

Waiswa v Earth Rich Co. Limited
(Civil Revision 1 of 2022) [2024]
UGCommC 183 (23 May 2024)
[2024] UGCommC 183

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The background of this application is contained in the affidavit in support deposed by the Applicant, and is summarized below:

- 5 1. That the trial Magistrate at the Chief Magistrate's Court at Kajjansi, Her Worship Nantege Christine (Magistrate Grade 1) exercised jurisdiction not vested in the Court in entertaining and delivering judgment in the Chief Magistrate's Court of Kajjansi at Kajjansi Civil Suit No. 83 of 2018, the cause of action being the recovery of money 10 arising out of an Agreement executed and dated at Kampala.
- 2. That the judgment, decree and subsequent orders of the Court stemming from the Chief Magistrate's Court of Kajjansi at Kajjansi Civil Suit No. 83 of 2018 are therefore a nullity and of no effect, 15 having been made by a Court without jurisdiction.
- 3. That the trial Court acted illegally and exercised jurisdiction not vested in it thus making the entire proceedings, judgment and all 20 subsequent orders therein a nullity and of no effect.
- 4. That it is in the interest of justice that this Court be pleased to revise the decision of the trial Court and thereafter set it aside.

In reply the Respondent through its Director Mr. Murangira Arthur, 25 opposed the application contending that:

- 1. The application is untenable in law since it is time-barred, frivolous and vexatious and only intended to waste the Court's time.
- 2. The application is incompetent since the Applicant served expired 30 summons yet there is no application on record seeking to extend the time within which to serve the summons.
- 3. The application is incompetent, an abuse of Court process and does not meet the required test for revision and should be summarily 35 dismissed with costs.
- 5 4. The Applicant and the Respondent's agent Mr. Murangira Arthur, executed the Promissory Note/Agreement dated 26th October, 2013 at the Respondent's office in Kampala and the money was handed over to the Applicant while at Kajjansi, Entebbe Road at the request of the Applicant within the jurisdiction of the Chief Magistrate's 10 Court of Kajjansi.
- 5. The Applicant only started making payments after a warrant of arrest was issued against him.
- 6. The decree and subsequent orders of the Court stemming from Civil Suit No. 83 of 2018 holden at the Chief Magistrate's Court of Kajjansi at Kajjansi were reached correctly since the said Court was vested with the jurisdiction to entertain the said matter.
- 20 In rejoinder, the Applicant deposed the affidavit stating that:

- 1. The Agreement was never executed in Kajjansi and neither was the money handed over to him in Kajjansi as alleged. That the money was paid to the Applicant at the Respondent's office at Mabirizi Complex in Kampala.
- 25
- 2. Annexure B to the Respondent's affidavit in reply is a forgery and the Applicant first saw it at Court.
- 30 3. Since the Agreement was executed at the Respondent's place of business at Mabirizi Complex, Kampala Road, level 3 room 18, the Chief Magistrate's Court of Kajjansi had no jurisdiction to entertain Civil Suit No. 83 of 2018.

5 Representation

The Applicant was represented by M/s Basiime Advocates while the Respondent was represented by M/s Arthur-Arutha Legal & Co. Advocates.

Issues for Determination

- 10 1. Whether this is a proper case for revision?
- 2. Whether there are any remedies available to the parties?

The parties were directed to file their written submissions which they did and the same have been considered by this Court. However, I would like to state that Counsel for the Respondent filed the submissions very late 15 on 22nd May, 2024 at 5:12pm and yet he knew that delivery of the Ruling was scheduled for 23rd May, 2024. I therefore urge Counsel for the Respondent to always endeavor to comply with the timelines given by Court to facilitate the expeditious disposal of matters.

The Respondent raised preliminary points of law in the affidavit in reply 20 which this Court is duty bound to resolve prior to the determination of the issues so raised. I however noted that Counsel for the Respondent did not address the preliminary objections in his written submissions. Nevertheless, I shall proceed with the determination of the objections so raised.

25 The Supreme Court in the case of *Uganda Telecom Ltd Vs ZTE Corporation SCCA No. 3 of 2017,* held that a trial Court has the discretion to dispose of a preliminary point either at or after the hearing of the matter. It is therefore trite that where there is a preliminary objection capable of disposing of the matter in issue, it is judicious to first determine

- 5 the said objection before embarking on the merits of the case (See: **Order 6 Rule 28 of the Civil Procedure Rules**).
- 1. Whether the application is time-barred?

Section 17 (2) of the Judicature Act and Section 83 of the Civil Procedure Act vest the High Court with power to revise the decisions of 10 the Magistrate's Courts.

Section 83 (e) of the Civil Procedure Act stipulates that:

"*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 where, from lapse of time or other cause, the exercise of that power would involve* 15 *serious hardships to any person."*

In the case of *Kabwegere Vs Charles Kangabi [1977] HCB 83* it was held that a Court cannot exercise its revisionary powers where there was lapse of time or other cause, the exercise of which would involve serious hardships to any person Further, in the case of *Kizito Okwong Vs*

"*...this application was brought to this court on the 18/12/2018, which is about 60 days or more from the time of delivery of the lower court ruling. Such time lag by the Applicant depicts a dilatory conduct on his* 25 *part and as such granting the revisionary orders as prayed for by the Applicant shall cause hardship to the current owners of the land. It is such an absurd circumstance but equity will not aid the indolent."*

²⁰ *Margaret Ocidirwoth Civil Revision No. 02 of 2018,* the trial Court stated that:

- 5 From the above authorities, revisionary orders may not be granted if the party seeking it is guilty of laches since the orders would most likely cause hardship to the other party who benefitted from the decision being challenged.
- In the matter at hand, according to the Court record, a default judgment 10 in Civil Suit No. 83 of 2018 was entered on 27th November, 2018. Notice to show cause why execution should not be issued was signed on 06th December, 2018 whereas the latest warrant of arrest in execution was issued on 24th June, 2019. This application was filed on 25th January, 2022, three (3) years after judgment had been delivered and two (2) years 15 after execution had been commenced. The Applicant has not provided any reasons to this Court to justify the inordinate delay.

Granting revisionary orders in respect of an application that was filed after three (3) years in respect of a summary suit for recovery of money would be unjust and unfair to the Respondent. Accordingly, I find the above 20 period unreasonably long for filing this application. This preliminary objection is therefore upheld.

2. Whether the Respondent was served with expired summons?

Under paragraph 6 of the affidavit in reply, the Respondent contended that the application is incompetent since the Applicant served the Respondent 25 with expired summons and yet there is no application on record showing that the Applicant requested for extension of time within which to serve the summons.

The Respondent did not adduce any evidence to show when it was served for Court to determine whether or not the served summons were expired 30 and the summons being referred to were also not attached.

5 In the absence of this evidence, this Court cannot determine whether or not the served summons were expired. In the premises, this preliminary objection fails.

Notwithstanding the upholding of the first preliminary objection, I shall proceed to resolve the application on its merits.

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

Applicant's submissions

In his submissions, Counsel for the Applicant first referred to the principle that the jurisdiction of the Court can only be granted by law. He submitted that, if proceedings are conducted by a Court without jurisdiction, they are a nullity. He referred to the case of **Desai Vs Warsaw* [1967] EA 351*.

Counsel relied on **Section 83 of the Civil Procedure Act**, which empowers this Court to revise decisions of the Magistrate's Courts. Counsel submitted that **Section 15 (c) of the Civil Procedure Act** provides that:

20 *"Every suit shall be instituted in a Court within the local limits whose jurisdiction the cause of action, wholly or in part arises."*

Explanation 3 (a) of Section 15 of the Civil Procedure Act provides that:

"In suits arising out of contract, the cause of action arises at the 25 *place where the contract was made."*

That in the instant case, the Chief Magistrate's Court of Kajjansi had no jurisdiction to entertain and determine Civil Suit No. 83 of 2018 since the

5 cause of action arose at Mabirizi Complex, Kampala Road hence rendering the entire proceedings, judgment and all subsequent orders therein a nullity. That it is upon this basis that the Applicant seeks the revision of this suit.

Respondent's submissions

- 10 Counsel for the Respondent submitted that the two Contracts and Promissory Notes were executed and completed at Kajjansi Trading Center which falls within the territorial jurisdiction of the Magistrate's Court at Kajjansi. Counsel relied on **Section 15 (a) of the Civil Procedure Act** and submitted that the Applicant carried out business and resided at Kajjansi
- 15 Trading Center at that time. That the lawyers only prepared the two Agreements at Mabirizi Complex but the signing and exchanging the money was at Kajjansi Trading Center.

Counsel for the Respondent further relied on **Section 207 (1)(b) of the Magistrates Courts Act** and submitted that the Chief Magistrate's Court

20 at Kajjansi had the pecuniary jurisdiction to handle the Civil Suit.

Counsel further submitted that there is no material irregularity or injustice caused on the Applicant since the Agreements are on Court record showing that he took the money, signed for it and accepted to pay it back. Counsel further contended that the Applicant is only seeking 25 revision of the case so that he does not pay the remaining balance of the money and also to deny the Respondent from enjoying the fruits of his litigation and labour.

5 Analysis and Determination

Black's Law Dictionary (9th Edition), defines revision as a reexamination or careful review for correction or improvement or an altered version of work.

Section 17 (1) of the Judicature Act vests the High Court with 10 supervisory powers over the Magistrate's Courts. The law on revision, as set out under **Section 83 of the Civil Procedure Act**, provides that:

> "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-*

15 *(a) exercised 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 20 *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."*

25 In the case of *Johnson Katebalirwe Vs Segonga Godwin T/A Platinum Associates, Revision Cause No.012 of 2017*, the Court cited with approval the case of *Mabalaganya Vs Sanga [2005] EA 152*, where it

- 5 was held that in cases where the High Court exercises its revisionary powers, its duty entails the examination of the record of any proceedings before it to satisfy itself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings before the High Court. Furthermore, in the case of *Friendship Taxi (U)*

- 10 *Ltd Vs Adrana Matovu HC Civil Revision No. 0003 of 2019,* **Hon. Justice Stephen Mubiru** stated that:

"*This Court will not in its revisionary jurisdiction consider the merits of the case however erroneous the decision of the Court below is on an issue of law or of fact but will only interfere only to see that the* 15 *requirements of law have been properly followed by the Court whose order is the subject of revision." (*My Emphasis*)*

In the instant case, the Applicant is aggrieved with the trial Magistrate's decision on grounds that the Magistrate Grade 1 was not vested with the territorial jurisdiction to hear the matter thus rendering the procedure, 20 judgment, decree and subsequent orders arising therein a nullity.

In the case of *Paul K. Ssemogerere and 2 Others Vs Attorney General SCCA No.1 of 2002*, **Oder, JSC** while defining the term jurisdiction, relied on **Mulla on the Code of Civil Procedure at page 225** that states that:

"*By jurisdiction it meant authority which a Court has to decide* 25 *matters that are litigated before it or to take cognizance of matters presented in a formal way, for its decision. The limits of this authority are imposed by statute, Charter or commission under which the Court is constituted and may be exercised or restricted by the like means. If no restriction or limit is imposed, the* 30 *jurisdiction is unlimited*."

5 It is a cardinal principle of the law that jurisdiction is a creature of statute. In the case of *Baku Raphael Obudra & Another Vs Attorney General S. C. C. A No.1 of 2005*, it was held that;

"It is trite that the *Courts are established directly by the Constitution or indirectly under it, and that their respective jurisdictions are* 10 *accordingly derived from the Constitution or other law made under the authority of the Constitution*."

Further, in the case of *Feng Huang Plastics Industries Ltd Vs Ssebunya Solomon and Another HC Revision Cause No. 03 of 2021*,* **Hon. Justice Duncan Gaswaga** while interpreting Section 15 of the Civil 15 Procedure Act held that:

> "*From the above discourse, it is apparent that a suit could be instituted where one of the parties resides, or where the principal place of business is and where the cause of action arises."*

As established under **Sections 101, 102 and 103 of the Evidence Act,**

20 **Cap. 6**, the onus is upon the Applicant herein, to prove to this Court that the trial Magistrate did not have jurisdiction to handle Civil Suit No. 83 of 2018. However, in the instant case, the Applicant did not adduce any evidence in proof of his assertions that the agreement in issue ("annexure A" attached to the affidavit in support of this application), was signed at 25 Mabirizi Complex Kampala Road. The terms of the Agreement do not reflect any statement showing that it was signed at the alleged venue.

This being a revision case, I have had the opportunity of perusing the file and record of the Chief Magistrate's Court of Kajjansi at Kajjansi and examined the attachments in the suit filed.

- 5 The Agreement dated 26th October, 2013 marked as "A" attached to the affidavit verifying the specially endorsed plaint does not indicate where the Agreement was executed from. A close look at the Promissory Note/Agreement dated 26th November, 2013 attached to the affidavit verifying the specially endorsed plaint also marked as "A" shows that the
- 10 Applicant's address as stated on page 1 of the Promissory Note/Agreement is Kajjansi. The same Agreement shows that it was signed and delivered by "Murangira Arthur at Kajjansi, Entebbe Road."

More so, **Clause 7** of the same Agreement dated 26th November, 2013 stipulated that:

15 **"For the purpose of this loan facility, the borrower chooses the address above, if any notice is delivered at this address, the borrower will not be able to dispute that it was received*."**

As was held in the case of **Feng Huang Plastics Industries Ltd Vs Ssebunya Solomon and Another (supra)**, a suit can be instituted where 20 one of the parties resides and in the instant case, the Applicant's place of residence is Kajjansi as per **annexure "A"**, where Civil Suit No. 83 of 2018 was instituted.

In the premises, the Chief Magistrate's Court of Kajjansi rightly exercised its jurisdiction when it heard the matter and passed judgment in regards 25 to same.

Before I take leave, I wish to comment on the claims of forgery raised by the Applicant. Under paragraph 2 of the affidavit in support of the application, the Applicant agreed to having only borrowed UGX 1,200,000/= from the Respondent. However, the claim in the summary 30 suit as per the record of the lower Court states under paragraph 3(a) of the

- 5 plaint that the Plaintiff on 26th October 2013, advanced to the Defendant/Applicant UGX 1,200,000/= and that on 26th November, 2013 the Plaintiff further advanced to the Defendant a sum of UGX 7,200,000/=. However, the Applicant in his affidavit in rejoinder averred that the Agreement for UGX 7,200,000/= was a forgery as he had never seen it
- 10 until when he went to Court.

As was held in the case of **Friendship Taxi (U) Ltd Vs Adrana Matovu (supra)**, the High Court cannot consider the merits of the case while exercising its revisionary powers. In the premise, the issue of forgery cannot be dealt with in this case to merit the grant of revisionary orders.

- 15 In the premises, given that the trial Magistrate rightly exercised her jurisdiction when she heard Civil Suit No. 83 of 2018 until its conclusion and the fact that this application was filed three (3) years after judgment was delivered and two (2) years after execution was commenced, which depicts dilatory conduct on the part of the Applicant; this application is
- 20 hereby dismissed. Each party shall bear their own costs.

I so order.

Dated, signed and delivered electronically this 23rd day of May, 2024.

Patience T. E. Rubagumya

25 JUDGE

23/05/2024

8:45am

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