THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(COMMERCIAL DIVISION)

REVISION CAUSE NO.15 OF 2020

(Arising from Small Claim No. 154 Of 2018 of Makindye Chief Magistrate's Court)

KIRUNDA WILGERS :: APPLICANT

VERSUS

KATEREGGA ALLOYS :: RESPONDENT

BEFORE: HON. MR. JUSTICE BONIFACE WAMALA

RULING

Introduction

This application was brought by Notice of Motion under Sections 83 (c) and 98 of the Civil Procedure Act for orders that:

1. The Orders by His Worship Gakyaro Allan and Her Worship Nambatya Irene against the Applicant be revised.
2. The Orders in Small Claim No. 154 of 2018 be substituted with appropriate orders as this court deems fit.
3. Costs of the application be provided for.

The grounds for the application are set out in the Notice of Motion and in an affidavit in support of the application sworn by **Kirunda Wilgers**, the Applicant, in which he stated as follows:

a) The Applicant is aggrieved by the decision of His Worship Gakyalo Allan, the trial magistrate, and Her Worship Irene Nambatya, the Magistrate that handled the application for review, in the Small Claims Case No. 154 of 2018.
b) The Applicant was never indebted to the Respondent.

c) The trial magistrate never allowed the Applicant to ask the Respondent any questions during the hearing contrary to the small claims rule 21(4).
d) The trial magistrate did not give the Applicant ample time to defend himself contrary to the small claims rule 25(b) as he was not allowed to tender all his defence documents to prove payment and when he wrote to the trial magistrate after hearing on 30/8/2018 giving him all original defence documents, the magistrate refused to consider them.
e) The Applicant was never served with a demand notice contrary to the small claims rule 10 and the Respondent did not reply to the Applicant's counter claim contrary to small claims rule 15(a).
f) The Respondent publicly confessed having bribed the trial magistrate.
g) The tenancy agreement tendered by the Respondent was forged but since the trial magistrate was influenced, the Applicant was not allowed to ask any questions in regard to the document.
h) It is in the interest of justice that the said judgement and orders of the magistrate be revised and substituted with appropriate orders.

The Respondent opposed the application through an affidavit in reply deposed by himself in which he stated as follows:

a) Sometime in 2018, the Respondent filed a Small Claims Case against the Applicant seeking payment of UGX 1,530,000/= being rent arrears. The matter was heard interpartes and judgment was delivered on 31st August 2018 ordering the Applicant to pay the claimed sum to the Respondent.
b) The Applicant filed an application for review of the said orders which application came up for hearing on 9th January 2019 whereupon the Applicant raised an objection claiming he will not get justice before the same trial magistrate thus prompting the trial magistrate to recuse himself and the file was allocated to another magistrate.
c) The application for review came up for hearing before another magistrate but the Applicant did not appear despite having notice and the

application was dismissed under order 17 rule 4 of the Civil Procedure Rules.

d) The Applicant was then required to pay the debt which he failed to do and was committed to civil prison for six months which period he served.
e) The remedy for revision is not available to the Applicant since he does not raise any serious grounds in his application to warrant a revision.
f) The application is overtaken by events since the Applicant has already served the sentence and, under the law, one has either to apply for revision or review but not both.
g) Despite serving the custodial sentence of 6 months, the Applicant is still indebted to the Respondent, which debt had been proved in the lower court and the Applicant had accepted to pay after the judgement.
h) Both parties were given an opportunity to prosecute their case, call up witnesses and the Applicant was never prevented from prosecuting his case by the trial magistrate.
i) The Applicant was duly served and has never influenced the trial magistrate in anyway which is a fictitious claim with no evidence.
j) The dismissal of the application for review on 9th January 2019 was because of want of prosecution owing to the Applicant's absence when the matter was called for hearing thus there was no bias of any sorts on the part of the judicial officers.

Hearing of the Application

Both parties appeared in court, unrepresented. Each addressed the court orally and the matter was set for Ruling.

Issue for determination

One issue arises for determination by the Court, namely; **Whether the application raises sufficient grounds for revision of the lower court's proceedings and judgment**.

Resolution by the Court

Let me begin by stating 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 by the same court 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*. The Court, however, has to guard against entertaining disguised appeals by parties.

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".*

The Applicant, herein invoked the above provision specifically under paragraph (c) thereof, i.e. that the magistrates' court acted in the exercise of its jurisdiction illegally or with material irregularity or injustice. Both parties have had opportunity to be heard on the Applicant's allegations and there is no allegation that owing to lapse of time or any other cause, the exercise of the power of revision by this Court may involve serious hardship to any of the parties. I will therefore proceed to examine the grounds raised by the Applicant and determine whether they or any of them bear any merit.

Denial of an opportunity to ask questions, to defend himself and the allegation of bribery

The Applicant avers in his affidavit in support of the application that the trial magistrate never accorded him an opportunity to ask the Respondent any questions during the hearing contrary to the Rule 21(4) of the Small Claims Procedure Rules.

To put this grievance by the Applicant into context, the court needs to examine the provisions of Rules 21, 24 and 25 of the Small Claims Procedure Rules.

Rule 21 thereof provides –

> *Judicial Officer's duties at hearing*
>
> *(1) A judicial officer shall ensure that the proceedings at the hearing are in accordance with the provisions of rule 25.*
>
> *(2) The judicial officer shall request the claimant on oath to state the facts of his or her claim clearly and submit any document or exhibit relevant to the claim.*
>
> *(3) The claimant shall answer any questions that may be asked by the judicial officer or any other party to the claim.*
>
> *(4) The judicial officer shall request the defendant on oath to respond to the claim presented under sub-rule (2) and the defendant shall answer any questions asked by the judicial officer or the other party to the claim.*

Rule 24 provides –

Cross-examination

Cross-examination between the parties or of any witness is not permitted, but the judicial officer may inquire into any aspect of the evidence that has been adduced in court.

Rule 25 provides –

Proceedings of Small Claims Procedure

The Court shall hear every case before it expeditiously and without undue regard to technical rules of evidence or procedure, but in exercising its jurisdiction, the Court shall be guided by the principle of fairness, impartiality without fear or favour and adhere to the rules of natural justice, and in particular, shall ensure that –

(a) Each party is given an opportunity to be heard;

(b) Each party is accorded ample opportunity to call witnesses and to adduce any other evidence as he or he requires support his or her case; and

(c) A judicial officer who has a direct or indirect interest of whatever nature in the dispute before him or her shall disqualify him/herself from hearing the case.

The cumulative effect of the above set out provisions is that a party does not have an entitlement to ask questions after the other party has given evidence. A party may however be permitted by the judicial officer to ask any questions if the judicial officer thinks that such a question is necessary to facilitate the inquiry. The trial under the Small Claims Procedure is inquisitorial. A party has no automatic right to put questions, let alone cross-examine. That is the import of the clear provision under rule 24 of the Rules. It is therefore important to note that even where the judicial officer allows a party to ask any questions, the questions put are not by way of cross-examination but to facilitate the inquiry. Therefore, the judicial officer has discretion to allow or disallow a party from putting any questions to the other.

The next question would be whether the trial magistrate herein exercised that discretion judiciously. The record does not indicate that the Applicant specifically asked the trial magistrate that he wished to put some specific

questions to the claimant. The Applicant himself does not allege that he made such a request and he was not put on record. It appears to me that the Applicant was under the impression that, like in ordinary civil proceedings, he had an automatic right to put questions to the other party. The trial magistrate cannot, therefore, be faulted in the way he exercised his discretion in the matter.

As such, if the trial magistrate conducts the trial in accordance with the provisions of Rule 25 of the Small Claims Procedure Rules, the trial would be proper and no illegality, irregularity or injustice can be said to be disclosed in that regard. In the instant case, there is no evidence to the satisfaction of the Court that the trial magistrate compromised the principles of fairness, impartiality and the rules of natural justice. There is evidence on record that each party was given an opportunity to be heard. There is no evidence that any of the parties indicated to the court that they wished to call witnesses or to adduce any other evidence and they were denied the opportunity. The evidence by the Applicant is that he wrote a letter after the court had closed the hearing and ajourned the matter for judgment, asking to be allowed to adduce further evidence. The trial magistrate was well within his right to reject such a request since that is not how proceedings are conducted. The court should not be expected to move back and forth in its conduct of proceedings.

I have also considered the fact that the Applicant had opportunity to present the additional evidence during consideration of his application for review. Unfortunately for him, he squandered this opportunity when he failed to appear at the hearing of the application and the same was dismissed on account of his non-attendance. If the Applicant had sufficient reason for non-attendance, his option was to apply to the same court to have the dismissal set aside. Such cannot be a ground for revision. Such a claim is not capable of

disclosing any illegality, irregularity or injustice committed by the trial magistrate in the way he conducted the proceeding.

There is also no evidence to impute that the trial magistrate had any direct or indirect interest of whatever nature in the dispute before him. The allegation that the trial magistrate was bribed by the Respondent (then Claimant) is unsubstantiated and unfortunate. When I asked the Applicant during this proceeding the basis of his claim that the magistrate was bribed, his answer was that it is the Respondent himself who publicly claimed that he had bribed the magistrate. The Respondent denied the allegation and the Applicant had no other evidence to substantiate the claim. This court cannot be expected to give any credence to such a wild allegation against a judicial officer.

The other evidence that establishes that the trial magistrate had no interest in the matter is that when it came up for review, he was asked to disqualify himself and he willingly did so. I am convinced that the trial magistrate observed the principles of fairness, impartiality and natural justice. The application by the Applicant has not disclosed any illegality, irregularity or injustice committed by the trial magistrate in this regard. No ground for revision therefore exist on account of these grounds.

Non-service of a demand notice and failure to make a reply to the counterclaim

The Applicant claimed that he was never served with a demand notice contrary to Rule 10 of the Small Claims Procedure Rules and the Respondent did not reply to the Applicant's counter claim contrary to Rule 15 (a) of the Rules.

Rule 10 thereof provides –

> *A person shall, before instituting a small claim under these Rules, give a notice of demand to the defendant specified in schedule 1, requesting him*

or her to satisfy a small claim with fourteen days of receipt of the notice of demand.

It is true that this rule is mandatory and any small claims proceeding instituted without first issuing a notice of demand would be premature and incompetent. In this case, however, the record indicates that a notice of demand was taken out by the Claimant (now Respondent) on the 25th July 2018. A copy of the same was attached onto the Summons and the Claim Form. The trial magistrate was not told, before the commencement of hearing or at all, that the same was not served onto the defendant (now Applicant). The trial magistrate was entitled to rely on the attached copy of the demand notice to deduce that a notice had been taken out and served onto the defendant. In my view, if the defendant had raised this issue before commencement of hearing, the trial magistrate would have had opportunity to investigate whether the notice was served or not. The issue cannot be raised at this point in time. This claim, too, establishes no ground for revision of the proceedings and judgment of the trial court.

The other claim concerns the absence of an answer to the counterclaim filed by the Applicant/Defendant in the small claims case. Rule 15 of the Small Claims Procedure Rules provides;

Reply to counter claim

Where the defendant has filed a defence which includes a counter claim under rule 13(c), the claimant shall, within fourteen days of filing the written statement of defence and counter claim –

(a) File a reply to the counter claim specified in schedule 6; or

(b) Notify the court in writing that he or she shall reply to the counter claim at the hearing of the case.

It is true that this rule too is mandatory and the claimant/counter defendant must comply with it. However, the effect of non-compliance with it is not to invalidate the proceedings. Rather, it is that the counter claim remains undefended. The further effect is that the claimant/counter defendant would not be allowed to give evidence regarding the counter claim. In effect the hearing of the counter claim would proceed ex parte at the same time as the hearing of the claim.

From my perusal of the record, although no formal ex parte order was entered by the trial magistrate, the claimant/counter defendant offered no evidence on the counter claim. The defendant/counter claimant offered his evidence and it was considered by the court. In his judgment, the trial magistrate stated as follows:

> **"... I have also ... considered the evidence of the defendant who testified as (DW1) and his counter claim allegations of 1,570,000/= arising from the treatment he offered to the plaintiff various wives. ... After careful evaluation of the evidence ... I find that the allegations to counter claim 1,570,000 from the claimant is not backed by evidence and still the claimant's exhibit No. 1 (PEX 1 commitment to pay ...) is not disputed by the defendant and he provided no evidence to have paid the said money ..."**

It is clear from the above statement of the trial magistrate that the Applicant's counter claim was considered on its merits and the court found no evidence proving the same. The lack of answer to the counter claim by the claimant in no way prejudiced the court's finding. The counter claim failed because it was not backed by sufficient evidence. Indeed, the defendant attempted to plug this hole by seeking to submit more evidence after the matter was already adjourned for judgment. Therefore, the failure by the Applicant/Defendant to adduce sufficient evidence to prove his counter claim cannot amount to an

illegality, irregularity or injustice as to constitute a ground for revision of the proceedings and judgment of the trial court.

As such, upon consideration of all the complaints raised by the Applicant and in answer to the issue before the Court, my finding is that the Applicant has not established any sufficient grounds for revision of the lower court's proceedings, judgment and orders. The issue is therefore answered in the negative.

Decision of the Court

In light of the above findings, the application for revision wholly fails. I accordingly dismiss the application with costs against the Applicant. The decision of the trial Court shall be enforced as by law provided.

It is so ordered.

Boniface Wamala
JUDGE
15/04/2021