THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
REVISIONAL APPLICATION NO. 93 OF 2005
(ARISING OUT OF CIVIL SUIT NO. 43 OF 2002 AT THE CHIEF MAGISTRATE'S COURT OF MUBENDE AT KIBOGA)

1. MUSHABE KAFUREDI
2. MUREKYE ANANIYA
3. KUSIIMA MISAKI :: APPLICANTS

VERSUS

1. GEORGE KAJUNA
2. MUGANIRA APOLLO
(T/A FREIGHT AUCTIONEERS)
3. TURYESIIMA JAKOB
(T/A KIS AUCTIONEERS & COURT BAILIFFS) :::::::::::::::::::::::::: RESPONDENTS

BEFORE: HON. JUSTICE DR. FLAVIAN ZEIJA

RULING

This is an application for revision of the judgment of the Magistrate Grade One delivered on May 19, 2003, in Civil No. 43 of 2002, in the Chief Magistrate's Court of Mubende at Kiboga. The impugned judgment was in favour of a one George Kajuna (now deceased) who was the plaintiff in the above-mentioned suit. By a consent order of this Court dated April 20, 2022, the deceased (George Kajuna) was substituted in this application by Janet Nyiratamu and Mary Mukamwiza (who are his administratrixes).

In the impugned judgment, the Magistrate Grade One made orders that; the Applicants (Defendants in the main suit) to be evicted from the suit land comprised in Lease Hold Register Volume 1617, Folio 14; an order of general damages of UGX. 1, 000, 000 (One Million Shillings); an order of mesne profits of UGX. 1, 000, 000 (One Million Shillings); and costs of the suit.

The applicants seek for a revision of the judgment of the Magistrate Grade One and for orders that:

a) The Magistrate Grade 1 entertained and delivered judgment in a land dispute of which he had no jurisdiction.
b) The pleadings, proceedings, judgment and execution thereof are a nullity.
c) The respondents jointly and severally compensate the Applicants for; all their 422 cows that were attached and sold by the 1st and 3rd respondents at the prices stated in the receipt dated 3rd July 2003; the cattle sold by the 2nd respondent and in the execution warrants dated 2nd June 2004 and 16th July 2004.
d) The respondents pay the Applicants 'costs in this application.

The grounds supporting the application are contained in the affidavit of the 1st Applicant which he swore on his behalf and on behalf of his co-applicants by virtue of a power of attorney they donated to him to plead and appear on their behalf. Briefly that;

a) The Magistrate Grade 1 heard civil Suit No. 43 of 2002, ex parte, without according the Applicants a hearing.
b) The court awarded a decretal sum of UGX. 2, 000,000 and UGX. 7, 718, 500 as costs totaling **UGX. 8,918,500** to the 1st Respondent.
c) In execution, the 2nd respondent who is a court bailiff attached and sold the applicants' **128 heads of cattle** which were more than the **60 cattle** authorized by the court in the warrant for attachment and sale dated 3rd July 2003. However, he made a receipt dated 3rd July 2003 for only 60 heads of cattle for UGX. 11, 000, 000 for UGX. 183, 300 each.
d) The 2nd Respondent applied again by letter dated 8th July, 2003, to attach more 20 heads of cattle and by a further letter dated 15th July 2003, he again applied to attach a further 20 and more 60 heads of cattle and falsely alleged thereof that 20 cows belonging to a certain Kalemangingo which had been taken in obstruction of the court order needed to be recovered. Instead he again illegally attached and sold 130 cows and no single receipt or return thereof has been found on court file.

e) *That on the two court warrants each for attachment and sale of 50 heads of cattle dated 2nd June 2004 and 16th July 2004 respectively, the 3rd respondent attached and sold 164 cattle when the warrants authorized 100 cows only.*

f) *That of the 422 cows attached and sold, the 1st applicant's were 289, the 2nd applicant's cows were 90 and the 3rd applicant's cows were 43.*

g) *That complaints of the illegal attachments were made to the LC1 and LC3 of the area but no aid was provided.*

h) *That since the passing of the decree of the Magistrate's court at Kiboga, the Applicants have been in the High Court seeking to appeal against the Magistrate's judgement and execution but no progress has been, so far made.*

i) *The Applicants were advised by their Lawyers to abandone the appea, because of the technicalities involved that have caused delays.*

j) *The Magistrate's judgment and executions are a nullity because Magistrates had no jurisdiction in fresh land disputes by the date the suit was filed in court in 2002 and thereafter, proceedings and judgment and executions were illegally made.*

k) *The 2nd & 3rd respondents as court bailiffs are jointly and severally liable with the 1st respondent for the attachment and sale of cows in excess of the warrants issued to them and generally for the irregularities they committed in attachment and sale and for the 1st respondent to have filed the suit in a wrong court.*

l) *The 2nd respondent at all material times misinformed court about the attachment and sale, falsified, attached and sold more cows either with or without court execution warrants and failed to make returns thereof to court.*

On their part, the respondents filed no affidavit in reply to this application. However, the 1st respondent's Advocates filed written submissions dated July 20, 2009. No submissions were filed on behalf of the 2nd and 3rd respondents. It is also pertinent to emphasize that the 1st respondent is now deceased. This application therefore, as mentioned earlier, proceeded against the administratrixes of his estate.

Representation

At the hearing of this application, the Applicants were represented by M/s Muhanguzi, Muhwezi & Co. Advocates and subsequently by **M/s Mushabe, Mununga & Co. Advocates.**

The 1st Respondent was represented by Ngaruye, Ruhindi, Spencer & Co. Advocates and subsequently by **M/s MRK Advocates.**

The 2nd and 3rd respondents were unrepresented even though service was duly effected on them by virtue of an affidavit of service on Court record filed on May 21, 2009.

Issues for court's consideration

1. ***Whether the Grade 1 Magistrate had jurisdiction to entertain and determine a land dispute Civil Suit No. 43 of 2002 filed in court on 8th November 2002 and disposed of on 21st May 2003.***

2. ***Whether pleadings, proceedings, judgment and execution in civil suit No. 43 of 2002 are a nullity.***

3. ***Whether the applicants are entitled to the reliefs claimed.***

Submissions on preliminary points of law

Submitting in support of the application, counsel for the applicants submitted that the respondents through their lawyers, were served with pleadings and acknowledged receipt thereof, supported by an affidavit of service on court record but filed no affidavit(s) in reply. On 24th April 2005, both Counsel and their respective parties appeared in court and surprisingly Counsel for the respondents denied having been properly served saying that he had just seen the full pleadings and court allowed him time to file an affidavit(s) in reply and serve

counsel for the applicants by 2nd May 2005 and Counsel for the applicants to have filed and served an affidavit in rejoinder, if any, by 5th May 2005. That against court's directive Counsel for the respondents opted not to comply. Consequently, counsel for the applicants submitted that this application should be considered ex-parte against the respondents.

Counsel for the 1st respondent made no response to the submission that no affidavit in reply was filed on behalf of his client and instead invested himself in raising preliminary points of law that; civil suit No. 43 of 2005 was filed in the Chief Magistrates Court of Mubende at Kiboga between the 1st respondent and the applicants. The 2nd and 3rd respondents were not party to the original suit and as such court ought to strike out this application at the earliest opportunity. Secondly, that this application was filed with inordinate delay, that whereas the decision that is sought to be revised is that of 2002, the application was filed in May 2005. In rejoinder, Counsel for the applicants submitted that the applicant who was illiterate and had been abandoned by his former lawyer had no way of knowing and appreciating the implication of an ex parte -judgment and decree. However, upon consultation, with M/s Muhanguzi, Muhwezi & Co. Advocates, he instructed them to file this application and it was done immediately.

Decision on preliminary points of law.

In the absence of any affidavit in reply from any of the Respondents, the net effect, would be that this application is unopposed. However, since there are submissions on Court record of Counsel for the 1st respondent, in which points of law were raised, I will proceed to determine the application, in view of those submissions.

As to whether the 2nd and 3rd respondents who were not parties to the main suit were wrongly joined to this revision application, the rules seem to be silent as to whether parties can be joined on revision although they may not have been party to the main suit. Section 83 (d) of *The Civil Procedure* Act simply provides that the High Court is

not to exercise its power of revision "unless **the parties** shall first be given the opportunity of being heard. The question that arises therefore is whether "the parties" includes third party persons who may have interest in the matter subject to revision by the High Court. I take the position that, within this context, "parties" ought to be given a liberal interpretation. That is, to include the parties to the suit and any other person whose presence before the court may be necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the application for revision, within the terms of Order 1 rule 10 (2) of *The Civil Procedure Rules*. Order 1 rule 10 (2) of *the Civil Procedure Rules, empowers this Court,* at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just, to order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added. **See; also *Azama Apollo Olema vs. Nile Micro Finance (U) Ltd & Anor (Miscellaneous Civil Application 13 of 2017)***. As such, the 2nd and 3rd respondents were properly joined to this application in as far as their presence is necessary to conclusively determine all questions in controversy between the parties. This is to prevent a multiplicity of suits.

Concerning whether this application was filed with inordinate delay, the explanation given by Counsel for the applicants was that the applicant had been abandoned by his lawyer and being illiterate was unable to understand what legal steps to take until he sought the services of M/s Muhanguzi, Muhwezi & Co. Advocates. Looking at the Written Statement of Defence in Civil Suit No. 43 /2002 filed on 3rd December 2002, the applicant was represented by Tumusiime, Kabega & Co. Advocates. In this application, the applicants are represented by M/s Mushabe, Munungu & Co. Advocates. In the absence of any other contrary evidence, I find that the applicants' delayed filing of this application is excusable. In the result, the 1st respondent's preliminary objections fail for lack of merit. I will now

proceed to determine the merits of this application in view of the evidence on court record.

High Court's revisionary power

The power of this court to revise decisions of Magistrates' Courts is derived from section 83 of *The Civil Procedure Act, Cap 71. The power* is invoked, where the magistrate's court appears to have; (a) exercised a jurisdiction not vested in it in 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. In exercising this power, the High Court must first give the parties the opportunity to be heard. Where, from lapse of time or other cause, the exercise of that power would involve serious hardship to any person, the High Court may choose not to exercise its revision powers.

The revision powers of the High Court entail a re-examination or careful review, for correction or improvement, of a decision of a magistrate's court, after satisfying oneself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings of a magistrate's court. It is a wide power exercisable in any proceedings in which it appears that an error material to the merits of the case or involving a miscarriage of justice, occurred. Guided by this court's revisionary powers, I will now proceed to address the issues raised in this application.

Issue 1: *Whether the Grade 1 Magistrate had jurisdiction to entertain and determine a land dispute Civil Suit No. 43 of 2002 filed in the Chief Magistrate is Court of Mubende at Kiboga on 8th November 2002 and disposed of on 21st May 2003.*

Counsel for the applicants cited the case of ***Steven Kyaligonza vs. Musa Kasangaki; Miscellaneous Application No. 42 of 2005 arising from Civil Suit No. 58 of 2001*** where on page 5, the learned Justice V.A.R Rwamisazi Kagaba (as he then was) stated that the effect of Land Act 16 /1998 was that:

a) All the Magistrates and LC courts must stop registering and entertaining new land cases from 2/7/1998.

b) *All the Magistrates and LC courts could complete to hear and determine only the land cases registered and pending in their courts before 2/7/1998*
c) *All Magistrates and LC courts had to finalise those pending cases within two years after 2/7/1998*

According to counsel for the applicants, civil suit No. 43 of 2002, from which the present application arises was filed on **8th November 2002** and disposed of on **21st May 2003** during a period when Magistrates courts had no jurisdiction to entertain land matters following the enactment of the Land Act 1998 which vested all land matters in the District Land Tribunals. Counsel for the 1st respondent did not bother to respond to the applicants' submissions as to jurisdiction of the trial court during the period cited.

I have had the opportunity to study the decision in Steven ***Kyaligonza (supra)*** cited by counsel for the applicants. In interpreting section 98(6) of the land Act 16/1998 as amended by Act 3/2001, the learned trial judge came to the conclusion that section 98(7) of Act 16/1998 as amended by Act 3 of 2001 did not create or grant new jurisdiction to Magistrates Courts to hear any land matter filed after **2nd July 1998** and consequently, such matters if entertained by the Magistrates Courts were a nullity for want of jurisdiction. With due respect, I depart from the reasoning of the learned trial judge in that case.

By reason of section 95 (3) of *The Land Act 1998*, jurisdiction over land disputes was divested from Executive Committee Courts and magistrates' Courts and vested in District Land Tribunals as from 2nd July, 2000. The Act was however, amended by the Land (Amendment) Act, 2002 (Act No. 3 of 2001) with a retrospective effect to come into force on 2nd July 2000 with the objective of extending the time limit within which Magistrates Courts and Local Council courts were authorized to continue dealing with land disputes pending before them prior to the enactment of the 1998 land Act so as to enable their completion given that the land tribunals which had been vested with such powers by section 95 (3) of *The Land Act 1998* had not yet been created and operationalized. Section 95, sub- sections

6, 7 and 8 of the Land Act 1998 as amended by Act No. 3 of 2001 provides as follows:

> ***(6) Where any case relating to a land dispute was pending before a Magistrates' Court or a Local Council Court prior to the coming into force of this Act, the case shall continue to be heard by the Magistrates' Court or the Local Council Court until completion.***
>
> ***(7) In each district, until a District Land Tribunal is established and commences to operate under this Act, magistrates' courts shall continue to have jurisdiction in land matters as they had immediately before the commencement of this Act.***
>
> ***(8) Any person who immediately before the commencement of this Act had a right to appeal to a Magistrate's Court or a Local Council Court in respect of a Land dispute but could not exercise that right owing to the provisions of subsection (7) of this section as they stood at the commencement of this Act, shall, notwithstanding anything to the contrary, have the right to appeal to that Court.***

It follows then that by virtue of sub sections 6 and 7 above, Magistrates courts had jurisdiction to continue hearing and disposing of cases filed prior to the commencement of the Act. Secondly, Magistrates Courts re-assumed jurisdiction in land disputes as they had prior to the commencement of the Land Act 1998 on 2nd July 1998. This jurisdiction which included entertaining newly registered matters was to continue being exercised until district land tribunals commenced their operations. The only question that arises therefore is whether by the time civil suit No. 43 of 2002 was filed, district land tribunals had commenced their operations.

By the time civil suit No. 43 of 2002 was filed on **8th November 2002** and disposed of on **21st May 2003**, district land tribunals had commenced their operations until sometime in 2006 when they ceased to operate after expiry of their contracts. However, the Chief Justice on 1st

December 2006 issued ***Practice Direction No. 1 of 2006*** which enabled magistrates Grade One and above to resume the exercise jurisdiction over land matters in accordance with Section 95 (7) of *The Land Act*, until new chairpersons and members of District Land Tribunals are appointed or otherwise. So with effect from 1st December 2006, Magistrates courts resumed their jurisdiction over land matters and that jurisdiction is still being exercised to-date. ***See; Sebirumbi Kisizingo vs. The Commissioner Land Registration & Another, Civil Appeal No. 16 of 2010*** for the proposition that Practice Direction No. 1 of 2006 gave courts jurisdiction in all matters which were being handled by the Land Tribunals. Consequently, the first issue is resolved in the affirmative

Issue 2: *Whether the pleadings, proceedings, judgment and execution in civil suit No. 43 of 2002 are a nullity.*

It is now trite that Jurisdiction of court is a creature of statute and it is expressly conferred by law. If proceedings are conducted by a court without jurisdiction, they are a *nullity*. Any award or judgment and or orders arising from such proceedings of a court acting without jurisdiction are also a nullity **See: *Desai vs. Warsaw (1967) EA 351***. I have already found that the Magistrates Court at Kiboga did not have jurisdiction to entertain civil suit No. 43 of 2002. All the pleadings, proceedings, judgment and execution that arose therefrom are therefore a nullity.

Issue 3: Whether the applicants are entitled to the reliefs claimed.

Counsel for the applicants submitted that the applicants are entitled to the loss of their 422 cows suffered at the hand of the 1st respondent who filed the suit in a court without competent jurisdiction and set in motion several illegal executions. Counsel invited court to exercise its inherent powers under section 98 of the Civil Procedure Act to order for compensation of the 422 cows as pleaded. The respondents did not rebut the allegations levelled against them. In fact, they did not file an affidavit in reply neither did they file submissions save for the 1st respondent that chose to file submissions. Considering the decision of ***H.G Gandesha & Anor vs. G.J Lutaya SCCA No.14 /89*** provided by counsel for the applicants, I agree that if the applicant supports his application by affidavit or other evidence and the respondent does

not reply by affidavit or otherwise, the facts supporting the evidence being credible in themselves, the facts stand unchallenged. The unchallenged facts in this application are that while executing a decision passed by a court without competent jurisdiction, the respondents jointly and severally executed the orders arising from the said decision in a rather arbitrary manner by selling 422 cows.

Counsel for the applicants submitted that the 422 cows was valued at a total of UGX. **844, 000, 000 (Eight Hundred Forty-Four Million shillings)** visa-vis **UGX. 8,918, 500 (Eight Million Nine Hundred Eighteen Thousand Five Hundred Shillings only)** decreed by the Magistrate's court. It is not clear how Counsel arrived at a figure of UGX. 844,000,000. However, what is clear from the warrants of execution is that each cow at the time of execution was valued at UGX. 180, 000, which translates into a total sum of **UGX. 75, 960, 000** for all the 422 cows.

It is now trite that a party who asserts a claim must prove it. Even though the respondents did not file an affidavit in reply, the applicants are still duty bound to avail evidence of to the satisfaction of this court of how they arrived at a figure of UGX. 844, 000, 000. Claiming an abstract value of UGX. 844, 000, 000 at the stage of submissions without supporting evidence of how the figures were arrived at is in my view unrealistic.

There is no evidence adduced by the applicants proving that the cows were of the value different from that indicated in the warrants of attachment at the time of the illegal attachment and sale. This court therefore, takes the value of 180,000= for each cow. Therefore, respondents are jointly and severally liable to the applicants to a tune of UGX. **UGX. 75, 960, 000=** being the total value of all the 422 cows at the time of attachment and sale. It was pleaded for the applicants that of the 422 cows sold by the respondents, the 1st applicant owned 289 cows, the 2nd applicant owned 90 cows and 3rd applicant owned 43 cows. The liability of the respondents to the applicants is therefore in the said proportions.

In the result, this application succeeds with the following orders;

a) The judgment and orders of the Magistrate Grade One delivered on May 19, 2003, in Civil No. 43 of 2002, in the Chief Magistrate's Court of Mubende at Kiboga, are a nullity for lack of jurisdiction.
b) All orders and executions arising therefrom are illegal and are hereby set aside.
c) The Respondents are jointly and severally liable to the applicants to a tune of **UGX. 75, 960,000=** being the total value of all the 422 cows illegally attachment and sold.
d) The award in (c) above is with interest at court rate from the date of attachment and sale, until payment in full.
e) Each applicant is entitled to the portion of **UGX. 75,960,000=** and interest awarded in (c) and (d) above, representing the number of his cows wrongly attached and sold.
f) The Applicants are awarded costs of this application.

Dated this 23rd of August 2022

Flavian Zeija (PhD)
PRINCIPAL JUDGE