

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**

**CIVIL REVISION NO 11 OF 2011**

*(ARISING FROM MENGO COURT MISC APPLICATION NO. 1349 OF 2010)*

*(ARISING FROM CIVIL SUIT NO. 1566 OF 2010)*

**GUANGDONG CHINESE CO LTD ::: APPLICANT**

**VERSUS**

**1. MCKNIGHTGENIES LTD** }  
**2. EDATU JAMES** } **::: RESPONDENTS**  
**3. KAYANJA YUDA TADEO** }

**BEFORE: HON JUSTICE ELDAD MWANGUSYA**

**RULING**

The applicant on the 9<sup>th</sup> July 2010 entered into a loan agreement with the second respondent for a sum of shs 10.000.000= (Ten Million Uganda Shillings). The second Respondent deposited a log book for motor vehicle Registration No. UAM 693 R as security. On the 20<sup>th</sup> July 2010 the applicant lodged a caveat on the said vehicle. However unknown to the applicant the 2<sup>nd</sup> respondent borrowed money from the 1<sup>st</sup> respondent and upon failure to pay, the 1<sup>st</sup> respondent filed Civil Suit No. 1566 of 2010 in which the second

respondent was ordered to pay the monies borrowed plus interest. On execution of the decree the 2<sup>nd</sup> respondent was arrested and upon his release he entered into an agreement with the 1<sup>st</sup> respondent in which it was agreed among other things that the second Respondent deposits Motor Vehicle Reg. No. UAM 693 R at the Court premises and that he deposits the logbook in a period of 14 days. This agreement was reduced in writing on 15<sup>th</sup> September 2010 and filed on the Court record. Later the motor vehicle was sold through public auction in which the Court Bailiff sold it to the 3<sup>rd</sup> respondent on 22<sup>nd</sup> October 2010. The logbook was not availed to the purchaser because the applicant had it. On 17<sup>th</sup> November 2010 the applicant filed a Notice of Motion for Review and setting aside the consent judgment and release order made on 11<sup>th</sup> November 2010 on grounds that the applicant was in possession of the original logbook and had registered a caveat on the suit motor vehicle and further that had Court known of the above facts, it would not have endorsed the consent order contending that the purported attachment of the motor vehicle was done fraudulently.

Following hearing of the application the trial Grade 1 magistrate made an order on 21<sup>st</sup> December, 2010 that the second respondent pays to the applicant a sum of shs 3.000.000= (Three million Uganda Shillings) and general damages under Section 98 of the Civil Procedure Act and that the 2<sup>nd</sup> respondent pays costs of the application.

The learned trial magistrate held that the 3<sup>rd</sup> respondent was a bonafide purchaser for value without notice of defect of title and further that the motor vehicle Reg. No. UAM 693 R be handed over to the 3<sup>rd</sup> Respondent. The applicant was ordered to hand over the Registration Book of the motor vehicle to the 3<sup>rd</sup> respondent.

The decision of the trial magistrate was brought to the attention of the Chief Magistrate Mengo who forwarded the case file to the Registrar, High Court for a possible revisional order. The letter of the Chief Magistrate raised the following issues.

- a) Huandah Guangdong Chinese Co. Ltd did not file a suit against Edatu James for him to have ordered for payment of general damages.
- b) Kayanja Yuda Tadeo did not file a suit in Court to enable the trial magistrate make declaratory orders against Hudar Guangdong Chinese Co. Ltd and to order them to hand over the logbook for the vehicle to him.
- c) The trial magistrate seems to have acknowledged the fact that the consent was arrived at as a result of fraud by Edatu James but instead of setting aside the consent and subsequent sale he sanctioned it.

The Deputy Registrar (Civil) forwarded the case file for a possible Revisional Order and raised the following issues:

1. Whether the trial magistrate lawfully ordered James Edatu to pay general damages and costs when there was no substantive suit and without hearing from the said James Edatu.
2. Whether the trial magistrate lawfully ordered Guangdong Chinese Co. Ltd to handover the logbook for the vehicle without any consideration.

3. Whether the trial magistrate could uphold a consent judgment after acknowledging that the same was obtained through fraud.
4. Whether the trial magistrate correctly declared Kayanja Yuda Tadeo to be a bonafide purchaser for value without notice without a formal hearing.

Under S. 83 of the Civil Procedure Act

***“The High Court may call for the record of any case which has been determined under this Act by any magistrate’s Court, and if that Court appears to have-***

- a. exercised a jurisdiction not vested in it by 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,***

***The High Court, may revise the case and may make such order in it as it thinks fit; but no such power shall be exercised-***

- d. unless the parties shall first be given an opportunity to be heard.***
- e. where, from lapse of time or other cause, the exercise of that power would involve serious hardship to any person”.***

In accordance with S. 83(d) the parties were given the opportunity to be heard. Written submissions were filed in support of the application. The first and 3<sup>rd</sup> respondents filed submissions in opposition of the Court giving a revisional order. The 2<sup>nd</sup> respondent never filed any submissions.

The submissions of Mr. David Matovu counsel for the applicant raised the following issues:-

- (1) Whether the Trial Magistrate lawfully ordered James Edatu to pay General damages and costs when there was no substantive suit and without hearing from the said James Edatu.
- (2) Whether the Trial magistrate lawfully ordered Huadar Guangdong Chinese Company Ltd to handover the logbook to the vehicle without any consideration.
- (3) Whether the Trial magistrate could uphold a consent judgment after acknowledging that the same was obtained through fraud.
- (4) Whether the Trial Magistrate correctly declared Kayanja Yuda Tadeo to be a bonafide purchaser for value without notice in the absence of a formal hearing.

There were a number of Court processes following the filing of the suit by the first respondent against the second respondent. It is from these process that Court is to determine as to whether or not the trial magistrate exercised jurisdiction not vested in it in law or failed to exercise a jurisdiction so vested or acted in exercise of its jurisdiction illegally or with material irregularity or injustice bearing in mind that in the case of **Eriazali Bameka vs. Dodoviko Nviri High Court Civil** Revision No. 1 of 1973 His Lordship Saied, J as he then was held that the mere fact that a Court came to a wrong decision, even on a point of law, was not sufficient to constitute an illegality or irregularity i.e. an erroneous decision was not itself a ground for revision.

The first Court process which is not disputed by any of the parties is that a default judgment was entered for 1<sup>st</sup> defendant against the 2<sup>nd</sup> respondent

against the respondent for a sum of shs 5.750.000=. The decree was passed on the 31<sup>st</sup> day of August 2010.

Following the passing of the decree, the plaintiff's bill of costs was taxed and execution of the decree ensued. It was during this process of execution that the Judgment Creditor and the Judgment Debtor reached an agreement as to how the decretal sum was going to be met. This agreement was reduced in writing and to me there was nothing irregular or illegal about a judgment creditor and a judgment debtor agreeing on how the decretal sum was going to be met and it only happens that the applicant was prejudiced by this agreement because as it turns out he was in possession of the Registration Book of the motor vehicle in dispute an unknown to him the second respondent was pledging to release both the motor vehicle and the Log Book to another party. It is a misnomer to describe the 'consent' as a consent judgment because it was not a judgment. It was simply an agreement between the parties to facilitate execution of the decree that Court had passed.

The next process was the sell of the motor vehicle. Again there was nothing irregular or illegal about the sale which followed the procedure of attachment and sale. The person who purchased the motor vehicle got a good title and the fact that the log book was with the applicant cannot vitiate the sale much as the applicant is aggrieved.

Lastly the applicant sought a review of the decision of Court given that he was in possession of the Log book of the vehicle when the matter was tried. The remedy of Review is provided under section 82 of the Civil Procedure Act as follows:-

***“any person considering himself or herself aggrieved-***

***a. by a decree or order from which an appeal is allowed by this Act but from which no appeal has been preferred; or***

***b. by a decree or order from which no appeal is allowed by this Act***

***may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order on the decree or order as it thinks fit”.***

The application for review was on the grounds that the applicant has the original log book and had registered a caveat on motor vehicle registration no. UAM 693 R, that the purported attachment of the vehicle was done fraudulently and that upon discovery of this new and material fact that the applicant is in possession of the original log book, it is just and equitable that the orders made on the 15<sup>th</sup> September 2010 and 11<sup>th</sup> November 2010 in respect of vehicle registration no. UAM 693 R be reviewed and set aside.

Order 46 Rule 1 of the Civil Procedure Rules provides for the following criteria for review of a judgment

***“Any person considering himself or herself aggrieved***

***a) by a decree or order from which an appeal is allowed but from which an appeal is allowed but from which no appeal has been preferred; or***

***b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after exercise of due diligence was not within his or her knowledge or could not be produced by him or her at the time when the decree was passed or the order made, or on account of some mistake or error on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him or her may apply for a review of Judgment to the Court which passed the decree or made the order”.***

The above order envisages a situation where a person against whom a decree or order is made discovers a new or important matter or evidence not in his possession at the time of the trial or there is some mistake or error apparent on the face of the record. The applicant could not evoke this provision because no decree or order was made against him. It only happened that the decree or order affected him because log book of a motor vehicle that was pledged to him was in his possession.

The fraud, if any was not attributable to the decree holder or the person who purchased the vehicle through a Court process. In my view the trial magistrate rightly declined to exercise her jurisdiction to review the judgment and the execution process that followed the judgment culminating with the sale of the motor vehicle in dispute to the third respondent.



In conclusion this Court finds that no ground constituting an illegality or a material irregularity has been disclosed to warrant a revisional order being made by this Court and the application is dismissed with costs.

**Eldad Mwangusya**

**J U D G E**

**17/02/2012**

**17.02.2012**

The applicant's counsel is not in Court but Mr. Balintuma the General Manager and Chen Jian Hua, the Financial Director are present.

Mr. Arinda Herbert holding a brief for Mr. Musa Bbale for the 1<sup>st</sup> respondent

Kayanja Yuda Tadeo, 3<sup>rd</sup> respondent is in Court

Ms Jolly Kauma Court Clerk

**Court:**

Ruling delivered in open Court

**Eldad Mwangusya**

**J U D G E**

**17/02/2012**

