

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

CIVIL REVISION NO. 004 OF 2014

NIMIDDE MARGRET ::::::::::::::::::::::::::::::::::::::: PLAINTIFF

VERSUS

DR. ROBERT KAGODA ::::::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

RULING

Through M/S Lukwago & Co. Advocates, the applicant Nimidde Margaret filed this application under Sections 83 and 98 of the Civil Procedure Act (CPA). and O. 52 rr 1, 2 and 3 of the Civil Procedure Rules for orders that:

1. The judgment, orders and Decree in Civil Suit 357 of 2009 issued by the Chief Magistrate’s Court of Makindye ordering the applicant to pay an unspecified amount of money be revised and set aside.
2. The warrant of arrest issued pursuant to the said orders be set aside.
3. The execution Decree and orders arising from the said civil suit be stayed and/or set aside.
4. Costs of the application be provided for.

The application is supported by the affidavit of the applicant which sets out the grounds of application as follows:

- (i) That the applicant is aggrieved by the judgment and order of Makindye Chief Magistrates in Civil Suit 357 of 2009.
- (ii) That the learned Chief Magistrate exercised jurisdiction vested in her illegally and/or with material irregularity and/or injustice when she proceeded to hear and grant the order of payment of an unspecified amount of money.
- (iii) That the learned Chief Magistrate exercised jurisdiction vested in her illegally and with material irregularity when she failed to ascertain the value of the land involved before trying the matter thereby failing to appreciate whether it was beyond her jurisdiction.
- (iv) That the learned Assistant Registrar of Execution Division issued a warrant of arrest against the applicant without hearing the applicant and her father as purported guarantor and without regard to the principles of natural justice.
- (v) The amount of money obtained from the applicant was obtained illegally pursuant to the impugned Order/Decree.
- (vi) That is just and equitable that the said order and decision of the Chief Magistrate be revised and set aside and execution proceedings be set aside.

In the affidavit in reply by Christine Mayanja an advocate with Makada & Co. Advocates, she deponed *inter alia* that as an advocate of the High Court, she knows that where it is impossible for the trial Magistrate to estimate the subject matter at a money value, no Decree

is issued for an amount on the claim exceeding the pecuniary limits of the ordinary jurisdiction of the court passing the Decree.

That the Chief Magistrate did not make any Decree for an amount above the pecuniary jurisdiction of the Chief Magistrate.

That the agreement to pay the bailiff's fees arrived at by the applicant and the bailiff is not a matter for the respondent to set out.

That the order of execution is carried out by the High Court of Uganda to which the current value of the suit property was proved by way of evaluation report prior to issuance of the order for execution (annexure 'A').

That the execution against Mzee Nadduli was pursuant to his undertaking to pay the judgment debt as surety and there is nothing illegal about it.

During the hearing of this application, Mr. Segona learned counsel for the applicant submitted that the learned Chief Magistrate exercised jurisdiction illegally with injustice when she granted an order to pay an unspecified amount of money after failing to ascertain the value of the land in issue and the arrest done was contrary to the principle of natural justice. That the learned Chief Magistrate had a duty to spell out in the Decree how much the applicant/defendant had to pay to the respondent as required under S. 2(c) of the Civil Procedure Act instead of ordering the applicant to pay the value of the land in issue. That without a direction from court, what the respondent did was to get a valuer who gave the value as 90.000.000= yet the Decree was silent on the value. That this rendered the Decree a nullity and should be set

aside. Mr. Segona further submitted that the valuation report was not part of the proceedings before the trial Chief Magistrate which offended the rules of natural justice and evidence. That the evaluation report ought to have been evaluated and its authenticity and veracity ascertained by the court hearing the matter to enable the parties test its contents and competence of the person presenting it. That the report first appeared before the Registrar execution in the absence of the applicant yet she was affected by the same.

Mr. Segona further submitted that the value of valuation of the land in question put the subject matter beyond the jurisdiction of the Chief Magistrate as provided under S. 207 of the Magistrates Courts Act and S. 4 of the Civil Procedure Act. He relied on the case of **John Sebataana Vs Abanenamar Yorokam & another HCCS 99 of 2005** where Murangira. J. dismissed a suit where the value of the subject matter was not stated yet High Court had unlimited jurisdiction.

Mr. Segona further faulted the proceedings before the Registrar wherein he based his actions on a consent not executed before a judicial official yet one of the parties thereto was not party to the proceedings. That there was failure of justice in this case.

In his submission in reply, Mr. Nuwagaba for the respondent faulted learned counsel for the applicant for smuggling into revision proceeding matters of execution yet court cannot revise Registrar's

Orders. That the Chief Magistrate had jurisdiction to hear the matter under consideration since it arose in 2006. That execution of the value made in the report was by the high court and if there was a complaint about the value, it should have been brought before the Registrar. That there was no infringement on any jurisdiction by the Chief Magistrate as provided under S. 83 of the Civil Procedure Act. That the application be dismissed.

Revision proceedings are governed by S. 83 of the Civil Procedure Act which provides that:

“83 Revisions

The high court may call for the record of any case which has been determined by this Act by any Magistrate’s Court, and if that court appears to have -

a) exercised jurisdiction not vested in it in law.

b) failed to exercise 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 may make such order in it as it thinks fit. -----”

From the wording of the above law, the proceedings for revision are concerned with jurisdiction i. e the none exercise or illegal and irregular exercise of the same. Only proceedings before a Magistrate’s

court are amenable to revision. I therefore agree with the submission by Mr. Nuwagaba that this court has no jurisdiction to revise proceedings before the Registrar of the high court. I will therefore not concern myself with the execution proceedings conducted in the execution and bailiff's decision of the high court.

Regarding the Decree complained of, it was drafted as follows:

DECREE

“This suit coming this 20th day of June 2013 before her worship Nambayo Esther Chief Magistrate in the presence of counsel for the plaintiff.

It is HEREBY ORDERED that:

- 1. The plaintiff properly purchased land comprised in Kyadondo block 250, plot 18 land at Bbunga.***
- 2. The defendant pays to the plaintiff the equivalent in shillings the current market value for the disputed land.***
- 3. The defendant pays general damages of 10million for breach of contract.***
- 4. The defendant pays costs of the suit.***

Dated at Kampala this 7th day of October 2013.

ESTHER NAMBAYO
Chief Magistrate.”

I agree with Mr. Segona that the order made in the second paragraph of the Decree, was irregular and illegal in as far as the learned Chief Magistrate did not specify the value of money to be paid by the judgment debtor as value for the suit land. The learned Chief Magistrate had the duty to spell out in the Decree how much the applicant had to pay to the respondent as required under S. 2 (c) of the Civil Procedure Act.

Section 2(c) provides that:

“ ‘decree’ means the formal expression of an adjudication which so far as regards the court expressing it, conclusively determines the rights of the parties with regard to any of the matters in controversy in the suit and may be either preliminary or final.....”

Without a direction from court, what the respondent did was to get a valuer who gave the value to be paid by the applicant as 90.000.000=. This irregularity rendered the Decree a nullity. It was an illegality for a valuation to be made outside the court proceedings because such valuation which came later was not part of the proceedings before the trial Chief Magistrate. It offended the rules of natural justice and evidence. The valuation report ought to have been ordered for before the conclusion of the case which could have enabled the adverse party to evaluate it, test its veracity and authenticity through testing its contents as well as competence of the person who presented it.

This process was important because it would guide the trial court to establish if it had jurisdiction to try the suit in the first place as permitted under S. 207 (1)(a) of the Magistrates Courts' Act.

In any suit where it is impossible to estimate the subject matter at a money value in which by reason of any finding or order of the court, a declaration of ownership of any money or property made, no Decree shall be issued for an amount on the claim exceeding the pecuniary limits of the ordinary jurisdiction of the court passing the Decree. The instant suit is one where it was impossible to determine the value of the subject matter.

Consequently, I will find that by the learned Magistrate granting an order to pay an unspecified amount of money after failing to ascertain the value of the land in issue, she failed to exercise jurisdiction vested in her and also exercised it illegally and with injustice to the applicant. The Decree in Civil Suit 357 of 2009 is hereby revised and set aside.

Under S. 83 this court is empowered to make such order in the suit as it thinks fit. It is my considered view that this suit be remitted back to the Chief Magistrate's Court for a fresh trial before any other Magistrate.

The applicant shall get the costs of this application.

Stephen Musota

J U D G E

28.08.2014