

UGANDA / JUDGMENT

Seven Hills Impex v Wafula (Small Claims Procedure Revision No. 20 of 2020) [2022] UGCommC 48 (29 June 2022)

[2022] UGCommC 48

COURT

Commercial Court of Uganda

BEFORE

Rwakakooko, J

CASE / FILE NUMBER

Small Claims Procedure Revision No. 20 of 2020

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
COMMERCIAL DIVISION SMALL CLAIMS REVISION CAUSE NO. 20 OF 2020 (Arising
from Chief Magistrates Court, Nakawa - Small Claims Case No. 041 of 2020)

SEVEN HILLS IMPEX LTD APPLICANT

VERSUS

WAFULA CHARLES RESPONDENT

BEFORE: HON. JUSTICE JEANNE RWAKAKOOKO

RULING

Introduction

This application was brought by way of Notice of Motion for orders that:

- a) The judgment of the lower court on the 17th day of August, 2020 by which she was ordered to refund UGX. 2,040,000/= be revised.
- b) The small claim filed by the Respondent be dismissed with costs.
- c) Costs of this application be awarded to the Applicant.

Background

The Applicant has brought this revision cause on the ground that the lower court acted with material irregularity or injustice. The background to this is that the Applicant on 12th October, 2018 supplied the Respondent with 4 pieces of 100Ah/12V Solar Deep Cycle batteries on credit at a total cost of UGX. 2,040,000/= . The Respondent paid in installments and fully paid the purchase price on 7th June, 2019. The Respondent returned the batteries on 22nd November, 2019 on the ground that they were faulty and he sought a refund. The Applicant refused to grant the Respondent a refund because he had had the batteries for over a year. The Respondent then sued the Applicant under the small claims procedure. The trial magistrate is said to have not considered the passage of time and that she acted with material irregularity or injustice and ordered for the refund. The Applicant seeks for this judgment to be set aside upon revision.

The Respondent's case is that he bought 4 brand new batteries for UGX. 2,040,000/= from the Applicant on 7th June, 2019. He was assured at time of

¹ [|] age

purchase of a one-year warranty from the time of purchase. After a short time of using the batteries, the Respondent claims that they started exhibiting problems and so he returned them on 22nd November, 2019 and sought a replacement but the Applicant refused claiming the Respondent was outside the one-year warranty time. That the Applicant does not have grounds for revision and that this is instead an attempt to appeal the decision of the lower court and the same should be dismissed.

Representation

At the hearing, the Applicant was represented by Sewandonda Isaac holding brief for Wetaka Andrew. Both the Respondent and his counsel were absent at the hearing despite being effectively served with the motion. The court gave directions for filing written submissions and counsel for the Applicant was directed to write to the Respondent's counsel informing him of these dates with court in copy.

Issues for Determination

- 1. Whether the lower court acted with material irregularity and injustice.
- 2. What remedies are available to the parties?

Resolution

Issue One: Whether the lower court acted with material irregularity and injustice.

Rule 4(4) of the Judicature (Small Claims Procedure) Rules, SI No. 25 of 2011 confers supervisory powers on the High Court over the small claims procedures in magistrates' courts. Among the supervisory powers are powers to revise the decisions of the small claims court. Section 83 of the Civil Procedure Act, Cap 71 provides for revision by the High Court of lower court's judgments and it reads:

"The High Court may call for the record of any case which has been determined under this Act by any magistrate's court, and if that court appears to have—

- (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 High Court may revise the case and may make such order in it as it thinks fit; but no such power of revision shall be exercised—

- (d) unless the parties shall first be given the opportunity of being heard; or
- (e) where, from lapse of time or other cause, the exercise of that power would involve serious hardship to any person."

The Plaintiff's case is properly expressed in paragraph 8 of the Affidavit in Rejoinder sworn by Nalluri Seshagiri Rao. He states that in so far as the trial court determined the claim without considering the law on lapsed warranties, the trial court acted with material irregularity.

Irregularity according to the **Black's Law Dictionary, 9th Edition** refers to an act or practice that varies from the normal conduct of an action. An act is irregular if it is not in accordance with law, method or usage. An irregular judgment still per the definition in **Black's Law Dictionary, 9th Edition** is a judgment that may be set aside because of some irregularity in the way it was rendered. In **Twine Amos -v- Tamusuza James, High Court Civil Revision No. 11 of 2009**, the Deputy Registrar entered interlocutory judgment in contravention of the CPR. The judgment was entered under Order 9 Rule 6 of the CPR and this was found to be irregular. It was however not material irregularity because the court after entering this irregular judgment went on to follow the correct procedure and set the suit down for assessment of damages.

Irregularity could be the result of misapplication or contravention of a provision of the law. However, to qualify the irregularity as material, the effect of the action ought to be looked at.

The trial Grade One Magistrate's judgment was brief. ^I shall reproduce the relevant parts of it below.

"In short all the facts are disputed by the parties save for receipt of the batteries and the money by the defendant.

The court finds that one can't eat their cake and have it. The defendant won't have the batteries and the money. However, since the claimant says he is no longer interested in the batteries, the court orders that his UGX. 2,040,000/= be refunded plus costs of Ugx. 200,000/ = . The defendant has seven days.

It's so ordered."

Rule 27 of the Judicature (Small Claims Procedure) Rules provides that the small claims court shall upon hearing all the witnesses pass judgment in the form in

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Schedule 7 of the Rules. The format of the judgment in Schedule 7 of the Rules contains the following sections: (a) the court's finding, (b) the basis of the finding, (c) orders issued, (d) mode & schedule of payment, (e) particulars of the parties, and (f) signature, date and seal of the court.

The judgment of the lower court did not abide by Rule 27 and Schedule 7 of the Judicature (Small Claims Procedure) Rules. The lower court did not state the basis for its finding. The basis of a court's finding refers to the rationale of the judgment. That is the law applicable vis a vis the evidence or facts on record. The trial court did not take into consideration the law on warranties. Instead it seems the court proceeded on the common sense that a party cannot have its cake and eat it too in arriving at its judgment.

Additionally, ^I have observed from the record of the lower court that after the judgment was given, the lower court did not inquire into the Applicant's financial position. Rule 28 of the Judicature (Small Claims Procedure) Rules provides for this and it states:

- (1) Where court has granted judgment for payment of a sum of money, the court shall inquire from the judgment debtor whether he or she is able to comply with the judgment without delay, and if he or she indicates that he or she is unable to do so, the court may, in camera, conduct an inquiry into the financial position of the judgment debtor and into his or her ability to pay the judgment debt and costs.
- (2) After such an inquiry, the court may—
 - (a) order the judgment debtor to pay the judgment debt and costs in specified instalments; or
 - (b) suspend the order under sub-rule (a) either wholly or in part on such conditions as to security or as the court may determine.

This rule makes it mandatory for the court to after making judgment for payment of money, to in camera inquire into the financial position of the judgment debtor. This informs the section in the judgment under Schedule 7 which provides for mode of payment and the schedule of payment undertaken by the parties. This was not done, and for that the judgment was materially irregular.

Lastly, the trial court ordered for payment of UGX. 200,000/= as costs to the Respondent. This was done in contravention of Rule 29 of the Judicature (Small Claims Procedure) Rules which provides that each party to a small claim procedure shall bear his or her own expenses; i.e. costs incurred in the course of the suit. This too was irregular. ____

In the premises, ^I find that all of these irregularities were material enough to warrant revision of the lower court's judgment. The trial court's non-observance of Rules 27, 28 and Schedule 7 of the Judicature (Small Claims Procedure) Rules led to the lower court not considering the law on warranties and other relevant aspects of the law of contract. The judgment was therefore entered in error.

Issue one is answered in the positive. ^I find that the lower court's judgment had material irregularities.

Issue Two: What remedies are available to the parties?

Section 83 of the Civil Procedure Act gives the High Court power to make any order as it thinks fit. The facts of this case warrant the following orders:

- 1. The judgment and orders of the lower court in Small Claims Revision No. 20 of 2020 are hereby set aside.
- 2. The matter is hereby referred back to the Small Claims Court for it to be Retried and heard properly taking into account the Rules under the Judicature (Small Claims Procedure) Rules.
- 3. Each party shall bear its own costs.

^I so order.

29/06/2022

This Ruling was delivered this ^9^ day of , 2022

SMALL CLAIMS REVISION CAUSE NO. 952 OF 2020 (ARISING FROM CHIEF MAGISTRATES COURT, NAKAWA SMALL CLAIMS CASE NO. 041 OF 2020)

PROCEEDINGS - JUNE 29, ²⁰²² (DELIVERY OF RULING)

Court: This matter was cause listed for delivery of the Ruling, today at 2pm. However, when the matter was called on for delivery of the Ruling at that time and up to 4pm, neither the parties nor their legal representatives was present.

In order not to keep case files open because of non-appearance of the parties and their legal representatives, ^I will deem this Ruling delivered.

Jeanne JUDGE kakooko 29/06/2022

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