

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

REVISION CAUSE NO. 012 OF 2012
(Arising out of Jinja Misc. Application No. 008 of 2012)
(Arising from Jinja Civil Suit No. 317 of 2009)

MUGOYA JULIUS CEASER ::::::::::::::::::::
APPLICANT

VERSUS

1. KYANGWA CHRISTINE
2. BAMEKA GEORGE ::::::::::::::::::::
RESPONDENT

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

RULING

This Application is brought under Sections 83 and 98 of the Civil Procedure Act and order 52 rr. 1, 2 and 3 of the CPR and also Section 33 of the Judicature Act.

It seeks orders:

- (a) That the Chief Magistrate's Orders in the head suit entering Judgment and dismissing the 3rd Party Cause No. 8/2012 be revised and set aside.

(b) That Civil Suit No. 317/2009 and 3rd Party Cause No. 008 of 2012 be reinstated and heard on their merits.

The application is premised on the grounds that:

1. The trial magistrate acted with **material irregularity** in the exercise of his jurisdiction when he summarily entered Judgment against the Applicant under Civil Suit No. 317 of 2009 purportedly on admission without according him opportunity to be heard on the same.
2. The trial magistrate acted with material irregularity in the exercise of his jurisdiction when he summarily dismissed the 3rd Party Cause No. 8/2012 without subjecting it to a formal trial on its merits.
3. The trial magistrate ignored the rules of natural justice by denying the Applicant a chance to be heard.
4. The trial magistrate exercised his jurisdiction illegally and with material irregularity when he summarily ordered the Applicant to pay to the 1st Respondent Shs.9,000,000/= plus costs without formal proof or trial on the merits of the claim.

These grounds are generally repeated in the affidavit in support of the Application. The said affidavit therefore adds no value to the Application.

Section 83 CPA gives this Court powers to call for the record of any case that has been determined by a magistrate's Court.

If it appears that the said Court has contravened any or all of paragraphs **(a) - (c) of the Section** the High Court may revise the case and make such order as it thinks fit.

Paragraph (d) thereof requires that the parties must be given opportunity to be heard.

The record shows that the Respondents were served through their previous Lawyers who eventually indicated that they were not representing the Respondents.

Service was ordered to be effected by substituted service which was done as per the affidavit of service dated 25/8/2014.

The Respondents neither filed a reply to the Application, nor did they appear for the hearing of the Application.

The Court accordingly exercised its discretion under **Section 98 CPA** and **Order 9 r. 11 (2) CPR** and proceeded to hear the Application.

The head suit in the lower Court was a Summary Suit based on a claim of a liquidated sum of Shs.9,000,000/=.

The Applicant successfully applied for leave to defend the suit and consequently filed a written statement of defence.

A perusal of the said written statement of defence shows that the Applicant/who was the Defendant denied the Plaintiff/Respondent's claims in their totality and instead cited a 3rd party as being the one liable. He then went ahead to apply for and was granted a 3rd Party Notice against the second Respondent.

The contested orders where Judgment was entered against the Defendant occurred on 17/5/2012. On that day, Counsel for the Plaintiff Mr. Mangeni and Mr. Osillo for the Defendant were both in Court. Both parties including the 3rd party were also present. The record shows that Mr. Mangeni (for the Plaintiff) addressed Court as follows:

Mangeni: *"The Defendant has admitted the claim. I pray for Judgment under Order 13 CPR with costs. The 3rd party is in Court to contest the Notice".*

Third Party (in response): *"I am not aware of the money the Defendant is talking about. I am ready to contest it."*

Defendant: *“I will adduce evidence to prove that I gave you the money”.*

Court: *“Judgment will entered against the Defendant in reliefs sought. The 3rd Party Notice proceedings fixed for 22/6/2012 at 9.00am.”*

From the above, it is not clear on what basis the trial magistrate decided to enter Judgment on admission under Order 13 CPR as:

- (a) The written statement denies liability.
- (b) Counsel Mangeni never referred to any specific admission either in the pleadings, by letter or even verbal admissions in the course of the proceedings.
- (c) The Defendant was not even asked by the magistrate whether it was true that he admitted the claim.

On 22/6/2012, both parties to the head suit and the 3rd party were again before the trial magistrate. The 3rd party made a submission denying liability as claimed by the Defendant and that he had never had any financial dealings with the Defendant at any time.

The Defendant replied that the 3rd party owed him Shs. 9 million and he is the one who referred him to the Plaintiff asking her to pay him (the Defendant) on the 3rd party's behalf. That the Plaintiff should claim for his money from the 3rd party.

The trial magistrate in a Ruling that in my view was arbitrary made a decision dismissing the 3rd party proceedings and insisted that the Defendant was liable to the Plaintiff in the head suit.

At the hearing of the instant Application, Counsel for the Applicant submitted that the trial magistrate summarily entered Judgment on admissions without complying with the requirements of Order 13 CPR. The case of **Eriaza Magala Vrs. Kefa Sempangi (1994) KALR** was cited.

Therein it was held that an admission can be by pleading or letter. The said admission must be unequivocal. In **Makerere University Vrs. Rajab Kagoro CA 78/2006**, Mpagi Bahigaine J.A as she then was held in her lead Judgment that an admission has to be clear and unambiguous, and must be admission of the claim of the Plaintiffs.

I have considered the above authorities and the circumstances of this case.

The proceedings which I reproduced do not indicate in any manner whatsoever that there was an admission or that any particular aspect of the claim was admitted by the Defendant.

I agree with the submission that the magistrate exercised his jurisdiction with material irregularity.

In respect of the 3rd party proceedings, it has been submitted that dismissal of the 3rd party claim is not one of the options provided for by Order 1 r.18 CPR. I do not agree with that submission.

Order 1 rule 18 CPR provides that the **Court must be satisfied that there is a proper question to be tried as to the liability of the 3rd party.**

It follows therefore that once the Court is not **satisfied** as above it may not accept the claim for indemnity as against the 3rd party.

In the instant case, much as the magistrate was not satisfied as indicated in his ruling, there is no indication as to how he arrived at the decision that the Defendant had failed to establish his claim against the 3rd party. No reference was made to the grounds on which the Defendant relied to claim indemnity against the 3rd party.

The magistrate should have required evidence from the Defendant to prove the claim that the 3rd party was liable to the Plaintiff and that indeed he (the Defendant) was owed Shs.9 million by the 3rd party. He made a summary decision, not based on any evidence or law.

I find that in this, the magistrate acted with material irregularity in the exercise of his jurisdiction.

It is my finding that the Applicant has made out a case under Section 83 (c) of the CPA and that the decisions of the trial Court should be revised.

The Application is allowed and the following orders are made:

1. The orders by the trial Court entering Judgment on admission against the defendant are set aside.
2. The orders dismissing the 3rd party proceedings are set aside.
3. The file of the lower Court is to be sent back to the Chief Magistrate's Court for proper trial.
4. The Respondent is to meet the costs of these proceedings.

Godfrey Namundi

Judge

10/12/2014

10/12/2014:

Applicant present

Respondent absent

Court: Ruling delivered in Court.

Godfrey Namundi

Judge

10/12/2014