

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT KAMPALA
(COMMERCIAL DIVISION)
MISCELLANEOUS CIVIL REVISION No. 0003 OF 2019

5 **FRIENDSHIP TAXI (U) LIMITED** **APPLICANT**

VERSUS

10 **ADRANA MATOVU** **RESPONDENT**

Before: Hon Justice Stephen Mubiru.

RULING

a. Background.

15 On 8th February, 2018 the respondent filed a suit under summary procedure against the applicant at the Chief Magistrates Court of Makindye, for the recovery of shs. 30,000,000/= interest thereon at the rate of 25% per annum from the date of breach until payment in full, and the costs of the suit. The respondent’s claim was that respondent had let out his premises to the applicant for the
20 conduct of its business as a car dealership. Under the tenancy agreement, the applicant had the obligation, at the end of the tenancy, to repair damage occasioned to the premises during the period of tenancy. When the applicant eventually terminated the tenancy, the respondent spent a sum of shs. 44,000,000/= on repairs. By their memorandum of understanding signed on 2nd December, 2017 it was agreed that the security deposit of US \$ 4,000 paid by the applicant at the
25 commencement of the tenancy be applied towards offsetting part of those costs. The applicant then undertook to pay the balance of shs. 30,000,0000/= by 4th December, 2017. The applicant failed to meet that obligation, hence the suit.

The applicant filed an application seeking unconditional leave to appear and defend the suit. When
30 the application came up for hearing on 5th September, 2018 neither the applicant nor its counsel were in court. The court thus dismissed it with costs to the respondent and entered judgment in favour of the respondent; awarding the respondent shs. 30,000,000/= with interest from the date

of default until payment in full, as well as the costs of the suit, which were on 18th September, 2018 taxed and allowed at shs. 11,654,594/=

b. The application.

5

The reapplication is made under sections 83 and 98 of *The Civil Procedure Act*, section 33 of *The Judicature Act* and Order 52 rules 1, 2 and 3 of *The Civil Procedure Rules*. The applicant seeks revision of the decree of the Chief Magistrate's Court by way of an order setting it aside. The grounds are that at the time the court enters judgment, interest on the principal amount had accumulated to a sum exceeding the pecuniary limit of the court and therefore the court acted without jurisdiction when it delivered the default judgment. Furthermore, that it was erroneous of the trial court to have awarded interest on the principal amount when it was not part of the contract and hence not a liquidated claim, yet the claim was made under summary procedure. The trial Court therefore exercised a jurisdiction not vested in it and did so with material irregularity.

15

c. The affidavit in reply

In his affidavit in reply the respondent averred that interest did not form part of the subject matter of the suit and therefore the trial court had jurisdiction. The application should therefore be dismissed with costs.

20

d. Submissions of counsel for the applicant

Counsel for the applicant, M/s MAGNA Advocates, submitted that the grounds are want of jurisdiction and error in the proceedings which is a material irregularity or illegality. The suit was under summary procedure. In para 4 and 3 of the claim is a tenancy agreement and shs. 30,000,000/= claimed and interest at 25% per month from the date of breach. The date of breach under para 4 (f) was stated to be 4th December, 2017. That interest was not embedded in the tenancy agreement or memo of understanding. The court should have issued ordinary summons. The rate too was unconscionable and illegal. Annexure "B" is the judgment and at the bottom the court entered summary judgment for the plaintiff as prayed. The court awarded the illegal an

30

unconscionable interest. Annexure “C” reflects the award and so too in annexure “D” where it was computed for recovery. It cause a substantial miscarriage of justice.

5 The Principal sum was shs. 30,000,000/= the interest awarded from 4th September, 2018 had accumulated to shs. 45,000,000/= at 7,500,000/= per month. At the time of judgment the interest was shs. 67,500,000/= added to the principal it is 97,500,000/= this is reflected in the annexures. That exceeded the pecuniary limits of the Magistrates Court under section 207 of the MCA. It should have been dismissed and the plaintiff should have been at liberty to file in the High Court. We rely on *Remo v. Juma Said, Civ. Rev. No. 006 2015* and *Hecterage Partnership v. Kesiime Polly, HC Civ. Appeal No. 21 2015*. The interest was ascertainable as the rate was pleaded. The Chief Magistrate should have been able to ascertain that it would exceed the pecuniary jurisdiction. S. 207 (4) of the MCA. Delay by the applicant annexure “B” is the warrant and it is dated 23rd May, 2019. The amount claimed was shs. 124,154,594/= By that time what had been recovered was only shs. 21,000,000/= there is still an outstanding balance and it sis till recoverable. Where 15 the judgment is an illegality any consequential action is equally a nullity. Para 4 of the affidavit in support explains the surrounding circumstances. 3rd parties will be affected if the cars are recalled. The money is recoverable from the respondent who benefited from an illegal judgment. They prayed that the order be granted.

20e. Submissions of counsel for the respondent.

Counsel for the respondent, M/s Lex Uganda Advocates submitted that the suit was filed in 2018 and the judgment was delivered on 6th September, 2018. The application for leave to defend had been dismissed. In *UCB v. Dotamu Koehere*, interest is not part of the subject matter. The 25 pecuniary jurisdiction is determined at the time of filing the suit not at the time of judgment. Under section 83 (e) of the CPA serious hardship will be occasioned. Execution is complete. The sales took place 14 days after 23rd May, 2019. By the time of the application, execution had been completed. Granting the application will cause serious hardship to third parties.

f. The decision.

This court is empowered by section 83 of the *Civil Procedure Act, Cap 71* to revise decisions of Magistrates' Courts where the magistrate's court appears to have; (a) exercised a jurisdiction not
5 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. It entails a re-examination or careful review, for correction or improvement, of a decision of a magistrate's court, after satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings of a magistrate's court.

10

An application for revision can lie only on the ground of jurisdiction, and the High Court in exercise of its revisional jurisdiction is not a court of appeal on a question of law or fact. This provision applies to jurisdiction alone, the irregular exercise of or non-exercise of it or the illegal assumption of it (see *Matemba v. Yamulinga [1968] EA 643*). This Court will not interfere under
15 this section merely because the court below came to an erroneous decision on a question of fact or of law. This Court will not in its revisional 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 interfere only to see that requirements of law have been properly followed by the court whose order is the subject of revision. Where a court has jurisdiction to determine a question and it determines that question,
20 it cannot be said that it has acted illegally or with material irregularity because it has come to an erroneous decision on a question of fact or even of law. A court is said to exercise jurisdiction illegally when it assumes a jurisdiction that is not vested in it by law, and is said to exercise jurisdiction with material irregularity when such a court is seized with jurisdiction but does so wrongly through some procedural or evidential defect.

25

Within those confines, an application for 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, 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
30 it appears that an error material to the merits of the case or involving a miscarriage of justice

occurred, except if from lapse of time or other cause, the exercise of that power would involve serious hardship to some person.

5 As a general principle if a court has got no jurisdiction to try and decide a suit, it cannot be conferred jurisdiction by consent, either express or implied (e.g. by absence of objection at appropriate time). A decree without jurisdiction is nullity and may be questioned at any stage including execution or even in collateral proceedings (see *Pastoli v. Kabale District Local Government Council and others* [2008] 2 E.A 300 and *Kagenyi v. Musiramo and another* [1968] E.A. 43). A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a
10 Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. A court ought to exercise its powers strictly within the jurisdictional limits prescribed by the law. Acting without jurisdiction or *ultra vires* or contrary to the provisions of a law or its principles are instances of illegality (see *Pastoli v. Kabale District Local Government Council and others* [2008]
15 2 E.A 300). A defect of jurisdiction, whether it is pecuniary or territorial or whether, it is in respect of the subject matter of the suit, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties.

A magistrate's court may grant any relief which it has power to grant under *The Magistrates Courts*
20 *Act* or any other written law and make such orders as may be provided for by the Act or any other written law in respect of any case or matter before the court. According to section 207 (1) (a) of *The Magistrates Courts Act*, a chief magistrate has jurisdiction where the value of the subject matter in dispute does not exceed fifty million shillings and has unlimited jurisdiction in disputes relating to conversion, damage to property or trespass.

25 Subject matter is the term used to denote the content of matter presented for court's determination. It encompasses all legal rights that are the subject of controversy between the parties. They are the matters, or subjects, about which the law is concerned. These rights may be those vested in individuals or the public, they may exist against the entire world, or against some particular person.
30 The subject matter of litigation, or a lawsuit, therefore is the right or rights actually put in issue by

the pleadings of the parties. For that reason the subject matter of contracts is the private legal rights *in personam* created by agreement.

Jurisdiction is defined as the limit of judicial authority or extent to which a court of law can exercise its authority over suits, cases, appeals etc. A court is said to have “jurisdiction over the subject-matter” when it has the power to hear, try and determine some right, not in a particular case but in every case of that class. Whenever a suit is filed before the court the initial issue is to decide whether the court has jurisdiction to deal with the matter. If the court has all the three; territorial, pecuniary or subject matter jurisdiction, then the court has the power to deal with the case. If the court does not have any of the jurisdictions, then it will be recognised as lack of jurisdiction and an irregular exercise of jurisdiction. The pecuniary jurisdiction of a court is determined at the time of filing the suit. The relevant sub-sections of section 207 (of *The Magistrates Courts Act* as amended by Act No. 7 of 2007, provide as follows;

(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 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 amendment.

(4) 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 ownership 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.

Similar provisions are to be found in section 11 of *The Civil Procedure Act*. Court must have pecuniary jurisdiction at the time of filing of the suit. Subsequent changes in value of the suit do not affect the jurisdiction of the court. In every case when the Court is seized of jurisdiction it cannot and does not lose it by the precise ascertainment of its value in cases which do not admit of such ascertainment at the time of its institution. However, for claims capable of a money valuation, the primary obligation of valuing the subject matter is that of the plaintiff and the same is considered for the purpose of determining the pecuniary jurisdiction of the court. The plaintiff

should avoid to fix the value in arbitrary manner to avoid the jurisdiction of the proper court. The court thus has duty of determining whether the valuation in the plaint stated by the plaintiff is correct or incorrect. Usually, a court accepts the valuation done by the plaintiff and proceeds further, however, if the court finds that valuation is falsely made in the plaint to avoid the jurisdiction of the proper court, it has to revalue the claim and direct the party to file in the appropriate court.

The valuation of subject matter of the dispute is undertaken at the date of filing the suit from; (i) liquidated claims; and (ii) quantifiable un-liquidated claims. In paragraph 3 of the plaint the respondent claimed shs. 30,000,000/= as the outstanding costs of restoration of the premises (this was a liquidated claim), and interest thereon at a rate of 25% per month “from the date of breach [un]till payment in full” (which was a quantifiable un-liquidated claim). The applicant did not quantify the latter yet the amount recoverable as at the date of filing the suit, 8th February, 2018, was quantifiable. Sine in paragraph 4 of the plaintiff and the attachment thereto it had been pleaded that the payment was due by 4th December, 2017 two months had elapsed since the date of default, hence shs. 15,000,000/= had accrued. When added to the principal sum claimed, the value of the suit at the time it was filed was shs. 45,000,000/= which is within the pecuniary jurisdiction of a Chief Magistrate. The trial court cannot be faulted on this account.

However, a plaint filed under summary procedure, in the circumstances of this case, should be limited to a claim for a liquidated demand in money payable by the defendant, with or without interest, arising upon a contract, expressed or implied (see Order 36 rule 2 (a) (i) of *The Civil Procedure Rules*). Anything else added to the liquidated demand would not come within the claims as defined and cannot be tried by way of a summary suit using a specially endorsed plaint (see *Uganda Transport Company Ltd v. Count De la Pasture (1954) EACA 163 at 168*). Since a default judgment cannot be entered in respect of an un-liquidated demand, when the plaint filed under summary procedure contains un-liquidated claims, the suit should instead be set down for hearing of evidence relating to the un-liquidated claim (see *Sekitto Wilson v. Nsambu Bethuel [1987] 50*). In that case the correct remedy should be for the Magistrate not to issue summons on the specially endorsed plaint but rather let the matter from its inception proceed as an ordinary suit (see *Solomon Baganja and another v. Henley Property Developers Ltd, H.C. Civil Suit No. 47 of 2012*).

The trial court therefore proceeded with material irregularity when it awarded interest on the principal sum, which interest was not part of the liquidated claim but rather required proof by evidence adduced inter-parties. This occasioned a miscarriage of justice and on that account the judgment and decree of the court below is set aside. A re-trial inter parties is ordered. The costs of the application are to abide the result of the retrial.

Signed and delivered this 22nd day of April, 2021

.....
Stephen Mubiru
Judge,
22nd April, 2021.

10