

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA, AT KAMPALA
CIVIL SUIT NO. MMEK 10 OF 2000
CHIEF MAGISTRATE’S COURT, OF MUBENDE.
AT KIBOGA

JOSEPH

KALINGAMIRE:.....
:..... PLAINTIFF

VERSUS

GODFREY

MUGULUSI:.....
:..... DEFENDANT.

BEFORE: V.F.MUSOKE-KIBUUKA (JUDGE)

Revisional Order.

This file was called by the High Court from the Chief Magistrate court of Mubende, following a request for a revisional order by counsel for the plaintiff.

The plaintiff sued the defendant in the Magistrate Grade 1 court at Kiboga. The cause of action was a claim for general damages which, the plaintiff claimed, arose out of wrongful arrest, imprisonment and malicious prosecution following a false report made by the defendant to the effect that the plaintiff had criminally trespassed upon the defendant’s land.

The case was heard by a grade one magistrate, his worship Ssejjemba Dec. He entered judgment for the plaintiff against the defendant for maliciously causing the wrongful arrest and detention of the plaintiff. The learned trial magistrate awarded the plaintiff general damages in the sum of

shs 2,400,000/=.

The only issue raised by counsel for the plaintiff, Mr. Nshinye Sebuturo, is that in awarding the sum of shs. 2,400,000/= as general damages, the learned trial magistrate exercised jurisdiction not vested in him.

Both parties did not wish to be heard by this court before it made the revisional order.

Section 84(a) of the Civil Procedure Act, provides:

“84. The High Court may call for the record of any case which has been determined by any magistrate’s court and if such court appears to have-

a) exercised a jurisdiction not vested in it in law, or

b)

C)

the High Court may revise the said case and may make such order therein as it thinks fits.....”

The complaint in the instant case is that the learned trial magistrate in making the order awarding to the plaintiff general damages in the sum of shs. 2,400,000/= he exercised jurisdiction that was not vested in him.

Jurisdiction is always a creature of a statute or of the constitution. David B. Kayondo Vs. The Co-operative Bank (U) Ltd. SCCA No. 10 of 1991 (unreported).

Section 219 of the Magistrates’ Courts Act, as amended by Statute 6, of 1990 provides, in its paragraph b) of subsection 1) that:

“219(1)

a)

b) a magistrate Grade 1 shall have jurisdiction where the value of the subject matter does not exceed shs. 2,000,000/=.

Although, considering the circumstances of Uganda today, that provision may seem quite ridiculous, it remains the law creating jurisdiction for Grade 1 magistrates in civil matters.

It follows, therefore, that when a Grade one magistrate makes an order awarding general damages the sum of which exceeds the monetary jurisdiction of shs. 2,000,000/= set by the law in section 219, of the magistrates' Courts Act, 1970, such magistrate would be exercising jurisdiction not vested in him. The High Court would appropriately invoke the provisions of section 84 (a), of the Civil Procedure Act and make such order as it thinks fit.

What is the appropriate order in the circumstances of this case?

The plaintiff, through his counsel sought a revisional order solely for the purpose of correcting the order or reducing the award of general damages from the sum of shs. 2,400,000/= which was in excess of the monetary jurisdiction of the trial magistrate of shs. 2,000,000/= to a sum of shs. 2,000,000/= which places the award within the confines of the trial magistrate's jurisdiction.

However, in Mubiru and Others Vs. Kayiwa (1979) HCB 212, the court of Appeal of Uganda held that "an Order made without jurisdiction is a nullity".

In the instant case, since the order of the trial magistrate awarding general damages in the sum of shs. 2,400,000,000/= to the plaintiff was made without appropriate jurisdiction, it was a nullity ab-initio.

If that is the correct legal position, then that order cannot form the basis upon which this court may think fit to make under section 84(a) of the Civil Procedure Act. In the circumstances, although this court is merely exercising its revisional jurisdiction and not its appellate jurisdiction, it appears to me that the court has to look at the case as a whole and upon the evidence received by the trial magistrate make an order as to general damages as the court considers appropriate in the circumstances of the case as a whole.

In light of what is stated above, I have examined the record and the judgment. Both the plaintiff and the defendant were simple cattle keepers or herdsmen of Kabagaya village in Kiboga District. The plaintiff was arrested by the police from his home. He was handcuffed and taken to Kyanda police post. The arrest was prompted by a malicious and false report made to the police by the defendant against the plaintiff to the effect that the plaintiff had criminally trespassed upon the defendant's land. The two had had long standing misunderstandings. The plaintiff spent one night in the police cells before he was transferred to Kiboga police station from where he was released upon a police bond. The plaintiff was taken from his home to the police when handcuffed. He was seriously humiliated. The defendant boasted that the plaintiff would learn from his arrest that he (plaintiff) is also a man.

In the circumstances, I consider an order awarding general damages of shs 1,200,000/= (one million two hundred thousands), to the plaintiff as appropriate. I accordingly award the plaintiff that sum as general damages instead of the order made by the trial magistrate which order was a nullity for lack of appropriate jurisdiction.

The order made by the trial magistrate in relation to costs remains intact.

V.F.MUSOKE-KIBUUKA (JUDGE)

4.7.2003