

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA.
CIVIL DIVISION

REVISION CAUSE NO. 12 OF 2017

(Arising from Miscellaneous Cause No. 4 of 2017 of Chief Magistrates Court of Nakawa at Nakawa)

JOHNSON KATEBALIRWE ::::::::::::::::::::::::::::::: APPLICANT

Versus

SEGONGA GODWIN

T/A PLATINUM ASSOCIATES ::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

RULING

This application is brought by Notice of Motion under Section 83 & 98 Civil Procedure Act, Section 33 Judicature Act Order 52 rules 1, 2 & 3 Civil Procedure Rules. It is for orders that;

- a) The order by his Worship Sajjabi Noah granting Special Certificate to distress for rent against the respondent be revised and set a side.
- b) The order for sale of the distressed property by His Worship Sajjabi Noah on the 10th of March 2017 be revised and set aside.
- c) The bailiff's taxed bill of costs be revised and set aside.
- d) The distressed property be released from the said distress if not yet sold and the remaining non distressed property be released and handed over to the applicant.
- e) The applicant, in his capacity as the managing director of Gold Beverages (U) Ltd be allowed access to the demised premises to assess and take any properties left there in or an inspector be appointed by court to verify the remaining property.

- f) The respondent compensates for the lost, damaged and distressed but already sold property.
- g) Costs of this application be provided for.

The grounds of this application as stated by Johnson Katebalirwe are as follows;

- That the respondent filed an application on the 9th day of January 2017 for distress for rent against the applicant seeking to recover rent arrears, eviction and access of property situate at Kiwanga opposite Namanve on grounds that he had defaulted in payment of rent to the land Lord Kenneth Muhangura and His Worship Sajjabi Noah awarded him a special certificate to levy distress for rent and subsequently ordered for sale of distressed property on the 10th day of March 2017.
- That in entertaining a matter whose geographical Jurisdiction would otherwise be in Mukono Magisterial Area, His Worship Sajjabi Noah acted without Jurisdiction.
- That in awarding the special Certificate to distress for rent over property that is worth more than UGX.20,000,000/= and subsequently the order for their sale, the trial Magistrate acted without monetary Jurisdiction.
- That in awarding the special certificate to distress for rent and subsequently the order for sale , the trial Magistrate exercised the Jurisdiction vested in him irregularly by not realising that the applicant was not and has never been a tenant of Muhangura Kenneth.
- That the learned trial Magistrate also acted with material irregularity in entertaining the respondent's application that was incurably defective and not properly filed.
- That the learned trial Magistrate further acted with material irregularity and injustice in allowing an application and accordingly granting of special certificate for distress and sale without proof of service of demand notice and the application for distress on the applicant.

- That the Learned Trial Magistrate further acted illegally and with material irregularity in awarding certificate for distress to the respondent/Bailiff whose licence had not been renewed at the time of grant.
- That the learned trial Magistrate further acted illegally in awarding a certificate for distress for rental arrears of six months each at UGX.800,000/= at UGX.6,600,000 instead of UGX.4,800,000/= which was itself not in arrears having been paid and off set from the water, glass, electricity installation plus painting and wiring costs.
- That the learned trial Magistrate exercised his Jurisdiction illegally, unfairly in granting a certificate to distress and subsequently order for the sale of the said property that was far higher in value over and above the rental arrears of UGX.4,800,000/- which itself was not in arrears.
- That it is in the interest of Justice that the distressed property be released from distress, the non –distressed property be released to the applicant, the damaged, lost and sold property be compensated by the respondent together with his principal the land Lord.

In his submissions, counsel for the applicant stated that Gold Beverages (U) Ltd and not the applicant was the tenant of Kenneth Muhangura the Landlord on whose behalf the respondent was acting.

That the said Gold Beverages paid to the Landlord rent in cash and some in Kind (water , Glass and Electricity installations, plumbing, wiring and roof repair) which works were valued at UGX.15,000,000= and was mutually agreed to be converted into rent that would be considered upfront.

That there was no service of court process on himself as he was away in Napak and the affidavit of service is false. Counsel for the applicant thus asserted that this is a proper case whose circumstances merit revision by this court because the Nakawa Magistrates' Court had

no Geographical Jurisdiction over a matter whose subject matter was in Kiwanga Mukono that falls within Mukono Magisterial Area.

That the trial Magistrate Noah Sajjabi exceeded his monetary Jurisdiction in entertaining a matter where the distressed property exceeded UGX.20,000,000/= as the whole plant belonging to Gold Beverages Ltd including all accessories were sealed off, locked and sold under the said distress and sale orders.

It is important to note that the respondents did not file any affidavit in reply neither did they file written submissions.

According to Black's Law dictionary (9th edition), it defines revision as a re-examination or careful review for correction or improvement or an altered version of work. In the case of *Mabalaganya Vs Sanga (2005) E.A 152*, the Court of Appeal of Tanzania held that in cases where it exercises its Revisional Jurisdiction under Section 4 of the Appellate Jurisdiction Act, its duty entails examination by the court of the record of any proceedings before the High court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings before the High court.

The above parameters set by that court would properly apply to the High court of Uganda in its Revisional Jurisdiction which is set out in **Section 83 of the Civil Procedure Act** as follows;

“The High court may call for the record of any case which has been determined under this Act by any Magistrate’s court and if that court appears to have;

- a) Exercised a jurisdiction not vested in it in law***
- b) Failed to exercise a Jurisdiction so vested***

***c) Acted in the exercise of its jurisdiction illegally or with material irregularity or injustice,
The High court may revise the case and may make such order in it as it thinks fit.....’***

Therefore it is clear from the above provision of the law that decisions are revised whenever the trial Magistrate fails to exercise his or her Jurisdiction or where he or she acts illegally or with material irregularity or injustice.

I will thus proceed to resolve whether the trial Magistrate had both pecuniary and Geographical Jurisdiction to handle this matter.

The jurisdiction of Magistrates is presently provided for by Section 207 of the Magistrates courts (Amendment) Act. Under Section 207 it states that; 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;

- 1)
- 2) *A Magistrate Grade 1 shall have Jurisdiction where the value of the subject matter does not exceed twenty million shillings.*

In this case, Annexure “E2” shows that there was an order of sale of movable property but the order does not show how much the movable property was worth. In his submissions, counsel for the applicant asserted that the value of the whole plant, wines, spirits, packed juice and tiles exceeded the monetary jurisdiction of the trial jurisdiction.

In his affidavit in support to the Notice of motion, the applicant stated that upon perusal of the court file, it was discovered that the respondent disguised to have made a valuation pursuant to which the order for sale was made which was a flagrant undervaluation of the company’s property designed to defraud the said company.

However, counsel for the applicant has not attached the above valuation report. The order from the trial court for the order of sale of movable property does not show which movable property was attached and sold. Since this court does not act in a vacuum and relies on evidence, it is not certain if the property attached was over 20 million shillings and hence cannot determine if the trial Magistrate exceeded his Pecuniary Jurisdiction.

Furthermore, Section 212 of the Magistrates' Courts Act provides that subject to the pecuniary or other limitations prescribed by any law, suits for the recovery of immovable property with or without rent;

1).....

2).....

6) *For the recovery of movable property actually under distraint or attachment shall be instituted in the court **within the local limits of whose jurisdiction the property is situate.***

In this case, it is clear the suit property was situate in Mukono and thus Mukono Chief Magistrate should have handled the matter and not Nakawa Court. Therefore in entertaining a matter whose geographical jurisdiction was in Mukono Magisterial Area, the Grade I Magistrate acted without Jurisdiction.

In the case of ***Makula International Ltd Vs His Eminence Cardinal Nsubuga (1982) HCB 11*** it was held that an Illegality once brought to the attention of court overrides all questions of pleading including admissions. Furthermore, in the case of ***Blakes Tours and Travels Ltd Vs Crane Bank Ltd SCCA No.71 of 2009***, the Supreme Court stated that Fraud or illegality once discovered by a court of law could not be condoned.

Since there was an illegality committed by the trial Magistrate, this court cannot fold its hands towards the illegalities committed by the trial Magistrate.

It is also counsel's submission that the trial Magistrate granted a certificate for distress to a bailiff who had no valid licence at the time. Rule 9 (3) of the Judicature (Court Bailiffs) Rules provides that no court bailiff shall execute a High court warrant unless he or she holds a general licence.

Although this rule specifically provides for High Court warrant, it is trite to reckon that the same applies to the Magistrates court. In this case, it is observed that the Licence attached shows that it was issued to the Bailiff on the 19th day of January 2017 and yet the Special Certificate by the trial Magistrate was issued to the Bailiff on the 18th day of January 2017. Since this Special certificate was issued before the Bailiff acquired a valid licence, this amounted to an illegality by the trial Magistrate.

It is also averred that the trial Magistrate granted a certificate for distress for rent without ascertaining whether there was any rent in arrears. According to annexure "A", the tenancy agreement states that the rent payable to the Landlord was UGX 800,000/= with effect from the 1st day of February 2016. It is observed that the rent arrears of six months as calculated by the trial magistrate was UGX.6,600,000/= instead of UGX.4,800,000/=. This miscalculation which shot up the figures was an injustice to the applicant. It is also ascertained that the UGX.4,800,000/= was itself not in arrears having been paid and off set from the water, glass, electricity installation, painting and wiring costs.

This is evidenced by annexures "B1", "B2", "B3", "B4", "B5", "B6", "C", "D" which are receipts for payments made to the landlord. Therefore it was double jeopardy for the applicant to pay arrears as ordered by the trial Magistrate and yet he had paid the same in advance.

Therefore, it is evident that the applicant has proved that the trial Magistrate exercised a Jurisdiction not vested in him and that he committed some illegalities which the High Court has to revise. In the case of *Hitila Vs Uganda (1969)1 E.A 219* the Court of Appeal of Uganda held that;

"In exercising its power of revision, the High court could use its wide powers in any proceedings in which it appeared that an error material to the merits of the case or involving a miscarriage of justice had occurred. It was further held that the court could do so in any proceedings where it appeared from any record that had been called for by the court or which

had been reported for orders or in any proceedings which had otherwise been brought to its notice”.

The above evidence has proved that this is an appropriate case for revision. This court therefore orders that:

- a) **The order by his Worship Sajjabi Noah granting special Certificate to distress for rent against the respondent be revised and set aside.**
- b) **The order for sale of the distressed property by His Worship Sajjabi Noah on the 10th of March 2017 be revised and set aside.**
- c) **The bailiff’s taxed bill of costs be revised and set aside.**
- d) **The distressed property be released from the said distress if not yet sold and the remaining non distressed property be released and handed over to the applicant.**
- e) **The applicant, in his capacity as the Managing Director of Gold Beverages (U) Ltd be allowed access to the demised premises to assess and take any properties left there.**
- h) **The respondent compensates for the lost, damaged and distressed but already sold property by its value put at UGX.150,000,000/=.**
- i) **Costs of this application be provided for.**

Stephen Musota

J U D G E

12.09.2017

12.09.2017:-

Mr. Arinaitwe for the applicant is in court.

Mr. Muhame Alan for the applicant is not in court.

Both parties not in court.

Jolly Court Clerk.

Court:-

Ruling delivered in the presence of:

1. Mr. Arinaitwe for the applicant.
2. Muhame Alan for the applicant.
3. Jolly Court Clerk.

.....

Joy Bahinguza Kabagye
ASSISTANT REGISTRAR

12.09.2017