

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION
HCT-00-CV-CR-0013-2015

LUBANGA DAVID ::: APPLICANT

- VERSUS -

OLGA BINIA ::: RESPONDENT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

REVISION ORDER:

This is an application for revision of the decision of the Magistrate Grade 1 of Mengo Court brought by way of Notice of Motion under Section 14 of the Judicature Act, and Sections 83 and 98 of the Civil Procedure Act.

The grounds of application are briefly set out in the Notice of Motion as follows:

1. *The applicant was sued in the Small Claims Case No. 66 of 2015; judgment was given against him and he is dissatisfied with the findings and judgment of the trial court;*

2. *That the Small Claims Procedure does not provide for appeals and other than review, the only remedy available is for this court to revise the orders of the court;*

3. *That the judgment of the Magistrate Grade I was tainted with material irregularity and there is a high likelihood that injustice will be occasioned to the applicant when the process of the court is to proceed;*
4. *That the trial court exercised jurisdiction not vested in it in law and in so doing caused injustice to the applicant.*

The application is supported by the affidavit of Lubanga David, the applicant. The respondent filed an affidavit in reply supporting the decision of the trial Magistrate.

At the hearing of this application the applicant was represented by Mr. Musinguzi and the respondent by Mr. Sempijja Mike. Both learned counsel were allowed to file written submissions.

I have considered the application as a whole and submissions by respective counsel. I also considered the law applicable.

Learned counsel for the applicant did not frame issues in his submissions. However counsel for the respondent framed the following issues in his submissions.

1. *Whether the trial court exercised jurisdiction not vested in it by law and in so doing occasioned an injustice to the applicant.*
2. *Whether the trial Magistrate in exercised jurisdiction acted illegally or with material irregularity.*

I will resolve the issues framed starting with Issue 1:

Whether the trial court exercised jurisdiction not vested in it by law and in so doing occasioned an injustice to the applicant.

In **Munobwa Muhammed Vs Uganda Muslim Supreme Council Civil Revision No. 1 of 2006**, Justice Irene Mulyagonja, as she then was, stated as follows:

“Decisions are revised whenever the trial magistrate fails to exercise his/her jurisdiction or where he/she acts illegally or with material irregularity or injustice.”

Similarly learned counsel for the respondent contended that under Section 83 of the Civil Procedure Act revision proceedings can only be invoked when or if it appears that the lower Court:

1. Exercise of jurisdiction not so vested in it in law;
2. Failed to exercise jurisdiction so vested; and
3. Acted in exercise of jurisdiction illegally or with material irregularity or injustice.

Counsel for the applicant submitted that the procedure used by the court to entertain the matter was not in the realms of small claims. I disagree with him. According to rule 5(1) of the Judicature (Small Claims Procedure) Rules SI 25 of 2011, a small claim procedure shall cover a case whose subject matter does not exceed ten million Uganda shillings and under sub rule 2 it gives exception under which this matter does not fall.

According to the record of proceedings this was a claim involving refund of the security deposit in a tenancy agreement which was equivalent to shs.4,800,000/= and by virtue of the rules this was within the range of the jurisdiction vested. There was no illegality or irregularity done by the trial magistrate. I therefore find that the trial magistrate exercised jurisdiction vested in him.

Issue 2: **Whether the trial Magistrate in exercise of his jurisdiction acted illegally or with material irregularity.**

The applicant contends that by the trial magistrate entertaining the matter under small claims procedure he acted with material irregularity. I have already held to the contrary while resolving issue 1.

It is also the applicant's contention that the trial magistrate acted with material irregularity when he held that the applicant was entitled to a refund of the security deposit of shs.4,800,000/=. The applicant's counsel faults the magistrate for misinterpreting the two tenancy agreements in his submissions. Dissatisfaction with a decision of a court with jurisdiction in favour of the other party, cannot be a matter for revision.

It is on record that the applicant and the respondent entered in a tenancy agreement on 12/1/2014 where upon the respondent paid security deposit of shs.4,800,000/= the agreement was to run from January to 30th April 2015.

It was a term of the agreement that the security deposit was not refundable. On the expiry of the tenancy the parties entered into a fresh agreement dated 1st May 2015 that was for a period of one year. It is a fact conceded to by both parties that when the 2nd tenancy was executed they agreed to carry forward the security deposit of shs.4,800,000/= to the new tenancy with a provision that

it would be refunded to the respondent at the end of the tenancy. The trial magistrate having heard the parties and the evidence held in favour of the respondent/claimant and ordered for a refund.

The applicant faults the trial magistrate and argues that a refund was only due at the end of the tenancy, that is, after the lapse of 1 year. It was also a term of the agreement that the tenancy was to remain in full force for the aforesaid period of one year or until terminated by either party at any time giving notice to the other of not less than three months in writing.

End of tenancy in my view could be by termination or by expiry. So the argument by the applicant that end of tenancy meant at the close/expiry of one year is wrong. The respondent gave the applicant three months notice as was required which the applicant received and accepted. This was enough to put him on notice and look for new tenants.

Much as the parties did not outline the essence/purpose of the security deposit, it is my view that this is meant to cater for eventualities i.e. repairs, in case the tenant goes without clearing utility bills, and scenarios where the tenants' run away without paying rent. This was not the case here, the respondent/claimant met all the repair costs, paid all the utility bills and cleared rent which the applicant accepted. It would be unjust for the applicant to turn around and hold onto the respondent's money as this amounts to unjust enrichment which this honourable court cannot entertain.

I accordingly dismiss this application with costs.

I so order.

Stephen Musota

J U D G E
16.05.2016.