

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT NAKAWA
REVISION CAUSE NO. 14 OF 2013
Arising from Misc. Application No. 28 of 2013 AT MPIGI
Arising from Civil Suit No. 64 of 2010 AT MUBENDE

SEBUGWAWO HENRY:.....
APPLICANT

VERSUS

TROPICAL MICRO ENTERPRENUERS
SAVINGS & CREDIT SOCIETY LTD:.....
RESPONDENT

BEFORE: HON. LADY JUSTICE ELIZABETH IBANDA NAHAMYA.

RULING

Introduction

The Applicant, through his Lawyers M/s Waluku, Mooli & Co. Advocates brought this Application against the Respondent by Notice of Motion under Sections 14, 17, 33 and 39 of the Judicature Act, Cap.13; Sections 83, 90 and 98 of the Civil Procedure Act, Cap. 71 and Order 52 rules 1 and 3 and Order 10 Rule 23 of the Civil Procedure Rules, S.I 71-1 seeking the following Orders;

- a. The Court calls for the record of proceedings in the Chief Magistrate’s Court of Mubende Civil suit No. 64 of 2010 and Mpigi Miscellaneous Application No. 028 of 2013 for purposes of Revision.

- b. The Court revises the Lower Court’s orders in Mubende Civil Suit No. 64 of 2010 and Mpigi Miscellaneous Application No. 028 of 2013.

- c. The Court makes an Order and a Declaration that the Ex parte Judgment, Decree and Execution proceedings are materially irregular/illegal which amounts to material injustice.
- d. That the Lower Court acted in the exercise of its jurisdiction judiciously, illegally and with material irregularities thereby occasioning a miscarriage and an abuse of justice.
- e. That the Judgment and the Decree be set aside and Execution thereof be stayed and/stopped.

This Application is supported by an Affidavit deponed by the Applicant, Mr. Ssebugwawo Henry dated 1st of August, 2013. The said Affidavit contains detailed grounds of this Application which are;

1. That the Applicant was the Defendant in Civil Suit no 64 of 2010 of the Chief Magistrates' Court in Mubende and Mpigi Miscellaneous Application No. 28 of 2013 where the Respondent, unknown to the Applicant, had sued the Applicant for recovery of **UGX 5,000,000 (Five Million Uganda Shillings Only)**.
2. That the Respondent alleged in both the Plaint and his evidence that he had served the Applicant with a copy of the Summons and the Plaint whereas not.
3. That the Trial Magistrate granted the Respondent an *Exparte* Judgment yet the Applicant had not been served with Summons.
4. That the Applicant had applied to set aside the said *Exparte* Judgment and review the same but both Applications were dismissed by the Trial Magistrate.
5. That the Trial Magistrate authorized the Execution of an Order under the Civil Suit No. 63 of 2010 to which the Applicant was not a party instead of Civil Suit No. 64 of 2010 which was the main suit hence

material irregularity occasioning miscarriage of justice to the Applicant.

6. That when the Applicant discovered new evidence in respect of his case, he applied for Review but the Trial Magistrate dismissed it as per **Annexures “C”, “D” and “E.”**

7. That the Trial Magistrate was directed by the Inspector of Courts not to go ahead with the Order of Execution but she ignored the said Orders and went ahead to order the same as per **Annexures “F” and “G”.**

8. That the Applicant’s house and Kibanja are the subject of Execution by way of Attachment and Sale originating from the material irregularities of the Trial Magistrate of Mubende.

The Applicant made a supplementary Affidavit in support of the Notice of Motion on the 14th October 2013. The said Supplementary Affidavit contains further grounds of this Application which are as follows;

1. That the Respondent sued the Applicant *vide* Civil Suit No. 064 of 2010 for recovery of a liquidated amount of UGX 9,720,000 (Nine Million, Seven Hundred and Twenty Thousand Uganda Shillings Only) as per Annexures “A”, “B” and “C.”

2. That Counsel for the Respondent filed the Complaint on the 28th November, 2010 and Summons issued by Court on the same day and the Decree being sought to be executed was given on the 1st of December 2010.

3. That upon a careful perusal by the Applicant, it was discovered that the said date 28th November 2010, which the Respondent purports to have filed the Complaint and Summons was a Sunday.

4. That for the above mentioned reasons, the Applicant has applied for Revision and Stay of Execution against the Respondent for the illegal Decree before this Honourable Court.
5. That it would be in the interest of justice if Court grants an Order for stay of execution pending the Revision proceedings.

The Respondents through their Lawyers M/s Lukwago & Co. Advocates filed an Affidavit in reply to this Application deposed by Mr. Swaleh Sendawula, the Manager of the Respondent Company. In that Affidavit in reply, the Respondent vehemently opposed this Application. In rebuttal, the Applicant filed an Affidavit in rejoinder to this Application; In effect, therefore, the matter is contentious as between the parties.

Facts of this Application

The Respondents filed a Civil suit No. 064 of 2010, under Order 36, Rules 1, 2 and 3 of the Civil Procedure Rules S.I 71-1 in a Summary Suit against the Applicant for recovery of UGX 9,720,000 (Nine Million, Seven Hundred and Twenty Thousand Uganda Shillings Only) as a loan which the Applicant had obtained from the Respondent Company to which he had failed to pay. An *Ex parte* Judgment was entered in favour of the Respondent on 13th December 2010 on grounds that the Applicant was served with Summons to apply for Leave to appear and defend the suit which he did not do.

Aggrieved by the decision of the Trial Magistrate issuing the *Ex parte* Judgment against him, the Applicant filed an Application for Review of the *Ex parte* Judgment vide **Miscellaneous Application No. 004 of 2010** on grounds that he was not served with Court. Summons. The Application was dismissed with costs to the Respondent. Subsequently, the Applicant filed another **Miscellaneous Application No. 041 of 2012** seeking an Order for setting aside the Decree and Execution of the Orders issued in the main suit pending the disposal of this Application, an Order dismissing

the main suit, Civil Suit No. 64 of 2010 for having been instituted by a non-judicial person who is not a legal person; an Order that unconditional Leave be granted to the Applicant to appear and defend the suit out of time and an Order that the Cost of the Application be provided for. I have noted that **Miscellaneous Application No. 041 of 2012** is still pending before this Honourable Court.

An Affidavit deponed by Mr. Kirigoola Benon is to the effect that he served the Applicant with copies of a Plaint together with Summons on the 28th October 2010, who acknowledged receipt of the same by endorsing the original copies. It is worth noting that on date 28th October fell on a Thursday and not a Sunday as alleged by the Applicant. I have thoroughly perused the Summons which were served to the Applicant and their status show that the Applicant received the Summons on the 28th of October, 2010.

According to Mr Kirigoola Benon's, Affidavit of Service, he had proceeded to the Applicant's place of residence at around 4:39 PM with the help of the Respondent's Manager who was well known to the Applicant and served him with the copies of the Plaint and Summons. It was Mr Kirigoola's averment that the Applicant acknowledged the same by appending his signature on the copy of Summons which is on Court record marked as **Annexure "D"** on page 25 (**See the Respondents Annexures to the Affidavit in Reply on the Application for Revision**).

Submissions of the Applicant

Counsel for the Applicant submitted on four (4) grounds. He argued ground one independently, grounds two and three concurrently while the fourth ground was handled independently.

Issue one

Whether the proceedings of the Lower Court were called for.

Counsel for the Applicant, Mr. Waluku Ronny Wataka alluded to the fact that issue one had been overtaken by events since this Honourable Court had called for the record of proceedings from the Lower Court.

Issues two and three

Whether the Respondent had the Legal Capacity to institute legal proceedings against the Applicant/ whether the Chief Magistrates Court lacked jurisdiction to entertain the matter without first referring it to an Arbitrator in accordance with Section 73 of the Cooperative Societies Act and whether this amounted to procedural illegality.

Counsel for the Applicant, Mr. Waluku Ronny Wataka, contended that the Respondent as a non-legal person had no capacity to institute proceedings. It was Learned Counsel Wataka's contention that based upon a search in the Companies' Registries and the Registrar of Cooperatives, the Respondent was non-existent and merely holding out. (**See Annexures "C" "D" and "E"**). Mr. Wataka submitted that the Respondent refers to itself as a Limited Company which is non-existent and asked court to declare the proceedings of the Lower Court a nullity for having no jurisdiction as it is a non-existent entity.

Counsel Wataka Ronny relied on the case of ***Forthall Bakery Supply Co. vs. Frederick Muigai Wongoe (1959) E.A 474***, where Court held that the Plaintiffs could not be recognized as having any legal existence and were incapable of maintaining an action, because the firm was not registered under the Registration of Business Names Registration. Therefore, Court would not allow the action to proceed. Counsel Wataka also relied on the Criminal Case of ***Uganda vs. Muwonge Andrew and 5 others, Criminal Revision No. 10 of 2009***, where Court held that a Court of law couldn't sanction what is illegal and an illegality once brought to the attention of the Court overrules all questions of pleadings including admissions made there under. (**See also *Makula International Ltd vs. His Eminence Cardinal Nsubuga & Anor [1982] HCB 11***).

In reply, Counsel Katumba Chrisestom, for the Respondent, submitted that the Applicant did not bring to the attention of the Chief Magistrate the fact that the Respondent lacked the legal capacity to institute Civil Suit No. 64 of 2010 did not form part and parcel of the Chief Magistrates Court's record. It was Counsel Katumba's contention that the Chief Magistrate is unfairly blamed for having acted illegally over a matter that was not brought to his attention. Counsel Katumba further argues that the purpose of revision is to call up the file of the Lower Court by the High Court for purposes of establishing the legality and propriety of proceedings before the Lower Court.

Counsel Katumba clarified that the High Court is not interested in establishing whether the Lower Court jurisdictionally or legally considered material before making a final decision which was influenced by bias. Counsel for the Respondent pointed out that the issue of lack of legal capacity to institute legal proceedings against the Applicant was brought out for the first time during this Application. He contended that it would be grossly unfair for the Applicant to condemn the Magistrates Court for acting illegally over a matter that was never brought to its attention.

It was Counsel Katumba's submission that it is a well-established legal principle that an error or a mistake of Counsel should not be necessarily visited on his client. Counsel Katumba relied on the case of **Julius Rwabinumi vs. Hope Bahinbisori SCCA No. 14 of 2009**, where Court held that it would be a real injustice to deny an Applicant to pursue his rights because of the blunder of his Lawyers when it is well settled that an error of Counsel should not be necessarily visited on his client. **(See also Yowasi Kabiguruka vs. Hope Byarufa C.A.C.A No. 18 of 2008).**

Counsel for the Respondent Submitted that the Respondent gave instructions to their Lawyer to file the main suit *vide* **Civil Suit No. 64 of 2010**. Counsel referred this Honourable Court to the record which has the loan application form which was filled and signed by the Applicant and

attached to the Plaintiff marked as Annexure "A". This bears the name of the Respondent as Tropical Micro Entrepreneurs Cooperative Savings and Credit Society Limited. It was therefore Counsel Katumba's contention that the Applicant cannot deny that he does not know the Respondent after being released from Civil Prison on 22nd December. However, contrary to the payment proposal made, the Applicant inconsistently started depositing instalments on the Respondent's account marked as **Annexures "M", "N" and "O."**

Counsel Katumba Chrisestom further submitted that the Applicant's search in the Companies Registry in respect of Tropical Micro Entrepreneurs Savings and Credit Society Limited was a goose search in futility since the Applicant knew the Respondent's proper name and description having applied for a loan. I make reference to **Annexure "E"** of the Affidavit of the Applicant in support of this Application and indeed the Tropical Micro Entrepreneurs Savings and Credit Society Limited, which is duly registered by the Registrar of Cooperatives and Credit Society under Registration No. 7182/RCS having been registered on the 31st August, 2006. The Applicant is a member of Tropical Micro Entrepreneurs Savings and Credit Society Limited wherefrom he applied and was advanced with the loan.

Counsel Katumba submitted that reference to the Respondent, as a Limited Liability Company had no consequence to the matter for reasons that it did not in any way affect the Magistrate Court's exercise of jurisdiction vested in it. He distinguished this case from the case of **Fort hall Bakery Supply Co. vs. Frederick Muigai Wongoe, (supra)** which Counsel Wataka for the Applicant had cited. Mr Katumba stated that in the above case, the Association was not registered, but in the present case before Court, the Respondent Company is registered and well known to the Applicant. Counsel Katumba submitted that failure to include the word "Cooperative" was a mere mis-description of the name by Counsel for the Respondent Company, who filed the Plaintiff in the Chief Magistrate's Court.

Resolution

I have listened carefully to the submissions of both Counsels on the issue of the Respondent's capacity to sue. I have no doubt that mistakes can be made by humans particularly in this computerized era. Upon perusal of the Court file, some of the Documents bear the Respondent's name as Tropical Micro Entrepreneurs Savings and Credit Society Limited instead of Tropical Micro Entrepreneurs Cooperative Savings and Credit Society Limited. It is my considered view that although, the name may be different because of the typos, it does not cause an injustice to the Applicant because it is evident that he acknowledged having obtained a loan. This issue of the Respondent being a different company from the one which loaned him the money is intended to frustrate the repayment of the loan advanced to him.

Whether the Chief Magistrates Court lacked jurisdiction to entertain the matter without first referring it to an Arbitrator in accordance with Section 73 of the Cooperative Societies Act amounted to procedural illegality.

Counsel for the Applicant, Mr. Wataka Ronny argues that the Respondent has no defence that it was a mistake in the title of the parties forgetting that the body still refers to the Respondent as a Limited Liability Company Ltd. Counsel Wataka Ronny further argues that even if the Court was to find the Respondent to be a Legal Entity, it would be an illegality under the Co-operative Societies Act, Cap 112 under Section 11(2) and 21 that the word "Co-operative" shall be used in Cooperative Societies which was deliberately avoided by the Respondent.

It was Counsel Wataka's argument that Section 73 of the Cooperative Societies Act Cap 112 lays down the procedure for a dispute settlement to be referred to an Arbitrator for a decision. Mr Wataka argued that matters pertaining issues of Cooperatives only go to Court as a second Appeal as per Section 75 of the Cooperative Societies Act and not in its original

state. Counsel for the Applicant submitted that if this procedure is flouted as it has been in this case, it is an illegality which goes to the root of the exercise of jurisdiction by the Trial Magistrate she should not have been entertained such proceedings.

It was Counsel Wataka's resolution that failure to adhere to statutory /legal provisions in respect of procedural issues renders the entire process a nullity. Counsel Wataka asked Court to declare the proceedings of the Lower Court void since the Trial Magistrate did entertain a suit by way of a Summary Complaint which she did not have jurisdiction to do so. Counsel Waluku Ronny Wataka submitted that failure to adhere to Section 73 of the Cooperative Societies Act was a procedural illegality which should not be shielded by this Honourable Court. He prayed that this Court be pleased to declare the entire trial an irregularity and void for want of jurisdiction by the Lower Court.

In response to this issue, Counsel for the Respondent, Mr. Katumba Chrisestom submitted that the existence of an alternative remedy was not at all brought to the attention of the Chief Magistrate's Court and therefore, the Trial Magistrate is unfairly being attacked over matters that were not brought to her attention. Consequently, she did not make any finding. Counsel Katumba submitted that pursuant to Section 73(1) and (2) of the Cooperative Societies Act, the use of the word, 'Shall' is not mandatory where the provision of the Statute itself provides for a sanction for non-compliance with the provision.

It was therefore Counsel Katumba's wise reasoning that the Trial Magistrate was not duty bound to refer the matter to arbitration. He challenged Counsel for the Applicant, Mr. Wataka Ronny for having not availed this Honourable Court with any decided authority to the effect that Section 73 of the Cooperative Societies Act ousts the jurisdiction of Court and non-compliance thereof makes the proceedings a nullity.

In support of his argument, Counsel Katumba relied on the case of *Edward Byaruhanga vs. Daniel Kiwalabye Musoke C.A No. 2 of 1998 (unreported)* which was quoted with approval in the case of *Lubyayi Iddi Kisiki vs. Kagimu Maurice Peter, Election Petition Appeal No.6 of 2002*, Court held that the use of the word 'shall' in the section was directory and not mandatory as to hold otherwise would lead to consequences which were not intended by Parliament. (***See also Sitenda Sebalu Sam K Njuba and Electoral Commission, Election Petition Appeal No. 26 of 2007 and Mukasa Anthony Harris vs. Dr. Bayiga Michael Phillip Lulume, Supreme Court Election Petition Appeal No. 18 of 2006***).

Counsel Katumba finally, submitted that the existence of an alternative remedy is not a bar to Court's exercise of its discretion of powers. He relied on the case of ***National Union of Clinical, Commercial and Technical Employee vs. National Insurance Corporation , Supreme Court Civil Appeal No. 17 of 1993***, where it was held that;

“the question whether a Court should invoke its inherent powers in a given case is a matter of Court's discretion to be exercised judicially and the availability of an alternative remedy or specific provision is only one of the factors to be taken into consideration but does not limit or remove the Court's jurisdiction”

Counsel Katumba contended that if at all the Applicant was aggrieved by the forum that was used, he would have filed an Appeal in the Chief Magistrates Court under Section 75 of the Cooperative Societies Act. He prayed Court to find that the Magistrate had jurisdiction to entertain the matter and exercised the said jurisdiction judicially.

Whether the Complaint was signed by the Chief Magistrate on 28th November 2010

Counsel Wataka, for the Applicant, submitted that the Trial Magistrate wrongly exercised her jurisdiction to deny the Applicant leave especially when it was brought to her attention that the Applicant was never served with a Complaint. Mr. Wataka Ronny further submitted that the purported

Plaint is a forgery since it was signed by the Magistrate on the 28th November 2010 which actually happened to be a Sunday. He pointed out that the two Plaints on the file are distinct and that this suspicion cannot be left un-attended to as it will amount to abuse of Court process occasioning a miscarriage of justice to the Applicant.

Counsel Katumba opposed the allegation by the Applicant that the Chief Magistrate had signed the Plaint. Counsel Katumba submitted that the Magistrate signed the Summons to file a Defence on the 28th October, 2010 as indicated in the Summons and an attached Affidavit of Service of the Summons sworn by Swaleh Sendawula marked as Annexure "D". Counsel for the Respondent further argues that the Decree was signed on 1st December 2010 after a period of over one month from the date of service of the Summons which were effected on the 28th Day of October, 2010.

In his closing submission on this issue, Mr. Katumba submitted that mere suspicions by the Applicant that the Plaint is suspect to forgery are false. He added that mere suspicion is not a ground for Revision.

Having perused the Court file in this matter, Counsel for the Applicant contends that the Trial Magistrate wrongly exercised her jurisdiction to deny the Applicant leave especially when it was brought to her attention that the Applicant was never served with a Plaint. I have not seen any application for Leave to appear and defend the suit in the Magistrates Court. What is on file is *Miscellaneous Application No 041 of 2012* which the Applicant filed in the Chief Magistrates Court in Mubende seeking to set aside the Decree and Execution and grant of leave to appear and defend the suit which has never been fixed for hearing to date.

At this stage, it would be prudent to analyse the Plaint and its attachment because it appears that there is a great discrepancy in the documents. Looking at Annexure "A" attached to the Supplementary Affidavit in

support of the Notice of Motion sworn by Sebugwawo Henry, it clearly shows that the Summons in Summary Suit on Plaintiff was signed on 28/11/2010 but was not received by the Applicant. (emphasis added) Meanwhile, Annexure "B" attached to the Supplementary Affidavit in support of the Notice of Motion sworn by Sebugwawo Henry shows that the Plaintiff was signed on 28/11/2010 the day it was lodged in the Court Registry. There is no summary of evidence attached to the Plaintiff. The signatures appear to be different on the two documents purported to have been signed by the Chief Magistrate.

On the other side, The Annexure "A" attached to the Affidavit in Reply in support of the Notice of Motion sworn by Swaleh Sendawula shows that the Plaintiff was not by the Chief Magistrate but was only signed by the Counsel for the Plaintiff on 28th October, 2010 which was on a Thursday. The Summons attached to Affidavit of Service sworn by Mr. Kirigoola Benon dated 9th November 2010 and marked as Annexure "D" shows that the Applicant received the summons in Summary Plaintiff by appending his signature on the same.

I agree with Counsel for the Applicant Mr. Wataka that these documents show a lot of discrepancies which cannot go un-noticed. At this stage, it is uncertain to me which of the documents on the Court record are forged. Hence, without proper documentation, I am unable to determine the veracity and authenticity of the documents on file.

Whether indicating the Civil Suit Number in the Decree as No. 063 of 2010 instead of Civil Suit 064 of 2010 as indicated in the Plaintiff amounted to unlawful exercise of jurisdiction.

It was also Counsel Waluku's submission that the Court Number of the registered case in the Plaintiff is distinct from the number on the Decree and the Warrant of attachment. He submitted that a number to a case can not be distinctive and independent from each other. Counsel Wataka

contended that the main case was registered as *Civil Suit No 14 of 2010* while the Decree and the Warrant of Attachment were registered as *Civil Suit No. 063 of 2010*. According to Counsel for the Applicant, Mr. Waluku Ronny, these are two distinct cases which were intended by the Respondent to confuse the Court and unlawfully attach the property of the Applicant. Counsel submitted that it was unlawful exercise of jurisdiction by the Trial Magistrate.

Counsel further contended that the Plaint was signed by Court on 28th November 2010 while the Decree was issued on 1st December 2010, two (2) days after the issuance of the Plaint instead of the 10 days which rendered the Decree premature. He relied on the case of *CK Mutemba T/A Mutemba & Company vs. Jumanne Yanulinga T/A Citizen Club*[1968] EA 643 Court held that that the original *Exparte* Judgment for the Plaintiff was premature since the Defendants' time within which to file his defence had not elapsed.

In reply, Counsel Katumba for the Respondent submitted that the wrong numbering of the suit as *Civil Suit No. 63 of 2010* was a typing error in the Decree which did not amount to material irregularity and did not occasion any miscarriage of justice to the Applicant.

Resolution

Upon careful perusal of the Decree, I have noted that it is numbered as Civil Suit No. 063 of 2010 but the parties and the amount claimed of UGX 9,720,000 (Nine Million, Seven Hundred and Twenty Thousand Uganda Shillings Only) are the same as the ones in *Civil Suit No. 064 of 2010*. Moreover, the Warrant of Attachment and Sale refers to the Applicant as the Judgment Debtor in *Civil Suit No. 064 of 2010* with an amount of Having noted the difference in numbering, the particulars of the case remain the same. Not only did the Respondent make an error in the numbering, but also the Applicant made the same mistake. I do not think

the mis- numbering of the Decree amounted to any miscarriage of justice to the Applicant.

Issue 4

Setting aside judgment *ex-debito justitiae*

Counsel for the Applicant submitted that; as already raised in Issues two and three, the Respondent is not a legal entity and even if the same was true, it would bring the question of exercise of jurisdiction by the Lower Court in question by making the Trial Magistrate to have acted without jurisdiction or to have exercised the same wrongfully. Counsel submitted that the Decree was signed in error and the only solution was to remedy the same through a Revision by this Honourable Court, to set aside the Judgment, the Decree and declare the same null and void with costs to the Applicant.

Counsel for the Respondent submitted that the Applicant could not appropriate and reprobate at the same time. Counsel Katumba submitted that when the Applicant was in prison, he was in need of being released whereby he accepted to pay the money owed from him. However, after being released, the Applicant filed this Application to challenge the Decree which he had accepted and from which he had derived benefit. Counsel Katumba relied on the case of ***Seruwagi Kavuma vs. Barclays Bank (U) Ltd M.A 634 OF 2010***; where Court held that it is a well-known principle of equity that one cannot approbate and reprobate all at the same time. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn around to say that it is void for purposes of securing some other advantage. Accordingly, Counsel Katumba, the Applicant accepted the payment proposals after being released from prison but failed to honour his obligation to repay the loan. The Applicant has been filing several Applications in Court to frustrate

execution and to deny the Respondents the fruits of a Decree passed on 1st December 2010.

Counsel Katumba prayed Court to dismiss the Application with costs.

Resolution

I have looked carefully at the record and I find that the Applicant took a loan from Tropical Micro Enterprenuers Cooperative Savings and Credit Society Ltd of UGX. 5,000,000 (Five Million Uganda Shillings Only).I make reference to the letter dated 21/12/2010 from the then Applicant's Lawyers: Kasumba, Kasule & Co. Advocates addressed to the Chief Magistrate, Mubende Court whereby the Applicant proposed to pay the decretal sum in regard to *Civil Suit no 64 of 2010* by paying UGX 2,000,000(Two Million Uganda Shillings Only)every after six months(SeeAnnexures "E", "F" and "G"which are Respondent's documents). The Applicant acknowledged the debt of UGX 5,000,000 (Five Million Uganda Shillings Only) with an interest of UGX 400,000 (Four Hundred Thousand Uganda Shillings only). I also refer to the Applicant's letter dated 6thNovember 2013 to Lukwago & Co Advocates whereby the Applicant admits to owe money to Tropical Micro Entrepreneurs Cooperative Savings and Credit society Ltd of shs UGX 5,400,000(Five Million, Four Hundred Thousand Uganda Shillings Only) and not the Respondent. The Applicant stated that he was willing to settle the said debt.

The Applicant's act of trying to deny his responsibility in repaying the loan is estopped by law pursuant to Section 114 of the Evidence Act Cap. 6. In the case of ***Lisseden v C.A.V Bosch (1940) A.C 412 at 417*** per Lord Maugham who held that:

"...it is settled law that in law, a person is not allowed to take the benefits under an instrument and disclaim the liabilities imposed by the same instrument...it is equally settled law that no person can accept and reject the same instrument."

In addition, the case of **Stanbic Bank Uganda Ltd v Uganda Crocs Ltd [2001-2005] HCB 68**, Court held, inter alia, that:

“...when a person has by his or her declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he nor she nor his or her representatives shall be allowed in any suit or proceedings between himself or herself and that person or his representatives, to deny the truth of that thing...”

In this regard, I agree with the submissions of Counsel for the Respondent that the Applicant cannot accept having taken the loan and at the same time reject its conditions of re-payment which he freely accepted to comply with. It is my opinion that, the Applicant did not come to Court with clean hands as the maxim of equity resonates that *“he who comes to equity comes with clean hands.”* The Applicant has not demonstrated any good will in honouring payment on the loaned monies; equity cannot surely favour the Applicant, as he has not come to Court with clean hands.

The Law

Under S. 83 of the Civil Procedure Act, Cap 71 the High Court may call for the record of any case which has been determined under this Act by any magistrate Court, and if that court appears to have

- a. Exercised a jurisdiction not vested in it in law
- b. Failed to exercise a jurisdiction so vested or
- c. Acted in the 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, but no such power shall be exercised.
- d. Unless, the parties shall first be given an opportunity to be heard;
- e. Where, from lapse of time or other cause, the exercise of that power would have involved serious hardship to any person.”

Counsel for the Applicant submitted that the Trial Magistrate acted illegally and with material irregularity and injustice when she dismissed an

application for Review filed by the Applicant on grounds that the Applicant had not been served with Summons. During the parties submissions in this Application, more grounds for were advanced which I have already cited above.

In the case of ***Mpungu & Sons Ltd V attorney General and Anor. (Civil Appeal No. 17 of 2001) 2006 UGSC 15***, the Supreme Court found as follows:-

"I agree that the Audi AlteramPartem rule is a cardinal rule in our administrative law and should be adhered to. The rule is to the effect that one must hear the other side. It is derived from the principle of natural justice that no man should be condemned unheard"

This is premised on the dictum of the case of ***Makula International Ltd V His Eminence Cardinal Nsubuga &Anr CACA No.4 of 1987*** quoted with approval in the case of Kisugu Quarries vs. The Administrator General SCCA No.10 of 1998, to the effect:

"That a Court of law would not allow an illegality that escaped the eyes of the Trial Court to cause undesirable consequences and that a Court cannot sanction what is illegal and an illegality once brought to the attention of the Court overrides all questions or all matters pertaining thereto."

I further agree with the decision in the case of ***Hitila v Uganda (1969) E.A 219***, the Court of Appeal of Uganda held that in exercising its power of Revision, the High Court could use its wide powers in any proceedings in which it appeared that an error material to the merits of the case or involving a miscarriage of justice had occurred.

In the case of ***Matembe vs. Vamulinga (1968) EA 643; Mustafa J.*** held that:

"It will be observed that the Section applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The Section is not directed against conclusions of the law or fact in which the question of jurisdiction is not involved."

2) that as regards alleged illegality or material irregularity argued by the Applicant, according to the case of **Amir Khan vs. Sheo Bakish Singh (1885) II Cal. 6 I.A 237** a Privy Council case, it is settled that where a Court has jurisdiction to determine a question and it determines that question, it cannot be said that it has acted illegally or with material irregularity because it has come to erroneous decision on a question of fact or even of law”.

Conclusion

From my analysis and evaluation of the Affidavits evidence adduced by both parties and in consideration of the submission by Counsel for the parties, there is no way how this Court can fault the Trial Magistrate on issues complained of by the Applicant. The Trial Magistrate did whatever she did in her ruling within the law.

The Applicant knows that he has a debt to pay but he is just trying to use so many tricks so that he can escape repaying the said loan. Such acts reflect that the Applicant is trying to use the Courts of law to defeat justice which will amount to an injustice not to him but to the Respondent, where he borrowed the money. This Court will not condone such acts. This Court is interested in administering substantive justice as per Article 126(2) (e) of the Constitution of the Republic of Uganda, 1995. When one borrows money, he/she has an obligation to repay the loan and failure to do so, other mechanisms come into play.

Since 2010, the Applicant would have resettled the said loan with the Respondent. The Respondent and the Applicant would have had a payment mechanism which would not have resulted into litigation.

Raising these issues under Revision in this Court amounts to an afterthought which will not be entertained. Counsel for the Applicant should have pursued this issue through an Appeal and not Revision.

CONCLUSION

For the Foregoing reasons, the Applicant failed to prove to this Court that the Orders made by the Trial Magistrate occasioned miscarriage of justice against him. The Applicant must obey the said Decree and orders that were issued by the Trial Court pending the hearing of this Application. In the matter before this Court, the Trial Magistrate acted within his jurisdiction is deciding Misc. Application No. 028 of 2013.

In the result and for the reasons in this ruling, this Revision Application No. 14 of 2013 has no merit. It is accordingly dismissed with costs to the Respondents.

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HON. LADY JUSTICE ELIZABETH IBANDA NAHAMYA
JUDGE

27TH FEBRUARY, 2014.