

UGANDA / JUDGMENT

Rubahwera v Mujurizi

(Miscellaneous Application 1 of 2023) [2024] UGHC 635 (5 July 2024)

[2024] UGHC 635

COURT

High Court of Uganda

BEFORE

Allan Nshimye, J

CASE / FILE NUMBER

Miscellaneous Application 1 of 2023

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MBARARA
MISCELLANEOUS APPLICATION 01 OF 2023 5 (ARISING FROM MISCELLANEOUS
APPLICATION NO.045 OF 2022) (ALL ARISING OUT OF CIVIL SUIT NO.39 OF 2022)

RUBAHWERA CHARLES ----- APPLICANT

VERSUS

10 MUJURIZI PATRICK ----- RESPONDENT

BEFORE: Hon. Justice Nshimye Allan Paul M.

RULING

15

REPRESENTATION

The Applicant was represented by M/s Twinamatsiko & Agaba Advocates, while the Respondent was represented by M/s Bwatota Bashonga & Co Advocates.

20 BACKGROUND

The Applicant commenced this Application by Notice of Motion under Section 83 of the Civil Procedure Act Cap 71, and Order 52 Rules 1,2 and 3 of the Civil Procedure Rules SI 71-1 seeking the following orders;

- 1. The ruling of His Worship Akankwasa Edward Kabayo, the acting Chief Magistrate of Kiruhura dated 9th 25 December, 2022 *vide* Miscellaneous Application No.45 of 2022 be revised.
- 2. That the costs of this Application be provided for.

The Application is supported by an affidavit deposed by Rubahwera Charles – the Applicant, and opposed through an affidavit in reply deposed by Mujurizi Patrick – the Respondent.

5 GROUNDS

The grounds of the Application as stated in the Notice of Motion are as follows;

- 1. The trial Chief Magistrate exercised jurisdiction not vested in him when he set aside the order withdrawing Civil Suit No.39 of 2022 passed by the same Court.
- 2. The trial Chief Magistrate acted with material irregularity when he set aside the
- 10 withdraw of Civil Suit No. 39 of 2022 which was instituted under a wrong procedure.
- 3. That it is fair, just and in the interests of justice that this Application is granted.

SUBMISSIONS

The parties filed written submissions. The Applicant filed his submissions on 3rd 15 May, 2023, while the Respondent filed his submissions on 11 th May, 2023.

Applicant's submissions

Counsel for the Applicant framed two issues namely;

- 20 1. Whether this is a proper case for revision and whether there are sufficient grounds for this Court to make a revision order?
- 2. What remedies are available to the parties?

On the first issue, counsel submitted that the Applicant's withdrawal of Civil Suit No.39 of 2022 was endorsed by the learned Chief Magistrate on 26th 25 July, 2022 (**see annexure A of the affidavit in support**) and thus by the time the Respondent applied for setting aside that withdrawal *vide* Misc. Application No.045 of 2022, the Chief Magistrates Court of Kiruhura at Kiruhura was functus officio, and thereby the learned Chief Magistrate acted illegally and with material irregularity when he 30 assumed jurisdiction to hear Misc. Application No.045 of 2022. Counsel cited the case of **CONNECT FINANCIAL SERVICES LIMITED VS MIDDLENORTH COOPERATIVE UNION LTD MISC REVISION CAUSE NO. 065/2017** to support the contention that this is a matter palatable for revision.

Counsel prayed for the revision and setting aside of the learned Chief Magistrate's decision in Misc. Application No.045 of 2022 to set aside an earlier order to withdraw the main suit and also prayed for costs of the suit.

Respondent's submissions

The Respondent prayed for upholding of the learned Chief Magistrate's decision to set aside the withdraw of suit order because the initial withdrawal was endorsed without the Respondent's consent and neither were his costs catered for yet he

- 10 had already filed a written statement of defence. Counsel further submitted that the initial withdrawal of Civil Suit No.39 of 2022 was done on 26th July, 2022 during Court vacation without a certificate of urgency in contravention of Rule 4 of the Judicature Court Vacation Rules.
- 15 Counsel further submitted that the initial withdrawal of Civil Suit No.39 of 2022 was in violation of Order 25 Rule 1(2) of the Civil Procedure Rules because the Applicant ought to have first applied for leave of Court to withdraw the suit, and cater for the Respondent's costs. Counsel contended that the withdraw of suits is governed by law, not wishes of individual parties. Counsel prayed for the dismissal of the 20 Application.

DETERMINATION

It is the law that a High Court can exercise powers of revision where it appears that a Magistrate's courts in its decision (a)exercised a jurisdiction not vested in it in 25 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 as is provided in section 83 of the Civil Procedure Act.

The High court exercises its revisionary power by satisfying itself as to 30 the correctness, legality or propriety of any finding, order or any other decision of the Magistrate's court as was stated in **MABALAGANYA V. SANGA (2005) E. A 152**. When a case for revision has been made out the High Court in exercise its unlimited powers in section 98 of the CPA may make such order in it as it thinks fit.

I will address the issues together.

The focus of this application is to determine whether the trial magistrate in making a decision in Kiruhura Chief Magistrates Court Miscellaneous application 45 of 2022

5 (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.

The evidence on court record is to the effect that the applicant instituted Kiruhura civil suit no 39 of 2022, which he later withdrew under order 25 of the CPR, on 25th 10 July 2022 and the withdraw was confirmed by the Trial Magistrate on 26th July 2022. *(see paragraph 2 of the affidavit in support, the withdraw order marked as annexure A to the affidavit in support and paragraph 5 of the affidavit in reply).*

- 15 The evidence on court record also shows that the respondent herein, filed Miscellaneous application 45 of 2022 in the Kiruhura Chief Magistrates court under section 98 of the Civil procedure Act , order 25 rule 1 and order 52 rule 1 of the CPR as listed in the Ruling of His Worship Akankwasa Edward kabayo. In Miscellaneous application 45 of 2022, the respondent herein sought to set aside the withdraw of
- 20 suit order made by the Kiruhura Chief Magistrates court in Civil suit 39 of 2022. *(see paragraph 6 of the affidavit in reply and the Ruling in Miscellaneous application 45 of 2022 attached as annexure A to the affidavit in support).*

The Trial Magistrate in his ruling in In Miscellaneous application 45 of 2022 set aside 25 the Withdraw that was made by the applicant, as a plaintiff in Civil suit 39 of 2022. In essence, the trial Magisrte in handling Miscellaneous application 45 of 2022 was reviewing his earlier decision. So did he conduct the review in line with the law?

In principle Section 82 of the Civil Procedure Act Cap 71 empowers court to review 30 and revise a judgment as was stated by Hon Justice Musa Ssekana in his ruling in **LUITINGH LAFRAS AND ANOR V SPECIAL SERVICES LIMITED (CIVIL MISCELLANEOUS APPLICATION 572 OF 2020)** where he said that;

"A review is reconsideration of the subject matter by the same court and by the same judge. Since he/she is better suited to correct to remove any mistake or error apparent on the face of his/her own order. It is the duty of the court to correct grave and palpable errors committed by it to prevent miscarriage of justice."

In miscellaneous application 45 of 2022, the respondent herein sought that the Magistrates court revise its decision in respect to the withdraw order made in in Kiruhura Magistrates Court Civil suit 39 of 2022. I note that the respondent herein did not file an application for review in miscellaneous application 45 of 2022 pursuant to the law in Section 82 of the Civil Procedure Act but rather filed an application under section 98 of the Civil Procedure Act.

An application for review under section 82 of the Civil Procedure Act is guided by specific grounds and considerations which are not applicable in an application filed \$15\$ under Section 98 of the Civil Procedure Act. It is therefore my finding that the Trial Magistrate in handling the application in Miscellaneous application 45 of 2022, the way it was, amounted to exercising his jurisdiction with material irregularity and injustice since the application before him was not for review under section 82 of

the Civil procedure Act. 20

> In making his decision attached as annexure A to the affidavit in support, the Trial Magistrate did not consider the grounds and considerations for review, because the application before him in Miscellaneous application 45 of 2022 was not an application for review of his earlier decision in respect to the withdraw order in Kiruhura Magistrates Court Civil suit 39 of 2022.

In conclusion, I hereby dismiss this Application with costs.

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NSHIMYE ALLAN PAUL M. JUDGE 05-07-2024

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