



the cost of shs. 1,500,000/=, provide free education for his children and construct for him a permanent house on the land. The UNHCR then took possession of the land. When the two months elapsed, the applicant and Lobule Sub-county Local Government remained in occupation of the land against the respondent's will. The Danish Refugee Council (named as the fourth defendant in the plaint) then engaged the services of a company called Multi Space Bureau Limited (named as the second defendant in the plaint), to construct a school on the land without first seeking the permission of the respondent. The respondent filed a suit against all the named parties, save the UNHCR, seeking the reliefs mentioned earlier.

On 2<sup>nd</sup> October 2014, a consent judgment was signed by the respondent and the Chief Administrative Officer of the applicant. It was attested by their respective counsel and it was then filed in court, signed and sealed by the Grade One Magistrate at Koboko, on the same day. The key content of the consent judgment is as follows

1. The third defendant shall pay the plaintiff a sum of Uganda Shillings 85,000,000/= (eighty five million shillings only) in 5 (five) installments for the full settlement and satisfaction of the plaintiff's claim.
5. That the compensation is for a piece of land comprised at Atu village, Ajiparu Parish, Lobule Sub-County in Koboko District measuring 3.264 acres which was the subject of dispute in civil suit No. 0006/2014 and the plaintiff SHALL (sic) all his proprietary interest and right on the said land and allow the 3<sup>rd</sup> defendant to continue with its development programs on the land being funded by United Nations High Commissioner (sic) for Refugees (UNHCR).

On 19<sup>th</sup> November 2015, the Magistrate Grade One Court at Koboko commenced execution proceedings of the resultant consent decree by issuing to the applicant's Chief Administrative Officer, a notice to show cause why a warrant of arrest should not issue.

In the notice of motion and supporting affidavit seeking revision of the judgment and decree, the applicant contends that the judgment ought to be revised for having been entered by a magistrate who lacked pecuniary jurisdiction, for which reason the Magistrate Grade One exercised his jurisdiction irregularly and illegally when he allowed the parties to enter a consent judgment which was beyond his pecuniary jurisdiction. In the affidavit in reply opposing the application,

the respondent, through his advocates, contends that the Magistrate Grade One properly exercised his jurisdiction when signed and sealed the consent judgment and that this court should not interfere with “the litigating parties’ freedom of contract but instead give effect to their contractual understanding and endorse it regardless of the amount the parties have agreed upon.”

At the hearing of the application, counsel for the applicant Ms. Mudoola Diana, State Attorney, relied on s 17 of the *Judicature Act*, s 83 (c) of *The Civil Procedure Act* and O 52 rr 1 and 3 of *The Civil Procedure Rules*, to argue that the consent judgment should be set aside because it is unenforceable and a nullity for having been entered by a court that lacked pecuniary jurisdiction to do so. She contended that entering the judgment was therefore a mistake of law that justifies it to be set aside.

In reply, counsel for the respondent opposed the application. He argued that once the parties have agreed to enter a consent judgment, all that is left for the court to do is to formalize it so that litigation comes to an end. He cited *Dada Cycles Ltd v Sofitra S.P.R.L Limited H. C. Civil Suit No. 656 of 2005*, to buttress his argument that breach of contract is the breaking of the obligation which a contract imposes which confers a right of action for damages on the injured party. He argued further that a consent judgment creates contractual obligations for the parties and once court endorses it, it cannot be set aside and can only be vitiated by circumstances which vitiate a contract. He cited *Attorney General and Another v James Mark Kamoga and Another, S.C. Civil Appeal No. 8 of 2004* in support of that submission. He also cited *Oyugi Martin v Oyoo Anthony, H.C. Civil Appeal NO. 0019 of 2012* for the point that any order made in the presence and with consent of counsel is binding on all parties to the proceedings or action and cannot be varied or discharged unless obtained by fraud or collusion or by an agreement contrary to the policy of court, or if the consent was given without sufficient material facts, or in misapprehension or ignorance of material facts or in general for a reason which would enable a court to set aside an agreement. On this point, he finally cited *Attorney General and Another v James Mark Kamoga and Another, S.C. Civil Appeal No.8 of 2004* to support the argument that consent judgments are treated as fresh agreements, and may only be interfered with on limited grounds such as illegality, fraud or mistake because a party against whom a consent decree is passed may, notwithstanding the consent, be wrongfully deprived of its legal interest if, for

example, the consent was induced through illegality, fraud or mistake. It is a well settled principle therefore, that a consent decree has to be upheld unless it is vitiated by a reason that would enable a court to set aside an agreement, such as fraud, mistake, misapprehension or contravention of court policy. This principle is on the premise that a consent decree is passed on terms of a new contract between the parties to the consent judgment.

His last contention was that there was no illegality or irregular exercise of jurisdiction by the Magistrate Grade One since s 207 (2) of *The Magistrates Courts Act* confers upon that court unlimited jurisdiction over causes or matters of a civil nature governed only by civil customary law, in which case there is no limit to the amount of damages which can be awarded by the court. He cited *Munobwa Muhamed v Uganda Muslim Supreme Council H.C. Civil Revision No. 1 of 2006*, in support of this point.

Section 83 of the *Civil Procedure Act, Cap 71* empowers this court to revise decisions of magistrates' courts where the magistrate's 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. It entails a re-examination or careful review, for correction or improvement, of a decision of a magistrate's court, after satisfying oneself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings of a magistrate's court. It is a wide power exercisable in any proceedings in which it appears that an error material to the merits of the case or involving a miscarriage of justice occurred, but after the parties have first been given the opportunity of being heard and only if from lapse of time or other cause, the exercise of that power would not involve serious hardship to any person. Counsel for the applicant in their notice of motion cited s 17 (2) of *The Judicature Act, Cap 13* empowers the High Court in exercise of its general powers of supervision over magistrates courts to invoke its inherent powers to prevent abuse of the process of the court.

The nature of a consent judgment was stated by the Supreme Court in *British American Tobacco (U) Limited v Sedrack Mwijakubi, S.C. Civil Appeal No. 1 of 2012*, to be a Judgment of the parties validated by Order 25 Rule 6 of *The Civil Procedure Rules*. For that reason, in *Nshimye*

*and Company Advocates v Microcare Insurance Limited and Insurance Regulatory Authority, H.C. Misc. Application No. 231 of 2014*, it was decided that by consent judgments, the Court assists and facilitates parties to meet the ends of Justice and that it would therefore be unfair and cause injustice to nullify a consent judgment properly concluded.

Order 25 Rule 6 of *The Civil Procedure Rules* provides for compromise of suits, and states that where the court is satisfied that a suit has been adjusted wholly or in part by any lawful agreement or compromise, it shall, on the application of any party, order that such agreement, compromise or satisfaction be recorded and enter judgment in accordance therewith. A consent Judgment was defined in *Agrafin Management Services Limited v Agricultural Finance Corporation and 5 others [2012] eKLR*, as a contract in which parties make reciprocal concessions in order to resolve their differences and therefore avoid litigation or where litigation has already commenced, bring it to an end. Therefore, when it complies with the requisites and principles of contracts, it becomes a valid agreement which has the force of law as between the parties and once given judicial approval, it becomes more than a contract. Having been sanctioned by a court it becomes a determination of the controversy and has the force and effect of a judgment.

The contention in this application is that the Magistrate Grade One Court at Koboko exercised a jurisdiction not vested in it in law or acted in the exercise of its jurisdiction illegally or with material irregularity or injustice when it entered a consent judgment awarding a sum of shs. 85,000,000/= which is beyond its pecuniary limit of shs. 20,000,000/= set by s 207(1) (b) of *The Magistrates Courts Act* (as amended by Act No.7 of 2007), which provides for the pecuniary jurisdiction of a Magistrate Grade One Court as follows;

- (1) Subject to this section and any other written law, the jurisdiction of magistrates presiding over magistrates courts for the trial and determination of causes and matters of a civil nature shall be as follows—
  - (b) a magistrate grade I shall have jurisdiction where the value of the subject matter does not exceed twenty million shillings.

In addition to this, S. 4 of *The Civil Procedure Act*, Cap 71, provides as follows;

Pecuniary jurisdiction.

Except insofar as is otherwise expressly provided, nothing in this Act shall operate to give any court jurisdiction over suits the amount or value of the subject matter of which exceeds the pecuniary limits, if any, of its ordinary jurisdiction.

The question to be determined in this application is whether having been sanctioned by a court and become a determination of the controversy which has the force and effect of a judgment, a contract in which parties make reciprocal concessions in order to resolve their differences and therefore avoid litigation or where litigation has already commenced, bring it to an end, is subject to the rules of pecuniary jurisdiction of courts and therefore can be challenged for lack of such jurisdiction. This has to be determined within the context of a revision.

Although the High Court exercises a wide power in its supervisory role over magistrates' courts, the discretion in setting aside consent judgments is more restricted and is exercised upon well established principles which were outlined by the Court of Appeal for East Africa in *Hirani v Kassam* [1952] EA 131, in which it approved and adopted the following passage from *Seton on Judgments and Orders*, 7<sup>th</sup> Ed., Vol. 1 p. 124:

Prima facie, any order made in the presence and with consent of counsel is binding on all parties to the proceedings or action, and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the court ... or if the consent was given without sufficient material facts, or in misapprehension or in ignorance of material facts, or in general for a reason which would enable a court to set aside an agreement."

This principle has since been followed in decisions such as *Attorney General and Another v James Mark Kamoga and Another*, S.C. Civil Appeal No.8 of 2004 and *Jennifer Harriet Bamwite v Arvind Patel*, H.C. Misc Application No. 188 of 2014, where it was held that a consent judgment is protected and unless set aside is as good as any other adjudication with no right of appeal accruing from it. Similarly in *Mohamed Allibhai v W.E. Bukonya and another*, Civil Appeal No.56 of 1996 it was decided that it is a well settled principle that a consent decree has to be upheld unless it is vitiated by a reason that would enable a court to set aside an agreement, such as fraud, mistake, misapprehension or contravention of court policy.

However where there is misapprehension or mistake of fact or law, it can be a ground for setting aside a consent judgment. The nature of misapprehension or facts which will result in setting aside a consent judgment was explained in *Eleko Balume and 2 others s Goodman Agencies Limited and 2 others H.C. Misc Application No. 12 of 2012* where court observed that:

The misapprehension or facts that may form the basis for setting aside a consent judgment must relate to the state of mind of the parties to the consent judgment by which state of mind informed by the facts before them they were misguided into executing the consent judgment.

It is now well established law that a consent decree must be upheld unless it is vitiated for reasons that would mandate a court to set aside an agreement, such as fraud, mistake, misapprehension or contravention of court policy. From the limited scope of discretion within which this court may set aside a consent judgment as outlined above, the only ground applicable to the facts of this application, is as to whether the impugned consent judgment is an agreement contrary to the policy of the court, that is, if at all the agreement was given the force and effect of a judgment by the Grade One Magistrate's Court in exercise of a jurisdiction not vested in the court by law or if in doing that, the court acted in the exercise of its jurisdiction illegally or with material irregularity or injustice.

One of the "policies of court" is the question of jurisdiction that it is at once fundamental and over-arching as far as any judicial proceeding is concerned. Jurisdiction is the first test in the legal authority of a court and its absence disqualifies the court from exercising any of its powers. Jurisdiction means and includes any authority conferred by the law upon the court to decide or adjudicate any dispute between the parties or pass judgment or order. A court cannot entertain a cause which it has no jurisdiction to adjudicate upon. With regard to pecuniary jurisdiction, s 207 (4) of *The Magistrates Courts Act*, Cap 16 provides that;

- (4) In any suit where it is impossible to estimate the subject matter at a money value in which, by reason of any finding or order of the court, a declaration of ownership of any money or property is made, no decree shall be issued for an amount on the claim exceeding the pecuniary limits of the ordinary jurisdiction of the court passing the decree.

Jurisdiction must exist at the time of filing suit or latest at the commencement of hearing. It cannot be conferred at the time of delivery of judgment for Jurisdiction does not operate

retroactively. Whereas the general pecuniary jurisdiction of a Magistrate Grade One court is limited to shs 20,000,000/= set by s 207(1) (b) of *The Magistrates Courts Act* (as amended by Act No.7 of 2007), by virtue of s 207 (2), the court has unlimited jurisdiction with regard to disputes relating to a cause or matter of a civil nature governed only by civil customary law. The question therefore is whether the suit filed by the respondent was governed only by civil customary law, where s 1 (a) of *The Magistrates Courts Act* defines civil customary law as the rules of conduct which govern legal relationships as established by custom and usage and not forming part of the common law nor formally enacted by Parliament.

Upon examination of the plaint as filed in the Magistrate's Court at Koboko, it is evident that although the respondent claimed to have owned the land under customary tenure, his claim in contract (for the agreed sum of shs. 1,500,000/= as compensation for his cassava) and trespass (for the activities of the applicant and the rest of the defendants which continued upon expiry of the two months) was not governed "only by civil customary law" but also by the law of contract both under common law and *The Contract Act, 2010*. The action in trespass as well is maintainable under the common law of torts. The claim was therefore based on legal relationships forming part of the common law and partly by enactment of Parliament. This was not an action based exclusively on civil customary law. Therefore the Grade One Magistrate's Court did not have unlimited jurisdiction but rather its pecuniary jurisdiction was limited to shs 20,000,000/= as stipulated by s 207(1) (b) of *The Magistrates Courts Act*.

Although by clause one and five of the consent judgment the respondent was to receive the agreed amount in full settlement and satisfaction of his claim and as compensation for the land measuring 3.264 acres which was the subject of dispute and thereupon relinquish all his proprietary interest and right over the said land and allow the 3<sup>rd</sup> defendant to continue with its development programs on the land being funded by United Nations High Commission for Refugees, nowhere in the plaint did the respondent allege that the applicant had taken over that land. The claim was in trespass and the amount of shs 1,500,00/= the value of the cassava that was on the land. The respondent's claim was not for the value of the land. It is also for orders of a permanent injunction, general damages and costs for trespass to land. Those remedies were well within the pecuniary jurisdiction of the Grade One Magistrate.



By choosing to file the suit before that court, it is deemed that the respondent, through his own assessment, had estimated what amount of damages he would claim. He had by that choice delimited the amount of general and special damages he would claim, not to exceed shs 20,000,000/= in order to bring himself within the pecuniary jurisdiction of the court. This is because with regard to damages, the law is that a magistrate cannot award damages over and above the pecuniary jurisdiction of the court. In the case of *Joseph Kalingamire v Godfrey Mugulusi* [2003] KALR 408, at 410, Musoke-Kibuuka, J. found as follows;

It follows, therefore, that when a Grade one magistrate makes an order awarding general damages the sum of which exceeds the monetary jurisdiction of Ushs 2,000,000/= (now Ushs 20,000,000/=) set by the law in S. 219 of the *Magistrates Court's Act 1970* (now S. 207 (1) (b) of *The Magistrates Courts Act* as amended by Act No. 7 of 2007), such magistrate would be exercising jurisdiction not vested in him.

A similar decision is to be found in *National Housing and Construction v T. N Bukenya*, H.C. Civil Appeal No. 02 of 2009, where the court decide that;

A magistrate awarding shs 24.000.000= general and punitive damages exceeds his or her jurisdiction. The monetary jurisdiction of shs 20.000.000= provides the ceiling beyond which the total award should not exceed otherwise by itemizing the damages as the trial magistrate did in this case would mean that by granting an award of less than 20.000.000= for each item a trial magistrate may award amounts well in excess of his or her jurisdiction.

By way of comparison, in *Murakatete Faith v Boniface Ayebare*, H.C. Civil Revision No. 43 of 2011, before a Chief Magistrate's Court the plaintiff claimed a sum of U shs 47.000.000= (forty seven million only), interest thereon at the rate of 8% per month with effect from 28<sup>th</sup> July 2009, until payment in full, a liquidated penalty of 20% of the outstanding amount as per the agreement and the costs of the suit resulting in a judgment and decree of the Chief Magistrate in excess of his pecuniary limit of shs 50,000,000/=. The High Court observed that although at the time of filing the suit it was ostensibly within the pecuniary jurisdiction of the court, the chief magistrate acted without jurisdiction when he passed judgment and issued a decree which was beyond his pecuniary jurisdiction and rightly declined to execute the decree because his judgment and subsequent orders were void and an order of revision was made setting them aside.

Where there is a high likelihood that general damages, when assessed may be beyond the pecuniary jurisdiction of the magistrate's court, the correct procedure is to invoke s. 218 (1) (b) (i) of *The Magistrates Courts Act*, and / or s 18 (1) (b) (i) of *The Civil Procedure Act* and apply for the suit to be transferred to a court with competent jurisdiction, otherwise if the court proceeds to award damages beyond its pecuniary jurisdiction, the award will be a nullity. In *Mubiru Kaloli and 21 others v Kayiwa Edmond and 5 others [1979] HCB 212 (CA)*, the Court of Appeal of Uganda held that,

An order made without jurisdiction is a nullity. In the instant case, since the order of the trial magistrate awarding general damages in the sum of Ushs 2, 400,000/= to the plaintiff was made without appropriate jurisdiction. It was a nullity ab-initio.

Jurisdiction cannot be conferred on court by consent of the parties and any waiver on their part, cannot make up for the lack of jurisdiction (See *Assanard and Sons (U) Ltd v East African Records Ltd [1959] EA 360*). In *Edith Nantumbwe Kizito and three others v Miriam Kuteesa C.A. Civil Application No. 294 of 2013*, the Court of Appeal cited the following authorities with approval;

The Canadian case of *Manitoba Windmills v Vigier [1909] 18 Man LR.427*, where it was held that;

It is not competent for parties to a contract to agree to confer jurisdiction upon court of any judicial division other than one in which under statute any action arising out of a breach of the contract may be brought, and if such action is brought in any other court the judge should refuse to try it on the ground of want of jurisdiction”

And the decision of Bramwell LJ in *Foster vs Usher Wood [1877] 3 Ex D1* in which he stated as follows:

It is argued that consent has waived the objection. I do not understand what is meant by waiving the objection. In this case the Registrar had no jurisdiction to make the order or try the action in a country court. The parties cannot by consent confer a jurisdiction which does not exist.

It was also held by Lord Asher MR in *Re, Aylmer Exp. Bischoftsheim [1887] 20 QB 258* that;

The consent of parties cannot give the court jurisdiction which it does not otherwise possess.

The English Court of Appeal in *Hinde v. Hinde* [1953] 1 ALL ER. 171 held as follows:-

The parties could not by consent give the court a jurisdiction which it did not otherwise possess while the Court would recognize a consensual arrangement between the parties it would not lend its process to enforce an order that which was drawn up in the form of an order but which in reality was the statement of an agreement in terms which the court would have no jurisdiction to impose.

In that case a decree absolute had been made containing an order by consent that the husband pay or cause to be paid periodical maintenance to the wife until remarriage. It was held that under the powers conferred on the Court by the statute, its statutory jurisdiction was limited to an order for payments during the joint lives of the parties and to have validity as such, the decree was to be construed as made for their joint lives. To the extent that the consent order provided for payment of maintenance to the wife after the husband had died, it was a nullity and could not be enforced.

In the instant application, the only aspect of the respondent's claim that was not subject to the limit of the pecuniary jurisdiction of the court was the claim for costs. It is a settled principle of law is that costs are not considered in determining the pecuniary jurisdiction of a court (see *Abbey Semakula v Eldad Rubarenzye* [1996] 2 KALR 22). However, clause 7 of the consent judgment is to the effect that each party was to bear its own costs.

This means that whereas the sum of U shs 85,000,000/= was meant to be paid in full settlement and satisfaction of the plaintiff's claim, it did not include costs but rather the rest of the claims which were;- a declaration that the respondent was the rightful and absolute customary owner of land which constituted the subject matter of the suit, a declaration that the defendants were trespassers on that land, general damages for trespass and alienation of the land, a permanent injunction and interest, a suit which was compromised by way of the respondent ceding all his proprietary interest and rights over the said land, to the 3<sup>rd</sup> defendant in consideration of that sum. Since the suit was not based exclusively on civil customary law, the court exceeded its pecuniary jurisdiction when it conferred upon the consent the force of a judgment when it signed and sealed it. It ceased to be a mere agreement of the parties and became the judgment of court.

For the reasons stated above, I find that the Grade One Magistrate’s Court at Koboko exercised its jurisdiction irregularly and illegally when it allowed the parties to enter a consent judgment which was beyond its pecuniary jurisdiction rendering that consent judgment to be an agreement contrary to the policy of court. The judgment and decree are a nullity and are therefore hereby set aside. Since the error was mutual, each party is to bear its costs of these proceedings.

Dated at Arua this 26<sup>th</sup> day of September 2016.

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Stephen Mubiru  
Judge