

- d) The execution of the decree in Mengo Chief Magistrates Court Civil Suit No. 74 of 2011 be set aside or stayed.**
- e) Provision be made for the costs of this application.**

Further this application is based on the grounds which are well set out in the affidavit of the applicant but briefly they are; that:-

- a) The applicant was advised by his lawyers M/S Wegulo & Wandera Advocates that court as presided over by the trial Grade 1 Magistrate did not have jurisdiction to entertain Mengo Chief Magistrates Civil Suit No. 74 of 2011.**
- b) The judgment and decree stemming out of Mengo Chief Magistrates Civil Suit No. 74 of 2011 is a nullity.**
- c) The applicant was committed to civil prison under a warrant in execution of judgement which was pronounced by the trial magistrate.**
- d) The applicant's continued imprisonment will adversely affect his business interest, social standing and no amount of damages will be enough to compensate him for the stigma involved with imprisonment.**

On 30/8/2012, when this application came up for hearing, the applicant was represented by Mr. Dan Wegulo of Wegulo & Wandera Advocates. The respondent was represented by Ms. Sarah Kisubi from Kalenge, Bwanika, Ssawa & Co. Advocates. The respondent was unable to proceed because service had been effected on previous counsel for the respondent on 27/5/2012 who declined service on reasons that he no longer had instructions. Having effected service on the respondents' current lawyer late, the matter was adjourned and time given to the respondent to file an affidavit in reply.

On the 03/09/2012, the matter came up again for hearing. The parties were directed to file in court written submissions together with the authorities each party shall have relied on. The applicant in his submissions contends that the judgment and subsequent decree passed by the trial Magistrate was a nullity on grounds that he did not have the jurisdiction vested in it by law to entertain Civil Suit No. 74 of 2011. Jurisdiction is defined by the Black's Law Dictionary (7th ed.1999 at pg. 855) as 'A courts' power to decide a case or issue a decree. The limit of this authority is imposed by statute, charter or commission under which the Court is constituted.

The regulation of the exercise of this jurisdiction in Magistrates Courts is provided for under the Magistrates Courts Act Cap. 16 which in its Section 207 states:

(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 1 shall have jurisdiction where the value of the subject matter does not exceed twenty million shillings;**
- c) a magistrate grade 11 shall have jurisdiction where the value of the subject matter in dispute does not exceed five hundred thousand shillings.**

In instances where a court that has no jurisdiction entertains a matter, any proceedings arising there from are a nullity.

In the matter before me, the applicant was sued in trespass by the respondent in Civil Suit No.74 of 2011 on grounds that he encroached on his land and further allowed waste from his land onto the respondent's land. Trespass is a common law tort committed when an individual or the object of an individual intentionally enters the land of another without a lawful excuse. The subject matter of trespass to land as fortified by Halsbury's Laws of England Vol 45 4th Ed at page 634 paragraph 1390 must be real and corporeal property, that is land or buildings, or the vesture of land or herbage or pasture to the exclusive possession of which the person complaining of is entitled.

The applicant is the registered proprietor of land comprised in Block 26, Plot 659 and Block 26 Plot 660, land at Kibuga and the respondent is the registered proprietor of the adjacent land comprised in Block 26 plot 658 land at Kibuga. The respondent claimed in Civil Suit no.74 of 2011 that the applicant has for a period of time from a drainage hole made in his fence let sewage flow onto about 0.9 meters onto his land thus damaging a garage and compound. This was observed by the trial magistrate during trial when he visited locus.

Further a survey report by the respondent indicates that the drainage channel on site encroaches onto plot 658 by 0.9 meters. The issue in question is that the applicant constructed a channel for waste on part of the respondent's land and the waste from his premises has been flowing into this portion of land which waste as a result has damaged the respondent's property and also a health hazard.

I have looked at Civil suit no. 74 of 2011 and noted that the suit proceeded *ex parte*. The issues that were framed by the plaintiff (now respondents) are:-

- 1. Whether the drainage channel is on the plaintiff's land.**
- 2. Whether the defendant had trespassed on the plaintiff's land.**
- 3. Whether the actions of the defendant have occasioned damage or loss to the plaintiff.**
- 4. What remedies are available to the plaintiff?**

The above actions stated in the issues constituted the subject matter of the suit. The subject matter of the suit was never quantified. The way the cause of action was pleaded, the suit was triable by a magistrate Grade 1. In the written statement of defence, the applicant (then defendant) in paragraph 5 thereof pleaded; that:-

“5. The defendant submits to the jurisdiction of this Honourable Court.”

The complaint of the applicant that the tri023al Principal Magistrate Grade I had no jurisdiction to try Civil Suit no. 74 of 2011 between the parties is unattainable. I hold, therefore, that the judgment and decree of the trial Court were/are valid.

In the result and for the reasons given hereinabove in this ruling, this application has no merit. It is accordingly dismissed with costs to the respondent. The orders of the trial magistrate in Civil Suit No. 74 of 2011 are lawful and they should be executed against the applicant with immediate effect, but not later than 10 (ten) days from the date of the delivery of this ruling.

Date at Kampala this 14th day of June, 2013.

sgd

Murangira Joseph

Judge