

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
CIVIL REVISION NO. 0005 OF 2006
(Arising from Jinja Chief Magistrates' Court Miscellaneous
Application No. 40 of 2006)

NTALO GEORGE ::: APPLICANT

VERSUS

BABIRYE EDINANSI ::: RESPONDENT

BEFORE: HON. LADY JUSTICE IRENE MULYAGONJA KAKOOZA

REVISION ORDER

The applicant brought this application under the provisions of sections 83 and 98 of the Civil Procedure Act for revision of the order of the Chief Magistrate sitting at Jinja authorising a court bailiff to evict the applicant from land situated along Kamuli in Rubaga Parish in Jinja District. He also sought for the nullification of a judgment of the Village Local Council (LCI) Court of Rubaga Parish on which the eviction order was based. The application was supported by the applicant's affidavit sworn on the 16/09/2006. The respondent filed three affidavits in reply: the first deposed by her on the 7/09/06, another deposed by Aggrey Wagubi, Assistant Administrator General on the 7/09/06, and lastly an affidavit deposed by Owere Wilson, Vice Chairperson of Kamuli Road LC1 in Rubaga Parish on 7/09/06.

The grounds of the application were that the LCI Kamuli Road acted with material irregularity when they purported to hear an unregistered case with no clear claim or description of the case on a public holiday (i.e. 09/10/05, Independence Day). Further that the court passed the judgment on the same day in the absence of the applicant and as a result he was not informed of his right to appeal. Further grounds were that the Chief Magistrate acted illegally or with material irregularity when she issued a warrant to evict the applicant and put the respondent in possession of the property.

The facts on which the application was based can be summarised as follows. In his affidavit in support of the application the applicant inferred that he was the occupant of the land in issue till the 18/08/2006 when he found three of the grass-thatched houses thereon the land had been demolished by a court broker. The applicant claimed that he was not aware of any suit that could have resulted into an order for eviction except a claim that the respondent had lodged against him with the Human Rights Commission, but which had not been concluded. The applicant later discovered that the structures had been demolished by one Oundo Robert by a warrant of eviction issued by the Chief Magistrate at Jinja in Misc. Application No. 40 of 2006 arising out of a judgement declared by the LC1 Court of Kamuli Road, Rubaga Parish. The applicant further deposed that he recalled that on the 9/10/2006 the same LC court summoned him and he reported at the appointed place. That the LC court asked him questions about the land that he occupied but he was not notified that the respondent had filed a claim against him in respect of the land.

The applicant further averred that he was not informed that judgment had been delivered in favour of the respondent. Neither was he informed that he had the right to appeal against the judgment. Further that at the alleged hearing he had not been given an opportunity to call witnesses or to produce documentary evidence to prove how he acquired the land in dispute.

In her affidavit in reply the respondent averred that the suit land belonged to her husband the late Ssosipateli Sajjabi to whom she was legally married until his death on 1/07/2005. That the property was acquired jointly by the deceased and her after they got married in 1969 and it therefore formed part of the deceased's estate. The respondent further averred that after the death of Ssosipateli Sajjabi the applicant forcefully prevented her from occupying and cultivating the suit land. That as a result the applicant was facing criminal charges in the Magistrates Court at Jinja for trespass, threatening violence and intermeddling in the deceased's estate. Further that the Administrator General was the Administrator of the estate of the late Ssosipateli Sajjabi. Aggrey Wagubi, one of the Administrators General confirmed this in his affidavit. He averred that on 27/03/2005 the Administrator General obtained letters of administration in the estate. That at a meeting held on the 15/07/2007 he established that the respondent was the widow of the deceased. That he instructed the applicant to vacate the land but the applicant refused to do

so. As a result the A.G instructed the police to press charges against the applicant for intermeddling. Subsequently the applicant was charged in Jinja Criminal Case No. 187 Of 2007.

In a further affidavit in reply Owere Wilson the Vice Chairman of the LC of the area in which the disputed land is situated averred that he was one of the members of the LC who gave judgment against the applicant in a suit that was lodged by the respondent. He further averred that the LC court in his village usually sits on Sunday. That before the 9/10/2007 the applicant was summoned to the LC court on two occasions but he did not respond to the summons. That he finally responded on 9/10/2005 when the court disposed of the matter in favour of the respondent after hearing both parties. That though the applicant was ordered to vacate the suit within 14 days after the judgment he refused to do so. As a result he referred the matter to the LCII Court for further action. There was no evidence to show that the LCII court dealt with the matter. It would appear that is why the respondent filed an application in the Chief Magistrate's court for execution of the orders of the LCI court.

At the hearing of the application Ms Mildred Nassiwa for the applicant submitted that the LC I court had no jurisdiction in land matters because s.30 of the Land (Amendment) Act (2004) introduced a new section, s. 76A into the Land Act. By virtue of s.76A the Parish or Ward Executive Committees were established as the courts of first instance for land matters. It was further contended for the applicant that the eviction order that resulted from these proceedings was null and void and had no legal effect. Further that prosecution of the applicant for criminal trespass was also based on the order of the Chief Magistrate and was therefore improper. Counsel for the applicant also challenged the respondent's reliance on the grant of letters of administration to the Administrator General for the reason that the grant was made in 2007 after this application was filed in 2006. She contended that the grant was obtained to sabotage the application for revision of the Chief Magistrate's order. She prayed that the application be allowed.

In reply, Ms. Juliet Musoke for the respondent opposed the application. She submitted that the Administrator General had powers over the property in dispute since letters of administration were granted to him. That the application before court was of no consequence because it sought to obtain orders for ownership of the property yet the property is part of an estate under the

trusteeship of the Administrator General. Further that if court made any orders in favour of the applicant in respect of the property such orders would challenge the powers or authority of the Administrator General over the estate. With regard to the legality of hearing the suit in the LC court on a public holiday, Ms. Musoke submitted that there is no law that prohibits an LC court from disposing of matters on a public holiday.

In this application this court has been called on to determine whether the Magistrate's court failed to exercise a jurisdiction vested in it and whether the court acted in the exercise of its jurisdiction illegally or with material illegality or injustice. Having determined those two questions the court may make such order in it as it thinks (s. 83 Civil Procedure Act). The questions that arise from the above facts and submissions are basically four and I shall dispose of them in the order that they are stated below.

- (i) Did the absence of a serial number of the case from the record of the LC Court render the proceedings illegal?
- (ii) Could the LCI court lawfully hear and dispose of a case on a public holiday?
- (iii) Did the LCI court have the jurisdiction to entertain the case before it?
- (iv) Did the Chief Magistrate fail to exercise her jurisdiction in the matter or did she act in the exercise of her jurisdiction illegally or with material irregularity or injustice?

Regarding the first question, s. 17 (1) of the Executive Committees (Judicial Powers) Act (Repealed) provided that in every case the court shall keep a record of its proceedings in writing, and every such record shall contain particulars including the serial number of the case, the statement of claim and a brief description of the case, among other things. In the instant case counsel for the applicant complained that the record of proceedings from the LC court did not show that the case had been given a serial number and that put together with the fact that the case was heard on a public holiday made the proceedings illegal.

With regard to the serial number of the case, s.17 (2) of the Executive Committees (Judicial Powers) Act provided that subject to the Act, the court would hear the case before it expeditiously and without undue regard to technical rules of evidence or procedure. The Act thus reproduced the provision in Article 126 (2) (e) of the Constitution of the Republic of

Uganda that substantive justice shall be dispensed without undue regard to technicalities. I am therefore unable to agree with counsel for the applicant that the mere fact that the record bore no serial number rendered the proceedings a nullity.

Turning to the question of hearing the case on a public holiday, it is true that the 9/10/2005 was Independence Day in Uganda and is a gazetted public holiday. The Vice Chairman of the LC confirmed that the case was heard and disposed of on that day. He explained that the day was not only a public holiday but also a Sunday. Further that the court was in the habit of sitting on Sundays because that was when most of the members were able to spare time for their LC duties since they were also employed elsewhere. Although Counsel for the applicant complained about the LC not observing the public holiday she did not cite any law that prohibits public institutions or public officers from executing their duties on public holidays. I have not found any either.

On the contrary the Public Holidays Act which provides a schedule of public holidays to be observed in Uganda also provides for remuneration of persons, both in the private and public service who may have to work on a public holiday (s. 3). S.4 of the Act provides that Government is bound by the provisions of s.3 of the Act, i.e. it has to pay its employees who sometimes have to work on public holidays. By implication working on a public holiday is not illegal if the employee is paid for it. The fact that the court sat on Independence Day did not therefore invalidate the proceedings of the court. It was in fact done in compliance with the Executive Committees (Judicial Powers) Act which also provided that matters brought before LC Courts had to be disposed of expeditiously. If a public holiday presented itself as one on which the court could expeditiously dispose of the case, it was its duty to do so.

The applicant's further complaint was that the court did not give him the opportunity to call witnesses to prove his case and that this also rendered the proceedings irregular. I carefully perused the translation of the record of proceedings in the LCI Court, Annexure "C2" to the affidavit in support. There is no indication that the applicant informed the court that he needed to call witnesses to prove his case. The court could not be faulted for that.

The applicant also complained that judgment was delivered in his absence and that as a result, the court did not notify him of his right of appeal. The record showed that the applicant attended

court on that day and even testified. There is therefore no doubt that judgment was delivered in his presence. However, the record does not show that he was informed that he had a right to appeal against the decision of the court. S.19 of the Executive Committees (Judicial Powers) Act specifically provided that after the delivery of its judgment the LC Court had to inform the parties of their right to appeal. S. 17 (2) provided that in exercising its jurisdiction, the court would be guided by the principle of impartiality, i.e. it shall adjudicate without fear or favour. Court also had to adhere to the rules of natural justice. Where a right of appeal has been provided for, it is a principle of natural justice that parties be accorded the right. Failure to notify a party of the right is fatal to the proceedings.

As to whether the court had the jurisdiction to entertain a land matter, there was some contention as to whether the case before the LCI court was a customary land matter or not. There was no evidence as to how the respondent's husband came to be in possession of the land. Counsel for the applicant submitted that the land was held under customary law while counsel for the respondent contended that it was held under leasehold. The evidence on record could not help this court to determine that matter. However, since there was no certificate of any kind adduced in evidence at the hearing before LC court, it will be assumed that the land was held under customary tenure.

Schedule 1 Part 2 of the Executive Committees (Judicial Powers) Act provided that LC courts could try matters relating to trespass. Schedule 2 provided that the court could hear cases in respect of land held under customary tenure. However, s. 30 of the Land (Amendment) Act removed this jurisdiction from the court when it introduced s. 76A, vesting the jurisdiction in land matters at first instance in the Parish or Ward Courts. The Land Amendment Act, 2004 came into force on the 18/03/2004. There is therefore no doubt that when it sat on 9/10/05 the LC1 Court of Kamuli Road, Rubaga Parish had no jurisdiction to entertain the case. The judgement that resulted from the proceedings was therefore null and void for want of jurisdiction.

I finally come to the question whether the Chief Magistrate failed to exercise her jurisdiction in this matter and whether she acted in the exercise of her jurisdiction illegally or with material irregularity or injustice. The judgment being challenged was delivered on 9/10/2005. The Chief Magistrate gave her order of eviction on 18/08/2006 in an application that had been filed on

28/07/2006. By the time of filing the application and granting the order for eviction the Local Council Courts Act, of 2006 had come into force on the 8/08/06. S. 40 of the Local Council Courts Act provides that the general powers of supervision over Magistrates' Courts conferred upon the High Court by the Judicature Act may be exercised by the Chief Magistrate over local council courts on behalf of the High Court. The general powers of supervision vested in the High Court which are in turn vested in the Chief Magistrate include preventing the abuse of the processes by the magistrates' courts. In addition the general powers of supervision by magistrates are provided for by s.221 (1) of the Magistrates Courts Act (MCA). Section 221(2) amplifies them as follows:

“Without prejudice to the generality of subsection (1), a chief magistrate may call for and examine the record of any proceedings before a magistrate's court inferior to the court which he or she is empowered to hold and situate within the local limits of his or her jurisdiction for the purpose of satisfying himself or herself as to the correctness, legality or propriety of any finding, sentence, decision, judgment or order recorded or passed, and as to the regularity of any proceedings of that magistrate's court.”

I believe this provision may be properly imported to amplify the Chief Magistrates supervisory powers over LC courts. Where a dispute comes before him/her in which it appears that the process of the court is being abused, the Chief Magistrate has a legal duty to ensure that the abuse is stopped. Where illegal orders have been made he/she may nullify them and/or make alternative orders. In this case the court had exercised a jurisdiction that was not vested in it or which had been removed from it. The file was now before the Chief Magistrate. She had the duty as the supervisor of the LC Courts to inquire into the instances named in s.221 (2) of the MCA. I therefore find that the learned Chief Magistrate exercised her jurisdiction illegally or with material irregularity when she entertained the application for an eviction order. The order of eviction was thus illegal.

The applicant prayed that this court should under its revisional powers declare the eviction order null and void and order that the applicant be put back in possession of the land in dispute. It has during these proceedings transpired that the land which is the subject of the dispute is now under

the authority of the Administrator General as the Public Trustee. Mr. Wagubi, Assistant Administrator General, swore an affidavit in which he stated that he established in a family meeting that the respondent was indeed the widow of the deceased. Following s. 26 of the Succession Act, Schedule 2 thereof sets out the rules relating to the occupation of residential holdings of deceased persons. Rule 1 (1) thereof provides:

“In the case of a residential holding occupied by the intestate prior to his or her death as his or her principal residence, any wife or husband, as the case may be, and any children, under eighteen years of age if male, or under twenty-one years of age and unmarried if female, who were normally resident in the residential holding shall be entitled to occupy it.”

Under rule 2 of the same Schedule it is provided that any wife, husband or child who normally cultivated, farmed or tilled any land adjoining a residential holding owned by an intestate prior to his or her death shall have the right to cultivate, farm and till the land as long as he or she continues to be resident. Unless other evidence is adduced to rebut the fact that the respondent was the widow of the deceased and resident with him on the disputed land before his death, she appears to have had the right to remain in the residential holding by law.

The applicant also purported to challenge the Administrator General's powers in this estate in this application. In paragraph 4 of his affidavit in rejoinder he stated that the letters of administration were obtained after the application for revision was heard. He contended that the grant was obtained to sabotage this application. I am unable to agree with this assertion. It is immaterial that the grant was made after the application was filed. S. 4(1) of the Administrator General Act provides that when a person dies in Uganda, the agent of the Administrator General of the area in which the death occurs shall, upon receiving notice of the death or upon the death coming to his or her knowledge institute inquiries to ascertain whether the deceased left any, and if so what, property in Uganda. He shall then report the death with full particulars as to property, as far as ascertainable, to the Administrator General. S. 4(3) (d) and (e) go on to provide that upon receiving such report or upon such death coming to his or her knowledge, if it appears to the Administrator General that probate or letters of administration have not been obtained within two months from the death of the testator; or that the person died intestate, the Administrator

General may apply to the court for letters of administration of the estate of the deceased person, whereupon the court shall, except for good cause shown, make a grant to him or her of letters of administration. The fact that the applicant had filed this application could not prevent the Administrator General from applying for letters of administration in the estate of the deceased.

The applicant proposed that he would have the grant made to the Administrator General revoked. He is free to do so if he has better rights to administration or probate than the Administrator General. He is also at liberty to challenge the applicant's occupation of the suit property in a court of competent jurisdiction. What ought to be noted is that widows and widowers are the only persons entitled to apply for letters of administration without first consulting the Administrator General (s.5 (1) Administrator General Act). They therefore have better rights to administration than any other beneficiary, except an executor of a will.

In conclusion, being in possession of additional facts provided by the Administrator General and which have not been successfully rebutted by the applicant, for the moment I am unable to make an order evicting the respondent from the disputed land and putting the applicant back in possession thereof. Section 83 of the Civil Procedure Act from which this court's powers of revision derive provides that 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 where, from lapse of time or other cause, the exercise of that power would involve serious hardship to any person. I am of the view that the period of 3 years since the applicant was evicted and the respondent reinstated is a long time. I have declared that the judgment handed down by the LCI Court was illegal and so the dispute between the parties still stands unresolved. In the circumstances granting an order that the respondent be evicted might not only occasion a serious injustice but it would also occasion undue hardship to her. It would also be premature. It is now the duty of the Administrator General to divide the estate according to the law; I am sure he/she will do so if his/her powers are not challenged by the applicant in court.

In the end result the application only partially succeeds. The judgment of the LCI court of Kamuli Road, Rubaga Parish delivered on the 9/10/2005 in favour of the respondent is hereby set aside but the respondent shall remain in occupation of the suit premises until further orders of a competent court. Each party shall bear its advocates costs for this application. It is so ordered.

Irene Mulyagonja

JUDGE

25/06/09