

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**CIVIL REVISION APPLICATION NO. 007 OF 2023**  
**(ARISING FROM KYENJOJO CHIEF MAGISTRATE’S COURT CIVIL**  
**SUIT NO. 217 OF 2019)**

**TURYAMANYA MOSES ::: APPLICANT**

**VERSUS**

**BYENSI BEN ::: RESPONDENT**

**BEFORE HON. MR. JUSTICE VINCENT EMMY MUGABO**

**RULING**

The applicant filed this revision application by way of a Notice of Motion under provisions of sections 83 and 98 of the Civil Procedure Act Cap. 71 and order 52 rules 1 and 2 of the Civil Procedure Rules SI 71-1 (CPR) seeking for the orders that;

- i. The ruling delivered by His Worship Babu Waiswa on civil pecuniary jurisdiction to entertain civil suit No 217 of 2019 before the Chief Magistrate’s Court of Kyenjojo be revised and set aside.
- ii. The orders for attachment of Motor vehicle registration No. UBA 115G pending the hearing and determination of the main suit given by His Worship Muhumuza Asuman be revised and set aside.
- iii. Motor vehicle registration No. UBA 115G be released from the attachment and handed over to the applicant.
- iv. The respondent be ordered to compensate the applicant for the losses incurred by unlawful attachment of the said motor vehicle.

The grounds for this revision application are set out in the affidavit of Turyamanya Moses, the applicant, the gist of which is that:

- (a) On the 3<sup>rd</sup> of November 2018, the applicant entered into a contract for the sale and purchase of a motor vehicle registration No. UBA 115G with the respondent for a consideration of UGX. 40,000,000/=.
- (b) Later in 2019, the respondent herein filed Civil Suit No. 217 of 2019 against the applicant herein for breach of contract.
- (c) Thereafter, the respondent filed Misc. Application No. 32 of 2019 for orders that the said motor vehicle be attached before judgment which application was heard ex parte and granted.
- (d) The said motor vehicle was attached before the judgment without a proper application for correction.
- (e) The applicant filed Misc. Application No. 004 of 2020 where he raised an issue of contradicting orders, but the application was dismissed.
- (f) The applicant raised the preliminary objection regarding the court's jurisdiction to handle the suit which was overruled.
- (g) The court record is marred with irregularities that need an examination of this court.
- (h) If the orders are not revised, the applicant will suffer irreparable damage to his motor vehicle parked at the court premises for over 2 years.
- (i) It is in the interest of justice that the whole court record be revised.

The respondent filed an affidavit in reply opposing this application on the following grounds:

- (a) That the respondent instituted Civil Suit No. 217 of 2019 against the applicant for recovery of UGX. 11,500,000/= out of which UGX.

- 6,500,000/= is the balance for the consideration of the sale of the motor vehicle and UGX. 5,000,000/= as special damages in the form of expenses incurred while impounding the motor vehicle.
- (b) That the applicant further filed Misc. Application No. 31 of 2019 seeking attachment of the motor vehicle registration No. UBA 115G.
  - (c) That the applicant also filed Misc. Application No. 32 of 2019 seeking for interim order for attachment of the said Motor Vehicle which was granted.
  - (d) That the court order in Misc. Application No. 32 of 2019 has a clerical error where the motor vehicle Registration Number is written as UAB 115G instead of UBA 115G.
  - (e) That applicant filed Misc. Application No. 01 of 2020 against the respondent and the court bailiff who executed the said interim order for attachment of the said motor vehicle seeking for their arrest and committal to civil prison but the same was dismissed with costs.
  - (f) That the applicant filed Misc. Application No. 004 of 2020 seeking leave to appeal Misc. Application No. 31 of 2019 but the application was dismissed.
  - (g) That the applicant also filed Misc. Application No. 005 of 2021 seeking leave to appeal Misc. Application No 001 of 2020 but the same was dismissed with costs.
  - (h) That on 13<sup>th</sup> October 2022, the applicant raised a preliminary point of law on the jurisdiction of Magistrate Grade 1 to hear and determine Civil Suit No. 217 of 2019 and the objection was overruled, and the file was sent to the chief magistrate for proper management.
  - (i) That the said motor vehicle was attached as security so that the applicant herein does not evade justice.

(j) That the hearing of the main suit has stalled due to the applicant's filing of numerous applications.

## **Background**

The applicant bought motor vehicle Registration No. UBA 115G from the respondent in April 2019 for a consideration of UGX. 40,000,000/=. The applicant paid part of the purchase price, leaving a balance of UGX. 6,500,000/=. In November 2019, the respondent sued the applicant in Civil Suit No. 217 of 2019 before the Chief Magistrate's Court of Kyenjojo for recovery of UGX. 11,500,000/= which included UGX. 6,500,000/= as the remaining balance and UGX. 5,000,000/= for motor vehicle impounding expenses.

The respondent then filed Misc. Application No. 31 of 2019, seeking the attachment of the motor vehicle before judgment. An interim attachment order was granted in Misc. Application No. 32 of 2019. The applicant filed various applications contesting the attachment which were dismissed. Later, the applicant raised a preliminary point of law questioning the jurisdiction of the Magistrate Grade 1 to handle the matter. The trial Magistrate Grade 1 ruled that the Chief Magistrate's Court had jurisdiction to entertain the matter since the value of the car was UGX. 40,000,000/= and sent back the file to the Chief Magistrate for proper management.

This application seeks orders that the trial Magistrate Grade 1's order for the attachment of the motor vehicle before judgment and a ruling on his civil pecuniary jurisdiction to hear and determine Civil Suit No. 217 of 2019 be revised and set aside.

## **Representation and hearing**

*M/S Mark Mwesigye & Co. Advocates* represented the applicant while *M/S Kaahwa, Kafuuzi, Bwiruka & Co. Advocates* represented the respondent. Both Counsel filed written submissions which have been considered in this ruling.

## **Issues for determination**

In this application, the issues for determination are;

- i. Whether the application raises sufficient grounds for this court to make revision orders.
- ii. What remedies are available to the parties?

## **Submissions by Counsel**

In his submission, counsel for the applicant referred this court to section 83 of the Civil Procedure Act empowers this court to make revision orders. Counsel submitted that this court is enjoined to make revision orders in cases where a magistrate court exercises jurisdiction not vested in it in law, fails to exercise a jurisdiction so vested, or acts in the exercise of its jurisdiction with material irregularity.

Counsel argued that jurisdiction is a creature of the statute, and it is expressly conferred by the law. Counsel cited the case of ***Desai Vs Warsaw (1967) EA 351*** where it was held that an award, judgement or order arising from such proceedings of the court acting without jurisdiction is a nullity.

Counsel also cited section 207 (1) which caps the pecuniary civil jurisdiction of a Chief Magistrate and Magistrate Grade 1 to UGX. 50,000,000/= and UGX. 20,000,000/=, respectively.

Counsel for the applicant argued that the pleadings before the trial court show that the subject matter was a motor vehicle whose value is UGX. 40,000,000/=. However, the orders being contested were made by a Magistrate Grade 1 whose pecuniary civil jurisdiction is capped at UGX. 20,000,000/=. Counsel for the applicant argued that a Magistrate Grade 1 had no jurisdiction to entertain the matter and therefore his decisions were illegal and irregular. Counsel cited the case of ***Koboko District Local Government Vs. Okujjo Sali HCMA No. 001 of 2016*** where the court found that the trial magistrate had exercised his jurisdiction illegally when he allowed parties to enter a consent judgment whose value was beyond his pecuniary jurisdiction.

On the other hand, counsel for the respondent argued that the trial Magistrate Grade 1 had jurisdiction to determine the main suit and grant the orders that are a subject of this application.

Counsel for the respondent argued that the respondent instituted Civil Suit No. 217 before the Chief Magistrate's Court of Kyenjojo for recovery of UGX. 11,500,000/= which is well within the civil pecuniary jurisdiction of Magistrate Grade 1. Counsel also argued that the subject matter of the suit is not the value of the motor vehicle, but payment of the balance and expenses incurred when the vehicle was impounded.

Counsel for the respondent further argued that it was not the whole consideration of UGX. 40,000,000/= in contention but a fraction of it which was not paid that the respondent sought to recover.

Counsel also argued that the attachment of the motor vehicle before judgment was not the main issue but the payment of the balance of its purchase price. Counsel argued that the application lacked merit and ought to be dismissed with costs to the respondent.

## **Consideration by Court**

**Issue 1: Whether the application raises sufficient grounds for this court to make revision orders.**

The law governing revision proceedings is found in section 83 of the Civil Procedure Act which provides thus:

### ***“83 Revision***

***The high court may call for the record of any case which has been determined under this act by any Magistrates Court, and if that court appears to have -***

- a. exercised the jurisdiction not vested in it in law;***
- b. failed to exercise the jurisdiction so vested; or***
- c. acted in exercise of its jurisdiction illegally or with material irregularity or injustice, the High Court may revise the case and make such order in it as it thinks fit:”***

The term revision is also defined in **Black’s Law Dictionary, 8<sup>th</sup> edition, page 1346** as ***‘a re-examination or careful review for correction or improvement.’***

From the wording of section 83 of the Civil Procedure Act, it is apparent that revision applies to jurisdiction alone, the irregular exercise or non-exercise of it, or illegal assumption of it. The section is not directed against the conclusions of law or fact in which the question of jurisdiction is not involved.

Where a court has jurisdiction to determine a question and it determines that question, it cannot be said that it has acted illegally or with material irregularity because it has come to an erroneous decision on a question of fact or even law, which error would then qualify to be rectified on appeal. **(See: *Matemba versus Yamulinga [1968] EA 643, 645.*)**

The duty of the court in that regard would be to revise the case and make such order as it deems fit. Therefore, the subject of re-examination by the High Court sitting in its revision jurisdiction would be the lower court record for purposes of ascertaining whether or not such court did perpetuate the misnomers spelt out in sub-sections (a), (b) and (c) of section 83 of the Civil Procedure Act. This court revises the record of the lower court to satisfy itself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings before the High Court.

In the instance case, the applicant contends that the respondent herein filed civil suit No. 217 of 2019 against the applicant herein for breach of a contract whose value is UGX. 40,000,000/= which exceeds the pecuniary jurisdiction of a Magistrate Grade 1. However, a scrutiny of the parties' pleadings, as I demonstrate hereunder, leads to a different conclusion.

Paragraphs 3(a) and (b) of the plaint states thus:

**3. The plaintiff's claim against the defendant is for;**  
**a. An order for attachment and return of a motor vehicle registration No. UBA 115G in compliance with the sale agreement dated 3/11/2018.**



***b. In the alternative an order for payment of the balance of the purchase price of the above motor vehicle and the cost incurred in impounding the said motor vehicle of Shs. 11,500,000= (Eleven million five hundred thousand shillings only)."***

Paragraph 5 of the plaint adds that:

***"The plaintiff shall aver that the defendant breached the agreement and has never fully paid the balance of the purchase price which occasioned loss and damage to the plaintiff and shall therefore claim special damages as follows:***

***PARTICULARS OF SPECIAL DAMAGES***

***a. balance of the purchase price on M/V reg. No. UBA 115G----- shs 6,500,000=***

***b. costs of impounding the said motor vehicle including transport and accommodation ----- shs. 5,000,000=***

***Sub Total-----shs. 11,500,000="***

In his written statement of defence, the applicant herein partially admits to the claim by the applicant. Paragraphs 6 and 7 of his written statement of defence state as follows:

***"6. The defendant shall aver that on the day after the 3<sup>rd</sup> January 2019, the plaintiff made a further deposit of UGX. 1,500,000= to the plaintiff's bank account/mobile money leaving the outstanding balance of UGX. 6,500,000***

***which was to be paid upon the plaintiff surrendering the original logbook of the said motor vehicle.***

***7. The defendant is and has always been ready and willing to pay the said UGX. 6,500,000 to the plaintiff upon the plaintiff surrendering the original logbook of the said motor vehicle.”***

It is a trite law that parties in civil matters are bound by their pleadings. Order 6 Rule 7 of the Civil Procedure Rules provides thus:

***No pleading shall, not being a petition or application, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading that pleading.***

In the case of ***Jani Properties Ltd Vs. Dar es Salaam City Council [1966] EA 281*** court held that parties in civil matters are bound by what they say in their pleadings which have the potential of forming the record and the court itself is also bound by what the parties have stated in their pleadings as to the facts relied on by them. No party can be allowed to depart from its pleadings. It, therefore, follows that parties herein are bound by their pleadings.

In light of the foregoing, it is clear that although the motor vehicle in question was sold at UGX. 40,000,000/=, the substantive claim of the respondent against the applicant in Civil Suit No. 217 of 2019 is for recovery of UGX. 11,500,000/= which includes UGX. 6,500,000/= as the remaining balance and UGX. 5,000,000/= as impounding expenses.

From the parties' own pleadings, it is not in contention that the applicant had already paid UGX. 33,500,000/= out of the agreed price of UGX. 40,000,000/=.

The Magistrates Court Act Cap. 16 provides for the pecuniary jurisdiction of the chief magistrates and magistrate grade 1. Section 207(1)(a) and (b) of the Act provides thus:

***“Civil jurisdiction of magistrates***

***(1) Subject to this section and any other written law, the jurisdiction of magistrates presiding over magistrates courts for the trial and determination of causes and matters of a civil nature shall be as follows —***

***(a) a chief magistrate shall have jurisdiction where the value of the subject matter in dispute does not exceed fifty million shillings and shall have unlimited jurisdiction in disputes relating to conversion, damage to property or trespass***

***(b) a magistrate grade I shall have jurisdiction where the value of the subject matter does not exceed twenty million shillings.”***

In the premises, it is my considered view that Civil Suit No. 217 before the Chief Magistrate's Court of Kyenjojo is, substantially, for a claim of UGX. 11,500,000/= which is within the civil pecuniary jurisdiction of Magistrate Grade 1.

Having found that Magistrate Grade 1 has jurisdiction to hear and determine Civil Suit No. 217 of 2019, I am inclined to inquire as to whether the trial Magistrate exercised his jurisdiction illegally or with

material irregularity or injustice when he ordered for attachment of Motor vehicle Registration No. UBA 115G in Misc. Application No. 32 of 2019.

Generally, the rationale for the law on attachment before judgment is to prevent any attempt on the part of the defendant to evade justice and avoid the decree that may be passed against him or her. It is provided for in section 64(b) of the Civil Procedure Act which is to the effect that to prevent the ends of justice from being defeated, the court may direct the defendant to furnish security to produce any property belonging to him or her and to place the same at the disposal of the court or order the attachment of any property.

In the case of ***Evelyn Bachwenkojo Karugaba and Another Vs. Shengli Engineering Construction Co. (U) Ltd Misc Application No. 044 Of 2022*** this court held thus:

***“[The] object of the provisions of the law on attachment before judgment and provision of security is to prevent any attempt on the part of the defendant to evade justice and avoid the decree that may be passed against him or her. It is a sort of a guarantee against a decree becoming infructuous for want of property available from which the plaintiff can satisfy the decree.”***

Order 40 Rule 5 of the Civil Procedure Rules provides for the procedure for attachment of property before judgment. It provides thus:

***“Where defendant may be called upon to furnish security for production of property.***

***(1) Where at any stage of a suit the court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him or her—***

***(a) is about to dispose of the whole or any part of his or her property;***

***(b) is about to remove the whole or any part of his or her property from the local limits of the jurisdiction of the court; or***

***(c) has quitted the jurisdiction of the court leaving in that jurisdiction property belonging to him or her,***

***the court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the court, when required, the property or the value of the property, or such portion of it as may be sufficient to satisfy the decree or to appear and show cause why he or she should not furnish security.***

***(2) The plaintiff shall, unless the court otherwise directs, specify the property required to be attached and the estimated value of the property.***

***(3) The court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.”***

From the wording of Order 40 Rule 5 of the Civil Procedure Rules, the conditions precedent to the issuance of the order of attachment before judgment is for the court to satisfy itself by affidavit or otherwise, that the defendant has the intent to obstruct or delay the execution of any decree

that may be passed against him or her. This can be established where evidence is adduced that the defendant is about either to dispose of the whole or any part of his or her property, to remove the whole or any part of his or her property from the local limits of the jurisdiction of the court or has quit the jurisdiction of the court leaving in that jurisdiction property belonging to him or her.

Once the court is satisfied with any of the above conditions, the property to be attached is specified and its estimated value is indicated, then the court may order for the conditional attachment of the whole or any portion of the property so specified.

In the instant case, the respondent filed Civil Suit No. 217 of 2019 before the Chief Magistrate's Court of Kyejono. While the main suit was pending hearing and determination, the respondent filed Misc. Applications No. 31 and 32 of 2019 seeking for attachment and interim attachment of Motor Vehicle registration No. UBA 115G, respectively. The trial Magistrate Grade 1 subsequently issued an interim order for the attachment of the same Vehicle pending the hearing of the main suit.

I note that this is the same motor vehicle, which, of course, is a movable property, that the respondent had sold to the applicant. It can, therefore, be safely concluded that the rationale for the order of attachment of the motor vehicle in issue was to prevent any attempt on the part of the defendant to evade justice or avoid the decree that may be passed against him.

The argument of counsel that the order of attachment of the motor vehicle is irregular to the extent that it indicates the motor vehicle to be attached

as UAB 115G instead of UBA 115G is rejected because this is a mere clerical error which does not undermine the validity of the order.

In the premises, I find nothing illegal or irregular with the issuance of the interim order of attachment before judgment of the motor vehicle Registration No. UBA 114G.

## **Issue 2: What remedies are available to the parties?**

Counsel for the applicant prayed to this court to find this application meritorious and be pleased to revise and set aside the orders and ruling of the trial magistrate Grade 1 concerning the attachment of the motor vehicle and his jurisdiction to hear and determine civil suit No. 217 of 2019. Counsel also prayed for an order for the release of motor vehicle registration No. UBA 115G and for compensation of the applicant for the loss he incurred due to unlawful attachment of the said motor vehicle.

Having made a finding that a Magistrate Grade 1 has civil pecuniary jurisdiction to hear and determine Civil Suit No. 217 of 2019 and that that jurisdiction was legally and regularly exercised when he ordered for attachment of motor vehicle Registration No. UBA 115G before judgment, I shall not grant any of the revision orders as sought in this application.

The prayer for the release of motor vehicle UBA 115G is also declined since it would defeat the purpose of the order for attachment before judgment.

In conclusion, I find that this application has no merit and is hereby dismissed with costs to the respondent.

The file for Civil Suit No. 217 of 2017 shall be sent back to the trial magistrate for an expeditious hearing and determination.

**Obiter**

Before I take leave of this matter, I cannot help but imagine the zealousness with which the applicant overwhelmed the trial court with a plethora of applications stemming from the main suit. Such zealousness, while perhaps well-intentioned, could have impeded the expeditious hearing and determination of the main suit. Consequently, a motor vehicle, which is, partly, the subject of this application, has languished within the confines of the court premises for over three years and is slowly succumbing to the ravages of prolonged stagnation. This reflection serves as a poignant reminder that parties to the suit, either personally or through their advocates, must conduct themselves in a manner that will ensure that their cases are heard expeditiously.

It is so ordered.

Dated at Fort Portal this 25<sup>th</sup> day of January 2024.

A handwritten signature in black ink, appearing to read 'Mugabo', written over a horizontal line.

**Vincent Emmy Mugabo**  
**Judge**