

UGANDA / JUDGMENT

Matanda v Masibo (Civil Revision 15 of 2023) [2025] UGHC 9 (17 January 2025)

[2025] UGHC 9

COURT

High Court of Uganda

BEFORE

Lubega, J

CASE / FILE NUMBER

Civil Revision 15 of 2023

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MBALE
REVISION CAUSE NO.15 OF 2023**

(ARISING FROM MISCELLANEOUS APPLICATION NO. 26 OF 2022) (ARISING FROM CIVIL SUIT NO. 0019 OF 2021)

MATANDA STEVEN

VERSUS

<table>

MASIBO MARY VICTORIA.....

BEFORE: HON. JUSTICE LUBEGA FAROUQ**RULING****1. Introduction**

- 2. The Applicant brought this application by way of a notice of motion under S.83 & 98 of the Civil Procedure Act, Cap. 282, and Order 52 Rules 1 & 3 of the Civil Procedure Rules SI.71, seeking orders that
- a) This court be pleased to call for the record and proceedings and ruling of the Chief Magistrate court of Bubulo in Misc. Application No.26 of 2022 and original civil suit No. 0019 of 2021 and record, proceedings and judgment for revision;
- b) The proceedings, Ruling, decision and order of the Chief Magistrate in Misc. Application No.26 of 2022 be quashed for being null and void;

- c) The proceedings, ex-parte judgment, decision, decree and orders of the Chief Magistrate court Bubulo, delivered by Magistrate Grade One Her Worship Afyorwoth Winny Epiphany be quashed;
- d) The execution proceedings issued by the Chief Magistrate court be set aside for being null and void;
- e) Costs of the application be provided for.
- 3. The application is supported by the affidavit sworn by **MATANDA STEVEN** and the grounds are briefly that-
 - The Respondent filed Civil Suit No. 0019 of 2021 against the \$i.\$ Applicant before the Chief Magistrate's Court of Bubulo at Bubulo over a land matter in Nabunulu village, Butemuni Parish, Namisindwa Bumwomi Sub County, district measuring approximately one acre;
 - The learned trial Magistrate Grade One H/W Afyorwoth Winny ii. Epihany, proceeded ex-parte and decided the case against the Applicant, yet the Applicant was not served with court summons and the Plaintiff;
 - Following the judgment and order of the trial Magistrate Grade iii. one of Chief Magistrate's court of Bubulo, the Respondent commenced on execution process through court bailiff's by way of arrest and detention orders;
 - The decision/judgment, decree and orders of the trial Magistrate iv. Grade one in Civil Suit No. 019 of 2022 were null and void and full of illegalities;
 - The decision of the trial Magistrate Grade one, and the execution \$V\$. process issued therefrom are null and void, and the same is an abuse of judicial powers vested in her;
 - There was no proper service of summons to the Applicant, and vi. this caused grave injustice to him;
 - It is in the interest of justice that the instant application is vii. allowed.
- 4. The application was opposed through an affidavit in reply of the Respondent which has been relied upon in the determination of this application, and briefly states that-
 - The Applicant was served with the summons as per the affidavit a. of service on court record;
 - The Applicant in his affidavit in support of Misc. Application No. b. 26 of 2022 averred that he was served with the summons and he instructed his lawyers to file a written statement of defence;

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- The trial magistrate reached a right decision upon satisfaction \$c.\$ that the Applicant was served, but adamantly refused to file his written statement of defence;

- The Applicant did not have any sufficient reasons he presented \$d\$. for court to set aside the ex-parte proceedings, and allow him file a written statement of defence.

5. Background

6. As can be discerned from the pleadings of both parties, the Respondent filed Civil Suit No.19 of 2021 against the Applicant before the Chief Magistrate's court of Bubulo at Bubulo. The matter proceeded ex-parte against the Applicant, and judgment of court was delivered in favour of the Respondent. As a result, the Applicant filed Miscellaneous Application No. 26 of 2022 for setting a side of the ex-parte judgment entered against him in Civil Suit No. 19 of 2021, which was unsuccessful. The Applicant then moved this court in the instant application for revision of both.

7. Legal Representations

- 8. The Applicant was represented by \$M/s\$ Whon Advocates & Solicitors, and the Respondent was represented by \$M/s\$ Sefu Advocates & Solicitors.
- 9. The parties filed written submissions which I have considered in determination of this application.

Applicant's submissions \$10.\$

The Applicant submitted that the learned trial magistrate acted with \$11.\$ material irregularity in exercise of her jurisdiction when she entered default judgment in Civil Suit No. 019 of 2021, and proceeded ex-parte against him yet he was not served with the summons to file his defence. To fortify his argument, he relied on S.83 of the Civil Procedure Act, Cap.282 and the cases of Elizabeth Bameka V. Dodovico Nviiri (1973) ULR 134 and Nadiope & 8 others V. Maluku Development Association Ltd HCT-04-CV-MA-0073-2010.

12. Respondent's submissions

13. The Respondent submitted that the Applicant was duly served with the summons in Civil Suit No. 019 of 2021. That the trial court relied on the affidavit of service on the court record to rightly enter a default judgment, and proceed ex-parte against the Applicant since the Applicant had failed to file a written statement of defence. The Respondent further submitted that the Applicant admitted in his affidavit in support of Misc. Application No. 26 of 2022 for setting aside Civil Suit No.019 of 2021 that he had been with summons whereby he instructed his lawyers who did not file the written Statement of defence.

\$14.\$ He cited a number of authorities which I have also considered in determining of this application.

- 15. Issues for determination of court

- 16. I have considered the averments in the affidavit in support and the affidavit in reply and framed the following issues for determination, that is
- a) Whether the application satisfies the grounds for revision?
- b) What remedies are available to the parties?
- 17. **Analysis of court**
- 18. Issue one: Whether the application satisfies the grounds for revision?
- 19. Section 83 of the Civil Procedure act, Cap. 282 provides that-
 - a. *"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—**
 - 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 injustice"*
- Revision is defined in the **Black's Law Dictionary (9th Edition)** as-20.

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

In the case of Hitila V. Uganda [1969] 1 E. A. 219, the Court of 21. Appeal of Uganda held that-

> "In exercising its power of revision the High Court could use its wide powers in any proceedings in which it appeared that an error material to the merits of the case or involving a miscarriage of justice had occurred. It was further held that the Court could in any proceedings where it appeared from any record that had been called **for by the Court, or which had been reported for orders,** or in any proceedings which had otherwise been brought to its notice".

The above principle was reinstated in **Fatehali V. Republic [1972] 22. 1 E. A. 158 (CAD)** where the Court of Appeal sitting at Dar-e-salaam held that-

> "A judge of the High Court has power, on his own motion, to call for and revise any proceedings in the magistrate's court, in whatever manner the proceedings came to his knowledge".

Further in **Mabalanganya V. Sanga [2005] 2 E. A. 152, the Court of 23. Appeal of Tanzania held that: -**

> "In cases where it exercises its revision jurisdiction under s.4 of the Appellate Jurisdiction Act, its duty entails examination by the Court of the record of any proceedings before the High Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings before the High Court".

In the Instant case, the Applicant avers in paragraph 3 of his 24. affidavit in support that the trial Magistrate heard Civil Suit No. 19 of 2021

ex-parte and went on to decide the case, yet the Applicant was not served with summons.

- 25. The record of the trial court shows that on \$27/04/2022\$, the learned trial magistrate granted leave to the Plaintiff (now Respondent) to proceed ex-parte upon being informed by his counsel that the Defendant (now Applicant) was served with the court summons, but did not take any step to file a defence. It is imperative to note that on my perusal of the trial court record, I have not been able to find any affidavit of service as way of proof that the Applicant was served with the summons in Civil Suit No. 19 of 2021.
- 26. Being aggrieved with the ex-parte judgment entered against him vide Civil Suit No. 19 of 2021, the Applicant filed Miscellaneous Application No. 26 of 2022 wherein he moved court to set aside ex-parte judgment on among other grounds stating that he was not served with summons as required by the law.
- 27. The trial court declined the Applicant's application on the view that the Applicant was aware of the ongoing proceedings against him, but he chose not to take any step in defending himself. The trial court inculcated the Applicant by invoking the principle of law that equity aids the vigilant. Still, I note that the trial magistrate did not bother to find out whether who alleged to have served the summons to the Applicant, had filed the affidavit of service on court record to prove that indeed the Applicant was served with summons to file a defence.
- 28. One of the limbs under of \$S.83\$ (c) of the Civil Procedure Act that provides for revision, is that; this court is enjoined with powers to examine whether the trial court acted in the exercise of its jurisdiction illegally or with material irregularity or injustice.
- 29. The gist of this application of this application lies on the allegations that there was violation of the Applicant's right to fair hearing when the trial magistrate allowed the Respondent to proceed ex parte against him in Civil Suit No. 019 of 2021 without being served with the summons to

file a defence as required under the law. This was exacerbated by trial court's subsequent denial to set aside the impugned ex parte judgment.

0.9 r. 27 of the Civil Procedure Rules which provides for setting 30. aside of ex parte judgments stipulates that-

> "In any case in which a decree is passed ex-parte against a *defendant, he or she may apply to court by which the decree was passed for an order to set aside; and if he or she satisfies court that.... He or she was prevented by sufficient cause from appearing when the* suit came up for hearing. The court shall make an order setting aside the decree as against him or her upon such terms as to costs, payment into court, or otherwise as it thinks fit, and shall appoint the date for *processing with the suit".*

The principles governing the determination of what amounts to 31. sufficient reason or cause for setting aside an ex parte decree under O.9 r 27 have been severally enunciated in our jurisprudence. In S. C. C. A No. 6 of 1987 Florence Nabatanzi V. Naome Binsobedde (cited with approval in **Hikima Kyamanywa V. Sajjabi Chris CACA No. 1 of 2006**), it was held that-"sufficient reason or cause depends on the circumstances of each case and must relate to inability or failure to take a particular step in time."

- It is worth noting that the law does not define "sufficient reason", 32. but often the expression is used as being analogous to "good cause". Black's Law Dictionary 8th Edition, at page 235, defines "good cause" to mean *legally sufficient reason*. Therefore, it is true to say that good cause is the legal burden placed upon a litigant, usually by court, to show why a particular request should be granted or an action or omission excused.
- The Applicant asserts in the present case that he was not served 33. with the summons to file a defence. Order 5 Rule 1 (a) of the Civil Procedure Rules is to the effect that when a suit has been duly instituted, summons may be issued to the defendant—

"Ordering him or her to file a defence within a time to be specified in the summons"

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It is further provided under Order 5 r.10 of the Civil Procedure 34. Rules, that-

> "Service of summons shall be made to the defendant in person or his/her appointed agent.

- The Respondent argued in the trial court that the Applicant was 35. served with summons to file a defence in the Civil Suit No.019 of 2021, but declined to receive the summons. Surprisingly, there appears no affidavit of service on court record detailing the veracity of such allegations.
- Order 5 r.16 of the Civil Procedure Rules provides for affidavit of 36. service. It states that-

"the serving officer shall, in all cases in which the summons has been served under rule 14 of this Order, make or annex or cause to be annexed to the original summons an affidavit of service stating the time when and the manner in which the summons was served, and the name and address of the person, if any, identifying the person served and witnessing the delivery or tender of the summons".

In my view, the requirement to file an affidavit of service as required 37. under 0.5 Rule 16 of the Civil Procedure Rules is not discretionary but rather a mandatory requirement intended to serve as evidence in guiding court on whether summons were served on the Defendant or that there were attempts accepted in the legal ambit to effect service of summons.

The absence of the affidavit of service on the record of the trial court 38. leaves me in doubt, and I cannot be convinced to come to a conclusion that the summons were served to the Applicant. Therefore, it was materially irregular for the trial magistrate to rely on conjectures and unsubstantiated facts to conclude that summons were served to the Applicant. And if the trial magistrate had properly addressed herself on the law regarding service of summons, she would have found a sufficient

reason to allow the Applicant's application for setting aside of the ex-parte judgment she had earlier entered against the Applicant.

- Summons are court documents with well laid procedure on how they 39. are issued and served. The purpose of service of summons is to ensure observance of the cardinal principle of law of fair hearing embedded under Article 28 of the 1995 Constitution of the Republic of Uganda.
- 40. Where the summons are not effectively served on a party, and the court proceeds to hear a matter affecting the rights of a party who has not been effectively served with the summons, it is irregular, and an outright injustice to the party against whom the matter proceeds ex-parte.
- On that premise, I find that the learned trial magistrate acted with 41. material irregularity when she granted leave to the Respondent to proceed ex-parte, and subsequently entering an ex-parte judgment vide Civil Suit No.019 of 2021 which she declined to set aside without proof of affidavit service that the Applicant had been served with summons to file a defence.
- 42. I, therefore answer issue one in the affirmative.
- Issue Two: **What remedies are available to the parties** 43.
- On the basis of the observations above, this application is hereby 44. allowed with orders that
- a) The ex-parte judgment of the trial court and all the resulting orders therefrom are hereby set aside;
- b) The file shall be sent back to the trial court for Civil Suit No. 019 of 2021 to be heard interparty, preferably before a different judicial officer.
- c) Costs are awarded to the Applicant.

I so order.

LUBECA FAROUO Ag. JUDGE

Ruling delivered via emails of the advocates of the parties on this 17th day of January, 2025

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