THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

CIVIL REVISION NO.003 OF 2010

(Arising from Misc Application 111 of 2010)

(Arising from Mengo Civil Suit No. 241 of 2010)

CISSY NANONO ::APPLICANT

VERSUS

MUSIMAMI RAMANTHAN:::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

RULING

The applicants Cissy Nanono, Muwamba Wilson and C & M Millers & Suppliers brought this application by way of Notice of Motion for Revision. The orders sought in Revision are that:-

a) The orders issued by the Mengo court in ***Misc. Application No.111 of 2010 and Civil Suit 241 of 2010*** be revised and set aside.
b) ***Civil Suit No.241*** at Mengo be heard on its merits.
c) Costs of this application be provided for.

The applicants are represented by M/s. Luzige – Kamya, Kavuma and company advocates while the respondents are represented by M/s. Bwengye & Ndyomugabe & Co. Advocates. According to the grounds of the application as contained in the supporting affidavit of Cissy Nanono; the applicants complained that:-

1. The applicants were not given a chance to be heard,
2. The applicants were forced to sign a consent.
3. The applicants were ordered to pay exorbitant costs before commencement of the case.
4. The applicants were not served with court documents.

According to the applicant, the respondent's filed *Civil Suit No. 241 of 2010* seeking UGX 20.000.000= against the three applicants on 4th February, 2010. On 5th February 2010, the respondent filed *Misc. Application No.111 of 2010* to arrest the applicants before judgment. On 5th February, 2010, the Trial Magistrate issued a warrant of arrest before judgment ordering the respondent to pay shs 20.000.000= with interest of 10% plus costs of 6.500.000= as costs of the suit. That on the same day a committal warrant was signed to send the applicants to jail. On the same date, the applicants were taken to the Trial Magistrate where they found a handwritten consent. The applicants paid UGX 3.000.000= which was taken by the respondent's advocates and a further sum of 700,000= paid and taken by the bailiffs who did not acknowledge receipt of the same yet the applicants were mere directors of the 3rd applicant's company which entered into the transaction with the respondent. That the 3rd applicant is a limited liability company which had been paying its debts of 30.000.000= and by the time the respondent went to court, the debt was standing at 13.600.000=. Further the applicants allege that they were forced to sign cheques to cover 26.500.000= in the names of the respondent's lawyers and another two cheques in the names of Musimami Ramanthan of 32.000.000=.

In his affidavit in reply, the respondent admitted that upon the applicant's admission of liability, the applicants willingly and without coercion paid the respondent UGX3.000.000= as part payment of the claim. He however disputes the contents of paragraphs 4, 5, 6, 8, 9, 10, 11 & 12 of the affidavit which I paraphrased above. The respondent contends that the warrant of arrest was issued against the applicant by court in

Misc. application No.111 0f 2010, on 4th February, 2010 and the applicants were arrested on 5th February, 2010. Further that the applicants willingly consented to the payment of the principle sum plus costs and the consent order was not set aside. The respondent further contends that the applicants transacted with the respondent directly in their personal and individual capacities and they are personally liable under the laws of Uganda.

At the commencement of the hearing of this application, Ms Nabitaka raised a preliminary objection to the jurisdiction of this court to grant the order prayed for in paragraph (b) of the Notice of Motion that ***Mengo Civil Suit 241 of 2010*** be heard on merits because the said Civil Suit was under summary procedure where for the defendant to be heard, he/she must make an application under O. 36, r 3 (1) of the Civil Procedure Rules.

According to Ms Nabitaka, this court cannot grant the order sought when there was no application to appear and defend. She prayed that the prayer be struck off.

In reply, Mr. Kavuma agreed that ***Civil Suit 241of 2010*** was a summary suit but it was determined by the lower court without giving opportunity to the applicants to be heard. He submitted that summons were not served and the applicants were brought to court by way of arrest. That if the file goes back to the lower court, the applicants would file an application to appear and defend.

In rejoinder, Ms Nabitaka submitted that ***Civil Suit 241 0f 2010*** was not heard. That it was Misc. **Application 111 of 2010** which was heard and a consent was entered.

I promised to give a decision on the preliminary objection at the end of the proceedings and I will do it now.

It is not disputed by the parties that ***Civil Suit 241 of 2010*** was a summary suit under ***O.36, r 3 rr 1 of the Civil Procedure Rules*** which provides that:

> ***"upon filing an endorsed plaint and an affidavit as is provided in rule 2 of this order, the court shall cause to be served upon the defendant the summons in Form four of Aappendix A to these rules or in such other form as may be prescribed, and the defendant shall not appear and defend the suit except upon applying for and obtaining leave from court."***

In view of the above provision, I am in agreement with the submission by learned counsel for the respondent that for one to appear and defend a summary suit leave to appear and defend must be applied for under O. 36 r 3 of the Civil Procedure Rules. Leave to appear and defend cannot be granted to the applicants under Revision proceedings when there was no application to appear and defend.

The law governing Revision proceedings is enacted under S.83 of the Civil Procedure Act which provides that:

> "***83 Revision***
>
> ***The high court may call for the record of any case which has been determined under this act by any Magistrates Court, and if that court appears to have -***
>
> ***a) exercised the jurisdiction not vested in it in law;***
> ***b) failed to exercise the 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 make such order in it as it thinks fit:"

From the wording of the above Section, it is apparent that it applies to jurisdiction alone, the irregular exercise or none exercise of it, or illegal assumption of it. The Section is not directed against the conclusions of law or fact in which the question of jurisdiction is not involved. 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 an erroneous decision on a question of fact or even law. *See:* ***Matemba versus Yamulinga [1968] EA 643, 645***.

It is trite law that the High Court has no power under S. 83 of the Civil Procedure Act to revise an intellectually order.

From the facts of this case, I am of the considered view that the learned trial Magistrate had jurisdiction to handle *Civil Suit 241 of 2010* and the applications arising there from. He therefore did not act illegally or with material irregularity. It is not true that committal to civil prison was on the same day the application under consideration was filed. The applicants were produced in court on 5th February 2010 and they were heard and opted to enter a consent agreement in which even cheques were issued and their numbers were listed as well as the amounts of money to be paid.

In default a warrant was to issue. Since court had jurisdiction and determined the case by issuing a warrant which was interlocutory then the proceedings are not amenable to Revision under S.83 of the Civil Procedure Act.

If the applicants wanted to challenge the consent agreement, then they ought to have moved court differently. It was held in the case of **Brookbond Liebig (T) Limited Vs Malia [1975] EA 266** *inter alia* that: -

> ***"The consent judgment may only be set aside for fraud, collusion or for any reason which would enable court to set aside an agreement."***

Such standard of proof cannot be met under Revision proceedings whose scope concerns jurisdiction. I have been unable to find justifiable reasons to revise the lower courts proceedings because the trial Magistrate had jurisdiction and did not act illegally.

If dissatisfied, the applicants ought to have used other avenues to impeach the decisions of the learned trial Magistrate.

This application will stand dismissed with costs.

Stephen Musota

J U D G E

31.03.2014