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IN THE HIGH COURT OF UGANDA AT JINJA

GASITA BALABA :::::::::::::::::::::::::::: APPELLANT

KIBI BAKUSEKA :::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: THE HON. MR. JUSTICE C.M. KATO

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There are five grounds of appeal advanced by the appellant in his amended memorandum of appeal. The five grounds are:-

1. That the trial grade I magistrate did not evaluate the evidence adduced by the defendant and thereby arrived at a wrong decision.
2. That the decision of the trial magistrate to decide the case on partly recorded evidence of magistrate grade II and evidence recorded by her is irregular in law.
3. That the trial magistrate erred in seeking and receiving the opinions of the assessors which biased her opinion which procedure is unknown in the magistrates grade I and in chief magistrate's courts.
4. That the trial magistrate was biased as she omitted statements made and signed by the appellant and his witness, one Atanansi Mubiazali and instead wrote an unsigned statements purported to have been made by them.
5. That the decision of the trial magistrate occasioned a miscarriage of justice.

THE
UNITED STATES
NAVY

OFFICE OF THE SECRETARY OF THE NAVY
WASHINGTON, D. C.

NAVY DEPARTMENT, WASHINGTON, D. C., MAY 1, 1917.

TO THE SECRETARY OF THE NAVY:

DEAR SIR:

I have the honor to acknowledge the receipt of your letter of the 28th inst. in relation to the proposed purchase of the ship "Albatross" (No. 101) for the service of the Navy. The ship is a steamship, built in 1904, and is now in the service of the Navy. It is a fine ship, and I am sure that it will be a valuable addition to the fleet.

I am sure that the ship will be a valuable addition to the fleet, and I am sure that it will be a valuable addition to the fleet.

I am sure that the ship will be a valuable addition to the fleet, and I am sure that it will be a valuable addition to the fleet.

I am sure that the ship will be a valuable addition to the fleet, and I am sure that it will be a valuable addition to the fleet.

Very respectfully,
J. D. LONG

Enclosed for the Secretary of the Navy are two copies of the report of the Board of Naval Commissioners, dated May 1, 1917, in relation to the proposed purchase of the ship "Albatross" (No. 101) for the service of the Navy.

I am sure that the ship will be a valuable addition to the fleet, and I am sure that it will be a valuable addition to the fleet.

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After the plaintiff had closed his case magistrate Ndifuna disappeared from the scene and in his place appeared Mrs. Munaba magistrate grade I. The proceedings do not show how the case found its way to a magistrate of a different grade, but after a long search in the poorly prepared original file I discovered some correspondence which tends to show why Ndifuna the grade II magistrate had to stop hearing the case which he had heard half-way. There was some correspondence between the present appellant and the chambers of the chief magistrate Jinja which culminated in Ndifuna being disqualified from hearing the suit. The defendant/appellant wrote to the chief magistrate complaining that the plaintiff/respondent was closely related to the trial magistrate, in his affidavit which supported that undated letter the appellant stated that Ndifuna's father was the step brother of the plaintiff/respondent. The appellant in the same letter requested the chief magistrate to have the case heard by a different magistrate, he even complained of the plaintiff's counsel Mr. Egonda-Ntende as being the son-in-law of the plaintiff so he felt that the whole matter was being treated as a family affair at his detriment, he thought he could not get justice in a situation like that.

On receipt of that letter the learned chief magistrate in his letter of 21/10/87 addressed to the magistrate grade I at Kamuli directed that the case should be removed from Ndifuna and handed to another magistrate, that was being done presumably under the provisions of section 233 of C.M.A. By her letter of 23/10/87 Mrs. Munaba the magistrate grade I at Kamuli instructed Mr. Ndifuna to hand over the case to another magistrate grade II by the name of Mr. Kayiira for hearing, this was done in obedience to the instructions of the chief magistrate as contained in his letter of 21/10/87. Strangely enough the name of Mr. Kayiira was crossed out and replaced by that of Mrs. Munaba who herself had written the letter asking Kayiira to hear the case, that is the crux of the matter because it raises the question as to who transferred the case from the court of magistrate grade II to that of magistrate grade I. There is nothing on record suggesting that the case was ever transferred by any lawful authority from magistrate grade II to magistrate grade I for hearing. The chief magistrate's letter of 21/10/87 was clear in its terms it said, "I am therefore directing you to withdraw the above case from Mr. Ndifuna and allocate it to another magistrate". If the learned chief magistrate had wanted the grade I magistrate at Kamuli to hear the case he would have said so, but he did not say so.

The learned magistrate grade I cannot treat that letter as an authority for her to hear the case. In case the chief magistrate gave her some verbal instructions to proceed with the hearing of the case she should have reduced such instructions to writing so that they (instructions) formed part of her proceedings. It is most likely that there were some good reasons why Mr. Kayiira could not deal with the case but still it was not proper for the magistrate grade I to cross out his name and replace it with her own names as a trial magistrate.

In her judgment the learned trial magistrate says that the case was transferred to her court after the appellant had complained to the chief magistrate, but as I have already said when the appellant complained to the chief magistrate the grade I magistrate was only directed to remove the file from Ndifuna and pass it to another magistrate not to herself, she also obeyed the directive and asked Ndifuna to pass the file to Kayiira but there is no explanation as to why Kayiira Gr.II magistrate never tried the case instead it was tried by a magistrate grade I.


There is no provision in our law under which a magistrate of a different grade can assume the powers of the court to which he or she has no jurisdiction except where a case has been lawfully transferred to him/her by a court of higher jurisdiction which was not the case in the present case. In the present case it cannot be said that the learned magistrate grade I was acting under the provisions of section 142 of magistrates courts Act because that section deals with magistrates of the same grade or jurisdiction, sections 164 and 165 of M.C.A. are also inapplicable to the present case as those sections deal with criminal matters only at any rate none of them was ever invoked.

With due respect I do agree with Mr. Mutyabule when he says that the two courts of magistrate grade I and that of magistrate grade II are governed by different rules of procedure in civil matters as per section 231 of magistrates courts Act. It is because of that difference in the procedure followed by the two courts that it becomes highly improper for a magistrate of one grade to take over a case heard partly by a magistrate of a different grade.

Considering the fact that the case was never legally transferred from the court of a magistrate grade II to that of magistrate grade I and in view of the fact that the two courts operate under different procedures, I hold that the learned trial magistrate acted illegally as she exercised jurisdiction which had been legally vested in a different court and she followed procedure which was not meant for the court of her grade.

What happened cannot be treated as a mere irregularity, it was a clear act of illegality which rendered her decision a complete nullity and that is what distinguishes the present case from the case of:- John Tibaijuka v Nyansio Mutungi (1975) HCB 38 which was quoted to this court by Mr. Tuyiringire the learned counsel for the respondent. The position would have possibly been different if the case had been properly transferred from the court of magistrate grade II to that of magistrate grade I under the provisions of section 18 of Civil Procedure Act or section 230 of M.C.A. or if the case was transferred from one magistrate grade II to another magistrate of the same grade under sections 142 and 233 of M.C.A. Since this is not a case of wrongful admissibility of evidence alone but it goes to the wrongful assumption of jurisdiction section 165 of the Evidence Act is inapplicable.

In all these circumstances, I find that the second ground of this appeal must succeed. Since on this ground alone the appeal succeeds I see no useful purpose being served in considering the remaining grounds of this appeal. As the last part of the proceedings was handled by a court which was not supposed to deal with the matter, I see no point of evaluating the evidence which was illegally recorded. For all those reasons the appeal is allowed and the judgment and orders of the court below are set aside. The case is to be remitted to Kamuli court for a retrial by another magistrate grade II with competent jurisdiction. Each party is to meet his own costs of this appeal as it was not the fault of any of the parties that the case was conducted the way it was conducted. So I order.


C.M. KATO
J U D G E

1/11/93.