

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

CIVIL REVISION NO. 48 OF 2016

(ARISING FROM MPIGI CHIEF MAGISTRATE’S COURT CIVIL SUIT NO. 71 OF 2008)

JUSTINE KASOZI..... PLAINTTIF/APPPLICANT

V

1. MPIGI DISTRICT LOCAL COUNCIL V

2. WAKISO DISTRICT LOCAL COUNCIL.....DEFENDANT/RESPONDENTS

BEFORE HON. LADY JUSTICE H. WOLAYO

RULING

Background to the application.

The chief registrar of the Courts of the Judicature in his letter to the deputy registrar Civil Division dated 25.10.2016 gives the background to his application. Apparently after a complaint from counsel for the defendants Nambale, Nerima & Co. Advocates addressed to the Inspector of Courts, the chief registrar called for Mpigi chief magistrate’s court CS No. 71 of 2008 and determined that the file be placed before a judge for revision orders.

The absence of a written complaint by Nambale, Nerima & Co. Advocates is not material to the determination of a case on revision. This is because the High Court may on its own motion call for the record for possible revision under section 83 of the CPA. Of course it is good practice to act on a written complaint but it is not fatal if the written complaint cannot be found or is not there.

What happened is that counsel Nerima for the defendants raised a preliminary objection to the handling of Civil Suit No. 71 of 2008 by the chief magistrate on the ground that she did not have jurisdiction. Counsel argued that the Employment Act 6 of 2006 conferred jurisdiction in employment disputes on the Labour Officers with appeals to the Industrial Court and therefore the magistrate’s court did not have jurisdiction.

In her ruling dated 23.4.2015, the trial magistrate initially agreed with counsel Nerima but on an application for review by counsel Mubiru for the plaintiff, the trial magistrate reversed her decision on 23.9.2015 and declared that she had jurisdiction arguing that the Employment Act 6 of 2006 did not have retrospective effect and therefore as the case was filed in 2005 when magistrates' courts had jurisdiction, she had jurisdiction to hear the dispute.

Counsel adopted the same arguments advanced in the lower court for the revision.

Under section 83 of the CPA, the High court may call for and revise a case before the magistrates' court on the following grounds:

1. The magistrate acted without jurisdiction
2. Failed to exercise a jurisdiction so vested
3. Acted illegally in the exercise of jurisdiction or with material irregularity.

The magistrate in entertaining an application for review acted within her powers. However, an application for review could only be sustained if there is an error on the face of the record or new and important evidence has been discovered and could not have been discovered with due diligence at the time the decision was made.

It seems to me that although the magistrate had jurisdiction to entertain the application for review, there were no grounds for review as contemplated by order 46 rules 1 and 2 of the CPR. If she had made an error of law, the remedy was in appeal to the High Court or to state a case but not for her to reverse her own decision because she was *functus officio*.

This means the magistrate acted with material irregularity when she reversed her previous decision and therefore the file is properly before me for a revision order.

In **Soroti HC Civil Revision No. 1 of 2013 Concern Worldwide v Kugonza**, I held that the Employment Act vests jurisdiction in Employment matters in the Labour Officers at first instance with appeals to the Industrial Court. The reason I ordered the case to be re-registered in Soroti High court was because the Industrial court was not in place to hear appeals from Labour Officers in the event a party was dissatisfied. That decision arose from **Moroto Civil Suit No. 1 of 2013** which means it was filed after the coming into force of the new Employment Act that conferred jurisdiction on labour officers.

Whether magistrates' courts have Jurisdiction in employment disputes

Counsel for the applicant was emphatic that with the enactment of the Employment Act 6 of 2006, jurisdiction was taken away and conferred on specially created dispute resolution mechanisms . Further , that urisdiction is a creature of statute and since magistrates courts are not envisaged by the Employment Act, it is immaterial that when cause of action arose, magistrates courts had jurisdiction.

On construction of statutes, **Halsbury's Laws of England 3rd edition, page 392** states that

'words are primarily construed in their ordinary meaning or common popular sense and as they would have been generally understood the day after the statute was passed unless such construction would lead to manifest and gross absurdity'.

By creating a special dispute resolution mechanism complete with appellate jurisdiction, magistrates courts are no longer competent to handle employment disputes. That is the plain meaning of section 93 of the Employment Act.

That Jurisdiction is a creature of statute is a cardinal principle in statutory interpretation. By enacting a law to regulate individual employment relations and how disputes are to be resolved, the general civil jurisdiction of magistrates courts ceased to apply.

Moreover, section 93(2) to (4) of the Act prescribes a specialized procedure for hearing employment disputes that provides for lodging a complaint and not a plaint, and the case is settled by conciliation or mediation as opposed to the adversarial approach implicit under the Civil Procedure Act and rules .

The remedies available include reconciliation, ordering a party to respect obligations under the contract , and to make the aggrieved party whole .

It is only claims in tort that are reserved for the ordinary courts. Section 93(6) of the Act prescribes that

'A claim in tort arising out of the employment relationship shall be brought before a court and the labour officer shall not have jurisdiction to handle such a claim'.

This provision is consistent with the **Workers Compensation Act Cap 225** that defines a court as a magistrates court in the area where the accident to the employee took place. Injuries suffered by employees are torts to the person.

Argument against retrospective application of the Employment Act

It was argued for the respondent that the Employment Act cannot have retrospective effect. The principle on retrospective application is captured in our Constitution in article 28 (7) where it is stipulated that

‘ no person shall be charged with or convicted of a criminal offence which is founded on an act or omission that did not at the time it took place constitute an offence.’.

This constitutional norm was discussed by the **Constitutional Court in Const. Reference No. 31 of 2010 Uganda v Atugonza** where the Court had to determine whether sections of the Anti-Corruption Act of 2009 had retrospective effect. The applicant was charged with abuse of office based on acts committed prior to the coming into force of the Anti-Corruption Act 6 of 200- It was held that abuse of office and related offences existed in the penal code prior to the Anti-corruption Act and their re-enactment under the Anti-Corruption Act 6 of 2009 was merely a re-enactment and continuation of the old offences. Therefore the applicant was not being charged with an offence that did not exist when the conduct complained off allegedly happened.

It seems that the argument on retrospective application of the Employment Act is misconceived because it is restricted to criminal offences or conduct that attracts a penalty. .

Halsbury’s Laws of England , 3rd edition page 413 explains that statutes should not be construed as taking away private rights to property or rights under contracts. That said, there is no such thing as a right to be tried by the court that had jurisdiction at the time a suit was filed.

When jurisdiction is removed from a magistrates’ court, it means just that unless the statute clearly states that existing cases will continue to be handled. I have carefully scrutinized section 99(2) of the Employment Act that prescribes as follows:

‘any proceedings pending under the repealed Act before the commencement of this Act may be continued and completed under this Act’

The literal meaning of this section is that cases are to be determined under the new law that provides for special procedures and remedies before the Labour officers. Magistrates courts are not contemplated under the Act and therefore they cannot continue and dispose of cases filed before the enactment and in accordance with the new law as prescribed by section 99.

The argument against retrospective application of the Employment Act does not therefore apply .

In the instant case, the respondent's rights were not infringed when sections 93 and 94 of the Employment Act conferred jurisdiction to hear employment disputes on Labour Officers and appeals to the Industrial Court.

The sum total of the foregoing analysis is that the chief magistrate acted with material irregularity when she reversed her earlier correct decision and substituted it with an erroneous decision.

Therefore, Mpigi CS .NO. 71 of 2008 will be transferred to the Industrial Court for further management.

Costs of this application in the cause.

DATED AT KAMPALA THIS 6TH DAY OF APRIL 2017.

HON. LADY JUSTICE H. WOLAYO