THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE

HCT-04-CV-MA-0080-2014

MBOIZI DISON.....APPLICANT

VERSUS

1. **DAULI DAVID ROBERT**
2. **TAWONEKA LAWRENCE**
3. **MULA ENOCK**
4. **NABYAMA JAMADA**
5. **LINA G. GEMESI.....RESPONDENTS**

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

RULING

This is an application for review of the judgment in CA No. HCT-04-CV-CA-106-2010. It's brought under Section 33 of the Judicature Act, Section 82 and 94 of the Civil Procedure Act and O.46 r.1, 2 and 8 of the Civil Procedure Rules.

The brief facts are that the applicant filed c/s 0007/1979 before the Magistrate's Court at Kibuku where it was heard and determined in the applicant's favour by the Magistrate Grade II. The Respondent appealed the decision to the Chief Magistrate's court at Tororo vide CA 70 of 1983. It was dismissed in 1986. Respondent filed another appeal before the Chief Magistrate's Court of Mbale vide Mbale CA 45/1999 arising from Civil Suit 0007 of 1979- Kibuku.

The Chief Magistrate found in favour of Respondents.

Applicant appealed to the High Court vide –HCT-04-CV-CA-106-2010 which terminated in favour of Respondents. Applicant then filed this application for review. This application is premised on grounds that;

1. The appeal filed before the Chief Magistrate's Court at Mbale was irregular, illegal and abuse of court process.
2. That the Chief Magistrate sitting at Mbale had no jurisdiction to entertain the appeal.
3. That the Chief Magistrate Mbale entertained an appeal without extension of time within which to appeal.
4. That the High Court at Mbale entertained an appeal that arose from an appeal that was an abuse of court process and proceedings that were irregular and illegal.
5. The proceedings in Mbale Chief Magistrate's Court and High Court occasioned prejudice and hardship to the applicant.

I have perused the entire record on which the appeal is premised. I have also examined the pleadings and the submissions.

This is an application for review.

Review is provided for under section 82 of the Civil Procedure Act; providing that;

> "*Any person considering himself/herself aggrieved by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred may apply for review of the judgment to the court which passed the decree or order*."

Also O.46 r. 1 of the Civil Procedure Rules, stipulates that;

> "*Any person considering himself or herself aggrieved by the decree or order from which an appeal is allowed but from which no appeal has been preferred or by a decree or order from which no appeal is hereby allowed and who from the discovery of new and important matter of evidence which after the exercise of due diligence was not within his or her knowledge or could not be produced by him or her at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other mistake or error apparent on the face of the record, or for any other sufficient reason, desire to obtain a review of the decree passed or order made against him or her, may apply for review of judgment to the Court which passed the decree or made the order*."

Discussing the above provisions **Sir Udo Udoma** in *Nakabugo v. Attorney General (1967) (EA) 60*, noted that:

> "*The provision would only apply where there has been a discovery of new and important matter or evidence which after the exercise of due diligence was not within the knowledge or could not be produced by the applicant at the time when the order or decree complained of was made*."

The same was quoted in *Joyce L. Kusulakweguya v. Hader Somaru & Najib Mubiru MSC App. 40 of 2007* by **Hon. J. Kiryabwire** (as he then was) pointing out that;

> " *the purpose of review is to guard against injustice and abuse of court process because the court did not have the correct evidence before at the time of the hearing due to no culpable fault of an aggrieved person*."

I will now apply the above provisions of the law, to the facts before me and resolve them as argued on each ground as follows:-

A. Appeals filed at Mbale Chief Magistrate's Court and Mbale High Court irregular, illegal and abuse of court process.

The facts as enumerated show that Applicant filed CS 0007/70 before Magistrate Grade 2 Court at Kibuku. The Respondent appealed to the Chief Magistrate at Tororo (Appeal 70 of 1983). This appeal was dismissed on 18/September/1986. Respondent again filed Mbale appeal 45 of 1999 before Chief Magistrate which applicant argues was *res judicata*, filed out of time and without leave of court to appeal out of time. The appeal was nonetheless determined in favour of Respondent. Applicant appealed to the High Court Mbale under CA.106/2010 and lost.

Applicants allege that the High Court also entertained the appeal in error since it arose from an illegal appeal.

In their submissions in reply the respondents did not contest the above facts. The respondent concurred with the applicant that the appeal was irregular before the two courts. They referred to Article 126 (2) to argue that though irregularly before court, the matters were nonetheless determined on merit by the courts.

I do find the above reasoning erroneous and faulty. Article 126 (2) of the Constitution was never intended to out seat (do away with) the specific provisions of the law. This application has shown and brought to light three very important facts.

1. That the Respondent fraudulently instituted Mbale Appeal 45/1999 well aware that he had earlier on filed CA 70 of 1983 at Chief Magistrate's Court of Tororo, which was dismissed on 18th September 1986.

   The above appeal was brought in total disregard of the law of procedures which limits appeals and requires specific leave to appeal out of time. The appeal violated the rule as to *res judicata*. It abuses the rules governing the jurisdiction of courts.
2. The High Court in determining HCT Appeal 04-CV-CA-106/2010 did not have the correct evidence before it at the time of the hearing and based itself on an irregular decision before the Chief Magistrate Mbale which had no basis to Civil Suit 007/1979 of Kibuku.
3. The Respondent was not property represented by the Lawyers in the Mbale cases so as to draw the anomalies to the attention of both appellate courts.

From the above observations of fact and admissions by Respondents, this court is in agreement with the arguments raised by the applicant in this application that.

(a) CA 45 of 1999 was *res judicata* as it had already been determined and dismissed by the Chief Magistrate's Court of Tororo in CA 70 of 1982.

(b) CA 45/1999 was improperly before the Chief Magistrate's Court of Mbale at Mbale as the Appellant/Respondents had no right of appeal.

(c) The Chief Magistrate's Court at Mbale had no jurisdiction to determine CA/ 45/1999.

This court agrees with all quoted cases which bring out the points of arguments; especially *Barclays Bank Uganda Ltd v. Jing Hong* and or quoted in *Hon. Pirosantos Eruga v. General Moses Ali and Another Election Petition 1 of 2001*- on *res judicata*.

Baku Raphael Obudra & Anor. V. AG (SCCA 1 of 2005, on jurisdiction and *Athanansias Kivumbi v. Hon Emmanuel Pinto Constitutional Petition 5/1998*.

On the fact that a court cannot confer jurisdiction on itself.

Also M*akula International v. His Emminence Cardinal Nsubuga (CACA No. 4 of 1981)* which hold that;

> "*An illegality once brought to the attention of court cannot be allowed to stand*."

This ground is therefore proved.

B. The Chief Magistrate's Court and High Court sitting at Mbale had no jurisdiction.

In arguments under ground (A) above, it has been showed that the two appellate courts lacked the jurisdiction to hear both appeals on ground of illegality. This ground therefore was proved.

C. Appeals before Chief Magistrate Mbale were a nullity for lack of leave to appeal out of time and appeal at High Court was incompetent for arising out of an illegal/irregular appellate process.

   The appellant has in his submissions and pleadings proved the above. Respondents admit, that the appeals were irregular. These grounds too succeed.

D. The proceedings occasioned prejudice, and hardship to the applicant.

I agree with submissions that the proceedings were irregular and hence a nullity. The fact that Respondent had won before the Kibuku Court in 1979 but has been forced before court under a faulty process since then, in itself amounts to hardship and injustice to him. I uphold this ground as well as proved.

All in all, and based on the holding in *Makula International v. His Emminence Cardina Nsubuga*; I hold that an illegality has been pointed out showing that in determining HCT-04-CV-CA-106/2010, the High Court based itself on an illegal appeal No. 45/1999 which had no bearing on civil suit 0007/1979 of Kibuku.

This is a proper case for review in which this court must guard parties against injustice and abuse of court process. I find that it has been demonstrated that at the time of hearing both the Chief Magistrate Court of Mbale in Civil Suit Appeal 45 of 1999 and the High Court in Civil Appeal No. HCT-CV-CA-106 of 2010 both courts did not have the correct evidence before them at the time of the hearing and this was not due to any culpable fault of the applicant; since both Counsel never drew the illegal nature of the proceedings to the attention of both appellate courts, this failure will not be visited on the applicant.

I hold that the two appeals that is CA 45 of 1999 and HC-04-CA-106/2010, were null and void, irregular and illegal and are accordingly set aside as prayed.

The application is granted with costs to the applicant.
I so order.

Henry I. Kawesa
JUDGE
22.01.2015