

UGANDA / JUDGMENT

Wadri & 4 Others v Dranilla (CIVIL REVISION NO. 7 OF 2019) [2020] UGHCCD 68 (29 April 2020) [2020] UGHCCD 68

COURT

HC: Civil Division (Uganda)

BEFORE

Bashaija, J

CASE / FILE NUMBER

CIVIL REVISION NO. 7 OF 2019

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[CIVIL DIVISION]

8 CIVIL REVISION No. 0007 OF 2019

(ARISING FROM EMA 2604 OF 2018 AND KASANGATI C. S No. 18 OF 2016)

1. WADRI MATHIAS

12 2. OBETI MARTIN

3. OPINYA SUSAN

4. MATURU CAROL

5. BANIA

16 PROSSY :.....APPLICANTS

VERSUS

DRANILLA ANGELLA :.....RESPONDENT

20 *BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW RULING:*

The Applicants jointly brought this application under Section 83 and Section 98 of the Civil Procedure Act Cap 71; and Order 52 rule

24 1 of the Civil Procedure Rules SI 71 – 1 against the Respondent; seeking for this Court's order of revision in respect of the orders of His Worship Mr. Freddie Achoka Egesa, Magistrate Grade 1 at Kasangati Magistrate's Court *(hereinafter referred to as the "trial court")* in Civil Suit No. 18 of 2016; and EMA No. 2604 of 2018. The grounds of the application are that the trial Court lacked the jurisdiction, exercised the jurisdiction with material illegality, and exercised jurisdiction not vested in it. The Applicants also seek for cost of the application.

The application is supported by the affidavit sworn by Obeti Martin the 2nd Applicant on behalf of the other Applicants with their express authority. He states that all parties in the case are members of the family with the 1st Applicant as the father and the 1st Respondent as mother. That by ruling in favor of the 16 Respondents, the trial Court acted illegally and exercised jurisdiction not vested in it thus making the entire proceedings a nullity and of no effect. That Section 207 (1) (c) of the Magistrates' Courts Act (MCA) gives the Chief Magistrate's Court unlimited jurisdiction in disputes relating to trespass, conversion and damage to property, but that the trial Court in this case was not a Chief Magistrate and therefore could not exercise the exclusive

jurisdiction vested in a Chief Magistrate's Court which is quite different from that of a Magistrate Grade 1.

Further, that Section 207 (1) (b) MCA provides that the pecuniary

jurisdiction of Magistrate Grade 1 shall not exceed UGX. 20,000,000. That Section 207 (3) MCA makes it incumbent on a plaintiff to state the value of the subject matter of a suit in the pleadings for purposes of legal action. That the question of jurisdiction is important in determining the authority to be exercised by the Court and where a Magistrate Grade 1 hears an action for trespass without stating the value of the subject matter, the court would be acting illegally and its decision is a proper case for revision under Section 16 83 CPA.

The Applicants enumerated the alleged illegalities committed by the trial Court to warrant revision. The first one relates to the law of limitation. The Applicants contend that the agreements tendered by

20 the Respondent were made in 1999 (twenty-seven years ago) and that an action based on a contract cannot be brought after six years. That this means the suit was barred by limitation and should never

have been brought. That even if it was a land dispute, a suit for recovery of land, by law, could not be brought after 12 years.

The second one relates to the doctrine of estoppel. The Applicants 8 contend that the Respondent being family with them since 1991 and having been born on the suit property; is estopped from denying the Applicants' interest in the suit property as a family. That because of the judgment of the trial court in Civil Suit No. 18 12 of 2016 and orders of the Registrar in EMA No. 2604 of 2018, the Applicants face imminent threat of eviction from the suit property whereupon they shall suffer substantial loss. As proof, the Applicants attached copy of a notice to show cause as *Annexure* 16 *B*. That having regard to the above stated illegalities and irregularities, the Applicants seek for the revision of the said orders of the trial Court.

The Respondent, Drania Angella, swore an affidavit in reply 20 opposing the application. She states that this application is frivolous and vexatious, has a lot of falsehoods and *malafides* and is only intended to delay her from attaining the fruits of the judgment and decree awarded to her. That the application is an abuse of

court process since the Applicants failed to stay execution and have also lodged an appeal lodged in this Court vide Civil Appeal No. 52 of 2017, which is yet to be prosecuted. She attached a copy of the 8 notice of appeal marked *A*. Further, that this court cannot revise the decision of a Registrar of the Execution Division of the High Court vide EMA No. 2604 of 2018 since law stipulates that revision can only be made against decisions of Magistrates' Courts. More so, 12 that the Registrar had jurisdiction to grant execution orders and as

well as deny the Applicants stay of execution as was the case in this matter.

Further, that the trial Court had the proper jurisdiction to hear a 16 matter for eviction orders and also exercised the powers legally in making and determining the rightful owner of the suit property before awarding the eviction orders. That the trial Court acted within its jurisdiction and rightfully granted judgment in the Respondents' 20 favor and that this matter does not warrant revision.

Furthermore, that Applicants should have brought these assertions as preliminary points of law in the trial court but waited for judgment to be entered against them as well as failing to stay

execution; so as to realize and allege that the trial court had no jurisdiction. That Civil Suit No. 18 of 2016 was for issuance of eviction orders and not settlement of a land dispute between the 8 parties and as such there was nothing that warranted to have the matter before a Chief Magistrate and it was not necessary to have the value stated in the plaint since it was for eviction. That it was until the Applicants raised allegations in their written statement of defence that ownership allegedly belonged to the 1st Applicant that the trial Court had to ascertain who the rightful owner was so as to grant the remedy of eviction order so prayed for by the

Respondent. *(A copy of the plaint is attached and marked as Annexure "F").* That 16 as such there were no illegalities in the handling of the suit in relation to limitation and estoppel as alluded to by the Applicants.

That the civil suit as well as the execution applications were not as a result of a dispute over land, but were for eviction orders and as 20 such the Applicants are misguided. That if limitation and estoppels were in issue, the Applicants having this knowledge should have brought it to the attention of the trial court. That in any case, the Applicants shall not suffer any substantial loss which cannot be

remedied by damages upon their eviction or final determination of their appeal which they filed.

In his affidavit in rejoinder, Obeti Martin, the 2 nd Applicant, stated 8 that it is true that they filed Civil Appeal No. 52 of 2017 in the Civil Division of the High Court, that however, the Respondent and her former Advocates were so afraid of the appeal that the file disappeared without a trace and they have no hope of tracing it, 12 and have since opted to withdraw the appeal as per *Annexure "A".* That the application has a lot of merit and is not frivolous or vexatious in view of the illegalities and arbitrariness of the trial court.

On estoppel, the 2 16 nd Applicant swore that the famous case of *Kigongo vs Kigongo* is an authority for the view that equity treats as done that which ought to be done. That the same authority supports the view that where a person cohabits with another person 20 whether married or not and in reliance on the acts or deeds of the other to act as if he has an interest in the property, the other party would be estopped from asserting that the other party has no interest in the property. That the 1 st Applicant is a man aged 94

years, and has lived on the suit property for more than 28 years and the other Applicants are his children. That of the other Applicants, Nyakuru Hilda and Maturu Carol were born on the land 8 and hence proprietary estoppel applies.

On the decision of a Registrar, the 2 nd Applicant swore that Section 83 CPA targets illegality. That the authorities are to the effect that an illegality once brought to the attention of court cannot be 12 ignored. That in the present case, the trial Court committed many illegalities which the learned Registrar ignored. That there is hence no way a decision of the Registrar can survive such an application.

On jurisdiction, the 2 nd Applicant swears that the trial Court vested 16 in itself jurisdiction not vested in it when it purported to act as if it was a Chief Magistrate's Court in clear violation of Section.207 (1) (c) MCA. Furthermore, that the Respondent failed to state the value of the subject matter, which offended Section 207 (1) (b)MCA. That the 20 reason why the issue of jurisdiction was never raised at the trial is that the Applicants were not properly represented, and that an illegality once brought to the attention of court cannot be ignored. That consequently, there is no way court can ignore the lack of

jurisdiction and the trial Court acting as if it was a Chief Magistrate's Court to handle a case of trespass and that illegality overrides everything including judgments, contracts, etc. That 8 since the trial Court did not have jurisdiction, it overrides everything and makes the judgment a nullity. That under the doctrine of propriety estoppel, the 1 st Respondent is estopped from evicting the Applicants, especially the 1 st Applicant with whom she 12 has lived for 28 years.

Mr. J. F Ssengooba represented the Applicants while Mr. Moses Kivuna represented the Respondents. The following issues were framed for determination;

- 16 *1. Whether this is a proper case for revision.*
- *2. Whether there are sufficient grounds for this court to make a revision order.*
- *3. Whether the applicant is entitled to the orders sought in* 20 *the application.*

Counsel for the Respondents raised a preliminary point of law which requires to be resolved of first before delving into the merits of the issues. The objection concerns the propriety of the

Applicants' affidavits in support and rejoinder, which counsel contends are both incurably defective. Counsel argued that the said affidavits are very argumentative and they even cite laws such the 8 Magistrates Court Act, Civil Procedure Act, as well as the case of *Kigongo vs. Kigongo*;* the latter of which was cited in the Applicant's affidavit in rejoinder in paragraph 4 (i) in which the Applicants are making a case for the doctrine of estoppel. Counsel 12 submitted that throughout paragraphs 5, 7, 8 and 9 of the affidavit in support as well as paragraphs 4(ii), (iii) of the affidavit in rejoinder, the Applicants were arguing the law in their affidavits which renders the affidavits totally defective. To support this view, 16 counsel for the Respondents cited the case of *Nakiridde Namwandu vs. Hotel International Ltd [1987] HCB 34*, where it was held that an affidavit which is found to be argumentative should be struck out and not relied on. Counsel prayed that the 20 said affidavits should be struck out and the application dismissed for being frivolous and vexatious. Counsel for the Applicants never replied to this preliminary point of law.

The starting point is that there is no prescribed procedure for bring an application for revision. Such an application can be initiated even by an ordinary complaint. In *Jaffer vs. Gupta [1959] EA 406*, 8 it was held that the procedure normally to be adopted for revision is within the discretion of the court. Section 83 CPA which governs revision provides that High Court may call for any record in any case which has been determined under the Act by any Magistrate's 12 Court and if that court appears to have exercised; (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. In *Gulu*

- 16 *Municipal Council vs. Nyeko and others HCMA NO.5 OF1997*, Court considered the above provisions and held that there is no established procedure for initiating proceedings under Section 83CPA.

- 20 This Court, however, takes the view that where a party opts for a particular procedure that is provided for under the law in bringing the application for revision, then that procedure must be fully and correctly complied with. The Applicant in this case chose to proceed

by way of a notice of motion. As a matter of law, where a notice of motion is the procedure adopted for initiating an action, it must be accompanied by a valid affidavit. Order 19 r.3 CPR which governs the procedure of affidavit evidence provides as follows;

"(1) Affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove, except on interlocutory applications, on which* 12 *statements of his or her belief may be admitted provided that the grounds thereof are stated.*"

(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter or 16 *copies of or extracts from documents shall, unless the court otherwise directs, be paid by the party filing the affidavit.*"

In the instant application, the deponent of the affidavit in support 20 swears to matters of law, particularly in paragraph 5, 7 and 9. He also argues the case citing case law in the affidavit in rejoinder in paragraphs 4 and 7. As correctly submitted by counsel for the

Respondent, the said affidavits are indeed argumentative in nature. The Applicants argued their entire case in both affidavits which renders the content argumentative and prolix.

- 8 An affidavit is meant to adduce evidence by stating factual matters and not to argue the application or the case. Certainly, the affidavits of the Applicants fall far too short of meeting this standard as they argue the case instead of laying down the bare
- 12 facts in evidence to be relied on in determining the application. "Prolixity" is defined in the *Black's Law Dictionary, 9th Edition* at page 1331 to mean;

***"... the unnecessary and superfluous stating of facts and* 16 *legal arguments in pleading or evidence.*"**

In *Re: Bukeni Gyabi Fred HCMA 63 of 99, [1999] KALR, 918* the court while interpreting Order 19 r.3 (supra) held that the Order is very clear and an affidavit should contain facts and not arguments 20 or matters of law. Similarly, in *Rohini Sidipra vs. Freny Sidipra & O'rs, HCCS 591 of 90 [1995] KALR 724,* Mpagi Bahigine J.,

as she then was, while commenting on the same point, held as follows;

"*I think I first desire to make an observation about the* 8 *applicant's supplementary affidavit. It appears not to have been skillfully drawn. It is prolix in the extreme. It contains 11 rather lengthy paragraphs covered on 7 pages. Much of this is argumentative narrative, (it is) not* 12 *strictly relevant to the application before me.*"

The learned Judge quoted Order 17 rule 3(1) CPR (then) which is now Order 19 rule 3(1) (supra) and further held as follows;

"In this regard, the court has power to take an affidavit* 16 *off the file for prolixity or to order scandalous matter to be struck out of an affidavit. The Registrar should not have allowed it on record. I proceed to strike it out."*

This Court follows the above authorities and holds likewise. It is also noted that under Order 19 r.3CPR, a deponent who makes an argumentative affidavit which is incurable can be penalized by paying costs of the application. In the instant case, although the

affidavit in rejoinder is not scandalous, it is prolix and non compliant with Order 19 r.3 CPR and hence it is struck out. The consequence of striking out the offending affidavits is that there would be no competent application before this Court.

Be that as it may, as already observed, applications for revision have no prescribed procedure for initiating them. The whole essence of Section 83 CPA is that the High Court would invoke its 12 supervisory jurisdiction thereunder, to rectify the error on the trial court record. In **Munobwa Mohamed vs. Uganda Muslim Supreme Council Revision Application No.1 of 2006**, it was held that High Court's power of revision is unlimited and the Court can 16 move on own motion. Of course, it is good practice to act on a written complaint or formal application. However, even the absence of a written complaint or formal application by the Applicants or their lawyers, it is immaterial to the determination of a case on 20 revision as it is not fatal if the written complaint or formal application cannot be found or is not there. The High Court is vested with such power under Section 83 CPA and may on its own motion call for the record of the lower court for possible revision.

Exercise of revision is discretionary and the court may make such order as it thinks fit. The court will not usually interfere where justice has been done nor will the court act where an appeal from 8 another party is **sub judice**. It is on that position of the law that this Court will proceed to determine whether the trial Court record indeed calls for revision based on the issues framed above.

Issue No.1: Whether this is a proper case for revision

12 Section 83CPA already cited empowers the High Court to revise decisions of Magistrates' Courts where the Magistrate's 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 16 of its jurisdiction illegally or with material irregularity or injustice. Revision entails a re-examination or careful review, for correction or improvement, of a decision of a magistrate's court, after satisfying oneself as to the correctness, legality or propriety of any finding, 20 order or any other decision and the regularity of any proceedings of a Magistrate's Court. It is a wide power exercisable in any proceedings in which it appears that an error material to the merits of the case or involving a miscarriage of justice occurred, but after

the parties have first been given the opportunity of being heard and only if from lapse of time or other cause, the exercise of that power would not involve serious hardship to any person.

- 8 Section 17 (2) of the Judicature Act Cap 13, also empowers the High Court in exercise of its general powers of supervision over Magistrates' Courts to invoke its inherent powers to prevent abuse of the process of the court.
- 12 Jurisdiction of court is a creature of statute and it is expressly conferred by law. If proceedings are conducted by a court without jurisdiction, they are a *nullity*. See: *Desai vs. Warsaw (1967) EA 351*. Any award or judgment and or orders arising from such 16 proceedings of a court acting without jurisdiction are also a nullity. Most importantly, jurisdictional issues can be raised at any time or
- stage and they override all other matters in the proceedings, including pleadings and admissions thereon.
- 20 Section 4 and 12 CPA provide to the effect that in selecting a court with particular jurisdiction over a particular type of litigation, regard must be had to the pecuniary limitation of such a court and the enabling law which empowers such a court to hear such a case.

The enabling law in this case is the Magistrates' Courts Act which spells out the civil jurisdiction of a magistrate under Section 207 as follows;

- 8 *(1) Subject to this section 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—*
- 12 *(a) A chief magistrate shall have jurisdiction where the value of the subject matter in dispute does not exceed fifty million shillings and shall have unlimited jurisdiction in disputes relating to* 16 *conversion, damage to property or trespass;*

(b) A magistrate grade I shall have jurisdiction where the value of the subject matter does not exceed twenty million shillings;

20 *(c) A magistrate grade II shall have jurisdiction where the value of the subject matter in dispute does not exceed five million shillings;*

(2) Notwithstanding subsection (1), where the cause or matter of a civil nature is governed only by civil customary law, the jurisdiction of a chief magistrate and 8 *a magistrate grade I shall be unlimited.*

(3) Whenever for the purposes of jurisdiction or court fees it is necessary to estimate the value of the subject matter of a suit capable of a money valuation, the plaintiff shall 12 *in the plaint, subject to any rules of court, fix the amount at which he or she values the subject matter of the suit; but if the court thinks the relief sought is wrongly valued, the court shall fix the value and return the plaint for* 16 *amendment."*

Section 207 (5)MCA (as amended) specifies the pecuniary jurisdiction of magistrates to the effect that a magistrate's court may grant any relief which it has power to grant under the Act or 20 under any other written law and make such orders as may be provided for by the Act or any written law in respect of any case or matter before the court.

Section 207(1) (b)MCA (Amendment) Act 2007, vests a Magistrate Grade 1 with the jurisdiction where the pecuniary value of the subject matter of the suit does not exceed UGX. 20,000,000. 8 Further, subsection (2) thereof provides as follows;

"Notwithstanding subsection (1), where the cause or matter of a civil nature is governed only by civil customary law, the jurisdiction of a chief magistrate and* 12 *a magistrate grade 1 is unlimited."

The pleadings, before the trial Court in the instant case, clearly show that the only indicator of the value of the subject matter is the agreement that was attached to the plaint being for UGX. 790,000= 16 (Seven hundred and ninety thousand shillings). The record does not show anywhere that the defence contested the value as stated in the plaintiff's pleadings. Even though the defendants were silent, where no pecuniary value was attached to the suit property in the 20 pleadings, the trial Court ought to have put itself on notice and gone ahead to order that the value of the subject matter be indicated in order to determine whether the matter actually fell within its pecuniary jurisdiction or not. Section 207 (3) MCA also

makes it incumbent on a plaintiff to state the value of the subject matter of a suit. For purposes of legal action, the question of jurisdiction is important in determining the authority to be 8 exercised by the Court. It is thus called for that in all matters, the Court must first ascertain whether it has the requisite jurisdiction before determining the case.

It is also trite law that jurisdiction is a creature of the statute and a 12 Court cannot confer jurisdiction on itself nor can parties confer jurisdiction on a court by agreement when the court actually does not have one. See: *Koboko District Local Government vs. Okujjo Swali HCMA No. 001 of 2016.* The Learned Judge in that case 16 further observed that by choosing to file the suit before that Court, it is deemed that the respondent, through his own assessment, had estimated what amount of damages he would claim. He had by that choice delimited the amount of general and special damages he 20 would claim, not to exceed UGX 20,000,000 in order to bring himself within the pecuniary jurisdiction of the Court. This is because with regard to damages, the law is that a magistrate cannot award damages beyond the pecuniary jurisdiction of the

court. However, when it came to the consent signed which was above the pecuniary jurisdiction of the Magistrate Grade 1, the Learned Judge had this to say;

8 **"For the reasons stated above, I find that the Grade One Magistrate's Court at Koboko exercised its jurisdiction irregularly and illegally when it allowed the parties to enter a consent judgment which was beyond its pecuniary* 12 *jurisdiction rendering that consent judgment to be an agreement contrary to the policy of court*."**

This court agrees with the reasoning in the above decision. As applicable to the instant case, the Respondent/plaintiff, in paragraph 5(b) of the plaint, averred that the purchase price of the suit property was UGX. 790,000. The other orders that were prayed for and those granted by the trial Court were declaratory in nature, such as the declaration that the Respondent was the owner of the 20 suit property. From the facts on record, it is clear that this is a dispute as to the ownership of the property between the parties and not based on the tort of trespass. Section 207 (4) MCA provides as follows;

"In any suit where it is impossible to estimate the subject matter at a money value in which, by reason of any finding or order of the court, a declaration of ownership⁸ of any money or property is made, no decree shall be issued for an amount on the claim exceeding the pecuniary limits of the ordinary jurisdiction of the court passing the decree."

12 It is noted that the trial Court issued orders that were declaratory in nature, that is; a declaration that the Kibanja belongs to the plaintiff and no award of general damages was made. Therefore, the trial Court did not award any damages or decree exceeding its 16 pecuniary jurisdiction in the matter. Similarly, the trial Court did not in any way treat itself as a Chief Magistrate's Court because the basis upon which the Respondent/plaintiff asserted ownership is by a purchase agreement attached to the pleadings showing only UGX 20 790,000 as per paragraph 5(b) thereof. The net effect is that the trial Court acted well within its jurisdiction and the remedies were well within its power to grant.

Regarding the issue of limitation, it hinges on the principle that once statute barred always statute barred. See: **Arnold vs. Central Electricity Generating Board (1988) AC 228.** Section 5 of the 8 Limitation Act Cap 80, provides for limitation of actions to recover land as follows;

"No action shall be brought by any person to recover any land after the expiration of twelve years from the date on¹² which the right of action accrued to him or her or, if it first accrued to some person through whom he or she claims, to that person^{*}."

Section 6 (supra) provides for accrual of right of action in case of 16 present interests in land as follows;

"Where the person bringing an action to recover land, or some person through whom he or she claims, has been in possession of the land, and has while entitled to it been²⁰ dispossessed or discontinued his or her possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance."

From the record of the trial Court, there is no stated particular time or period when the Respondent deserted the suit property. This fact was not brought up at the trial nor was evidence ever led on it. 8 Therefore, the trial Court could not go into a fishing expedition where the facts and evidence were silent.

Also to note is that limitation is a defence that needed to be pleaded by the defendant and it acts as a shield to the person pleading it. In

12 the instant case, however, the particular defence of limitation was never pleaded at the trial. This Court is not enjoined to look into such issues of evidence because matters of revision are exclusively jurisdictional. Had the issue been raised in the trial court, then 16 court would have probably looked into it basing on the facts pleaded in the trial court. All in all, the defence of limitation was never pleaded, which renders it farfetched in the circumstances and the same cannot stand. Needless to restate, that issues relating to 20 conclusions of the law by a Magistrate's Court would not constitute matters for revision but for appeal.

On the issue pertaining to orders of eviction issued by the Registrar, revision is exercisable by the High Court only in respect of

proceedings, judgments and /or orders of the Magistrates' Courts, pursuant to Section 83 CPA. The High Court has no power of revision of the order of a Registrar which is not an order of a Magistrate's Court. Therefore, orders of eviction and other orders that the Registrar made do not fall within the ambit of orders that this Court can revise. On this point, the trial Court exercised jurisdiction so vested in it and did not exercise it illegally or with material irregularity and/or injustice.

\$12\$

\$16\$

\$20\$

The net effect is that the whole application lacks merit and it is dismissed. Given the peculiar circumstances of the case where the parties are family and have children who got entangled in the dispute, such a relationship is at stake and taken into account. The \$1st\$ Applicant and the \$1st\$ Respondent stayed together for 28 years. For that reason, each party shall bear their own costs.

> BASHAIJA K. ANDREW JUDGE 29/04/2020

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