

UGANDA / JUDGMENT

Mubiru v Mubiru (Revision Cause No. 04 of 2012) [2013] UGHCLD 35 (4 April 2013)

[2013] UGHCLD 35

COURT

HC: Land Division (Uganda)

BEFORE

Tuhaise, J

CASE / FILE NUMBER

Revision Cause No. 04 of 2012

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

REVISION CAUSE NO. 04 OF 2012

ARISING OUT OF MENGO CHIEF MAGISTRATES CIVIL SUIT NO 961 OF 2009

STEPHEN MUBIRU.....APPLICANT

VERSUS

ANNET MUBIRU.....RESPONDENT

BEFORE LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This was an application by notice of motion brought under sections 83(a) of the Civil Procedure Act and Order 52 rules 1, 2 & 3 of the Civil Procedure Rules (CPR) for orders that :-

1. Mengo Chief Magistrate's Court Civil Suit No. 961 of 2009 be revised and the judgement in the same delivered on the 2nd day of February 2012 by His Worship Mr. Ereemye James Jumire Mawanda learned Principal Magistrate Grade 1 be declared a nullity.
2. Costs of this application and in the proceedings in the lower court be provided for.

The application is supported by the affidavit of **Stephen Mubiru** the applicant. The grounds of the application are briefly that Mengo Chief Magistrate's court presided over by His Worship Mr. Ereemye James Jumire Mawanda learned Principal Magistrate Grade 1 exercised a jurisdiction not vested in it in entertaining and delivering judgement in Mengo Chief Magistrate's Court Civil

Suit No. 961 of 2009 the subject matter being land and developments comprised in mailo register Mengo Kibuga Block 26 Plots 659 & 690 at Namirembe valued at over UGX 280,000,000/= (two hundred and eighty million).

The application is opposed by the respondent who filed an affidavit in reply. Counsel filed written submissions on the matter.

The brief background to this case is that the respondent filed civil suit no. 961 of 2009 in Mengo Chief Magistrate's Court against her husband the applicant in respect to land and developments comprised in mailo register Mengo Kibuga Block 26 Plots 659 & 690 at Namirembe. The trial Magistrate awarded the respondent various orders against the applicant, among others, that the applicant (defendant) renders an inventory of rents received from the suit property and fully disclosure of all tenants and source of funding used to develop the suit land; that management and control of the suit property be vested in the applicant and respondent as joint owners; and that a permanent injunction restrains the applicant from posing as the sole owner and controller of the suit property. The applicant has referred the case to this court for revision on grounds that the trial magistrate lacked the pecuniary jurisdiction to adjudicate over the matter.

The applicant's case as deduced from his affidavit evidence is that the trial magistratedid not have pecuniary jurisdiction to entertain Mengo Chief Magistrate's Court Civil Suit No. 961 of 2009. He avers in paragraph 2 of his supporting affidavit that the suit property is valued at UGX 280,000,000/= (two hundred and eighty million) as indicated in the valuation report annexure A to the said supporting affidavit. The applicant avers in paragraph 5 of the same affidavit that his Counsel brought it to the attention of the trial court that it lacked jurisdiction vide Mengo Chief Magistrates MA No. 585 of 2009 to no avail, as per annexure B to his supporting affidavit. His Counsel submitted that this rendered the resultant judgement to be a nullity.

The respondent avers in her affidavit in reply that the dispute over the suit land was disposed of by the trial magistrate in MA 583 of 2007. She averred that a copy of the ruling was attached as annexure A; that filing this application could amount to a duplicity of suits in a bid to defeat the interests of justice; that the choice of court and procedure was made by the applicant; and that the application is irregular as it runs concurrently with MA 583 of 2007; and that this is not a case for civil revision. Her Counsel submitted that MA 583 of 2007 was dismissed for want of prosecution and it has never been reinstated. He argued that considering that the respondent was not seeking declaration of ownership of the suit property but management of the suit property, granting the application was intended to delay and defeat justice and considering that it is largely a family affair. He also contended that it will cause hardship to the respondent and her large family if the revision is exercised.

I have carefully addressed the affidavit evidence and submissions of Counsel as well as legal authorities cited in this matter.

Section 207 of the Magistrates Courts Act, as amended by Act 7 of 2007, provides as follows:-

“Subject to this Act and any 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-

1. *a magistrate grade 1 shall have jurisdiction where the value of the subject matter does not exceed twenty million shillings.”*

Section 4 of the Civil Procedure Act also provides as follows:-

“Except in so far as is otherwise provided, nothing in this Act shall operate to give any court jurisdiction over suits the amount of value of the subject matter of which exceeds the pecuniary limits if any, of its ordinary jurisdiction.”

This, would, in my opinion, infer that the jurisdiction of a magistrate is restricted to pecuniary value of the subject matter except where it is provided otherwise.

In **Bikaba Kidyede V Gedion Kibande [1988] HCB 104**, Bahigaine J, as she then was, defined jurisdiction as the legal authority to administer justice according to the means which the law has provided and subject to the limitations imposed by that law upon the judicial authority. She stated that the question to ask in such cases is whether the value of the subject matter is capable of clothing the magistrate’s decision with the requisite legality or authority. It is also the legal position that the value to be considered for purposes of determining jurisdiction is the value of that which the plaintiff seeks to recover. See **Jaffers Ltd V Caltex (Africa) Ltd [1961] EA 140**.

In the main case the respondent as plaintiff sought to recover management of the suit property jointly with the applicant as defendant, in addition to making the applicant make full disclosures on tenants and funding of developments on the land, as well as procuring a permanent injunction against the said defendant restraining him from posing as the sole owner and controller of the suit property. These were the main matters to be decided by the trial magistrate. They were indeed decided in the respondent’s favour as plaintiff.

The order on powers to manage and control the suit premises jointly and the permanent injunction against the applicant were powers in perpetuity which **Black’s Law Dictionary 6th edition pages 1140 & 1141** defines as, among others, continuing forever, never ceasing, enduring, lasting, unlimited in time, or continuing without intermission or interval, or, pertaining to real property, any condition extending the inalienability of property beyond the time of a life in being, among other circumstances. Thus, the said two orders would arguably stay unless and until there is a change in the ownership of the suit property. This would make the value of the subject matter to be the value of the suit property as was held in **Jaffers Ltd V Caltex (Africa) Ltd, supra**.

The evidence adduced by the applicant in this matter, which has not been disputed or discredited by the respondent, is that the value of the subject matter of this suit was UGX 280,000,000/= (two hundred and eighty million). The trial magistrate's orders of a permanent injunction and joint management of the suit property against the applicant, being powers in perpetuity, would derive legality or authority from the very subject matter on which they are based, the value of which is put at UGX 280,000,000/= (two hundred and eighty million). This is way beyond the trial magistrate's pecuniary jurisdiction which the law puts at UGX 20,000,000/=. Despite this, the trial magistrate went on to decide the suit and delivered judgement and a decree. I do not agree with the respondent's Counsel's arguments that since the respondent was not seeking declaration of ownership of the suit property but management of the suit property, he was within his jurisdiction when he granted the orders of a permanent injunction and joint management of the suit property against the applicant.

The respondent's Counsel argued in his submissions that MA 583 of 2007 was dismissed for want of prosecution and it has never been reinstated. The respondent in her affidavit in reply averred that the dispute over the suit land was disposed of by the trial magistrate in MA 583 of 2007. Though she averred in the same affidavit that a copy of the ruling was attached as annexure A, there was no such annexure on the court record. That notwithstanding, I agree with the applicant's Counsel that the respondent's failure to successfully challenge the lower court's jurisdiction did not and could not itself have vested jurisdiction in the trial court which did not have the same. I dare say that even if the trial magistrate had overruled the applicant on the matter, it still would not have conferred jurisdiction on his court.

The respondent's Counsel also submitted that it will cause hardship to the respondent and her large family if the revision is exercised. This was not brought out in the respondent's affidavit evidence. I will therefore treat the submission as evidence being given from the Bar and accordingly decline to address it.

It is settled law that a judgement of a court without jurisdiction is a nullity and something which a person affected is entitled to have set aside *ex debito iudiciali* – See **Karoli Mubiru & 21 Others V Edmond Kayiwa** [1979] HCB 212; **Peter Mugoya V James Gidudu & anor** [1991] HCB 63.

Section 83 of the Civil Procedure Act confers on this court jurisdiction to call for records of a lower court where it appears that such a court exercised jurisdiction not vested in it by law. In my opinion, considering the circumstances of this case, and the law applicable this is a proper case for the exercise of such jurisdiction.

In the given circumstances, on the adduced evidence and legal authorities on the matter, I find that the Principal Magistrate Grade 1 exercised a jurisdiction not vested in him in entertaining and delivering judgement in Mengo Chief Magistrate's Court Civil Suit No. 961 of 2009, the subject matter being land and developments comprised in mailo register Mengo Kibuga Block 26 Plots 659 & 690 at Namirembe. His judgement in respect of the said case was therefore a nullity. It is set aside. Costs of this application and in the proceedings in the lower court are awarded to the applicant.

Dated at Kampala this 4th day of April 2013.

Percy Night Tuhaise

JUDGE.

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