

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL REVISION NO. 50 OF 2016

(ARISING FROM MENGO CHIEF MAGISTRATE’S COURT MISC. CAUSE NO. 202 OF 2016)

SABAH ALI HASSANAPPLICANT

V

- 1. GASTER LULE**
- 2. OMONY STANLEY**

BEFORE HON. LADY JUSTICE H. WOLAYO

RULING

The applicant through her advocates Ms Nzige, Jamero & Co applied for revision of the proceedings and orders of the chief magistrate dated 30.10.2016 and for the following orders .

1. an order directing the respondents to pay 93,346,000/ being the value of the properties the applicant lost during the distress for rent process.
2. General damages for loss of business occasioned by the alleged illegal distress.
3. The 2nd respondent be disciplined by the Law Council for misleading the court to issue two conflicting orders.
4. The 2nd respondent be ordered to pay costs of the application personally.

The application was supported by affidavit of the applicant.

The 2nd respondent filed an affidavit in reply opposing the application. He was represented by BKA Advocates.

The 1st respondent filed an affidavit in reply . He was represented by Stanley Omony & Co. Advocates.

Both counsel filed written submissions that I have carefully considered.

The application was brought principally under section 83 of the CPA that contains statutory grounds on which the High court may exercise revision powers over magistrates’ courts , as follows.

1. The court exercised jurisdiction not vested in it by law.

2. The court failed to exercise jurisdiction so vested .
3. The court acted illegally in the exercise of its jurisdiction and with material irregularity.

Genesis of the application

The applicant sued Haruna Sengoba and Ntake Bakery ltd in Mengo Chief Magistrate's court CS No. 602 of 2016 for an order that she is the rightful goodwill owner of the shop; that the defendants illegally closed shop No. 40 located at Jemba Plaza Building; an order stopping continued closure , general damages and costs.

Along the way, she secured an interim order under Misc. Applic. No. 379 of 2016 on 27.5.2016 from the chief magistrate's court in the following terms.

'an interim injunction has been issued by this court to stop the respondents, their servants/agents or any other person deriving an interest from them from continued closure of the applicant's shop No. K40 at Jemba plaza till the determination of the main application for a temporary injunction.'

On 10.10. 2016, under Misc. applic. No. 202 of 2016, Gaster Lule applied for a certificate to levy distress for rent against Sabah Ali Hassan and Haruna Sengoba , wherein the chief magistrate granted the order. Gaster Lule was represented by Omony Stanley who is cited as the 2nd respondent in this revision.

From the affidavits filed in this revision, it is apparent that Gaster Lule is one of the directors of Ntake Bakery Ltd whom Sabah sued in CS 602 of 2016.

The complaint against the two respondents in the revision is three fold.

1. That Gaster Lule is not the landlord of shop No. K40 Jemba plaza for which Sabah paid goodwill to Haruna but rather it is Ntake bakery ltd. That therefore Lule cannot distress for rent and that the distress order was irregularly issued.
2. That the advocate for Lule , Mr. Omony Stanley acted unprofessionally in applying and getting the order for distress when the interim order against Ntake Bakery ltd and Sengoba issued on 27.5.2016 was in force.
3. That the chief magistrate acted with irregularity when he issued two conflicting orders for the same property.

With respect to the first complaint, Gaster Lule in his affidavit in reply, confirms that he is the registered proprietor of Jemba plaza , William street for which he attached a certificate of title.

The affidavit in rejoinder of the applicant in para. 9 confirms that Ntake Bakery ltd of which Lutaya Gaster , the manager as well as son of Gaster Lule , manages Jemba Plaza.

This means that it is not disputed that Ntake bakery is the agent of the owner of the premises, Gaster Lule. It follows that Gaster Lule is the landlord of the premises while Ntake ltd is the company that manages the premises.

With respect to the specific complaint that Gaster Lule cannot distress for rent , the answer is that as landlord, he has the locus to apply for a distress order to recover rent arrears and cause the eviction of a defaulting tenant who becomes a trespasser once in default of rent. The Supreme Court authority **Civil Appeal No. 7 of 1999 Tumushabe and anor v Anglo-African Ltd and another** cited by respondent's counsel before the trial magistrate is relevant. In that case, it is the agent who evicted the defaulting tenants and the Supreme Court held that the landlord tenancy relationship ceased as soon as they were found to be in default and they could be evicted as trespassers.

With respect to **Soroti HCCS. No. 30 of 2014 Ocen Patrick v Edatu Joseph** cited by counsel for the appellant , that decision reaffirmed the principle that only a landlord can apply for a certificate to distress for rent arrears against a defaulting tenant in which case the landlord must demonstrate that there is a landlord tenant relationship .

The distress order was against Haruna Sengoba the recognised tenant of shop K40 who did not oppose the application. Sabah did not attend the proceedings before the chief magistrate. Worthy of note is the reference to Sabah as a sub lessee except that the landlord had not consented to the sub letting.

Therefore, there was no irregularity in the issuance of the distress order as the 1st respondent was the landlord of the premises where shop K40 is located.

The second complaint was that the distress order ought not to have been issued when the interim order was in force concerning the same premises.

The applicant admits in her affidavit in support that she was a goodwill owner which means she paid one Haruna goodwill to operate the shop. She secured an interim order to 'stop' the said Haruna and Ntake Bakery from continuing to close shop K. 40. With due respect to her advocate and the magistrate who signed the order, I find it meaningless. The purpose of an interim order is to preserve the status quo and not to undo it. This explains why the preferred language is 'to restrain' a party .

The order was so vague that no wonder the respondent's advocate saw a loophole and applied for a distress order against Haruna, its substantive tenant from whom the applicant derived occupancy. The fact that the order also targeted Sabah a sub tenant of Haruna might be seen as unfair since she was not recognised as a sub tenant by the landlord. However, since she had occupied the shop , it was inevitable that orders against Haruna would affect her . It seems the arrangement between her and Haruna was such that she was not shielded from becoming a victim of Haruna's default on rent.

There was therefore no conflict between the two orders . The interim order arose from a dispute between Sabah as a party to a private arrangement with Haruna the substantive tenant and the said Haruna and Ntake bakery, on the other hand.

While the distress proceedings were by the landlord against his tenant Haruna.

Unfortunately for Sabah, her position in law was tenacious . She had no direct relationship with the landlord and therefore if she disagreed with her shadow 'principal' Haruna, she was at the mercy of the landlord. Her remedy is in damages for breach of contract by Haruna but not orders to prevent eviction.

The third complaint is therefore answered in the negative. The chief magistrate did not act with material irregularity when he issued two orders over the same subject matter as he was dealing with distinct interests in each of the orders.

With respect to the conduct of Omony Stanley, I find no misconduct on his part. If anything, he acted as a prudent lawyer in identifying loopholes in the applicant's status as a goodwill owner and not a tenant.

Moving forward, goodwill owners are better off committing the landlords or landlords' agents in their goodwill arrangements with substantive tenants so that the goodwill owner can

plead estoppel when a landlord attempts to treat him or her unfairly or when the substantive tenant fails to meet his obligation to pay rent to the landlord.

With respect to other orders sought, those are remedies available to the applicant after a full trial. She is free to file an amendment to the pleadings in the magistrates court so that all issues in controversy are determined.

This application is dismissed with no order as to costs. This is because the applicant's property was the subject of the distress order and she should not be made to incur additional costs .

DATED AT KAMPALA THIS 4TH DAY OF APRIL 2017.

HON. LADY JUSTICE H. WOLAYO