

UGANDA / JUDGMENT

Mbambu v Uganda Wildlife Authority (Civil Revision 2 of 2024) [2024] UGHC 654 (25 June 2024) [2024] UGHC 654

COURT

High Court of Uganda

BEFORE

David S.L. Makumbi, J

CASE / FILE NUMBER

Civil Revision 2 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KASESE

HCT-25-CV-CR-0002-2024

(Arising from Kasese Chief Magistrates Court Misc Cause No. 61 of 2021)

MBAMBU SHAMILAH (Suing Through Her Next Friend BIIRA
GRACE):..... APPLICANT

VERSUS

UGANDA WILDLIFE AUTHORITY:..... RESPONDENT

BEFORE HON. JUSTICE DAVID S. L. MAKUMBI

REVISION

REPRESENTATION:

Applicant represented by Rukundo Seth and Co. Advocates.

Respondent represented by Legal Department of Uganda Wildlife Authority.

BACKGROUND:

This application is brought by way of Notice of Motion supported by affidavit under Sections 83(b) & (c) of the Civil Procedure Act Cap 71; 218(1)(b) Magistrates Courts Act, 83 and 84 of the Uganda Wildlife Authority Act; 2, 3(2)(a), 5, 6(4)&(5), 9(1), 10(1) Human Rights Enforcement Act; and Rules 6(1)(a) and Rule 7(1) Judicature Fundamental Human Rights Freedoms Enforcement Procedure Rules SI 31 of 2019.

The Applicant seeks orders for:

1. Revision of the Ruling and Orders delivered by His Worship Chief Magistrate Okumu Jude Muwone in Kasese Chief Magistrate Miscellaneous Cause No. 61 of 2021.
2. Revision of the child Applicant's claims in Kasese Chief Magistrate Court Miscellaneous Cause No. 61 and allow claims, awards and any other relief court deems fit in the circumstances.

The grounds for the application in brief are that the Applicant previously filed an application before the Kasese Chief Magistrate vide Kasese Chief Magistrates Court Miscellaneous Cause No.61 of 2021 seeking for orders that the Applicant be declared a victim of human rights violation and be awarded a sum of UGX 50,000,000 being exemplary damages as well as special and general damages.

On 10th November 2021, the learned trial Chief Magistrate dismissed the application on the grounds that the court in which the application had been filed lacked jurisdiction to hear and determine the same.

The Applicant being aggrieved by the decision of the Kasese Chief Magistrate contended to this Court that by not allowing the Applicant's claim for compensation for the injuries inflicted by a hippopotamus the lower court failed to exercise jurisdiction so vested and acted in the exercise of its jurisdiction with injustice.

The Applicant contends that the Respondent is vicariously liable for the negligent conduct of its employees who failed to prevent a wild animal from straying outside the National Park and subsequently injuring the Applicant.

In reply to the above, the Respondent contended that there was no error manifest on the record of Miscellaneous Cause No. 61 of 2021 and that the Chief Magistrate Court was not vested with jurisdiction to handle the matter and rightly dismissed it.

The Respondent also contended by way of preliminary objection that the deponent of the affidavit in support of the application for revision had no locus to depone the same as he was neither Advocate in personal conduct nor the Applicant in the main suit.

ANALYSIS OF THE APPLICATION:

Counsels for the Applicant and Respondent provided written submissions.

However, before I handle the substantive merits of the application, I shall first address my mind to the preliminary objection as raised by the Respondent.

In Paragraph 4 of the Affidavit in Reply to the application deposed by Samuel Mwandha of the Legal Department at Uganda Wildlife Authority, he states that the deponent of the Affidavit in Support of the application had no locus to depone the same. He contended in that regard that he was neither Counsel in personal conduct nor the Applicant in the main suit. However, in the submissions of Counsel for the Respondent he raises a contradictory argument in that same regard contending instead that the deponent was Counsel in personal conduct of the matter. He further submitted that Counsel Seth Rukundo being Counsel in personal conduct was precluded from deposing the affidavit by virtue of Regulation 9 of the Advocates (Professional Conduct) Regulations. The preliminary objection was therefore not clear in that regard.

However, I noted from the court record that the Applicant in this matter appears to have filed two Notices of Motion before this Court. The first Notice of Motion was received on 16th December 2021 at which point Counsel for the Applicant also filed written submissions. The affidavit in support of the application filed on 16th December 2021 was deposed by one Counsel Frederick Bogezi. After the initial filing of the application, the Applicant filed an amended Notice of Motion on 31st March 2022 without leave of court. Counsel Seth Rukundo filed the affidavit in support of the amended Notice of Motion.

I find the circumstances above to be rather suspicious. This is because whereas both affidavits are purportedly sworn before the same Commissioner for Oaths within about a month of each other, the stamps associated to the Commissioner for Oaths are markedly different. One stamp identifies the Commissioner for Oaths as only a Commissioner for Oaths while another identifies the same Commissioner for Oaths as also a Notary Public. The application of the signature of the said Commissioner while appearing generally similar is applied conservatively on one document and rather extravagantly on the other. This to me calls into question the authenticity of the two documents. It is to that extent that I shall require the Deputy Registrar to look into the bona fides or lack thereof of both affidavits.

I shall therefore reserve my decision on the question of the locus of the deponent of the affidavit in reply to this matter and proceed without prejudice to address the merits of this application for Revision.

Section 83 of the Civil Procedure Act provides that,

“The High Court may call for the record of any case which has been determined under the Act by any Magistrate’s Court, and if that court appears to have –

1. *exercised a jurisdiction not vested in it in law;*
2. *failed to exercise a jurisdiction so vested; or*
3. *acted in the exercise of its jurisdiction illegally or with material irregularity or injustice;*

the High Court may revise the case and may make such orders as it thinks fit; ...”

The primary ground raised in by the Applicant to move this Court for Revision are that by not allowing the Applicant’s claim for compensation for the injuries inflicted by a hippopotamus the lower court failed to exercise jurisdiction so vested and acted in the exercise of its jurisdiction with injustice. This ground therefore brings forth two contradictory issues in my view.

1. Whether the lower court failed to exercise jurisdiction vested upon it.
2. Whether in the exercise of its jurisdiction the lower court acted illegally or with material irregularity or injustice.

Issue 1:

The first issue is settled by the decision of His Worship Okumu Jude Muwone in Kasese Chief Magistrate Court Miscellaneous Cause No 61 of 2021 delivered on 10th November 2021. The learned Chief Magistrate held at Page 3 of the ruling that,

“Having judiciously considered this point of preliminary objection and arrived at a conclusion that court lacks jurisdiction. I will not consider other issues raised because this point resolves the matter.

In the collusion (sic), the application is dismissed for lack of jurisdiction and since it is the application where a minor is suing through next of her friend (sic). I do order each party to bear their own costs.”

Going by the decision above the lower court’s decision was based on the fact that the lower court determined that it lacked jurisdiction. It could not therefore fail to exercise jurisdiction that it had already determined it lacked in the first place.

In reaching the decision above, the learned Chief Magistrate took into account Section 4(1)(a) of the Human Rights (Enforcement) Act which provides that,

“The High Court shall hear and determine any application relating to the enforcement or violation of –

1. *non derogable rights and freedoms guaranteed in Article 44 of the Constitution; ..”*

In the same ruling the learned Chief Magistrate noted that the Applicant sought a declaration that the Applicant is a victim of human rights violations and cited several provisions of the Human Rights (Enforcement) Act to wit Sections 2, 3(2(a), 5, 6(4), 6(5), 6(9) and 10(1) among other laws.

By the Applicant’s own pleadings before the lower court, it was stated in the Notice of Motion that the Applicant was a victim of human rights violation and accordingly sought aggravated damages caused by torture from teeth bite injuries caused by a hippopotamus.

The reference to torture by the hippopotamus, however misguided, clearly categorized the alleged human rights violation as a non-derogable right under Article 44(a) of the Constitution. This in turn meant that indeed the lower court lacked jurisdiction to handle the matter by virtue of Section 4(1)(a) of the Human Rights (Enforcement Act) Act.

I therefore resolve the first issue in the negative and agree with Counsel for the Respondent that the lower court lacked jurisdiction.

Issue 2:

The second issue is also resolved by implication in the first issue. The lower court could not act illegally in the exercise of its jurisdiction as it never had jurisdiction to begin with and therefore declined to decide the matter on the merits.

Before I take leave of this matter I must observe that the quality of representation by Counsel for the Applicant in this matter leaves a lot to be desired. A prudent lawyer would have taken the trouble to diligently look into the basis for which the lower court decided not to entertain the application. From what I can tell, Counsel for the Applicant opted to smuggle the matter before this court by way of revision which procedure clearly does not apply. Counsel's intention in this regard is evident from his reliance upon Section 6(5) of the Human Rights (Enforcement) Act. It is provided thereunder that,

“No suit instituted under this Act shall be rejected or otherwise dismissed by the competent court merely for failure to comply with any procedure, form or on any technicality.”

The provision above speaks for itself; suits instituted under the Act cannot be dismissed merely for procedural, form or technical reasons. Jurisdiction is clearly not envisaged under the provision above.

It is also trite law that proceedings of a court without jurisdiction are a nullity because no court can confer jurisdiction upon itself. Furthermore, lack of jurisdiction goes far beyond any error, omission or irregularity nor can it be regarded as a mere technicality. (See **Desai v Warsama** [1967] EA 351).

In my view, the level of representation of the Applicant in this matter falls below the standard of diligence expected of an advocate under Regulation 12 of the Advocates (Professional Conduct) Regulations. I cannot see how by pursuing revision in this matter the advocate was acting in the best interests of his client.

In light of the resolution of the issues above I find that this application for revision fails.

ORDERS:

1. This application is hereby dismissed. However, given my concerns about the quality of representation of the Applicant I do hereby order that costs in this matter are borne by Counsel for the Applicant personally, as I do not feel it is fair for the Applicant to shoulder the burden due to poor representation.
2. In light of the concerns I expressed about the authenticity of the two affidavits in support filed in this matter, I require that the Deputy Registrar crosscheck the authenticity thereof and take the necessary action in case anything irregular is established.

I so order.

David S. L. Makumbi

JUDGE

25/06/24

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