

THE REPUBLIC OF UGANDA

HIGH COURT OF UGANDA AT SOROTI

CIVIL REVISION NO. 1 OF 2013.

(Arising from decision of Chief Magistrate Moroto dated 21st March, 2013 in Civil Suit 1 of 2013)

CONCERN WORLDWIDEAPPLICANT

VERSUS

MUKASA KUGONZARESPONDENT

BEFORE HON. LADY JUSTICE H. WOLAYO

REVISION ORDER

Ms Sebalu & Lule Advocates for the applicant complained to the High Court by letter dated 2nd April 2013 about a decision by the Chief Magistrate Moroto , HW Katorogo Moses in Moroto Civil Suit No. 1 of 2013. The complaint is in two parts:

1. That the Chief Magistrate acted without jurisdiction when he entertained an employment dispute contrary to section 93 of the Employment Act 2006 which confers jurisdiction on the District Labour Officer.
2. That the Chief Magistrate relied on defective service of summons to enter default judgment against the applicant.

The applicant seeks a revision order under section 83 of the Civil Procedure Act.

At the presentation of arguments, Mr. Segawa appeared for the applicant and Mr. Apo-oroma appeared for the respondent.

Section 83 of the CPA confers revision powers on the High Court to call for proceedings of lower court to :

- 1) Satisfy itself that the lower court acted with jurisdiction or
- 2) Failed to exercise jurisdiction that is duly vested or
- 3) Exercised jurisdiction illegally or with material irregularity or injustice.

Where there is lapse of time or some other cause, power of revision shall not be exercised if it causes hardship to any person.

The facts of the case are not in dispute. The respondent sued the applicant for wrongful dismissal and termination of an employment contract and prayed for special and general damages. The court entered what it called a default judgment comprised of the following orders

1. The defendant pays the plaintiff his due salary from the date of termination of service.
2. The defendant pays the plaintiff his calculated salary for the remaining period.
3. The defendant pays 6,000,000/ as general damages.
4. The defendant pays interest at 25 % per annum on the monetary awards.
5. The defendant pays costs of the suit.

In my opinion, the default judgment is another area for revision in addition to the grounds articulated by counsel for the applicant, namely, acting without jurisdiction, and entering a judgment based on defective service.

Acting without jurisdiction

Mr. Segawa for the applicant submitted, rightly, that section 93 of the Employment Act confers jurisdiction in the first instance on district labour officer in these terms:

‘ except where the contrary is expressly provided for by this or any other Act, the only remedy available to a person who claims infringement of any of the rights granted under this Act shall be by way of a complaint to a labour officer.’

The respondent was employed as a driver under a written contract of employment. Section 3 of the Act provides that the Act applies to all employees employed under a contract of service. The section exempts some categories of employees but the respondent’s employment as a driver is clearly governed by the Employment Act.

Mr. Apo-Oroma’s submission that section 207 of the Magistrate’s Courts Act conferred jurisdiction on the CM is not sustainable. Whereas section 208 of the MCA confers civil jurisdiction on magistrates courts, this is only to the extent that that jurisdiction is not expressly or impliedly barred. As Mr. Segawa rightly submitted, the Employment Act removes jurisdiction from magistrates courts and confers jurisdiction in employment disputes on district Labour Officers and the Industrial Court on appeal. The preamble to

the Employment Act is instructive in this regard. It states that the Act is to revise and consolidate the laws governing individual employment relationships which Act then sets up structures and procedures for dealing with employment disputes.

I therefore find that the CM acted without jurisdiction when he entertained the suit based on breach of employment relations.

However, in order not to deny the respondent a right to be heard, the suit will be registered in the High Court at Soroti which has unlimited jurisdiction irrespective of section 93 of the Employment Act. This order is made bearing in mind that the Industrial Court is not yet in place to handle appeals from district labour officers.

Default judgment

Although the issue of jurisdiction disposes of the complaint, i wish to comment on the character and content of the default judgment. A default judgment is entered where there is proof of service and the defendant has not filed a defence within the specified time. Rules 6 and 8 of order IX of the CPR are relevant. Under rule 6, where plaintiff is for a liquidated demand, judgment will be entered for the sums claimed. However under rule 8, where the claim is for pecuniary damages, the rule requires that an interlocutory judgment is entered and the suit set down for formal proof.

In the instant case, the claim was for unspecified sums of money and for general damages for wrongful dismissal. Clearly, there was need for the respondent to adduce evidence of wrongful dismissal and for his entitlements under the contract, that is if the CM had jurisdiction. It was not

up to the magistrate to interpret the contract when the plaintiff had not specified what he was demanding in the plaint.

The awards in the default judgment are not based on any evidence . I find that in making the awards in the default judgment, the magistrate acted with material irregularity. I also find that the magistrate erroneously entered a default judgment when the correct entry should have been an interlocutory judgment.

Defective service of summons

As the findings on jurisdiction and default judgment are sufficient basis for a revision order, i shall not go into the defective service. Suffice it to say, the court must satisfy itself that the service of summons is delivered to the defendant in person or if it is a corporate entity, to the officials authorised to receive service. Order V of the CPR gives clear guidance on service of summons.

In the premises, i make the following orders.

1. The default judgment is set aside
2. The vehicles that were attached in execution be released from attachment.
3. The decretal sum that was ordered to be deposited in court be returned to the applicant.
4. The suit will be registered in the High Court at Soroti and fresh service of summons will issue.

5. A copy of this revision order will be delivered to the Chief Magistrate, Moroto and all magistrates in the circuit .
6. Costs of this revision in the cause.

DATED AT SOROTI THIS 15TH AUGUST, 2013.

Hon. Lady Justice H. Wolayo