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

HCT-04-CV-CR-0016-2015
(ARISING FROM KAPCHORWA CIVIL SUIT NO. 35/2009)

KAPCHORWA DISTRICT
LOCAL GOVERNMENT……..…………………………..……APPLICANT
VERSUS
MUZUNGU PATRICK………...…………….…………RESPONDENT

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

RULING IN REVISION

This is a ruling in respect of an application for revision under Section 83 (c) of the Civil Procedure Act. The grounds raised are briefly that:

1. Defendant/Applicant was counter claimant in CS.37/2009, which was determined exparte by Chief Magistrate on 21st August 2012. The reason was that defendants were absent, by reason of which counsel **Mayende** appearing for the plaintiffs moved court, to decide the matter under O.17 r. 3 and 4 of the Civil Procedure Rules. Court agreed, entered judgment, granted orders for vacant possession of Plot 17 Kapchorwa, Kitale road to plaintiffs, order for permanent injunction against defendants, and awarded general damages of shs. 20 millions to plaintiff. The Court also granted costs of the suit.

It is against those orders that a series of other actions happened. The applicant however moves court to find that the trial Magistrate acted irregularly and denied them a fair hearing. Counsel pointed out that the irregularities were that:

1. The learned trial Magistrate did not comply with the law while determining the matter, since she did not conform with O.9 r. 10 of the Civil Procedure

Rules, by writing a reasoned judgment giving reasons on the issues as framed. The judgment in his opinion was irregular as it did not consider the counter claim.

2. The Advocate-**Mayende** who appeared in court did not possess a practicing certificate and was therefore illegally before court. He cited ***Makula International v. Nsubuga (1982) HCB 11***, to argue that all proceedings that day were a nullity and should be struck out.
3. There were irregular taxations handled, and garnishee orders given by court under MA.022/2015 before lapse of six month. This was also irregular and illegal among others.
4. Injustice before court; in that the trial Magistrate ignored all the attempts by Applicants to draw the above to him for a possible remedy.

This court has power under section 83 of the Civil Procedure Act to call for any record of any case which been determined by any Magistrates court if it appears to have;

a) exercised jurisdiction not vested in it in law or
b) failed to exercise jurisdiction so vested or
c) Acted in exercise of its jurisdiction illegally or with material irregularity or injustice.

In his submission, Counsel for respondents argued that this application ought to have been originated by Notice of Motion.

I do not find the position above as correct- because section 83 Civil Procedure Act does not limit the procedure to be followed, while moving court. The correct position is that an ordinary letter by an aggrieved party to the High Court Registrar,

requesting for the matter to be put before a Judge is sufficient. I therefore overrule that objection.

In exercising the power of Revision, court is guided further by the fact that this power shall not be exercised unless parties are given a chance to be heard. It is also noted that court should be careful to ensure that the exercise of this power shall not involve serious hardships to anybody.

See the cases ***Muhinga Mukono v. Rushwa Native farmers Cooperative society Ltd (1959) EA 595***, and ***Kabwengure v. Charles Kanjabi (1977) HCB 89***.

Having the law in mind as above, I have gone through the entire lower court record and, the submissions by counsel on points raised and I do find as hereunder:

Issue 1: Whether the judgment of 21st August 2012 by the trial Magistrate complied with the law.

I have duly examined the record. The record indicates that on that day the plaintiff was present and was represented by **Mr. Patrick Mwanga**, who told court that the CAO sent him to inform court that efforts were still being made to settle out of court. It is at that stage that "**counsel Mayende** addressed court and moved it to proceed to determine the matter under O.17 r.13 of the Civil Procedure Rules and Section 98 of the Civil Procedure Act. Court complied and made the orders complained of.

The applicant finds the procedure adopted flawed for not conforming with the strict provisions of O.9 r. 10 of the Civil Procedure Rules which enjoin the court to write a formal judgment, giving reasons for its decision.

I find that the effect of O.17 r. 3 and r. 4 of the Civil Procedure Rules, was to require court to proceed to make a decision on the matter as if a defence had been filed. The word determine the "suit" as used in O.17 r. 4 of the Civil Procedure Rules in my view means that court considers the pleadings and evidence and makes findings on the issues.

In this case plaintiff had closed his case. Did that evidence prove his case on the balance of probabilities so as to lead court to the decision it gave? Reading the record, the Magistrate did not consider the evidence, did not determine the issues and only went ahead to enter judgment. Technically the learned trial Magistrate did not judiciously determine the matter, as envisaged under O.17 r. 4 of the Civil Procedure Rules. I find this ground proved. I am persuaded in this holding by the quoted case of ***Waruru v. Oyatsi 2002 E.A 644***, where the Court of Appeal of Nairobi held that its incumbent upon a judge to give good reasons for striking out a defence.

Issue 2: Whether Mayende Patrick's professional impropriety is fatal to the proceedings of the suit.

I have gone through the submissions by the applicants and Respondents.

It is not disputable from the record that **Mayende** is on record as Counsel for the plaintiff that day. It was him who moved court to disregard the attendance and appearance of **Mr. Patrick Mwanga** from the Town council on grounds that he had no locus to represent defendants. The question is what locus did **Mayende** himself have to represent the plaintiff?

He was not a lawyer with a valid practicing certificate and was masquerading as one. I, with the greatest disdain dismiss the arguments raised by Respondents that "mistake of counsel" should not be visited on the client.

Respondents attempted to argue that, the actions of "**Mayende**" were by him as an individual, and should not be visited on the client. They then again concede that **Mayende**'s action was a mistake blamable on the law firm which sent him. To me, this is all symantics. The courts administer law, and are courts of law.

Parties come to courts for serious business not moot. What transpired in court that day amounts to a nullity. The actions of **Mayende** misled the court to follow his illegal arguments which were without locus. He was a stranger to the proceedings and therefore had no capacity to move court to grant the orders that resulted from his illegal activities.

I agree with the decision in professor ***Huq v. Islamic University in Uganda 1995-1998 EA 117*** that counsel who violates Section 14 (1) of the Act renders all actions done by him as unlawful. The documents prepared, signed and filed by such an Advocate were therefore illegal, invalid, and of no legal effect.

When the above is read together with the case of ***Makula International v. His Eminence Cardinal Nsubuga and Another (1982) HCB 11***, the actions of **Mayende** were illegal. They are in contravention of section 65 of the Advocates Act. **Mayende**'s conduct cannot be sanctioned by this court. It follows that all the subsequent orders from court obtained by **Mayende** were obtained illegally and are without any force of law.

The arguments raised by the respondents that a person who is sent out by a law firm to represent a party without a practicing certificate should be handled as an "imposter" unknown to the Advocates Act is farfetched. The record of court indicates that he was in court as "counsel for the plaintiff" and acted as such.

All authorities on this subject including the Supreme Court decision of ***Banco Arabe Espanol v. Bank of Uganda Supreme Court Case No.8/1998*** discuss all forms of excusable errors, omissions and mistakes that should not be visited on clients but none of the cases excuse a lawyer who appears in court without a practicing certificate.

In fact in the ***Professor Huq v. Islamic University in Uganda*** (supra) decision, **Hon. J. Wambuzi** held:

> "*that a lawyer who practices without a practicing certificate commits an offence and was liable to both criminal and disciplinary proceedings. Any documents prepared or filed by such an advocate were invalid and of no legal effect on the principle that court would not condone or perpetuate illegalities*."

From the above discourse, both ground 3 and ground 4 would be terminated since they are complaints hinged on the illegal court orders earlier on obtained by the said **Mayende** in abuse of the law.

On the strength of the findings above, am satisfied that there was gross irregularity, error and illegality committed by the learned trial Magistrate. This court therefore exercises its revisionary powers under section 83 of the Civil Procedure Act, and

sets aside the judgment and orders, (and all other applications and orders arising therefrom) of Chief Magistrate- Court Kapchorwa of Civil Suit 37/2009. The entire proceedings should be typed out for purposes of a retrial. Accordingly a retrial is ordered to proceed afresh before another competent Chief Magistrate in Kapchorwa. Costs shall abide the cause. All other applications etc arising therefrom be stayed and the main suit and counter claim 37/2009 be determined interparties afresh. I so order.

Henry I. Kawesa

JUDGE

27.10.2016