

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

**HCT-04-CV-CA-0032-2008
(ARISING FROM TORORO CIVIL SUIT NO. 82/2007)**

**GEORGE WANDERA.....APPELLANT
VERSUS
GERALD WAFULA.....RESPONDENT**

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

JUDGMENT

The appellant was dissatisfied with the judgment of His Worship **Cheptukei David Kaye** Magistrate Grade I of Tororo. The appellant’s counsel with leave of court amended the grounds of appeal, so as to add a ground as to whether the learned trial Magistrate had jurisdiction to try the matter. Counsel by written submissions, opted to argue only this ground (on jurisdiction) and abandoned all other grounds.

The Respondents did not oppose the appeal; by the fact that though served they did not respond to the appeal.

Having perused the lower court record; and having internalised the submissions by Counsel for the appellant, I note that:

1. The matter in the lower court was filed in the Chief Magistrate’s Court of Tororo at Tororo as CS.82/2007; and the plaint received in court on 8.10.2007.
2. According to paragraphs 1, 2, and 3 of the plaint, the plaintiff’s address for purposes of the suit was given as C/o Sofia ‘B’ Zone Busia District within the jurisdiction of the Honourable court.

The defendant’s address was C/o Mawero East ‘B’ Busia District within the jurisdiction of the Honourable court.

3. According to paragraph 7, the cause of action arose at Busia District within the territorial jurisdiction of the honourable court.

It is the contention of Counsel for the appellant that the trial court at Tororo was not authorised to hear a matter arising at Busia, whose territory was outside of the Tororo Chief Magisterial area.

Counsel referred court to the distinctions in law regarding pecuniary jurisdiction and territorial jurisdiction. He referred court to the case of ***Mutonyi Margret Mukyala v. Tito Wakyala HCRC No. 7-12 of 2011*** where J. Musota held:

“This jurisdiction envisages territorial and pecuniary jurisdiction and location where the defendant actually resides at the time of commencement of the suit or where the cause of action in whole or in part arises or in case of immovable property, where the property is situated.”

Counsel then referred to Section 216 of the MCA and Section 16 of the Civil Procedure Rules to argue that even if the question of jurisdiction was not raised in the lower court, that failure does not confer jurisdiction as per **J. Odoki** in ***Pulkeria Nakaggwa v. Dominiko Kiggundu [1978] HCB 310***. For emphasis reference was made to ***Umar Asuman v. Olila Moses HCCR No. 1/2006*** where J. Musota observed that:

“Jurisdiction of courts is a creature of statute and a judicial officer worth the name must keep abreast with developments in our laws and ensure jurisdiction.... for..... It is trite law that where a suit is filed in a court without jurisdiction, it is a non-existent suit. Whatever is decided in such a suit amounts no decision.”

I agree with all the above statement of the law, as regards jurisdiction.

The question therefore which begs to be answered is whether in the case before me, the learned trial Magistrate had no jurisdiction to entertain the matter.

Under Section 212 of the MCA, subject to pecuniary jurisdiction, a suit is instituted where the subject matter is situate. Also under Section 215 MCA, other suits are to be instituted where defendant resides or cause of action arises.

However section 216 MCA, requires that no objection to “place of suing” shall be allowed on appeal unless the objection was taken in the court of first instance and unless there has been a consequent failure of justice.

I notice that no objection to the jurisdiction was raised in the lower court. however following the authority of ***Desai v. Warsama (1967) EA 351*** that:

“lack of jurisdiction goes far beyond any error, omission, or irregularity nor can it be regarded as a mere technicality and that there is in law nothing to be reversed or altered and there is a complete absence of any material from which an appeal can be heard.....”

And the case of ***LILIANS V. CALTEX OIL (KENYA LTD) [1986-1989] 305 CAK*** per **Justice Nyarangi** that:

“..... It is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything”

Also ***MAKULA INTERNATIONAL LTD V. HIS EMINENCE CARDINAL NSUBUGA AND ANOTHER [1982] HCB 111***, where it was held that:

“A court of law cannot sanction what is illegal and illegality once brought to the attention of the court overrides all questions of pleading including admissions made thereof.”

I am persuaded to agree with the appellant that even if the objection was not raised before the lower court in accordance with Section 216 MCA, it can be raised on appeal in the peculiar circumstances of this case because;

- i) The parties were not represented in the lower court and therefore did not appreciate the technical aspects of the law as above.
- ii) The matter raised materially goes to the root of the trial and if true would vitiate the trial for being a nullity.

Consequently as per *Makula case* (supra), the illegality supersedes the requirements of Section 216 MCA as an illegality can be pointed out at any time before court.

I therefore allow the arguments by appellant on this limb.

This then leads me to the consideration of the question whether as alleged the learned trial Magistrate lacked the jurisdiction.

I have looked at the plaint and written statement of defence. The cause of action arose in Busia. The plaintiff and defendant were resident in Busia. Therefore by virtue of Sections 212 and 215 MCA, the matter should have territorially been filed in Busia where both the subject matter and parties were resident (subject to pecuniary jurisdiction of the courts, and territorial jurisdiction of the courts).

Did Busia have the territorial jurisdiction of a Chief Magistrate, at the time as alleged by appellants?

I notice that by Statutory Instrument No.45/2007, The Magistrates Courts (Magisterial Areas) Instrument 2007 Busia Chief Magisterial area was created as a separate Chief Magisterial area from Tororo Chief Magisterial area. From arguments of Counsel, Busia Chief Magistrate's Court comprises of Grade I Court at Busia while Tororo Chief Magisterial area comprises of Grade I Courts of Tororo, Malaba and Butaleja.

The Instrument came into force on 21st September 2007. The suit was filed after, on 8th October 2007; a month after the separation.

Was that fatal?

According to Section 9 of MCA,

“The Jurisdiction of a Magistrates Court shall subject to this Act and any other written law limiting or otherwise..... be exercised in conformity with the law with which the High Court is required to conform in exercising jurisdiction by the Judicature Act.”

From the discourse above as already pointed out Jurisdiction is a creation of statute. No court or Judicial Officer can assume Jurisdiction. If a suit is filed in the wrong court, it is the duty of the court to advise the parties.

When the law clearly stipulates a clearly stated territorial jurisdiction of a court, it is illegal and a nullity to file the suit in the wrong territory, let alone for the presiding Judicial Officer to hear the same. See: ***Paul K. Semogerere and 2 Others v. A.G. SCCA 1/2002***; where it was held: Jurisdiction is defined in **Mulla on the Code of Civil Procedure at page 225** as;

“By jurisdiction it meant authority which court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way, for its decision. The limits of this authority are imposed by statute, charter or commission under which the court is constituted and may be exercised or restricted by the likemeans. If no restriction or limit is imposed, the Jurisdiction is unlimited.”

From the position above I hold that the learned trial Magistrate Grade I Tororo had no territorial jurisdiction to hear the matter which fell within Busia Chief Magisterial area. His decision was therefore a nullity and amounts to nothing.

Lack of jurisdiction goes far beyond the original errors or technicalities. It is an illegality to handle a matter without Jurisdiction.

As held in ***Desai v. Warsama*** (Supra) such an illegal decision leaves the appeal court with nothing to reverse or to alter; as there is complete absence of any material from which an appeal can be heard. The only remedy rests in the option offered by the holding in ***Makula International v. Nsubuga*** (supra) that such an illegality once brought to the attention of court

should not be allowed to stand. I hold that the judgment and orders and entire trial was a nullity. It therefore cannot be allowed to stand. No party can benefit from it. I agree with appellant that this ground is proved. The ground disposes off the entire appeal.

The trial and judgment and orders of the learned trial Magistrate under C/S 82/2007 are accordingly set aside. The proceedings are a nullity. Respondent if still interested should opt to file a fresh suit before another competent court in Busia Chief Magistrates Court. The appeal is granted with costs to the appellant.

Henry I. Kawea

JUDGE

5.12.2016