha Sikh Education Society Limited and others, HCMA. No.352 of 2015*).

Considering that service was through substituted service and the fact that no injustice has been occasioned on the Applicant especially because there is even an affidavit in rejoinder, it is my view that the circumstances warrant admitting the affidavit in reply out of time. It is will also be in the interest of justice the matter be determined on its merits.

2. Whether there are sufficient grounds for Court to make a revision order.

Under *Section 83(a)* of the *Civil Procedure Act,* The High Court may call for the record of any case which has been determined under this Act by any magistrate's court, and if that court appears to have exercised jurisdiction not vested in it in law, the High Court may revise the case and make any orders as it thinks fit.

In *Mabalaganya versus Sanga [2005] EA 152* cited with approval in *Nsubuga versus Ndiwalana High Court Revision Application No. 05 of 2018*, it was held that where Court exercises its revisionary powers, its duty entails examination of the record of proceedings before it for the purpose of satisfying itself as to the correctness, legality or propriety of any findings, order or any decision and the regularity of any proceedings.

The Applicant's main contention is that the trial Court lacked pecuniary jurisdiction to entertain the matter because the subject matter is valued at Ugx. 215,000,000/= which is beyond the pecuniary jurisdiction of the trial Court that is Ugx. 20,000,000/=. The matter was heard by a Magistrate Grade I.

Jurisdiction is conferred by statute. (See: *Desai versus Warsama [1967] EA 351*). In examining matters of jurisdiction, the starting point is Section 4 of the Civil Procedure Act which provides that; Except insofar as is otherwise expressly provided, nothing in this Act shall operate to give any court jurisdiction over suits the amount or value of the subject matter of which exceeds the pecuniary limits, if any, of its ordinary jurisdiction.

As to the jurisdiction of the Magistrates Grade 1, reference is made to *Section 207* of the *Magistrates Courts Act (MCA)*. *Section 207(1)(b)* of the *MCA* provides that *the Magistrates Grade 1 shall have jurisdiction where the value of the subject matter does not exceed Ugx.20,000,000/=*. *Section 207(2)* of the *MCA* provides that; *where the cause or matter of a civil nature is governed only by*

civil customary law, the jurisdiction of a chief magistrate and a magistrate grade I shall be unlimited. Under *Section 208* of the *MCA*; *Every magistrate's court shall, subject to this Act, have jurisdiction to try all suits of a civil nature excepting suits of which its cognisance is either expressly or impliedly barred; but every suit instituted in a magistrate's court shall be instituted in the court of the lowest grade competent to try and determine it.*

In the context of the matter before this Court, on consideration of all the provisions above, it can be deduced that the Magistrates Grade 1 has jurisdiction to determine all matters of civil nature provided the pecuniary value of the subject matter does not exceed Ugx.20,000,000/=. The Magistrate Grade 1 only has unlimited jurisdiction in situations where the civil matter is governed by only civil Customary law. Under *Section 1(1)(a)* of the *Magistrates Court Act*, Civil customary law means; the rules of conduct which govern legal relationships as established by custom and usage and not forming part of the common law nor formally enacted by Parliament. (Also see*: Munobwa Muhamed versus Uganda Supreme Muslim Council, HC Civil Revision No.01 of 2006* for the proposition that the Magistrate Grade 1 only has unlimited jurisdiction in matters under Section 1(1)(a) of the Magistrates Court Act).

In considering whether the Learned Trial Magistrate was vested with jurisdiction to determine the matter, I have had the benefit of perusing the Court record, that is; the pleadings and the evidence at trial. In considering the pleadings, my first observation is that the value of the land subject to the suit was never pleaded. My second observation is that the case at trial was grounded in trespass and issues of lawful and bonafide occupancy as well as ownership, which are matters typically governed by Common law, the Land Act and the Registration of Titles Act among others.

My first observation upon consideration of the above is that, the Magistrate Grade 1 did not have unlimited jurisdiction since the issues that were raised for determination did not concern civil customary law and therefore, the Magistrate Grade 1's pecuniary jurisdiction would be limited to Ugx. 20,000,000. (See; *Ajuna Jackson and others versus Lake View Enterprises, HCMC. No.02 of 2019*).

My second observation is that the Applicant introduced a valuation report that indicated that the land subject to the suit is valued at Ugx.215,000,000/=. The Respondent did not challenge the land valuation and where an allegation of fact is made and the same is not rebutted or challenged, the fact is taken to be admitted. (See: *Kaggwa v Olal & 6 Ors, HCCA. No. 10 of 2017*). As a result, on consideration of the report, it is my observation that the value of land subject to the suit before the Trial Court exceeded the pecuniary jurisdiction of the Trial Court and had the Magistrate

made an

inquiry into the value of the land subject to the suit, he would have come to a conclusion that he did not possess the necessary jurisdiction to determine the matter.

The fact that the Learned Trial Magistrate did not have unlimited jurisdiction, the location, the size and the structures on the land should have put the Learned Trial Magistrate on notice that there was a need to establish the value of the land subject to the suit for purposes of establishing whether the Trial Court was vested with the necessary jurisdiction.

In **Wakisa Fred and others versus Katabarwa Josephine, HCCA. No.06 of 2021**, it was held that where the Plaintiff would not reveal the value of the suit property, and the trial Magistrate fails to inquire into the value of the subject matter, and pecuniary jurisdiction is contested and it is established that the value of the subject matter is beyond the pecuniary jurisdiction of the Magistrate, the High Court is obliged to make a finding that the trial Magistrate entertained the matter without pecuniary jurisdiction

Considering the matter before the trial Court, the value of the land subject to the suit was not stated. The Learned Trial Magistrate was under a duty to inquire into the value of the land for purposes of establishing whether the trial Court had jurisdiction to entertain this matter however, this was never done resulting in the Trial Court entertaining a matter it did not have jurisdiction to entertain.

It was submitted that the value of the land could be derived from the Written Statement of Defence however, I respectfully disagree. The sums contained in the Written statement of Defence did not pertain to the land subject to the suit specifically.

As earlier observed, jurisdiction is a creature of statute. Where a Court exercises jurisdiction not vested in it, the resulting proceedings are a nullity. (see: **Desai versus Warsama [1967] EA 351**).

I have already found that the trial Court entertained a matter which it did not have jurisdiction to entertain and as a result, the proceedings before the Trial Court are a nullity.

Conclusion and orders.

- 1. The proceedings before the Trial Court are a nullity.
- 2. The decision and orders of the Magistrate Court vide Civil Suit No. 28 of 2019 are hereby set aside.
- 3. Costs are awarded to Applicants.

I so order.

Dated and delivered electronically at Masaka this 17th day of August 2023.

Victoria Nakintu Nkwanga Katamba.

Judge.

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