

UGANDA / JUDGMENT

Senyonga v Stanbic Bank Uganda Limited & Another (Criminal Revision 4 of 2024) [2024] UGHC 1103 (26 November 2024) [2024] UGHC 1103

COURT

High Court of Uganda

BEFORE

David S.L. Makumbi, J

CASE / FILE NUMBER

Criminal Revision 4 of 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KASESE

HCT-25-CV-CR-04-2024

(FORMERLY FORT PORTAL HCT-01-CV-CR-02-2024)

(ARISING FROM KAS-00-CV-MC-033-2023)

ISSA SENYONGA=====APPLICANT

VERSUS

1. STANBIC BANK UGANDA LTD

2. IGARA TEA FACTORY LTD=====RESPONDENTS

BEFORE JUSTICE DAVID S. L. MAKUMBI

RULING

REPRESENTATION:

Applicant represented by Counsel Geoffrey Mishele of M/S Bagyenda & Co. Advocates.

1st Respondent did not enter appearance.

2nd Respondent represented by M/S Wegulo and Wandera Advocates.

BACKGROUND:

This application is brought by way of Notice of Motion under Sections 83 and 98 of the Civil Procedure Act; and Orders 46 and 52 of the Civil Procedure Rules by which the Applicant seeks orders that:

1. A Revision Order doth issue setting aside the Ruling and Orders of His Worship Michael Kwesiga Senior Magistrate Grade One delivered vide KAS-00-CV-MC-0033-2023.
2. Costs of the Application be provided for.

The grounds of the Application as laid out in the Affidavit in Support of the Applicant Issa Ssenyonga are that:

1. The Trial Magistrate acted without pecuniary jurisdiction as the subject matter of the application in issue was UGX. 37,000,000.
2. The Trial Magistrate acted with material irregularity and injustice when he dismissed the application without evaluating the evidence that was already on the court file.
3. The Trial Magistrate denied the Applicant a chance to file a rejoinder to the evidence of the Respondents.

The 1st Respondent never entered appearance in this matter. However, the 2nd Respondent did file an Affidavit in Reply by which the Deponent Mutabaruka Kenneth opposed the Application.

By his Affidavit the Deponent pointed out that the 2nd Respondent Igara Tea Factory Ltd was unknown to him and that he was the Company Secretary to Igara Growers Tea Factory Ltd. Nonetheless he stated that he was appearing in Court having been served with court proceedings related to Igara Tea Factory.

The Deponent went on to state that the matter for which the Applicant sought revision had nothing to do with adjudication of rights related to any amount of money or property for which the pecuniary jurisdiction of the lower Court would need to be established.

The Deponent further averred that the Applicant had failed to appear before the lower Court despite having served the same court proceedings on the Respondents wherein the date and time of hearing were set. The Deponent went on to state that the Applicant had appeared in Court an hour later after the Trial Magistrate had delivered the ruling and that he had forfeited his right to rejoinder when he failed to appear on the hearing date at the appointed time.

The 2nd Respondent subsequently prayed that the Application be dismissed with costs.

By way of rejoinder the Applicant swore an Affidavit and stated that the reference to Igara Tea Factory Ltd instead of Igara Growers Tea Factory Ltd was a misnomer which could easily be corrected and could not be used as a basis to defeat the application. He further reiterated that the matter for revision exceeded the Trial Magistrate's pecuniary jurisdiction. Furthermore, the Applicant argued that as an unrepresented litigant he ought to have been allowed the benefit of

doubt by granting an adjournment instead of a dismissal on first mention. The Applicant reiterated his prayer that the matter be revised in the interests of justice.

Applicant's Submissions:

Counsel for the Applicant provided written submissions while the 2nd Respondent filed an Affidavit in Reply but no submissions and did not appear in Court. In his submissions Counsel for the Applicant raised three issues to wit:

1. Whether the Trial Magistrate had jurisdiction to hear the application.
2. Whether the Trial Magistrate acted illegally or with material irregularity or injustice.
3. What remedies are available to the parties.

In line with the issues above, Counsel argued that the learned Trial Magistrate had no jurisdiction to handle the matter as Section 207 of the Magistrate Courts Act sets the pecuniary jurisdiction of a Grade 1 Magistrate at UGX 20,000,000 while the subject matter. Counsel contended that the subject matter value was UGX 37,000,000 which was outside the Trial Magistrate's jurisdiction and that therefore the decision he made was a nullity.

With regard to illegality, material irregularity or injustice Counsel submitted that the Trial Magistrate acted illegally when he failed to realize that the Respondents who had filed their Affidavits in Reply on the date of dismissal of the matter had not served the Applicant. Furthermore, the Trial Magistrate had failed to evaluate the evidence in the affidavits and had dismissed the matter for want of prosecution yet there was affidavit evidence on record. The failure to take into account the affidavit evidence resulted in an injustice to the Applicant who was unrepresented.

The Applicant reiterated his prayer that the lower court ruling be set aside in revision.

ANALYSIS:

Section 83 of the Civil Procedure Act provides that the High Court may call for the record of any case determined under the Act by any Magistrate Court and revise the case where it is apparent that:

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

Section 83 of the Civil Procedure Act further provides that revision will not be exercised unless the parties have been given the opportunity to be heard or where, from lapse of time or other cause, the exercise of that power would involve serious hardship.

The Applicant based this application on the grounds that the lower court acted outside of its pecuniary jurisdiction and had also acted with injustice when it dismissed the matter without allowing the Applicant a chance to file a rejoinder.

As concerns pecuniary jurisdiction the Applicant contended that the subject matter in the lower court concerned a sum of UGX 37,000,000 as referenced in the pleadings before the lower court. I have considered the pleadings before the lower court and noted that the matter before the lower court was premised upon a Notice of Motion brought primarily under Section 6 of the Evidence (Banker's Books) Act.

Section 6 of the aforementioned Act provides that,

1. *On the application of any party to a legal proceeding, a court may order that the party be at liberty to inspect and take copies of any entry in a Banker's book for any of the purposes of those proceedings.*
2. *An order under this section may be made either with or without summoning the bank or any other party, and shall be served on the bank three clear days before it is to be obeyed, unless the court otherwise directs.*

In addition to the above the long title to the Act describes it as an Act relating to the law of evidence with respect to Bankers' Books. In this regard therefore I note that despite the reference in the lower court pleadings to UGX 37,000,000 as a sum that the Applicant had deposited with the 1st Respondent, it is erroneous on the part of the Applicant to state that the sum in question formed the pecuniary basis of the subject matter in issue before the lower court. I agree with the 2nd Respondent that the substantive matter before the lower court was not about the UGX 37,000,000 which the Applicant claimed to have deposited with the 1st Respondent. The matter in issue before the lower court was an application for access to a bank statement in the names of the 2nd Respondent. This was clearly reflected in the prayer by the Applicant before the lower court for an order directing the 1st Respondent to avail the Applicant with a bank statement of the bank account in the name of the 2nd Respondent for the period between January and March 2014.

The Applicant further stated in Paragraph IX of his Notice of Motion that the purpose for which he required the bank statement was to conclusively prove that he deposited the sum of UGX 37,000,000. By his own pleadings the Applicant therefore stated that the primary purpose of the application was to secure evidence by way of a bank statement to prove the deposit which deposit itself was never an issue before the lower court.

In this regard therefore I find that the Applicant's prayer for revision on the basis of lack of pecuniary jurisdiction amounts to a departure from his previous pleadings contrary to Order 6 Rule 7 of the Civil Procedure Rules. The pleadings before the lower court did not reflect any claim concerning UGX 37,000,000 beyond merely referencing it as a basis for seeking access to a bank statement.

I find therefore that the Trial Magistrate did not act outside his pecuniary jurisdiction as the matter in issue was not related to the sum of UGX 37,000,000 but rather to accessing evidence or proof deposit on the 2nd Respondent's bank account with the 1st Respondent.

As concerns the question of whether the Trial Magistrate acted with illegally or with material irregularity, I draw from the reference in **Civil Procedure and Practice 2nd Edition by Ssekaana and Ssekaana** to the Indian Supreme Court case of **DLF Housing and Construction Co (P) Ltd v Sarup Singh (1969) 3 SCC 807** wherein the Court held with regard to the equivalent of Section 83 of the Ugandan Civil Procedure Act that,

“The words ‘illegally’ and ‘with material irregularity’ as used in this clause (c) do not cover either errors of fact or of law; they do not refer to the decision arrived at but merely to the manner in which it is reached. The errors contemplated by this clause may, in our view, relate either to breach of some provision of law or to material defects of procedure affecting the ultimate, and not to errors either of fact or of law, after the formalities have been complied with.”

To the extent of the holding above, it is in fact a material irregularity in terms of procedure that the Trial Magistrate having received the 1st and 2nd Respondents' Affidavits in reply still proceeded to make his ruling without allowing the Applicant time to file a rejoinder if any. However, it is also pertinent to note that whereas Counsel for the Applicant submitted that the matter in the lower court was dismissed for want of prosecution, I noted from the lower court record that the application was actually dismissed on the merits.

The ruling of the Trial Magistrate was as follows,

“The applicant filed the motion in court on the 29/12/23 (sic), after perusing the pleadings, on 15/1/2024 court advices (sic) that Igara Tea Factory limited be added as 2nd respondent since orders sought from court if granted would affect the 2nd respondents interest and the matter was fixed for 1/2/2024 and 10:00 a.m which is today for hearing and no reason has been given why the applicant is not in court.

Secondly; from the submissions of 1st respondent, they hold no account in the names of 2nd respondent, they hold no account in the names of 2nd respondent. I have perused the motion and affidavit in support of notice of motion and find that the applicant has given no account details in which an order of court can be given same (sic) for a name which the 2nd Respondent submits they don't have as their client.

Based on the above observations and submissions by both counsel for the 1st respondent and 2nd respondent. I find that the application has no merit and the same is dismissed with costs.”

From the ruling above, it is clear to me that the Trial Magistrate never dismissed the matter for want of prosecution but rather did so on the merits. However, this dismissal was done prematurely in light of the fact that the 1st and 2nd Respondents had only filed their respective Affidavits in Reply upon which the Trial Magistrate placed reliance on the very same day as the dismissal. This resulted in the Applicant missing the opportunity to file a rejoinder. The question though is whether this irregularity in procedure resulted in an injustice per se to the Applicant

especially in light of the ruling of the Trial Magistrate with regard to the fact that the order that the Applicant sought related to Igara Tea Factory Ltd as opposed to Igara Growers Tea Factory Ltd.

I find that it was indeed a fact that the Applicant had referred to an entity which was not a client of the 1st Respondent. However from the Applicant's own pleadings he no longer had the bank deposit slip upon which he could have gleaned the correct details. This is material because clearly the Trial Magistrate never took this into account when he made his ruling otherwise he would not have found that the applicant had failed to provide account details. The Applicant had already explained why he could not provide those details.

However, notwithstanding the material irregularities outlined above, I still find myself unable to cause revision of the lower court decision. This is because the Application before the lower court was lacking in terms of qualifying criteria upon which the 1st Respondent could be required by Court to avail the evidence sought by the Applicant. Section 5 of the Evidence (Bankers' Books) Act provides that a banker or officer of a bank shall not, in any legal proceedings to which the bank is not a party, be compellable to produce any banker's book the contents of which can be proved under the Act, or to appear as a witness to prove the matters, transactions and accounts recorded in a banker's book, unless by order of a court made for special cause.

By the provision above, a banker or officer of a bank is not a compellable witness in any legal proceedings for which the bank is not a party unless by order of court for a special cause. In this instance the Applicant placed reliance on the Act without considering that he must either be engaged in legal proceedings beyond the instant application against the bank or he would have to prove to Court the special circumstances under which he required the bank statement.

There are therefore only two means by which an Applicant may access evidence of the nature sought in this matter. The first is where the Applicant is already involved in litigation in which the bank is also a party and the second is where the Applicant has to prove special circumstances before the Court.

Section 6 of the same Act under which the Applicant proceeded to apply to the lower court for the bank statement could not apply to the Applicant. This is because Section 6(1) as cited earlier in this ruling presupposes that the Applicant was already previously engaged in legal proceedings in which the bank is also a party by virtue of Section 5 of the said Act. There was neither evidence of previous ongoing legal proceedings involving the Applicant and the bank nor evidence of special circumstances proved in the Applicant's failed application before the lower Court.

It is to the extent of the above that I find that while there was material irregularity in procedure inherent in the Trial Magistrate's decision to make a ruling against the Applicant without taking into account the fact that he had not been served with the Respondents' respective Affidavits in Reply, the irregularity was immaterial because the Application itself was defective. This is because any application made under the Evidence (Bankers' Books) Act has to be based on pre-existing legal proceedings involving the Applicant and bank or proof of special circumstances to the satisfaction of the Court to which the Application was made in accordance with Sections 5 and 6(1) of the said Act.

The Applicant in this matter cannot therefore seek revision based on an injustice when the very application upon which he is claiming was itself procedurally misconceived. To benefit from the remedy of revision and indeed any other remedy the original matter for which the Applicant now claims a new remedy must have first been founded in procedural correctness.

It is therefore on the basis of the analysis above that I find that this application for revision is misconceived and accordingly fails.

ORDER:

For reasons outlined in this ruling this application is hereby dismissed with costs to the 2nd Respondent.

I so order.

Ruling delivered this 26th day of November 2024.

David S. L. Makumbi

JUDGE

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