

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
CIVIL REVISION NO.008 OF 2022
(ARISING FROM MISCELLANEOUS APPLICATION NO. 03 OF 2014)
AHEBWA ELIZABETH :::::::::::::::::::::::::::::: APPLICANT

VERSUS

- 1. MBAGYENZA EMMANUEL**
2. MWESIGYE VICTOR :::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON LADY JUSTICE JOYCE KAVUMA

RULING

Introduction.

[1] This Application is brought by way of Notice of Motion under **Section 83 of the Civil Procedure Act Cap 71** and **Order 46 rule 1 of the Civil Procedure Rules SI. 71-1** seeking orders that;

- a) Court revises the Ruling in Miscellaneous Application No.03 of 2022 by His Worship Muhanguzi Copan the Magistrate Grade 11 Mbarara Municipal Court.
- b) The Orders made there in be set aside.
- c) Costs of the Application be provided for.

The grounds set forth in the application briefly are that the Applicant Ahebwa Elizabeth is aggrieved by the decision of the Learned Magistrate Grade 11 in setting aside the orders that were passed vide MBR-FCC-49/2022. That the decision is irregular, illegal and unjust.

The Application was supported by the affidavit deposed by **Ahebwa Elizabeth** and the respondent **Mbagyenza Emmanuel** opposed the Application in an affidavit in reply.

Background.

[2] According to the applicant, she filed MBR-FCC-49/2022 at the Chief Magistrates Court of Mbarara at Mbarara Municipal Court against her husband Mwesigye Victor who borrowed a sum of UGX. 2,000,000/= from the 1st respondent Mbagyeza Emmanuel and without her consent mortgaged property they had jointly purchased from Mr. Tumukunde Lasbon for UGX. 7,000,000/= in the year 2020. That the 2nd respondent failed to pay back the loan and the 1st respondent and then agreed to sell the property to the 1st respondent without her consent and had another woman forge her signature. This caused her to institute MBR-FCC-49/2022 against the 2nd respondent, which was ruled in her favour. That the 1st respondent however applied for review of the same judgment and orders and the Magistrate set aside the decision.

On the other hand, the respondent stated in his affidavit in reply that the orders made by court did not in any way determine the question of ownership of the suit land but rather placed the applicant in occupation of the same. That he has never given out a friendly loan to the 2nd respondent but he bought the suit property from both the applicant and 2nd respondent.

Issues for determination

1. Whether this application discloses sufficient grounds for revision?
2. What remedies are available to the parties?

Representation.

The Applicant was represented by M/s Kaganzi & Co. Advocates while the 1st Respondent was represented by Ampurire Associated advocates

Analysis and decision of court.

[3]Section 83 of the Civil Procedure Act provides that the High Court may call for the record of any case which has been determined by any subordinate court and may revise the case if that court appears to have done any or one of three things;

- a. Exercised a jurisdiction not vested in it by law;
- b. Failure to exercise a jurisdiction vested in that court;
- c. Acted in the exercise of its jurisdiction illegally or with material irregularity or injustice

Section 17 (2) of the Judicature Act Cap 13, also empowers the High Court in exercise of its general powers of supervision over Magistrates' Courts to invoke its inherent powers to prevent abuse of the process of the court

Counsel for the respondent raised a preliminary point of law that will allegedly determine the application summarily. He stated that the applicant filed an application that was bad in law since it seeks to revise

orders which are based on an illegality. That the initial application by the applicant was to the Magistrate Grade II Court which had no pecuniary Jurisdiction to hear the matter. He argued that the applicant ought to have filed for a fresh suit in a court with jurisdiction. He prayed for the application to be struck out with costs.

I therefore must disagree with counsel for the respondent. The law above is clear that this court can review any decision of the lower court where it appears to have exercised a jurisdiction not vested in it by law. In the case of **Mabalaganya vs Sanga (2005) E.A 152**, it was held that; in cases where High Court exercises its revisional powers, its duty entails examination of the record of any proceedings before it for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings before the Magistrate court.

Further. in the case of **Zirungura v Mutebe (Revision Cause No. 23 of 2021) [2022] UGHCLD 232** stated that: -

“The law is clear that revision proceedings apply beyond questions of jurisdiction or lack thereof and extend to the nature of exercise of that jurisdiction. Specifically, the High Court is enjoined to interrogate the question of whether the jurisdiction of the subordinate court was exercised illegally (illegitimately) or with material irregularity (wrongdoing). This is the nature of the application before this court, and I find that these proceedings are properly before this court.”

Therefore, decisions are revised when the trial Magistrate fails to exercise his or her Jurisdiction or where he or she acts illegally or with material irregularity or unjustly.

Similarly, in the instant case, this application is properly brought before court as this court is tasked with interrogating the very issue Counsel for the respondent raises.

[4] Counsel for the applicant submitted that the Magistrate Grade II court had no pecuniary jurisdiction to entertain the matter since the suit land is valued at approximately UGX. 20,000,000/=

This court held in **Margret Rwakaino vs Kakuru Charles and anor HCT-05-CV-CR-0016-2023** that in an application for revision, one has to prove that the judicial officer acted without jurisdiction, or failed to exercise the jurisdiction so vested or acted illegally, irregularly or unjustly. JK

Mubiru J stated in the case of **Otto v Onyut (Civil Revision No. 5 of 2020) [2020] UGHC 149 (23 July 2020)** that;

“A court is said to exercise jurisdiction illegally when it assumes a jurisdiction that is not vested in it by law, and is said to exercise jurisdiction with material irregularity when such a court is seized with jurisdiction but does so wrongly through some procedural or evidential defect”

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. (See: **Desai vs. Warsaw (1967) EA 351**). Any award or judgment and or orders arising from such proceedings of a court acting without jurisdiction are also a nullity.

When instituting a suit, one must always take into regard the pecuniary jurisdiction of the court and the law that empowers such a court to hear such matters. **Section 207 of the Magistrates Court's Act** provides for the civil jurisdiction of Magistrates Courts and particularly provides in **subsection (c)** the following pecuniary jurisdiction for a Magistrates Grade II Court;

“(c) A magistrate grade II shall have jurisdiction where the value of the subject matter in dispute does not exceed five million shillings.”

In the instant case, in *MBR-45-CV-FCC-49 of 2022*, which is the original suit in this matter, on page 2(3rd paragraph) it states that “*the house is valued at 30,000,000/=*”. Furthermore, in *Miscellaneous Application No.03 of 2022*, the judgment of which the applicant is seeking to have revised, the 1st respondent stated in his application that the consideration he paid for the house was 20,000,000/=. This clearly is beyond the pecuniary jurisdiction of the Magistrate Grade II Court. The lower court ought to have put itself on notice that the matter before it was above its pecuniary jurisdiction.

It is trite law that court cannot confer on itself jurisdiction in certain matters because it is a creature of statute. It is therefore my considered opinion that the proceedings, ruling and orders in **Miscellaneous Application No.003 of 2022** were a nullity.

The parties are free to file a fresh suit with court of competent jurisdiction to determine the issues of ownership of the suit property.

Issue 2: What remedies are available to the parties?

[5] Counsel for the applicant prayed for an order for retrial of the matter in a competent court with jurisdiction given that the main issue between the parties about ownership of the suit property has not been determined.

In conclusion, I allow the application with the following orders;

- a) The order by the Magistrate Grade II in Civil Miscellaneous Application No.003 of 2022 is hereby revised and set aside.
- b) Each party bears their own costs.

I so order.

Dated, delivered and signed at Mbarara this ^{28th} day of ^{June} 2024.


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Joyce Kavuma

Judge

Page 7 of 8