

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT ARUA

MISC. APPLICATION NO. 0023 OF 2011

ST. DANIEL COMBONI

COLLEGE

_____ **APPLICANT**

=VERSUS=

INNOCENT ODAMA

ATRIASON

_____ **RESPONDENT**

RULING

BEFORE JUSTICE NYANZI YASIN

This motion was filed in court on 6/09/2011 by the applicant through M/s Joel Cox Advocate. It sought orders that;-

- 1) The consent judgment/decreed of 8th April 2011 entered into between the parties and sealed by the Assistant Registrar of this Court be set aside.
- 2) Civil Suit No. 0010 of 2010 be heard as ordered by this honourable Court on 10/12/2010.

The application is a result of long procedural history of a suit filed by the respondent against the applicant in the Chief Magistrate's Court of Nebbi on 04/March/2008. That suit where the present applicant was the defendant and the present respondent was the plaintiff was dismissed by the Chief Magistrate without stating the particular order or rule under which he dismissed it.

The plaintiff felt aggrieved and filed an application for reinstatement of his suit. This was also dismissed.

Upon the dismissal of that application, the present respondent who was the plaintiff filed an application in this court that the Chief Magistrate order dismissing the application be revised, set aside and court orders the suit to be re-instated. He was successful.

On 10/12/2010 I delivered the ruling in that application in which I made three orders among others which are relevant to this application. Those orders are;-

1. That Civil Suit No. 0010 of 2010 between the applicant and the respondent is hereby re-instated.

2. That the main suit file be re-transferred from the Chief Magistrate to Magistrate Grade 1 court where it was before.
3. That the hearing of the said suit shall proceed before Magistrate Grade 1 at Nebbi Chief Magistrate's Court and if no such grade is available the same shall be heard by a grade 1 Magistrate at Arua.

None of those orders was ever implemented. What happened instead is that on 08/04/2011 the Assistant Registrar of this Court His Worship Muhumuza Didas conducted a hearing at the Registrar's Chambers in the High Court. This hearing was attended by all the parties with their advocates.

What transpired is contained in annexure "A" to the Respondent's affidavit in reply. Suffice to mention at this juncture that it resulted into ***a consent judgment*** annexure "B" to the affidavit in support of the motion.

On 7th October 2011 the Registrar of this court issued an order directing the applicant to pay shs. 40m/= within one week from 12/08/2011. In the mean time the present applicant changed advocates. The new advocates advised him that the consent judgment or decree he had entered into was illegal.

On 21/10/2011 the advocates acting on behalf of the applicant filed this application 09 r 12, 0.50 r 2, 0.52 r 1 & 3 and S.98 CPA seeking the orders I stated earlier. In short, the case serves as an unfortunate example of over protracted litigation.

The application had only one ground that the consent judgment I have referred to above was illegal. It is supported by an affidavit sworn by FR. RAPHAEL OKUMU to which he attached this Court's ruling of 10/12/2010 and the *consent judgment* of 08/04/2011 as annexure A and B respectively.

The respondent filed an affidavit in reply sworn by himself to which he attached the proceedings before the Registrar of this Court which resulted into this consent judgment as annexure "A".

At the trial Mr. OJIAMBO DAVID acted for the applicant and Mr. CHRIS BAKIZA for the respondent.

During his submission Mr. Ojiambo relied on four items to make court believe that the consent judgment was illegal. In summary they are:-

- 1) The Registrar acted without any jurisdiction to entertain the file and record a consent judgment.
- 2) That the hearing the Registrar conducted on 08/08/2011 which was during court vacation was irregular.
- 3) The consent judgment mixed up two cases including one which was different from the subject matter of settlement.
- 4) That the applicant was misled by their advocate in the whole process of executing the consent judgment.

Mr. Bakiza for the respondent replied to each of the complaint. I will consider the reply as I resolve each of the complaint.

ASSISTANT DEPUTY REGISTRAR HAVING NO JURISDICTION

Mr. Ojiambo argued that the Assistant Deputy Registrar handled the matter in which had no jurisdiction. He based his reasoning on this court's ruling of 10/12/2010 and the kind of orders the court made. He referred to paragraph 4 of the applicant's affidavit in support of the application which summarized the orders of this court to;-

- Re-instating civil suit No. 0010/2010
- Re-transferring the file from the Chief Magistrate back to Magistrate Grade 1 where it was before.
- That the file be heard by a Grade one Magistrate at Nebbi and if none is available at Nebbi then one at Arua.

He reasoned that the above was the court order the Asst. Deputy Registrar had to follow. That order stood enforceable unless set aside or appealed from or reviewed. That it was illegal for parties to consent contrary to the orders of court. He referred this court to the authority of **BULASIO KOMDE =VS= BULANDINA NANKYA & ANO [1985] HCB 22** where it was held that parties cannot consent to reverse a court order or judgment of court.

Mr. Bakiza disagreed with the argument that the Registrar had no jurisdiction. In his view 0.50 r 2 allowed the Registrar to enter consent judgment which he did in this case.

He also submitted that 0.50 r 3 gave the Registrar power to handle all formal steps preliminary to the trial. He reasoned that,

“The Registrar handled the file as a civil court. The process of transferring the file as ordered was a formal step preliminary to trial”.

He cited to this court the case of **ATTORNEY GENERAL & ANOTHER – VS- JAMES MARK KAMOGA & ANO. CIVIL APPEAL NO. 0008/2004 S.C.**

Specifically in the judgment of MULENGE JSC (now retired) for the contention that consent judgment can only be set aside on grounds of fraud, illegality or mistake.

He argued further that the consent judgment was a new contractual arrangement between the parties. That the present applicant went ahead and part performed that new contract by paying shs. 25.000.000/= of the amount the consent order.

He cited **KASOZI & TWO ORS –VS- PEOPLES TRANSPORT SERVICES LTD SC Civil Appeal No. 27/1993** where court was of the view and held that courts must sanction the compromise arrived at by the parties

The above is how I heard the views of both sides. I am aware that the law supports the finality of consent judgment. In the case of **THE ATTORNEY GENERAL and U.L.C. –VS- JAMES KAMOGA** cited to me by Mr. Bakiza the Supreme Court held that

“Consent judgments are treated as fresh agreement and may only be interfered with on limited grounds such as illegality, fraud or mistaken. The very narrow circumstances where a consent judgment may be challenged, confirm that such a judgment acts as a final decision”

The above decision is the settled law and has been in a number of decisions including **GOODMAN AGENCY LTD –VS- ATTORNEY GENERAL & HASSA AGENCIES LTD** Constitution petition No. 003 of 2008 applied.

Now, the above means that the issue for this Court to decide is whether there are any grounds as mentioned in those case to tamper with the consent judgment.

In order to do so the ruling this court made on the 10/12/2010 and the orders thereof are very relevant. I have already stated the orders in that ruling when stating the back ground to this application. I will not repeat them in detail. But in brief it was ordered that civil suit No. 10 of 2010 be reinstated, that it be heard by a Magistrate grade 1 instead of the Chief. That the hearing take place at Nebbi Chief Magistrate's Court if there is a grade 1 and if none is there then the hearing be conducted at Arua.

This ruling is annexed to the affidavit of the applicant and marked "A". The ruling made no mention of the Asst. Registrar of Court to have any part to play. The order of the ruling referred to "re-transferring" the file from the Chief Magistrate who had removed it from Grade 1 back to Grade One Court not to the Asst. Registrar.

Mr. Bakiza argued that the Asst. Registrar was in transferring the file **as ordered** was a formal step in the preliminary trial. With due respect, there was no such order to the Asst. Registrar. The order was made to the Chief Magistrate to stop him from handling the file. If the Asst. Deputy Registrar

was to do anything to this file, it was only to return it to Nebbi Chief Magistrate Court.

Annexure “A” to the affidavit in reply is a copy of proceedings before His Worship DIDAS MUHUMUZA. The annexure show that the hearing took place on 08/04/11 at his Chambers and was attended by the parties and their advocates. It is those proceedings which resulted into the disputed **consent order/judgment**. The judgment is annexed to the affidavit of the applicant as “C”.

There is evidence that the Asst. Deputy Registrar assumed further jurisdiction in the matter furthering the **consent judgment**. Annexure “B” to the affidavit in reply is an **order** in Misc. Application no. 0054/2010. For emphasis I will reproduce it here

ORDER

This application coming for final disposal before His Worship Didas Muhumuza (Asst. Registrar High Court) this 5th day of August 2011 In the presence of CHRIS JOHN BAKIZA, counsel for the applicants and in the presence of Rev, Fr. Okumu the representative of the respondent in absence of his counsel.

IT IS HEREBY agreed and ordered as follows:-

- 1) That shs. 40.000.000= be paid within one week from 12/08/2011.
- 2) Costs of the day be paid by the respondent.

The order was signed and sealed by the Registrar. Nothing of those acts the Registrar took were mentioned in the order of this court of 10/12/2010. If the Registrar was so desirous of enforcing the order he would have handed over this file to Magistrate Grade 1 of either Nebbi or Arua.

Since there was no ready Magistrate grade 1 at Nebbi at that time, the file would have been given to Magistrate grade 1 at Arua.

That way the court order would have been served. Before the Magistrate grade 1, the parties with their advocates would have pronounced their intentions to consent and end the main suit. That would be so because the court order was to that effect. Before the Magistrate Grade1 the parties would have settled ***Civil Suit No 10/2010***. It is not understandable how the main suit which had been re-instated by a court order was to be settled under Misc. Application **No.0054 of 2010** which the court had finally concluded, thereby making the High Court functus officio.

Mr. Bakiza argued that in so doing the Asst, Deputy Registrar acted under 0.50 r 2 and 3. I have read the two rules of the order.

Rule (2) reads

“In uncontested cases and cases in which parties Consent to judgment being entered in agreed terms, judgment may be entered by Registrar.

It is true the above rule would be applicable to give the Registrar jurisdiction if the main suit which order had re-instated was before the High Court. To the contrary CS No. 10/2010 was re-instated before Magistrate Grade 1 Court and not the High Court. All that remained before the High Court was

taxation proceedings for the application and no more. I cannot only say that the Registrar had no jurisdiction, I am constrained to add that he practically hijacked the file for hearing and continue to exercise such jurisdiction to the extent of making fresh order like the one I referred when no execution proceedings were before him. That was in error. 0.50 r 3 reads;-

“All formal steps preliminary to trial, and all interlocutory applications may be made and take before the Registrar”.

On the facts of this case there were no such formal steps preliminary to trial before the Registrar as the matter was not before the High court. The High court had exhausted its jurisdiction when it delivered the ruling on 10/12/2010.

For those reasons with due respect I do not agree with Mr. Bakiza that the learned Asst. Deputy Registrar acted under 0.50 r (2) and (3).

My conclusion is that the Registrar acted without jurisdiction and that was illegal.

Consequently the applicant has proved one of those limited grounds for setting aside a consent judgment and the same is set aside on grounds of illegality.

That being my finding, it remains academic to discuss other complaints raised by the applicant and any reply thereto by the respondent.

However I have noted that there were orders for money payment and actually some money was paid under this illegal arrangement.

Paragraph 8 of the affidavit in reply of the respondent admits that he received shs. 25.000.000/= at the time of signing the consent judgment. The consent judgment under which this payment was paid has been declared to have been illegal, it follows that the payment was equally illegal. Court never keeps a blind eye on an illegality. It is consequently directed that the respondent refunds the illegal payment and deposits the same on the account of the Chief Magistrate Court Nebbi within 30 days from the date of this order, That amount will remain on that account until the final completion C.S. No. 10/2010.

Lastly this Court must say that in order not to over prolong litigation, this court's order of 10/12/2010 ought to be implemented.

Finally this application succeeds with costs to the applicant.

NYANZI YASIN

13/07/2012

Mr. Ojiambo for applicant

Mr. Fr. Rafael Okumu in court.

Respondent in Court.

Joyce Andezu court clerk.

Ruling delivered in presence of the above.

13/07/2012