

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

CIVIL REVISION NO.008 OF 2013

(Arising from Misc Application 1149 of 2013)

(Arising from Mengo Civil Suit No. 2882 of 2010)

HON. HOOD KATURAMU :::::::::::::::::::::::::::::::::::APPLICANT

VERSUS

R. I JAIN ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

RULING

This is an application for Revision brought by way of a Notice of Motion for orders that:

1. The trial Magistrate's Order granting the applicant conditional leave to deposit in court the sum in the consent settlement order of UGX 45,037,445= executed by the parties before the Registrar on 21.06.2013 be revised.
2. The applicant be allowed to unconditionally defend himself in Civil Suit No. 2882 of 2010
3. Costs of the application be provided for.

The application is supported by the affidavit of Sseguya Alias in which he deponed that:

- (i) The applicant was sued by the respondent in Civil Suit No. 2882 jointly and severally as guarantor and a default judgment entered against him.
- (ii) The applicant applied to set aside the said judgment vide Misc Application No. 1149 of 2012.
- (iii) That in the same ruling the Trial Magistrate acted with material irregularity and injustice when he ruled that the applicant be granted conditional leave by depositing shs 45,037.445= contained in the consent order.
- (iv) That once the judgment and decree in CS No. 2882 of 2010 were set aside the “consent settlement order” and other subsequent orders could not remain standing as the same were overtaken by events.
- (v) The order directing the applicant to deposit a sum of UGX 45,037,445= contained in the consent settlement order before defending himself is not only irregular and unjust but an abuse of Court process calculated to defeat the end of justice.
- (vi) The trial magistrate’s ruling that the “consent settlement order” is still in existence is illegal and a frustration of the applicant’s right to defend himself.
- (vii) That in the interest of justice the order directing the applicant to deposit UGX 45.037.445= before defending himself be set aside and the applicant be allowed to unconditionally defend himself.

In the respondent’s affidavit in reply deponed by Ruth Nkalubo, she averred that the judgment and decree in CS 2882 of 2010 was not set aside and the Chief Magistrate acted legally and justly in exercise of

judicial discretion when he granted conditional leave to appear and defend Civil Suit No. 2882 of 2010 by depositing in Court the sum of UGX 45.037.445= as agreed. Therefore the Chief Magistrate did not act illegally or unjustly and the consent settlement order was not set aside and was valid until the sum mentioned was deposited.

The respondents further aver that the Chief Magistrate exercised his discretion judicially to order the deposit of the money and through the consent the applicant no longer had a defence on the merits of the main suit.

I gave respective counsel a schedule to file written submissions but none complied. I will therefore make my decision basing on the pleadings.

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

The High Court may call for the record of any case which has been determined under the Civil Procedure 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,***

then the High Court may revise the case and make such order in it as it thinks fit after parties have been given opportunity of being heard. If the exercise of that power would involve serious hardship to any person then revision may not be done.

I have considered the application before me and the affidavit in reply by the respondent. I have perused the record of the lower court and lower court Ruling. I have noted that the said Ruling is not clearly cauched to bring out the basis for the decision of the learned trial magistrate. I have found it irregular for the Chief Magistrate to have made an omnibus Ruling affecting different applications which sought for different reliefs from court in one Ruling.

This application however is aimed at the part of the decision regarding leave to appear and defend CS 2882 of 2010 and set aside the default judgment entered which application was made under Misc Application 1149 of 2012.

I agree with the view by the applicant in their pleadings that the learned Chief Magistrate having allowed the applicant to appear and defend himself against the respondent's claim, it was irregular and unjust for him to order the applicant to deposit the contested shs 45,037,445= which was contained in "consent settlement order" executed before the acting Registrar High Court Execution Division. By allowing the applicant to defend himself, it meant that the judgment

and decree in CS 2882 of 2010 were set aside otherwise there would be nothing the applicant would defend himself against.

Therefore the order directing the applicant to deposit shs 45.037.445= was irregular and unjust and would defeat the purpose for defence which raises triable issues. By allowing the applicant to defend himself, it meant that the consent settlement order had been overtaken. Leave to appear and defend the suit could not co-exist with the consent settlement order. Whereas O. 36 r 8 of the Civil Procedure Rules provides that leave to defend may be conditional, the conditionality envisaged does not include the equivalent of the disputed claim which had been contained in a consent order which was set aside. The condition may also include giving security or time or mode of trial or otherwise as the court may think fit.

The decision to grant leave or not however has to be made judicially. The court has to exercise discretion keeping in view the basic dictates of justice when determining the question whether or not to permit the defendant to contest the suit and if so whether unconditionally or on terms and what terms.

Unconditional leave should be granted where a defendant satisfies that court that he has a good defence to the claim on its merits and/or if facts disclosed by the defendant indicate that he has a substantial defence to raise with a good chance of success or has good potentiality to dislodge the plaintiff. The defence should raise such question of law or facts which require thorough judicial scrutiny.

On the other hand conditional leave is granted if the defendant discloses such facts as may be deemed sufficient to entitle him to defend, that is to say, although the affidavit does not positively or immediately make it clear that he/she had a defence which discloses facts which lead to the inference that at the trial he/she may be able to establish a defence to the plaintiff's claim, the defendant ought to be granted leave on such conditions as to the time or mode of trial but not as payment into court or furnishing security.

Payment into court can be made a condition if the defence is contradicted by documents.

From my perusal of the proceedings I did not find that the learned Chief Magistrate put into consideration the above parameters before granting conditional leave to the defendant.

Consequently, I will allow this application in the interest of justice. The learned Chief Magistrate's order directing the applicant to deposit shs 45.037.445= before defending himself will be set aside. The applicant is allowed to unconditionally defend himself. Costs shall be in the cause.

Stephen Musota

J U D G E

01.04.2014

