

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-CV-CR-0018-2021**

(Arising from MBR-45-CV-DC-001-2020)

MUZEEI WILLIAM ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

NALULE ALICE ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON LADY JUSTICE JOYCE KAVUMA

RULING

Introduction.

[1] The Applicant filed this application by way of Notice of Motion under Section 83(a) of the CPA and order 52 rules 1, 2 and 3 of the CPR. The application seeks for orders that;

1. The judgment and orders made by Magistrate Grade One His Worship Muhimbise Gordon Mbarara Court under Divorce Cause no. 001 of 2020 be revised.
2. Costs of the Application be provided for.

The grounds upon which this application was based were briefly laid out in the motion as follows;

1. The Petition was between two adult people the wife and husband but not children.
2. The family and children court has jurisdiction in the trial and determination of causes of civil nature concerning children.

3. The Children and family court has no jurisdiction to hear a cause of distribution of property which value is well over UGX 500,000,000/=.
4. It is fair, just and reasonable and in the interest of justice that the Application be granted.

The application was supported by an affidavit sworn by the Applicant and opposed by an affidavit sworn by the Respondent. I have taken cognizance of the content of both affidavits touching this matter.

Representation

[2] The Applicant was represented by M/s Twinamatsiko & Agaba Advocates while the Respondent was represented by M/s Legal Aid Project of the Uganda Law Society.

Both counsel filed written submissions in the matter which I have taken into consideration in coming up with this ruling.

Analysis and decision.

[3] **Section 83** of the **Civil Procedure Act** contains the law on revision and it provides as follows;

“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*
- 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”

In the case of **Mabalaganya vs Sanga (2005) E.A 152**, it was held that; in cases where High Court exercises its Revisional powers, its duty entails examination of the record of any proceedings before it for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings before the Magistrate court.

Therefore, decisions are revised when the trial Magistrate fails to exercise his or her Jurisdiction or where he or she acts illegally or with material irregularity or unjustly. In an application for revision, one has to prove that the judicial officer acted without jurisdiction, or failed to exercise the jurisdiction so vested or acted illegally, irregularly or unjustly

Section 83 of the Civil Procedure Act can only be invoked when or if it appears that the lower Court acted in the exercise of its jurisdiction illegally or with material irregularity or injustice. In the case of **Matembe vs Yamulonga (1968) 1 EA 643**, court held that;

“Revision applies to jurisdiction alone, the irregular or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved.”

[4] In the instant application, the following issues were raised by the Applicant for determination by this court;

1. Whether the Family and children Court had jurisdiction to entertain Divorce Cause No. 001 of 2020.
2. What are the available remedies in the instance?

Issue 1: Whether the Family and Children Court had jurisdiction to entertain Divorce Cause No. 001 of 2020.

[5] Jurisdiction has been defined by the Court of Appeal as the power and authority constitutionally conferred upon or constitutionally recognized as existing in a court or judge to pronounce the sentence of the law, or to award the remedies provided by law, upon a set of facts, proved or admitted, referred to the tribunal for decision, and authorized by law to be the subject of investigation or action by that tribunal, and in favour of or against persons who present themselves, or who are brought before the court in some manner sanctioned by law as proper and sufficient. (See Elizabeth Kyomuhangi vs Uganda Court of Appeal Criminal Appeal no. 131 of 2020 at page 6).

It follows that jurisdiction is everything to a court, without it, a court or tribunal cannot proceed to take any more step in any matter as whatever will be decided by it will merely be a nullity. (See Owners of Motor vessel Lillian "s" vs Caltex Oil Kenya Limited [1989] KLR 1).



The jurisdiction of the Family and Children Court is provided for under **Section 14** of the Children Act Cap 59 as amended. The section provides that;

"14. Jurisdiction of family and children court.

(1) A family and children court shall have power to hear and determine—

(a) criminal charges against a child subject to sections 93 and 94; and

(b) applications relating to child care and protection.

(2) The court shall also exercise any other jurisdiction conferred on it by this or any other written law."

[6] From the foregoing, I am in agreement with the submission of counsel for the Applicant that the Family and Children Court has jurisdiction to handle and determine matters of a civil nature concerning children.

Counsel for the Applicant seems to front the argument that the designation of the trial court as "Family and Children Court" took away its jurisdiction to handle matters not falling within **Section 14** of the Children Act, that is, the divorce between Nalule Alice the Respondent and Muzeei William the Applicant.

It is not in contention that that the divorce petition in MBR-45-CV-DC-001-2020 was presided over by a Magistrate Grade one.

Jurisdiction to hear and determine divorce petitions is provided for under **Section 3(1) and (2)** of the Divorce Act Cap. 249. The section provides that;

"3. Jurisdiction.

(1) Where all parties to a proceeding under this Act are Africans or where a petition for damages only is lodged in accordance with section 21, jurisdiction may be exercised by a court over which presides a magistrate grade I or a chief magistrate.

(2) In all other cases jurisdiction shall be exercised by the High Court only."

It therefore follows from the above provision that jurisdiction to hear and determine divorce petitions may be exercised by a court over which presides a Magistrate Grade 1 or Chief Magistrate.

According to **Practice Notice no. 2 of 2012**, the Learned Hon. Chief Justice of Uganda directed that Magistrates Grade one shall exercise jurisdiction over Family and Children Courts in addition to Magistrates Grade Two.

Therefore, a reading of **Section 14** of the Children Act, **Section 3** of the Divorce Act and **Practice Notice no. 2 of 2012** in my view give the Family and Children Court presided over by a Magistrate Grade one jurisdiction to hear and determine divorce petitions as was in the instant case.

The designation of the court as Family and Children Court does not in my view take away its jurisdiction to handle other matters not falling within **Section 14** of the Children Act as well provided under **Section 14 (2)** of the same provision. Which provides that *the court shall also exercise any other jurisdiction conferred on it by this or any other written law*. In this case, the “other written law” is the Divorce Act as pointed out herein above.

[7] It was a further contention of counsel for the Applicant that the trial Magistrate Grade one heard a divorce petition whose subject matter was beyond the pecuniary jurisdiction of the court. That the property was in the tune of UGX 500,000,000/=.

The position of the law is now settled that a Chief Magistrates Court has jurisdiction to entertain a petition for dissolution of marriages as provided for under **Section 3** of the Divorce Act. However, regard has to be taken where the petition for divorce includes orders for distribution or determination of rights to property whose value exceeds the monetary jurisdiction of the magistrate. In such a case, the Chief Magistrates' Court will have no jurisdiction to determine the matter.

In **Fredrick Kato vs Ann Njoki HCT Family Division Case Number 0010 of 2007**, Justice Egonda Ntende as he was then held that;

“where in a divorce cause, matrimonial assets in contention exceed the upper limit of the pecuniary civil jurisdiction of a magistrates' court that may amount to exceptional circumstance

to allow the filing of such a matter directly in the High Court. The current limit is shs. 50,000,000/=. Where the matrimonial assets exceed this amount, such may be filed in the High Court.”

The upper limit of pecuniary civil jurisdiction for cases heard by a Magistrate Grade One is UGX 20,000,000/=. (**See Section 207(1)(b) of the Magistrates Court Act Cap 16 as amended**).

The Applicant averred under **paragraph 5** of his affidavit in support of this application that the value of the properties that the learned trial Magistrate distributed in the divorce petition was over UGX 500,000,000/= a fact which the Respondent refuted under **paragraph 4** of his affidavit in reply. The Respondent further deposed that the Applicant never raised the issue.

It is a settled principle of evidence that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts, must prove those facts exists. (**See Section 101 of the Evidence Act**). It is said that this person has the burden of proof. This is the person whose suit or proceeding would fail if no evidence at all were given on either side. (**See Section 102 of the Evidence Act**). The standard of proof in cases like the instant one is on a balance of probabilities. (**See Miller vs Minister of Pensions [1972] 2 All ER 372.**

The Respondent having denied that the properties in question were not to tune the Applicant was alleging, shifted back the burden to prove

the assertion onto the Applicant. I have examined the Applicant's pleadings and I have not found any scintilla of proof of this assertion. It is therefore my finding that the Applicant's assertion that the property in Divorce Cause No. 0001 of 2021 was to a tune of UGX 500,000,000/= beyond the trial Magistrate's pecuniary jurisdiction are without merit.

Consequently, this application for revision is dismissed with costs to the Respondent.

I so order.

Dated, delivered and signed at Mbarara this ^{13th}.....day of ^{December}.....2022.



Joyce Kavuma
Judge