

UGANDA / JUDGMENT

Ochan v Odur (Miscellaneous Application 34 of 2023) [2024] UGHC 314 (13 May 2024)

[2024] UGHC 314

COURT

High Court of Uganda

BEFORE

Phillip Odoki, J

CASE / FILE NUMBER

Miscellaneous Application 34 of 2023

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT GULU
(MISCELLANEOUS APPLICATION NO. 0034 OF 2023 (ARISING FROM CIVIL APPEAL
NO.050 OF 2019) (ARISING FROM CIVIL SUIT NO.001 OF 2010) HELLEN OCHAN
===== APPLICANT VERSUS

ODUR WILLIS =====RESPONDENT

BEFORE HON. MR. JUSTICE PHILLIP ODOKI

RULING ON PRELIMINARY OBJECTIONS

Introduction:

- [1] This ruling arises from the preliminary objection which was raised by counsel for the Respondent that this Court does not have the jurisdiction to entertain this application and prayed that the application be dismissed with costs to the Respondent.

Background:

- [2] The Respondent filed Civil Suit No.001 of 2010 against the Applicant in the Chief Magistrates Court of Gulu, seeking for specific performance of a contract of sale of land described as Plot 11 Mama Cave Close Road, Layibi Central Sub-ward, Gulu Municipality (hereinafter referred to as the 'suit land') or in the alternative a refund of Ugx 3,000,000/= being the purchase price of the suit land; Ugx 6,158,000/= being the costs of developments which were undertaken by the Respondent on the suit land; general damages for breach of contract; interest; and the costs of the suit. The Applicant denied the Respondents claim alleging that she only borrowed money from the Respondent. The suit proceeded interparty. On the 24th June 2015, the trial Magistrate rendered his judgment and issued a decree in which he

ordered the Applicant to pay the Respondent, Ugx 3,000,000/= being refund of the purchase price of the suit land together with interest of 12% per annum from November 2007; Ugx 6,846,200/= being the value of the building which the Respondent constructed on the suit land; Ugx 5,000,000/= as general damages; and the costs of the suit.

- [3] The Respondent filed a bill of costs which was taxed and allowed at Ugx 3,121,000/=. Thereafter execution of the decree ensued by way of arrest of the Applicant and by way of attachment and sale of the suit land. The suit land was valued by East African Consulting surveyors and valuers. It was given a market value of Ugx 76,000,000/= and a forced sale value of Ugx 46,000,000/=. The suit land was sold in execution to Lapir Innocent at Ugx 49,000,000/=. On the 7th January 2019 the court bailiff returned the warrant having been duly executed. The bailiff filed her bill of costs which was taxed on the 15th January 2019 and allowed at Ugx 14,711,886/=. On the 25th February 2019 the Court issued a warrant to give vacant possession of the suit land to the purchaser.
- [4] Meanwhile, on the 3rd December 2018 the Applicant filed High Court Misc. Application No. 171 of 2018 seeking for leave to file an appeal to the High Court out of time. On the 6th June 2019 the Applicant filed High Court Civil Appeal No. 50 of 2019 challenging the decree of the trial Magistrate. On the 29th August 2019 this Court gave its judgement on the appeal. The appeal succeeded in part. This Court set aside the award of general damages of Ugx 5,000,000/= and also adjusted the date when the interest on Ugx 3,000,000/= would start to run. The interest was to begin to run from the 12th April 2008. The Applicant was awarded half the costs of the appeal. The original file was thereafter returned to the trial Magistrate for further management.
- [5] On the 13th September 2023 the trial Court issued a warrant to give vacant possession of the suit land to the purchaser. On the 12th October 2023 the bailiff wrote to the trial Magistrate indicating that on the 13th September 2023 the purchaser was put into possession of the suit land. On the 16th September 2023 the Applicant instituted the instant application, by Notice of Motion, under Section 98 of the Civil Procedure Act Cap 71 and Order 52 Rule 1, 2 & 3 of the Civil Procedure Rules S. I 71-1, seeking to set aside execution in Civil Suit No.001 of 2010 for illegality.

The Applicant's case:

- [6] The Applicant's case as deduced from the Notice of Motion and affidavit in support of the application, which was deposed by the Applicant, is that, the valuation was only of 2 rooms rather than the entire suit land; the Respondent did not extract fresh warrant in line with the decision of this Court on appeal; the Applicant's unsurveyed land and building was sold off contrary to the law; and the warrant to give vacant possession of the suit land dated 13th September 2023 without advertisement was illegal.

The Respondent's case:

- [7] The Respondent filed an affidavit in reply opposing the application. Briefly, the Respondent's case is that by the time the Applicant filed Civil Appeal No. 50 of 2019, execution in Civil Suit No.001 of 2010 had already been concluded and the decision in the appeal did not set aside the execution. After the decision of the High Court, the purchase price of the suit land of Ugx 5,000,000/= which was set aside was deducted, handed over to the Applicant and the balance of the proceeds of the execution of Ugx 27,073,000/= was deposited in the trial Court. The suit land and all the structures thereon were valued by a professional valuer. The Respondent contended that all the procedures of execution was followed.

Legal representation:

- [8] At the hearing, the Applicant was represented by Mr. Owor Davis Abuga of M/s Owor-Abuga & Co. Advocates and the Respondent was represented by Mr. Obalo Michael Okot of M/S M. Oyet & Co. Advocates.

Preliminary objection:

- [9] When this application come up for hearing on 27th February 2024, Counsel for the Respondent, informed Court that they intended to raise a preliminary objection regarding the jurisdiction of this Court to determine this application. The Court gave Counsel directives to file written submissions, which directives were duly complied with.
- [10] Counsel for the Respondent submitted that this Court does not have the jurisdiction to entertain this application. According to Counsel, it is the Chief Magistrate's Court which executed the decree that is clothed with the requisite jurisdiction over this matter and not this Court. In support of his argument, Counsel relied on Section 34(1) of the *Civil Procedure Act, Cap 71* on the jurisdiction to entertain all questions arising between the parties to a suit relating to the execution, discharge, or satisfaction of the decree. Counsel also relied on the case of *Owners of Motor Vessel Lillian Versus Caltex Oil Kenya Limited (1989) 1 KARL* and *Katende Sarah Nakitende Versus Mpwany Samuel Revision Cause No. 11 of 2019* for the proposition of the

law that jurisdiction is a creature of statute and a decision by a court without jurisdiction is a nullity. Counsel invited this Court to dismiss the application with costs to the Respondent.

- [11] In reply, Counsel for the Applicant submitted that this Court has original unlimited jurisdiction to entertain this application. According to Counsel, Section 34(1) of the *Civil Procedure Act Cap 71* cannot oust the unlimited original jurisdiction conferred on this Court by the *Constitution of the Republic of Uganda, 1995.* In support of his argument, Counsel relied on Articles 2(2) & 139(1) of the *Constitution of the Republic Uganda, 1995*, Section 16(1) of the *Judicature Act, Cap. 13* and the case of *Uganda Revenue Authority versus Rabbo Enterprises Ltd and Another SCCA No. 12 of 2004.* Counsel invited the Court to overrule the preliminary objection with costs to the Applicant and allow the application to

proceed on its merits.

Consideration and determination of the Court:

- [12] The term jurisdiction refers to the authority which a court of law has to hear and decide a case that has been brought before it. The limit of the authority is imposed by the law under which the court is constituted and cannot be prescribed by inference. A court of law cannot arrogate itself jurisdiction beyond what is provided for under the law. Once the court finds that it has no jurisdiction to decide a case, it cannot take any further step in the case. This is because a decision of a court without jurisdiction is a nullity. See the case of **Desai versus Warsama [1967] 1 EA 351**; **Uganda Railway Corporation versus Ekwaru D. O and 5104 other SCCA No. 07 of 2019**; **Owners of Motor Vessel Lillian v. Caltex Oil Kenya Limited [1989] KLR 1**; and **Pulkeria Nakagwa v. Dominiko Kiggundu [1978] HCB 310**.
- [13] The jurisdiction to determine questions arising between parties to a suit relating execution, discharge, or satisfaction of decrees is vested with the Court executing the decree. Section 34(1) of the **Civil Procedure Act Cap 71** is explicit. It provides that:

"*Questions to be determined by the Court executing the decree*."

All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge, or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit. Underlined for emphasis.

- [14] In **Sinba (K) Ltd versus Uganda Broadcasting Corporation SCCA No. 3 of 2014** Arach-Amoko JSC held that Section 34 of the Civil Procedure Act is the correct procedure for determining issues arising out of execution of decrees between parties to a suit. She cited with approval Tsekokokoko JSC, in **Francis Micah v Nuwa Walakira SCCA No.24 of 1994** wherein he considered the relevant explanations on the scope, object and applicability of Section 35 (now section 34) using the comments by the learned author of **Rao's All India Reporter Commentaries on the Indian Code of Civil Procedure volume 1 (10th Edition)** where at pages 583 the authors stated thus:

**"The object of the section being to save unnecessary expense and delay and to afford relief to the parties finally, cheaply, and speedily without the necessity of a fresh suit: it must be construed as liberally as the language would reasonably admit. It embraces all matters connected with the execution of an existing decree between the parties or their representatives, and covers all questions relating to the execution, discharge or satisfaction of the decree, It does not matter whether such questions arise before or after the decree has been executed and the fact that an alternative remedy by suit is provided in* certain circumstances or that the application was made under a different provision of the code, does not prevent the section from being applied for the decision of the questions falling within its scope"* Underlined for emphasis.*

[15] Similarly, in **Papada Holdings Limited and Another versus Kisembo and Another HC. Misc. Application No. 497 of 2021**, my brother judge Mubiru Steven stated that:

"According to section 34 (1) of The Civil Procedure Act, all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge, or satisfaction of the decree, have to be determined by the court executing the decree and not by a separate suit. This ancillary jurisdiction serves two separate, though sometimes related, purposes: (1) to permit disposition by a single Court of claims that are, in varying respects and degrees, factually interdependent and (2) to enable a Court to function successfully, that is, to manage its proceedings, vindicate its authority, and effectuate its decrees. The purpose of this provision is to create a cheap and expeditious remedy for determination of certain question in execution so as to avoid the multiplicity of suits in a limited class of cases relating to discharge or 15 satisfaction of a decree".*

[15] From the grounds of this this application, it is evident that the Applicant and the Respondent were parties to Civil Suit No.001 of 2010 which was before the Chief Magistrates court of Gulu. Execution of the decree in that suit was done by the trial Magistrate. The Applicant has filed this application seeking the determination of questions arising between the parties in Civil Suit No.001 of 2010 relating to the execution, discharge, or satisfaction of the decree. Clearly this court did not execute the decree in Civil Suit No.001 of 2010. It was executed by the trial Court. This Court is therefore not possessed with the requisite jurisdiction to determine the questions arising between the parties in Civil Suit No.001 of 2010 relating to the execution, discharge, or satisfaction of the decree. That jurisdiction is vested with the trial court which executed the decree.

[16] I am not persuaded by the argument of counsel for the Applicant that since the High Court has unlimited original jurisdiction in all matters, it has the jurisdiction to entertain this application. Article 139(1) of the **Constitution of the Republic of Uganda, 1995** confers on the High Court unlimited original jurisdiction in all matters. It states that:

"*The High Court shall, subject to the provisions of this Constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by this Constitution or other law.*" Underlined for emphasis.

[17] The same position is also provided for in Section 14(1) of the **Judicature Act, Cap. 13** which provides that:

"*The High Court shall, subject to the Constitution, have unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by the Constitution or this Act or any other law.*" Underlined for emphasis.

- [18] The original jurisdiction referred to in Article 139(1) of the Constitution and Section 14(1) of the Judicature Act, is the authority of the High Court to hear and decide the case for the first time. In the instant application, this Court is not called to exercise its original jurisdiction. The Court is called to determine ancillary matters arising from the execution of the decree of the trial Magistrate.
- [19] In my view, the case of **Uganda Revenue Authority versus Rabbo Enterprises Ltd and Another SCCA No. 12 of 2004,** was cited out of context by counsel for the Applicant. In that case, the Supreme Court dealt with the jurisdiction of the Tax Appeals Tribunal vis -a -vis the unlimited original jurisdiction of the High Court. In that case, the Court of Appeal had expressed the view that the unlimited original jurisdiction of the High Court conferred upon it by Article 139 of the Constitution and Section 16 (1) of the Judicature Act can only be changed by amending the constitution. However, the Supreme Court disagreed with the Court of Appeal and held that the High Court exercises its original unlimited jurisdiction subject to other provisions of the Constitution. One such provision envisaged in Article 139 (1) is Article 152 (3) of the Constitution which envisages the establishment of Tax Appeals Tribunals through an act of Parliament and the Constitution empowered the Tribunal to handle taxation disputes. The issue before this Court is not about the exercise of unlimited original jurisdiction under Article 139(1) of the Constitution.
- [20] In the end, I find that this Court has no original jurisdiction to entertain this application. The preliminary objection is upheld. This application is accordingly dismissed with cost to the Respondent.

I so order.

Dated and delivered by email this 13th day of May, 2024

Phillip Odoki Judge

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