

UGANDA / JUDGMENT

Maherah v La Credit Forex Bureau (Revision Cause 16 of 2020) [2023] UGHCCD 394 (31 October 2023)

[2023] UGHCCD 394

COURT

HC: Civil Division (Uganda)

BEFORE

Baguma, J

CASE / FILE NUMBER

Revision Cause 16 of 2020

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[CIVIL DIVISION]

REVISION CAUSE NO. 16 OF 2020

[Arising from Makindye Chief Magistrate Civil Suit No. 141 Of 2016]

MAHERAH AHMAD ===== APPLICANT

VERSUS

LA CEDRI FOREX BUREAU ===== RESPONDENT

BEFORE: HON. JUSTICE EMMANUEL BAGUMA

RULING

This revision application is by notice of motion under section 83 of the Civil Procedure Act, section 33 of the Judicature Act and order 52 rules 1 & 2 of the Civil Procedure Rules SI 71-1 seeking for orders that; -

- a) The decree of the grade 1 Magistrate in Civil Suit No. 141 of 2016 dismissing the suit instead of referring it to the chief Magistrate of the court be revised and set aside.

- b) Civil suit No. 141 of 2016 be sent to Chief Magistrate of the Makindye for proper adjudication.

The application is supported by the affidavit of **Maherah Ahmad** the applicant whose details are on record but briefly states that; -

- 1. As a landlord I filed a case against the Respondent for breach of a contract pursuant to the executed rent agreement.
- 2. The suit was partly heard by 3 Grade 1 Magistrates with me leading evidence in support of my case and the court entertaining submissions from the applicant and respondent's lawyer.
- 3. The Grade 1 Magistrate in her final decision decided that whereas the case was heard to conclusion, she did not have pecuniary jurisdiction to hear the matter and proceeded to dismiss the same.
- 4. It was irregular for the Chief Magistrate to allocate the matter to a Grade 1 Magistrate instead of the Chief Magistrate and also visiting the same irregularity on me the innocent litigant.

In reply, the Respondent opposed the application and in an affidavit sworn by **Lameck Kiiza** the managing director of the Respondent whose details are on record briefly stated that; -

- 1. Though the case had been heard by three Grade 1 Magistrates and parties adduced evidence and submissions, the last trial Magistrate was right to discontinue entertaining this case and dismissing the same after realizing that the court had no pecuniary jurisdiction to entertain the same.
- 2. Even if the trial Magistrate was to refer the matter to the Chief Magistrate, still Makindye Chief Magistrate court did not have Geographical jurisdiction to entertain the subject matter which gave rise to this suit it being located in the central division of Kampala City.

In rejoinder, the applicant reiterated his averments in chief but added that the transaction from which the contract emanated was signed within the jurisdiction of Makindye Chief Magistrates court.

Legal representation.

Counsel Daniel Lubogo together with Ariao Suzan represented the applicant while counsel Deo Bitaguma represented the Respondent.

At the hearing, both counsel agreed to file written submission whose details are on record.

Submissions by counsel for the Applicant.

Counsel referred to section 83 of the Civil Procedure Act which provides for the revisionary jurisdiction of the high court and submitted that this court has powers to revise and set aside orders of a magistrate grade one.

Counsel submitted that much as the trial Magistrate Grade One had no jurisdiction to try a matter whose subject matter was computed at 23,865,000/=, from the record the applicant indeed filed his case to the Chief Magistrate Court of Makindye and clearly stated the value of its pleadings. The suit was then

erroneously allocated to a Magistrate Grade 1 who subsequently allowed the proceedings to commence. The matter was then partly heard by 3 magistrates before it was finally disposed off by the Magistrate G1 who discovered that the court lacked jurisdiction and thus dismissed it.

Counsel referred to the case of **Nsubuga Joseph Vs Ndiwalana Lawrence Misc Appln No. 060 of 2017** where court noted that;

*"The chief Registrar's function of assigning Magistrates to handle matters is an administrative function. It is now trite law in Uganda that administrative considerations should not be a bar to the substantive rights of litigants by resulting in fatality of suits. See **Pinnacle Projects Limited Versus Business in motion consultations Ltd Misc. Appl. No. 362 of 2010**".*

Counsel concluded that the suit was properly filed in the registry, having been properly titled and the value of the subject matter stated, it became an administrative function of the court registry to assign the matter to the correct judicial officer.

Submissions by counsel for Respondent

Counsel referred to section 207 (1) (b) of the Magistrates Court Act which provides for the pecuniary jurisdiction of a Magistrate Grade 1 to be where the subject matter does not exceed twenty million shillings.

Counsel submitted that the subject matter in the instant case was 23,065,000/= far above her pecuniary jurisdiction and the trial Magistrate was right in dismissing the case after realizing the illegality regardless of the stage of the trial. He referred to the case of **Busingye Jamiya Vs Mwebaze Abdu & Anor High Court CR 33 of 2011**.

Counsel submitted that the trial Magistrate was alive to the law, she did not fail to exercise the jurisdiction vested in her by law, she did not act in excess of her jurisdiction, nor did she exercise her jurisdiction with material irregularity to justify the application for revision.

Counsel submitted that the trial Magistrate could not transfer a nullity but the only option was to dismiss.

Counsel further submitted that under section 215 of the Magistrates Courts Act provides that every suit shall be instituted in a court within the local limits of whose jurisdiction the case arose.

Counsel submitted that the tenancy agreement in the instant case was signed in kampala. It related to the subject matter of a tenancy agreement known as plot 2, Entebe Road, Kampala Shop No. 1 ground floor which is in central division of Kampala and the suit should have been filed at Mengo Chief Magistrates court and not Makindye.

In rejoinder, counsel for the applicant reiterated his submissions in chief but added that the suit premises are located on Plot 3 Entebe Road as indicated in the plaintiff's witness statement of Dr. Mussawir Ahmed which fell within the Magisterial jurisdiction of Makindye Chief Magistrates Court.

Analysis of court

Section 83 of the Civil Procedure Act, (Cap. 71) provides that;

"The High Court may call for the record of any case which has been determined under this Act by any magistrate's court, and that Court appears to have"

(a) exercised a jurisdiction not vested 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 injustice"

According to Black's Law dictionary (9th edition), revision is defined as

"a re-examination or careful review for correction or improvement or an altered version of work"

The jurisdiction of the Chief Magistrates Courts is governed by provisions of Section 207(1) (a) of the Magistrate Courts Act Cap 16, as amended and it provides as follows; -

"Subject to this Act and other written law, the jurisdiction of magistrates presiding over magistrates' courts for the trial and determination of causes and matters of a civil nature shall be as follows;"

(a) A Chief Magistrate shall have jurisdiction where the value of the subject matter in dispute does not exceed fifty million shillings and shall have unlimited jurisdiction in disputes relating to conversion, damage to property or trespass"

Order 7 rule 1 of the CPR provides for particulars to be contained in the plaint and rule 1(i) in particular states that; -

"a statement of the value of the subject matter of the suit so far as the case admits".

It is trite law that the jurisdiction of courts is a creature of statute. A court cannot exercise a jurisdiction that is not conferred upon it by law. Therefore, whatever a court purports to do without jurisdiction is a nullity *ab initio*.

It is settled law that a judgment of a court without jurisdiction is a nullity and a person affected by it is entitled to have it set aside *ex debito iudicis* (See *Karoli Mubiru and 21 Others v. Edmond Kayiwa* [1979] HCB 212; *Peter Mugoya v. James Gidudu and another* [1991] HCB 63*).

Order 7(1) of the CPR implies that the value of the claim must be stated in the plaint and nowhere else.

In the instant case, I have read the plaint and found that under paragraph 3 of the same, the plaintiff claimed USD 6450 (United States Dollars six thousand four hundred fifty). Both parties agreed that when this amount is converted to Ugandan shillings, it will be 23,865,000/= (Twenty-three millions eight hundred sixty five thousand shilling) which is above the pecuniary jurisdiction of a Magistrate Grade1 . It is clear from these facts that the trial Magistrates G1 lacked pecuniary jurisdiction to try the matter.

This court notes that the applicant filed his case in the chief Magistrate court of Makindye, the Chief Magistrate erroneously allocated the same to Magistrate Grade One who heard it and dismissed it on ground of lack of jurisdiction.

This was unfair to the applicant because it is not his fault that the case was instead of being handled by the Chief Magistrate the same was allocated to a Magistrate Grade one who had no jurisdiction. It was therefore wrong for the Magistrate grade one to dismiss the case. He should have returned the case to the Chief Magistrate for further management.

The exercise of allocation of files by Registrars and Magistrates is purely administrative, this should have been solved administratively by the Magistrate Grade One taking back the file to the Chief Magistrate for further management including referring the case to High Court for revision other than dismissing it which caused injustice to the litigant.

In conclusion, it was irregular for the Magistrate grade 1 to dismiss a suit which was properly filed in the registry of the Chief Magistrates court.

The other contention relates to geographical jurisdiction, I have clearly read the tenancy agreement and found nothing to suggest that the same was signed from the central division as alleged by the Respondent. From the evidence on record the contract from which the suit arises was signed within the jurisdiction of the Chief Magistrate Court of Makindye.

Conclusion.

In the final result, this revision succeeds with the following orders; -

1 The decision of the trial Magistrate G1 dismissing Civil Suit No. 141 of 2016 is hereby set aside.

2 Let Civil Suit No. 141 of 2016 be heard *de novo* by a Chief Magistrate.

3 Considering the nature and circumstances of this revision, no order as to costs.

Dated, signed, sealed and delivered by email on this **31st October 2023**.

Emmanuel Baguma

Judge.

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