THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

REVISION CAUSE NO. 11 OF 2019

(Arising from Small Claims Case No. 104 of 2019 of Chief Magistrates Court of Nabweru)

KATENDE SARAH NAKITENDE :: APPLICANT

VERSUS

MPWANYI SAMUEL :: RESPONDENT

BEFORE: HON. MR. JUSTICE BONIFACE WAMALA

RULING

Introduction

This application was brought by Notice Motion under Sections 83 (a), (b) & (c), Section 98 of the Civil Procedure Act (CPA) Cap 71 and Section 17 of the Judicature Act Cap 13 seeking orders that:

1. The Judgment and Orders delivered by Her Worship Mangeni Marion (hereinafter referred to as **"the trial Magistrate"**) and the review made thereof by Her Worship Sanyu Mukasa be revised and set aside.
2. Costs of the application be provided for.

The grounds of the application were set out in the Notice of Motion and in an affidavit in support deponed to by **Katende Sarah Nakitende**, the Applicant. Briefly, the Applicant averred that the Respondent filed a Small Claims Case No. 104 of 2019 against her at the Chief Magistrate's Court of Nabweru alleging breach of contract. The alleged cause of action in the said suit took place at Kasubi Munakuyegulira Zone in Rubaga Division, Kampala, which falls under the Chief Magistrate's Court of Kampala at Mengo and not the Chief Magistrate's Court of Nabweru at Nabweru. The Respondent filed the Small

Claims case at Nabweru Chief Magistrates Court which was the wrong jurisdiction.

The Applicant further averred that she had been informed by her lawyer that the Small Claims Court also had no jurisdiction to handle a contentious matter of a contract which lacked consideration as only an ordinary court would determine the validity of such a contract since such was not a simple matter for a small claim litigant like herself to technically understand and submit in court without legal representation. The Applicant was further informed by her advocate that the Respondent did not prove his claim against her to the required standard and there are illegalities and material irregularities on court record which caused an injustice to the Applicant. The Applicant stated that it is in the interest of justice that this Court revises the said judgment and orders, set them aside and replace them with the dismissal of the said Small Claims case.

The Respondent opposed the application through an affidavit in reply sworn by himself wherein he stated that the Applicant was misleading the Court as the alleged cause of action took place at Munaku, Kasubi Zone IV, Rubaga Division in Kampala, which squarely is under the magisterial area of Nabweru Chief Magistrate's Court contrary to the allegations of the Applicant. The case was therefore filed and prosecuted in the right magisterial area, in a court with jurisdiction to hear and determine the same.

The Respondent further stated that it is not enough for the Applicant to merely state that the matter was contentious but ought to set out the contentious questions that he seeks the court to determine under revision. The Respondent averred that the present application is misconceived and a blatant abuse of court process as it aims to cause inordinate delay of justice and the same should be dismissed with costs and the orders of the lower court be upheld.

Background

The brief facts as they were captured in the trial court are that the Applicant is the owner of a piece of land which she let to the Respondent to operate a parking yard. The parties entered into an agreement dated 28th August 2018 by which the Respondent was to pay a sum of UGX 700,000/= per month. In January 2019, the Respondent received a notice from the Applicant stopping him from operating the parking yard; to which the Respondent obliged. By a document dated 10th February 2019, the Respondent handed over the parking yard to the Applicant with seven (07) motor vehicles whereupon it was agreed that some of the said vehicles would not be released without the knowledge of the Respondent since the owners of the said vehicles still owed money to the Respondent. The Respondent, however, later learnt that the said vehicles had been released without his monies being paid. He thus instituted the small claims case.

In defence, the Applicant stated that the agreement was in respect of only three vehicles which were not to be released until after payment. The Applicant stated that the Respondent received money for one of the vehicles and knew the circumstances under which the other vehicles left.

The trial court found for the Respondent and ordered the Applicant to pay the sum of UGX 3,423,000/=. The Applicant applied for review before the same court (but handled by a different Magistrate) and the court confirmed the decision of the trial Magistrate and declined to review the judgment and orders. The Applicant thus filed the present application for revision.

Hearing and submissions

At the hearing, the Applicant was represented by Mr. Kayondo George while the Respondent appeared by himself. The hearing proceeded by way of oral arguments which were made before me. I have reviewed and considered the submissions in the course of resolving the issue before the Court.

Issue for determination

The grounds raised by the Applicant disclose one issue for determination by the Court, namely; **Whether the application raises sufficient grounds for revision of the lower court's proceedings, judgment and orders**.

Resolution by the Court

I should begin by pointing out that under the *Judicature (Small Claims Procedure) Rules No. 25 of 2011* (hereinafter referred to as the **"Small Claims Procedure Rules"**), the decision of a small claims court is final and not appealable on the merits of the matter. The Rules, however, permit an aggrieved party to apply for review upon circumstances that are specifically set out under Rule 30 of the Small Claims Procedure Rules. Where no such application is made, or where it is made and rejected, the decision of a small claims court is final and enforceable. In a situation, however, where a party to such a case is aggrieved, and the grievance is based on the court's exercise of its power and calls for the invocation of the High Court's supervisory powers over lower courts, then the party can make use of the procedure available for revision of decisions of lower courts by the High Court.

Under the law, the High Court is endowed with supervisory powers over magistrates' courts; which courts also handle small claims matters. *Rule 4 (4) of the Small Claims Procedure Rules* provides –

> *"The High Court shall have general powers of supervision over matters claims in magistrates courts".*

This power is similar to the supervisory powers of the High Court over magistrates' courts provided for under *Section 17 (1) of the Judicature Act*, which provides –

> *"The High Court shall exercise general powers of supervision over magistrates courts".*

It is trite that one way the High Court exercises its powers of supervision over magistrates' courts in the judicial sense is through the function of revision. This therefore calls in the invocation of *Section 83 of the Civil Procedure Act Cap 71*. Therefore, provided the complaint against the proceeding conducted in a small claims court is within the ambit of *Section 83 of the CPA*, this Court is empowered to consider that complaint under *Rule 4 (4) of the Small Claims Procedure Rules*.

Section 83 of the CPA 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; 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".*

In the instant case, the allegation by the Applicant is that the trial Magistrate exercised a jurisdiction that was not vested in her; both in terms of the place of filing and the subject matter of the dispute. The application is therefore within the ambit of Section 83 of the CPA and was properly brought before the High Court.

The first complaint by the Applicant is that while the alleged cause of action in the small claims case took place at Kasubi Munakuyegulira Zone in Rubaga Division at Kampala, which falls under the Chief Magistrate's Court of Kampala at Mengo, the Respondent filed the case in the Chief Magistrates Court of Nabweru at Nabweru, which was the wrong jurisdiction. Counsel for the Applicant submitted that Rule 9 of the Small Claims Procedure Rules makes provision for where claims shall be instituted and in case of a claim based on breach of contract, it is where the cause of action wholly or in part arose. Counsel submitted that in the instant case, the cause of action arose at Kasubi in Rubaga Division, Kampala and the appropriate court was the Magistrate Grade 1 Court at Kasubi under the Chief Magistrate's Court of Kampala at Mengo and not Nabweru Chief Magistrate's Court. Counsel referred the Court to the *Magistrates Courts (Magisterial Areas) Instrument, 2017*.

Counsel for the Applicant submitted that under the law, where a court has no jurisdiction, whether pecuniary or territorial, its judgment and orders are a nullity and not just voidable. Counsel relied on the decisions in ***Gabula vs Wakidaka, HCCA No. 29 of 2006*** and ***Assanand & Sons (U) Ltd v. East African Records Ltd (1959) E.A 360***.

In reply, it was stated by the Respondent that the cause of action took place at Munaku, Kasubi Zone IV, Rubaga Division in Kampala, which squarely is under the magisterial area of Nabweru Chief Magistrate's Court contrary to the allegations of the Applicant. The case was therefore filed and prosecuted in the

right magisterial area, in a court with jurisdiction to hear and determine the same. The Respondent, however, could not point out to the Court the source of this information or the legal basis for such a contention.

Rule 9 of the Small Claims Procedure Rules provides as follows:

> *Where to institute a small claim*
>
> *(1) Subject to rule 4(3), every suit shall be instituted in a court within the local limits of whose jurisdiction the cause of action wholly or in part arises.*
>
> *(2) In the case of a rental dispute or claim, a small claim shall be instituted in a court within the local limits of whose jurisdiction the property is situated or where the defendant resides.*

Rule 4(3) of the Rules empowers the Chief Justice to designate, by a notice published in the gazette, a court where the Small Claims Procedure Rules shall apply. In case of these Rules, the Chief Justice designated the courts to apply the Rules in accordance with the Magisterial Areas Instrument, 2017.

On the case before me, the dispute was not over rent. The contract between the parties had been performed and was terminated. There was no dispute over the termination. Upon termination of the contract and at the time of vacation of the subject premises, the parties entered into another agreement concerning the handling of motor vehicles that were still on the premises. This is the agreement that led to the dispute that was handled by the trial court. In that regard therefore, sub-rule (2) of rule 9 above does not apply. The place of institution of the small claim could not be based on where the defendant resides. Sub-rule (1) of rule 9 above applied to the instant case. The place for institution of the small claim was to be based on the place where the cause of action arose.

On the facts before the court, the cause of action was based on the agreement dated 10th February 2019. According to the court record, the said agreement (which is P. EXH1) was made at Kasubi Zone IV, Kasubi Parish, Lubaga Division, Kampala District. According to *Paragraph 57 of the Magisterial Areas Instrument 2017*, the area of Kasubi falls under the Magistrate Grade 1 Court at Kasubi under the Chief Magistrates Court of Mengo at Mengo. Therefore, seeing that the Magistrate Grade 1 Court at Kasubi was not operational at the time, which fact this Court is able to take judicial notice of, the proper place for institution of this claim was at the Chief Magistrates Court of Mengo at Mengo and not Nabweru Chief Magistrates Court. There is no explanation as to why the Respondent chose to institute the case at Nabweru; because even if he had opted to file where the defendant resided, the available evidence indicates that the defendant resided in Nansana which falls under the Chief Magistrates Court of Wakiso.

The law is that issues of jurisdiction are substantive and go to the core of a case. If a court lacks jurisdiction, whether pecuniary or territorial, over the subject matter in dispute, its judgment and orders, however precisely certain and technically correct, are mere nullities and not simply voidable. Such judgment and orders are of no legal consequence and may not only be set aside any time by the court in which they were rendered but may be declared void in every court in which they are presented. Similarly, jurisdiction cannot be conferred on a court by consent of the parties, and any waiver on their part cannot make up for the lack of jurisdiction. See: ***Gabula vs Wakidaka, HCCA No. 29 of 2006*** and ***Assanand & Sons (U) Ltd v. East African Records Ltd (1959) E.A 360***.

On the case before me, the small claim was instituted clearly out of jurisdiction. This is not a curable defect. It renders the proceedings, judgment and orders of the trial court null and void. The proceedings, judgment and

orders of the trial court are therefore revisable under Section 83 of the CPA. The same ought to be set aside for reason of having been conducted by the court in exercise of a jurisdiction not vested in the court. The first complaint by the Applicant therefore succeeds.

The second complaint by the Applicant was that the subject matter of the dispute was such as would not have been taken in a small claims court. Counsel for the Applicant argued that the small claims court was established to handle simple and straight forward issues and, where complex issues are involved, the matter should be handled by the ordinary civil procedure court. Counsel submitted that in the instant case, the agreement in issue lacked the elements of consideration and capacity to contract; which are essential for a valid contract to exist. However, such aspects could not be comprehended by the Applicant when unrepresented. Counsel concluded that to that extent, the small claims court exercised its jurisdiction illegally.

In response, the Respondent stated in the affidavit in reply that it was not enough for the Applicant to merely state that the matter was contentious but ought to have set out the contentious questions that he seeks the court to determine under revision.

Rule 5(2) of the Small Claims Procedure Rules sets out matters to which the Rules shall not apply. Disputes arising out of tenancy agreements are not excepted; they can be handled under the Small Claims Procedure. The present dispute arose out of a rental agreement; which qualifies to be called a tenancy agreement. The agreement herein in issue was made upon termination of the rental agreement. The dispute therefore can be said to have arisen out of a tenancy agreement. Such a matter was properly before the Small Claims Court in terms of subject matter jurisdiction. The trial court, therefore, did not entertain the matter illegally.

The other leg to this complaint was that the issues involved were complex and the trial magistrate ought to have exercised her jurisdiction under section 26 of the Rules to suspend the proceedings and refer the party to the appropriate civil court. On his part, the Respondent averred that no such contentious matters had been highlighted by the Applicant. In his submissions, Counsel for the Applicant stated that the agreement in issue lacked the elements of consideration and capacity to contract; which are essential elements for a valid contract to exist. Counsel argued that such aspects could not be comprehended by the Applicant when unrepresented.

I do not agree that existence or not of elements of a valid contract constituted a complex matter that could not be handled by the small claims court. These are basic aspects that come into play whenever an issue concerning a contract is before the court. For purpose of putting rule 26 of the Small Claims Procedure Rules into perspective, complexity of a matter is not determined by the standards of the parties; but rather, by the judicial mind. It is the judicial officer to determine whether the matter before him/her contains complex questions of law or fact that cannot be adequately adjudicated upon by it. To my mind, every legal aspect is complex to an ordinary person. If the complexity referred to in the said provision was to be judged by the standard of the unrepresented common person, no matter would be amenable to be handled by the small claims court. The correct construction, therefore, is that whether the matter is complex or not will depend on the opinion of the judicial officer handling the matter.

That being the case, it cannot be accepted that the matter as to whether the agreement in issue lacked the elements of consideration and capacity to contract were complex issues that could not be handled by the trial Magistrate and that the Magistrate needed to refer the same to the ordinary civil court.

There was nothing complex about the issue before the court and, since the subject matter was such as is not barred by rule 5 (2) of the Rules, the same was properly before the trial court and was properly handled by the trial Magistrate. The second complaint by the Applicant therefore fails.

Decision of the Court

The first complaint concerned lack of jurisdiction. The Applicant has proved to the Court that the trial court, in handling this matter, exercised jurisdiction that was not vested in it in law on account of the cause of action having arisen outside the local limits of the Chief Magistrates Court at Nabweru. The proceedings, judgment and orders of the trial court are therefore a nullity and the same ought to be set aside. I accordingly allow the application and make the following orders:

1. The proceedings, judgment and orders the trial Magistrate in Small Claims Case No. 104 of 2019 and the review made thereof are revised and set aside.
2. The Respondent is advised to file the suit in a court of competent jurisdiction.
3. The costs of this application shall be paid to the Applicant.

It is so ordered.

Boniface Wamala

JUDGE

23/02/2021