THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL DIVISION)

SMALL CLAIMS PROCEDURE REVISION APPLICATION NO. 0003 OF 2023
ARISING FROM CHIEF MAGISTRATE'S COURT OF NABWERU AT MATUGA
SMALL CLAIM NO. 24 OF 2023

NAMATOVU SARAH :: APPLICANT

VERSUS

KAKANDE GRACE :: RESPONDENT

(Before: Hon. Justice Patricia Mutesi)

RULING

Background

This application is brought under **Sections 83(a) and (c) and 98 Civil Procedure Act Cap 71** and **Rules 3 and 4(4) of the Judicature (Small Claims Procedure) Rules 2011** seeking orders that:

1. The Judgment and Orders made on 31st May 2023 in Small Claims Court Case No. 024 of 2023 in the Chief Magistrates Court of Nabweru at Matuga be set aside, revised and the small claims suit dismissed.
2. The costs of the application be provided for.

Briefly, the grounds of this application are that:

1. The Applicant and the Respondent entered into a loan agreement for UGX 2,000,000 but the Applicant was made to sign a document for an amount in the sum of UGX 8,000,000 at an interest rate of 25% per month.
2. The Applicant was directed to sign another agreement of UGX 16,000,000 and to pledge her land at Kagoma valued at UGX 80,000,000 as security.
3. Upon an alleged default, the Respondent filed a suit in Small Claims court alleging that he had extended to the Applicant a friendly loan of UGX 8,000,000.
4. The Applicant filed a defence and counterclaim.
5. Judgment was entered in favour of the Respondent for UGX 8,085,000.

6. The Learned Trial Magistrate erred in law in exercising a jurisdiction of a dispute not vested in her by law.
7. There are material irregularities in the Small Claims proceedings which caused a miscarriage of justice to the Applicant.
8. The Learned Trial Magistrate wrongly gave judgment for the Respondent in absence of proof to the required standard.
9. The Learned Trial Magistrate erred in law when she misdirected herself on the law.
10. It is in the interest of justice that this Honourable Court revises the said Judgment and orders made therein.

The application is supported by an affidavit sworn by the Applicant. Therein, she told the Court that she entered into a loan agreement for UGX 2,000,000 with the Respondent. However, the Respondent made her sign a document for an amount in the sum of UGX 8,000,000 at an interest rate of 25% per month. She was directed to sign another agreement of UGX 16,000,000 and to pledge her land at Kagoma valued at UGX 80,000,000 as security. Upon an alleged default, the Respondent filed Small Claims Procedure Case No. 24 of 2023 against her in the Chief Magistrate's Court of Nabweru at Matuga. She filed a defence and a counterclaim in the case.

The Applicant also told the Court that the Learned Trial Magistrate eventually gave judgment in favour of the Respondent for the recovery of UGX 8,085,000. She stated that, upon the advice of her lawyers, she believed that the Learned Trial Magistrate erred in entertaining the matter yet she did not have jurisdiction over the same. She further believed that there were material irregularities in the trial proceedings which caused her a miscarriage of justice. For instance, she claimed that she was not allowed to present evidence or to cross examine the Respondent. She insisted that her attempts to ask questions were met with a direction from the Learned Trial Magistrate to ask questions to persons out of the court room. She maintained that the Learned Trial Magistrate erred in giving judgment in the Respondent's favour yet he had not proved his case to the required standard.

The Respondent filed an affidavit in reply strongly opposing the application. He told the Court that the Applicant went to him for friendly financial assistance which he agreed to extend to her. The terms of their agreement were reduced

into writing. The Applicant failed to pay back his money within the agreed time, and she instead proposed to continue using his money and to pay back later. This prompted them to sign another agreement at her request. The Applicant took his hard-earned money for her personal use upon the agreement that she would pay back within 4 months but she kept postponing refund and proposing repayment through agreements which they both genuinely agreed to given their relationship. The rescheduled time lapsed and he sought legal redress.

The Respondent stated that he issued a demand notice to the Applicant but she still refused to repay the money. This promoted him to file Small Claim No. 24 of 2024 in the Chief Magistrate's Court of Nabweru at Matuga. The Applicant was served and she appeared on the date when the case came up for hearing in Court. The resultant judgment was based on an admission by the Applicant in voluntary departure from her own pleadings. The Applicant is introducing a new case in this Court by denying the amount of money she freely consented to in the agreements and admitted before the trial Court.

Issues arising

1. Whether this application is competent.
2. Whether the judgment and orders in Small Claim No. 24 of 2023 should be revised and set aside.
3. What reliefs are available to the parties.

Representation and hearing

At the hearing, the Applicant was represented by Mr. Odele Anthony holding brief for Mr. Mutyaba Ivan of M/S DeMott Law Advocates and Solicitors while the Respondent was represented by Mr. Bunyasin Ibrahim of M/S KM Advocates and Associates. I have carefully considered all the materials on record, the submissions of the parties and the laws and authorities cited.

Determination of the issues

Issue 1: Whether this application is competent.

The High Court's powers to revise decisions of magistrates' courts is well-settled. These powers are aptly prescribed in **Section 83** of the Civil Procedure Act. That provision allows the High Court to call for the record of any case which has been determined by a magistrate's court and to revise the same if that court appears

to have exercised a jurisdiction not vested in it, failed to exercise a jurisdiction vested in it or acted in the exercise of its jurisdiction illegally or with material irregularity or injustice. Upon such revision, the High Court may make any and all such orders as it deems fit and just.

The only rather unusual question, which has arisen in this case, is the scope and extent of this Court's powers to supervise and intervene in small claims. This question, in my considered view, is answered by **Rule 4(4)** of the Judicature (Small Claims Procedure) Rules, S.I. No. 25 of 2011. This Rule reasserts the High Court's general powers of supervision over small claims in magistrates' courts.

I am fortified in this view by the decision in **Namuli Lillian & Anor v Abdulhaku Kaggwa, High Court Small Claims Procedure Revision No. 06 of 2019** in which this Court clarified in its role in small claims proceedings. The Court held that:

> *"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 Judicature (Small Claims Procedure) Rules. I need to emphasise that in exercising this function in respect of matters under the Small Claims procedure, the High Court strictly operates within the confines of the provisions of Section 83 of the CPA and ought to avoid the temptation of being induced by an applicant to consider matters that would otherwise be handled by way of appeal, which course is not available under the Small Claims Procedure Rules. In other words, the High Court should not be led into handling a disguised appeal."* Emphasis mine.

I cite the above dictum with approval. The collective import of the **Namuli Lillian** decision (supra) along with **Section 83** of the Civil Procedure Act and **Rule 4(4)** of the Judicature (Small Claims Procedure) Rules is that the High Court has power to revise the decisions of magistrates' courts in small claims.

However, this power does not extend to the reconsideration of the merits of the decision of a magistrate's court in a small claim. It only extends to assessment of whether the magistrate's court handled the small claim without jurisdiction

to do so in law, whether the magistrate's court refused to exercise jurisdiction over the small claim yet it had such jurisdiction under the law and whether the magistrate's court exercised its jurisdiction over the small claim illegally or with material irregularity or injustice.

For these reasons, Issue 1 answered in the affirmative with the finding that this application is competent.

Issue 2: Whether the judgment and orders in Small Claim No. 24 of 2023 should be revised and set aside.

The Applicant has put forward 2 main grounds as a basis for the argument that the judgment in Small Claim No. 24 of 2023 should be revised. First, she claims that the trial Court exercised jurisdiction not vested in it by law. Second, she claims that there were material irregularities in the trial Court's proceedings which occasioned a miscarriage of justice to her.

In arguing the first ground, counsel for the Applicant argued that the parties' transaction amounted to an equitable mortgage in law because the Applicant pledged her land to secure the lending. For that reason, counsel argued that, since the land was valued at over UGX 80,000,000, the trial Court did not have the jurisdiction to entertain the small claim. In reply, counsel for the Respondent clarified that the value of the Respondent's claim in Small Claim No. 24 of 2023 was UGX 8,000,000 which the trial Court was empowered to handle.

Having considered the submissions of both parties on the question of whether or not the Learned Trial Magistrate had jurisdiction to handle Small Claim No. 24 of 2023, I am inclined to agree with the Respondent. According to the claim form which was adduced before this Court as Annexure C to the affidavit in reply, the Respondent's case against the Applicant in Small Claim No. 24 of 2023 was for the recovery of UGX 8,000,000 being the money outstanding under a friendly loan agreement. **Rules 3** and **5(1)** of the Judicature (Small Claims Procedure) Rules dictate that a small claims procedure shall cover all cases whose subject matter value does not exceed UGX 10,000,000.

The Applicant's submissions on this ground appear to be a desperate attempt to mislead and confuse this Court. The claim form in Small Claim No. 24 of 2023 did not mention the Applicant's land as security. The Respondent did not seek to enforce the security or the collateral for the loan. The Respondent only sought

to recover his money from the Applicant. As counsel for the Respondent rightly submitted, the determination of pecuniary jurisdiction in a small claim ought to be based on the contents of the claim form only. Where the outstanding debt under a friendly loan agreement does not exceed UGX 10,000,000 but the value of the collateral for that loan exceeds UGX 10,000,000, a magistrate's court still has the jurisdiction to handle a small claim arising from that transaction as long as it is presented for the recovery of the outstanding debt alone and not for the enforcement of the security/collateral.

It is also critical for me to clarify on the nature of the transaction between the Applicant and the Respondent. It is as clear as day that this was a friendly loan which was secured by an equitable mortgage. There is nothing illegal about a private arrangement for the advancement of financial assistance through a friendly loan between persons known to each other (see **Ndyareeba Ronald v Joseph Arinaitwe, High Court Miscellaneous Application No. 173 of 2019**). It is trite law that a friendly loan agreement does not constitute a money lending agreement governed by the Tier 4 Microfinance Institutions and Money Lenders Act, 2016. To the contrary, a friendly loan agreement is governed by the general rules of contract as set out in the Contracts Act, 2010 and other relevant laws.

Additionally, in the instant facts, when the parties endorsed an agreement in which the Applicant pledged her land as collateral for the loan, the transaction took on the character of an equitable mortgage. Counsel for the Applicant argued that this implied that the Learned Trial Magistrate lacked jurisdiction to handle the case since the value of the security in that mortgage exceeded UGX 80,000,000. In my view, this is an erroneous construction of the nature of the Respondent's claim at the trial. As I have already highlighted, the Respondent's claim was for recovery of the outstanding debt and not for the enforcement of the collateral under the equitable mortgage.

Where collateral is pledged to secure a friendly loan and the loan is not duly repaid, the lender has the liberty to decide to recover that loan or not to recover the loan at all and count his or her losses. If the lender decides to recover the loan, he or she is still at liberty to decide whether to enforce the security or to pursue recovery through judicial process. Even after a judgment is delivered creditor, the judgment creditor is still at liberty to decide which execution alternatives to pursue in order to recover the debt.

There is no rule of law or practice in our courts dictating that once a creditor is secured, he or she can only recover the debt through enforcement of the collateral. In the instant case, the Respondent pruned and restricted his claim in Small Claim No. 24 of 2023 to recovery of UGX 8,000,000. In my considered opinion, although the transaction between the parties was both a friendly loan and an equitable mortgage, the true subject matter of Small Claim No. 24 of 2023 was the friendly loan and not the equitable mortgage.

It is utterly inconsequential that Respondent's claim arose from a friendly loan whose collateral exceeded UGX 10,000,000 in value. All that matters is that the Respondent's claim was for enforcement, through the court process, of the Applicant's payment obligations in the friendly loan following the outstanding debt of UGX 8,000,000. I, therefore, find that the learned trial Magistrate had the jurisdiction to hear and determine Small Claim No. 24 of 2023.

On the second ground, counsel for the Applicant averred that the Learned Trial Magistrate did not accord the Applicant an opportunity to adduce evidence on her defence and counterclaim. In reply, counsel for the Respondent pointed out that the Applicant's claims that the learned trial Magistrate did not have the jurisdiction to hear and determine the case and, at the same time, that the Learned Trial Magistrate exercised her jurisdiction irregularly are a contradiction. Counsel maintained that the trial was conducted in substantial compliance with all relevant laws.

Before dealing with the alleged irregularities in the trial, I will first emphasise the justification for the small claims procedure which was to decongest the courts of cases of debt recovery of the value not exceeding UGX 10,000,000. By providing for a simplified and quick procedure of hearing and determining those cases, it was hoped that the business community in Uganda, largely consisting of Small and Medium Enterprises (SMEs), would be supported in expeditiously resolving commercial disputes. It was also intended that the Ugandan society as a whole benefits from a simplified litigation procedure through the creation of a different queue for all those persons whose cases did not involve colossal amounts of money.

On the backdrop of this justification, the Judicature (Small Claims Procedure) Rules set up an abridged process through with disputes whose subject matter value does not exceed UGX 10,000,000 can be expeditiously settled. As opposed

to a trial in an ordinary civil suit which is substantially adversarial in nature, the small claims trial is a hybrid of both the adversarial and the inquisitorial trial methods. While both parties are entitled to present their evidence in response to each other's claims, the trial magistrate is enjoined to take on a more inquisitorial role as a fact finder. The parties are also allowed to put questions to each other relating to the case to enable the trial magistrate reach a decision (See Rules 21 and 23 of the Judicature (Small Claims Procedure) Rules, 2011).

The Applicant asserted that she was denied the chance to cross examine the Respondent's evidence, and further that the Learned Trial Magistrate ignored her counterclaim. She specifically asserted that she was not allowed and enabled to present evidence on her counterclaim yet it was on the trial Court's record. I will now delve into the record of proceedings at the trial of Small Claim No. 24 of 2023 to ascertain the truthfulness of the Applicant's allegations that she was not accorded a fair hearing by the learned trial Magistrate.

In her written statement of defence to Small Claim No. 24 of 2023, the Applicant admitted part of the claim (UGX 2,000,000) and contested the remainder (UGX 6,000,000). In her counterclaim, she averred that she had also filed a suit against the Respondent in the trial Court to the effect that the Respondent was only entitled to UGX 2,000,000 and not UGX 8,000,000. She went on to explain that the Respondent had extended to her a friendly loan of UGX 2,000,000 but that he had kept on increasing the amount due up to UGX 16,000,000 without proper justification. The Respondent did not file any reply to that counterclaim.

At the hearing of Small Claim No. 24 of 2023, both parties appeared before the learned Trial Magistrate. The Respondent presented his case and told the learned trial Magistrate that the Applicant had approached her and he gave her a loan of UGX 2,000,000 on the promise that she would repay the money in 4 months. He stated that the Applicant kept asking for more time promising to pay UGX 8,000,000 and they made agreements. Thereafter, the trial Court asked the Applicant to present the original copies of the agreements. She presented them and they were verified by the Court. The trial Court then asked the Applicant for her response and she said:

> ***"... I signed all the agreements, but the money is a lot. I cannot afford it now."***

The Applicant did not say anything more. The trial Court concluded that the agreements signed under the Applicant's hand showed that UGX 8,000,000 was due and that the Applicant was bound to pay as per those agreements.

I note that the Applicant did not tell the Learned Trial Magistrate about her allegations that she was made to sign the agreements indicating a higher sum than the one she took. In this Court, the Applicant stated that she took UGX 2,000,000 yet the Respondent cajoled her into signing that she would return more than that. It is clear to me that the Applicant's quarrels over the manner in which she signed the agreements are an afterthought. If it was true that the Applicant's consent to the agreements had been compromised by the Respondent, she would have said so in her written statement of defence and she would also have brought it up at the hearing.

Furthermore, as I said earlier, in a small claims trial, the presiding magistrate takes on a more inquisitorial role as opposed to ordinary trials. Counsel for the Applicant severally insinuated that the learned trial Magistrate was unfair to the Applicant when she concluded the case after the Applicant admitted signing the impugned agreements. In my view, this complaint springs from a misconception about how a small claims trial is supposed to run.

Due to the hybrid mode of trial which recognises both the traditional adversarial and the inquisitorial trial modes, the small claims trial does not involve the open competition between adversaries which is synonymous with ordinary suits. There is nothing wrong, both in the letter and the spirit of the law governing small claims, with a trial magistrate reviewing the evidence of the parties in their presence, asking them a few questions about that evidence and making his or her judgment, after allowing them to question each other if they so wish.

Whereas the Applicant has alleged that she was not allowed to cross examine the Respondent, the record of proceedings does not show that she requested to put any questions to the Respondent and that the request was denied. In any case, having admitted signing both agreements and simply explaining that the money was *"too much"*, I am unable to see which questions the Applicant wanted to put to the Respondent about the debt.

I note that the Learned Trial Magistrate does not appear to have paid much attention to the counterclaim. However, it is doubtful whether the Applicant's

said counterclaim constituted an actual counterclaim within the law. A counterclaim is a cross action which, but for the plaintiff's action, was, in and of itself, maintainable as a separate action. See **Otto Justine v Tabu Richard, High Court Civil Appeal No. 23 of 2015**. It must present an independent cause of action which entitles the counterclaimant to separate relief. A reply to a claim remains a defence to that claim even if it is presented as a counterclaim. The Court is bound to look at the substance of the pleading and not its titling or nomenclature in determining what that pleading is.

In the instant case, I am convinced that although the Applicant says she filed a counterclaim, what she filed was not actually a counterclaim but simply an elucidation of her defence to the Respondent's claim. I have already reproduced what the Applicant stated as her counterclaim. She just explained her side of the story by stating that the Respondent lent her UGX 2,000,000 but that he was now claiming for UGX 16,000,000 without any justification. This explanation does not amount to an independent cross action which entitles the Applicant to separate relief against the Respondent in her own right. It is, perhaps, this realisation – that what was claimed to be a counterclaim was not actually a counterclaim – that prompted the Learned Trial Magistrate not to ask the Applicant to specifically explain her "counterclaim". There was nothing more for her to explain because what she had disguised as a counterclaim was actually another explanation of her defence.

The Court, thus, finds that the Applicant did not raise any counterclaim in law against the Respondent at the trial. This implies that, even though the record of proceedings does not show that the Learned Trial Magistrate gave any specific attention to the alleged counterclaim, the Applicant did not suffer any prejudice or miscarriage of justice from that omission because she had already had the chance to explain her defence. It would have been ideal for the Learned Trial Magistrate to specifically ask the parties about the counterclaim and for her to specifically deal with it in her judgment and decree. Nonetheless, this omission remains inconsequential since the Applicant's said counterclaim was simply an explanation of her defence. It was not a separate bona fide and viable claim that entitled her to any specific separate relief against the Respondent.

The Applicant also complained about the standard of proof applied by the Learned Trial Magistrate in adjudging the case. She claimed that judgment had

been given in favour of the Respondent yet he had not proved his case to the required standard. This argument has no merit. It is inconceivable that a party who appears in court and admits a claim against him or her can then turn around and say that the claim was not proved against him or her to the required legal standard. This Court shall not *second-guess* whether or not the Respondent proved his claim to the required standard because the Applicant expressly admitted the contents of the friendly loan agreements in Court.

Notwithstanding all the above finings, I am convinced that this Court should revise and set aside the judgment and orders in Small Claim No. 24 of 2023 pursuant to **Section 83(c)** of the Civil Procedure Act on the ground that the Learned Trial Magistrate exercised her jurisdiction in a manner that is manifestly unjust and unfair. There is a glaring injustice on the face of the record of the trial Court which the Learned Trial Magistrate ought to have addressed and which this Court cannot stay silent about. The parties' agreement of 13th June 2022 stipulates that the Applicant would repay pay UGX 8,000,000 to the Respondent by 14th October 2022. This implies that, within 8 months, the principal of the loan (UGX 2,000,000) attracted interest of UGX 6,000,000 which is equivalent to an interest rate of 400%. This is evidently horrible, unfair, unjust, inequitable and unacceptable.

Although the Applicant admitted signing the 13th June 2022 agreement, it is clear that that agreement was extortionist, exploitative and unconscionable to the extent that it implied an interest rate of 400% for the friendly loan between the parties. An interest rate of 400% for every 8 months would equally imply an interest rate of 600% per year. This Court would have abdicated its statutory duty to supervise matters of small claims in magistrates' courts if it simply looks on as a Magistrate's court is enforcing an interest rate of 600% per year in a friendly loan.

In view of all the circumstances of this case, including the delayed repayment of the friendly loan from February 2022 to-date, along with the interests of justice and equity, it is my considered finding that the Respondent is entitled to recover UGX 4,000,000 from the Applicant as the outstanding loan balance and UGX 85,000 as the court fees in the trial Court. For all the above reasons, this Issue partially succeeds.

Issue 3: What reliefs are available to the parties.

The judgment and orders of the Learned Trial Magistrate shall be revised and substituted with the orders of this Honourable Court enabling the Respondent to only recover UGX 4,085,000 from the Applicant. I note that this whole dispute started from the impecuniousness of the Applicant which led her to seek out financial assistance from the Respondent. Accordingly, in the interests of justice, fairness and equity, each party shall bear their own costs. Consequently, this application partially succeeds and I make the following orders:

i. The Applicant shall pay UGX 4,085,000 to the Respondent.

ii. Each party shall bear their own costs.

Patricia Mutesi

JUDGE

(26/04/2024)