

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA SITTING AT ARUA**  
**CIVIL REVISION No. 0006 OF 2015**  
**(Arising from Paidha Grade One Magistrate’s Court Civil Suit No. 0030 of**  
**2013)**

**REMO HABIB** ..... **APPLICANT**

**VERSUS**

**JUMA SAIDI** ..... **RESPONDENT**

**Before: Hon Justice Stephen Mubiru.**

**RULING**

This is an application for revision of the proceedings and orders of the Grade One Magistrate’s Court of Paidha following its judgment entered in Civil Suit No. 30 of 2013. The applicant contends that in the proceedings leading to the judgment entered against him in that suit on 6<sup>th</sup> May 2015 as well as in the subsequent taxation proceedings, the trial magistrate failed to judiciously exercise a jurisdiction vested in him by denying the applicant an opportunity to be heard and acted in exercise of his jurisdiction illegally and with material irregularity when he committed the applicant to civil imprisonment in execution of the decree. He therefore seeks a revision of those proceedings, a stay of execution, an order directing the trial court to grant the applicant a hearing and an award of the costs of this application.

The application is supported by the affidavit of the applicant in which he avers that when the plaintiff closed his case, the applicant was denied an opportunity to present his defence since he was never served with any hearing notice thereafter. His efforts to obtain information about the progress of the case from the court registry were unsuccessful as he was told on several attempts that the court file could not be traced. He was therefore surprised when on 16<sup>th</sup> October 2015 he was arrested in execution of a decree in the suit and committed to civil imprisonment for failure to pay the decretal sum of shs. 11,024,900/=. Although the hearing had been conducted at Paidha, when the trial Magistrate was transferred to Nebbi he took the court file with him and it

is from Nebbi that the taxation and execution proceedings were conducted without the applicant's knowledge. The applicant contends that these proceedings were in violation of the territorial jurisdiction of the court and therefore constituted an illegality or material irregularity which occasioned him an injustice.

In his affidavit in reply, the respondent opposes the application and states that the applicant ought instead to have sought to have the ex-parte decree set aside. The respondent refutes the averment that the applicant was not notified of the hearing date for his defence. He avers that the applicant simply failed to present any defence. He further avers that the applicant's counsel was duly served with a hearing notice indicating that taxation of the bill of costs would take place on 24<sup>th</sup> July 2015 but he chose to absent himself without reason. The trial magistrate's conduct of the proceedings all occurred within Nebbi Chief Magistrate's Court's territorial jurisdiction, to which the trial magistrate had been posted and his transfer from Paidha to Nebbi did not divest him of jurisdiction to conclude the trial. The respondent therefore contends that there was no illegality or material irregularity in the conduct of the proceedings and therefore the applicant has not suffered any injustice and the application ought to be dismissed with costs.

At the hearing of the application, counsel for the applicant, Mr. Ben Ikilai argued that when the trial magistrate continued to preside over the suit that had been filed and heard in the Paidha Grade One Magistrate's Court after his transfer to Nebbi, he acted without territorial jurisdiction. On the date the suit was fixed for commencement of the defence case, i.e. 27<sup>th</sup> August 2015, the applicant's advocate was appearing before the High Court in a criminal session. When the applicant appeared in court on that day, the court clerk advised the applicant that the court file could not be traced. The applicant got to know that the trial magistrate had taken the file with him to Nebbi when he was arrested in execution of the warrant issued at Nebbi. An application to set aside the ex-parte decree could not be filed in Nebbi since in counsel's view, that court lacked territorial jurisdiction. Counsel argued that the circumstances manifest an illegality or material irregularity which occasioned the applicant an injustice for which reason the remedy sought ought to be granted.

In response, the respondent opposed the application arguing that the suit was heard and completed in Paidha. The trial magistrate only took the file with him to Nebbi for purposes of writing the judgement following his transfer to Nebbi. When the judgment was ready, the trial magistrate issued a judgment notice which was served on the applicant but he and his counsel never turned up in court to receive the judgment. When the bill of costs was fixed for taxation, counsel for the applicant was served with the taxation hearing notice but he never turned up on the appointed day of 27<sup>th</sup> August 2015.

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.

The background to this application is that on 24<sup>th</sup> September 2013, the respondent filed a suit in the Grade one Magistrate's Court at Paidha claiming shs. 7,200,000/= in special damages for breach of a contract for the supply of timber, general damages and costs. The applicant filed a written statement of defence to the suit on 11th October 2013 the applicant denied the claim and averred that the timber in issue did not belong to the respondent but rather to a one Mr. Rogers Mugisha on his behalf he acknowledged receipt of the timber from the applicant. The applicant claimed to have paid the said Rogers Mugisha in full. Later in a negotiated a settlement, the applicant paid the respondent shs. 2,060,000/= for maintenance of a healthy relation between the two of them. In a reply to the applicant's written statement of defence, the respondent averred that the applicant did not receive the timber on behalf of the said Rogers Mugisha. He denied the claim that the applicant paid the amount alleged.

The parties filed an interparty memorandum of scheduling on 17<sup>th</sup> March 2014 and hearing of the suit commenced on 2<sup>nd</sup> April 2014 with the testimony of the respondent. He called one witness who testified on 29<sup>th</sup> May 2014 and closed his case. Further hearing was adjourned inter parties to 11<sup>th</sup> June 2014 when the applicant was supposed to open his defence. The record does not reveal what transpired on that day. The next entry in the record of proceedings was on 1<sup>st</sup> October 2014. On that day both the applicant and his counsel were absent from court when the suit was called for hearing. In the presence of the respondent, counsel for the respondent submitted that a hearing notice had been served on counsel for the applicant on 18<sup>th</sup> September 2014 and an affidavit of service was duly filed on 24<sup>th</sup> September 2014. He prayed that the court directs closure of the defence case and filing of written submissions. The court obliged and counsel for the respondent filed his written submissions on 18<sup>th</sup> November 2014.

The applicant contends that he was denied an opportunity to present his defence. I have perused the record of proceedings of the court below and established that indeed when counsel for the respondent fixed 1<sup>st</sup> October 2014 as the date for commencement of the defence case, service of a hearing notice to that effect was served on counsel for the applicant on 18<sup>th</sup> September 2014 and an affidavit of service was duly filed on 24<sup>th</sup> September 2014. The affidavit of service in paragraphs 3 to 5 explains the manner in which service was effected and attached to the affidavit of service is a copy of the hearing notice bearing a stamp impression of counsel for the applicant's firm and a signature of the named recipient. The Court seal on the hearing notice and the receiving stamp on the affidavit of service indicate that the hearing notice was issued and the affidavit of service was filed at the Court Registry of Paidha Grade One Magistrate's Court. When the case came up on 1<sup>st</sup> October 2014 for hearing of the defence case, neither the applicant nor his counsel was in court and no explanation was given for their absence. Being satisfied that service had been effective, the trial court was empowered by Order 9 r 20 (1) (a) of *The Civil Procedure Rules* to proceed ex-parte. I find therefore that it is not true that the applicant was denied an opportunity to defend the case. Rather, the applicant absented himself from the court without explanation on the day the court had fixed for hearing his defence.

When the suit was subsequently fixed for judgment, a judgment notice dated 28<sup>th</sup> April 2015 was issued by the Grade One Magistrate and the court seal indicates it was issued at Nebbi Chief

Magistrate's Court. Counsel for the applicant was served on 29<sup>th</sup> April 2015 and an affidavit of service filed at the Court Registry of the Chief Magistrate's Court at Nebbi on 6<sup>th</sup> May 2015, the day judgment was delivered. The trial court record does not indicate who was present when the judgment was delivered and the judgment itself is unfortunately neither signed nor dated by the trial magistrate. Order 21 r 3 of *The Civil Procedure Rules* requires that a judgment pronounced by the judicial officer who wrote it should be dated and signed by him or her in open court at the time of pronouncing it. This requirement was not complied with but this in my view does not nullify the judgment but rather is an accidental slip or omission curable by correction under the provisions of section 99 of *The Civil Procedure Act*.

Furthermore, Order 21 r 7 (1) of *The Civil Procedure Rules* requires a decree to bear the date of the day on which the judgment was delivered. The decree in the instant case is dated 20<sup>th</sup> May 2015 rather than 6<sup>th</sup> May 2015, the day the judgment was delivered. This too appears to be an accidental slip or omission curable by correction under the provisions of section 99 of *The Civil Procedure Act*.

The respondent filed a bill of costs dated 10<sup>th</sup> June 2015, at the Court Registry of the Chief Magistrate's Court in Nebbi on 15<sup>th</sup> June 2015. Although there is a taxation notice dated 16<sup>th</sup> June 2015 on the court record fixing the bill of costs for taxation on 29<sup>th</sup> June 2015 at 9.00 am, there is no return of service of that hearing notice. The record as well does not disclose who was present during the taxation proceedings. Being a party who filed a written statement of defence and participated in the trial save for his failure to present evidence in his defence, the applicant was not precluded from participating in the taxation proceedings. He was entitled to be served with the taxation hearing notice and the trial court should not have proceed to tax it ex-parte except upon satisfaction that he had been duly served but absented himself from the proceedings without justifiable cause.

The other contention is that the trial magistrate conducted proceedings subsequent to the closure of the plaintiff's case unlawfully when he did so from Nebbi rather than Paidha following his transfer. The trial record does not indicate at what stage of the proceedings the trial magistrate was transferred from Paidha to Nebbi. What is clear though is that all pleadings were filed at the

court in Paidha. The court was sitting at Paidha throughout the trial up to the stage of closure of the plaintiff's case. When the court directed that written final submissions be filed, it was still sitting at Paidha and it is at the Court Registry at Paidha that counsel for the respondent filed his final written submissions as is evident from the receiving stamp affixed to the submissions.

The initial judgment notice dated issued on 18<sup>th</sup> November 2014, fixing 18<sup>th</sup> December 2014 as the date for delivery of the judgment, was issued at Paidha as evident from the Court seal affixed thereon. The subsequent one dated 28<sup>th</sup> April 2015 fixing the judgment for 6<sup>th</sup> May 2015 was instead issued at Nebbi Court as evident from the court seal affixed thereon. All subsequent pleadings and court process bear stamps and seals of the court at Nebbi. From this I deduce that the transfer of the trial magistrate from Paidha to Nebbi occurred between 18<sup>th</sup> November 2014 and 28<sup>th</sup> April 2015. Counsel for the applicant contends that all proceedings conducted by the trial magistrate from Nebbi after his transfer thereto were unlawful for lack of territorial jurisdiction.

A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. A court ought to exercise its powers strictly within the jurisdictional limits prescribed by the law. Acting without jurisdiction or *ultra vires* or contrary to the provisions of a law or its principles are instances of illegality (see *Pastoli v Kabale District Local Government Council and others [2008] 2 E.A 300*).

Local jurisdiction is the power of the court with reference to the territory within which it is to be exercised. The territorial jurisdiction of magistrates' courts is delimited by way of statutory instruments issued from time to time by the Minister of Justice, after consultation with the Chief Justice, in accordance with section 2 of *The Magistrates Courts Act*. The one in force at the time of the impugned proceedings is *The Magistrates Courts (Magisterial Areas) Instrument, S.I. 45 of 2007*. Under item 25 thereof, the Nebbi Chief Magisterial area comprises; a Chief Magistrate's Court at Nebbi, Magistrate Grade I Courts at Nebbi and Paidha, and Magistrate Grade II Courts at Nebbi, Paidha, Atyak, Zeu, Parombo, Pakwach and Wadelai. According to section 6 of *The*

*Magistrates Courts Act*, every magistrate appointed under the Act is deemed to have been appointed to, and have jurisdiction in, each and every magisterial area but may be assigned to any particular magisterial area or to a part of any magisterial area by the Chief Justice. According to section 3 of *The Magistrates Courts Act*, within each magisterial area, magistrates' courts are designated and are known as the magistrates court for the area in respect of which they have jurisdiction. The purpose of these provisions is to ensure that the authority of the various magistrates is limited to certain well defined territory. For that reason the Grade one Magistrates' Court at Paidha has its local limits restricted to the geographical limits of the local government administrative units of Paidha.

Close scrutiny of the provisions relating to geographical jurisdiction reveals that local jurisdiction is vested in the court and not in the magistrates. As such, when the magistrate is transferred, no transfer of territorial jurisdiction results since this continues to be vested in the court by virtue of the power of defining or apportioning the territory over which a particular magistrate exercises jurisdiction vested in the Chief Justice.

In the instant case, the trial magistrate was assigned to Paidha at the time of commencement of the trial and conclusion of the hearing. Upon transfer, all that remained was receiving of written final submissions and delivery of the judgment. It is the practice that judicial officers transferred, who at the time of transfer had cases pending before them where the proceedings had advanced to that level, are expected to carry the files with them to their newly assigned territorial jurisdiction and write the judgments. But when the judgment is ready, it is delivered not at the court of their new assignment, but rather the court where the evidence was recorded by the magistrate who wrote the judgment or by the successor magistrate. All subsequent proceedings are undertaken by that court within whose local jurisdiction the suit was filed and tried.

This practice is consistent with section 7 (1) (a) of *The Magistrates Courts Act* which requires a magistrate's court to sit "at any place within the local limits of its jurisdiction." If a magistrate's court is to sit at any place outside the local limits of its jurisdiction, then section 7 (1) (b) of *The Magistrates Courts Act* requires that written authorisation of the Chief Justice be sought and that authorisation will be given only if it appears to the Chief Justice that the interests of justice so

require, in which case the proceedings may be held in such building as the Chief Justice may, from time to time, assign as the courthouse. The alternative is for invoking the powers of the Chief Magistrate under section 171 of *The Magistrates Courts Act* (in respect of criminal cases) or that of the High Court under section 128 of *The Magistrates Courts Act* (in respect of civil suits) to have the suit transferred from one court to the other. When any of these provisions is invoked, territorial or local competency will not be a prerequisite, necessary or required of the court to which the suit is transferred.

In absence of written authorisation of the Chief Justice or transfer by the Chief Magistrate or the High Court, a magistrates' court seized with jurisdiction over a matter cannot transfer any aspect of the disposition of the matter, including the delivery of judgment and post judgment proceedings, from one local jurisdiction to another, unless authorised to do so by law or in accordance with the law, such as where a decree is sent to another court for execution under Order 22 rules 4 to 7 of *The Civil Procedure Rules*. Otherwise, a Court without local jurisdiction is not competent to dispose of any aspect of the suit. To have jurisdiction is to have the power to inquire into the fact, to apply the law and to declare the relief in a regular course of a judicial proceeding. Jurisdiction does not in any way depend upon the regularity of its exercise or upon the rightfulness of the decisions made. The authority to decide a case and not the decision rendered therein is what makes up jurisdiction. Therefore, a court taking cognisance of any aspect of the suit, in violation of the law governing territorial jurisdiction and transfer of decrees for execution, is an abuse of process.

Providing for the jurisdiction of courts on the basis geographical location is meant to give structure to the system of justice by ensuring that there is orderly disposal of cases. It also helps to create efficiency within the system by reducing conflicting cognisance of cases by different courts at the same time. It is for this reason that every suit should ordinarily be instituted in the Court of the lowest grade competent to try it as required by section 208 of *The Magistrates Courts Act*. This explains why in decisions such as *Pastoli v Kabale District Local Government Council and others* [2008] 2 E.A 300, *Kagenyi v Musiramo and another* [1968] E.A.43 it has been decided that an order of court made without jurisdiction is a nullity and that an order for the transfer of a suit from one court to another cannot be made unless the suit has been in the first



instance brought to a court which has jurisdiction to try it. Therefore that a suit instituted in a court without jurisdiction is incompetent and cannot be transferred to the High Court for hearing and determination. These decisions though have all addressed the pecuniary rather than the local limits of the jurisdiction of courts.

Whereas the rules of venue in criminal cases are of fundamental importance to territorial jurisdiction so as not to compel an accused person to move to and appear in a different court from that within whose territory the crime was committed as it would cause him or her great inconvenience in looking for his or witnesses and other evidence in another place, in civil suits they are procedural. Although it has been argued by the respondent that non compliance with local jurisdiction may not necessarily nullify a civil proceeding if both courts are within the same Chief Magisterial area, I am of the opinion that the four aspects of civil jurisdiction; the nature and pecuniary value of the subject matter, personal, temporal, and territorial are of equal importance. A court that lacks one lacks jurisdiction and competence entirely to try the suit, irrespective of whether or not it is operating within the same Chief Magisterial area. Proceedings undertaken by a court without jurisdiction are a nullity, be it subject matter (*ratione materiae*), personal (*ratione personae*), temporal (*ratione temporis*), or territorial (*ratione loci*).

In the instant case, although the court that tried the suit was competent to do so, significant parts of the concluding proceedings were undertaken in violation of the territorial aspect of jurisdiction. I therefore find that the proceedings undertaken by the court following the filing of the final submissions were erroneous. The trial magistrate acted with material irregularity when he; delivered the judgment at the Nebbi Court instead of the Court at Paidha, when he failed to record the attendance in court at the time of delivery of the judgment, when he omitted to sign and date the judgment, when he issued a decree whose date does not correspondent to the date of the judgment, when he proceeded with taxation proceedings at the Court at Nebbi instead of the Paidha Court, when he proceeded to tax the bill of costs without proof of service on the applicant or his counsel, of the relevant taxation hearing notice, when he proceeded to issue a warrant of execution at the Nebbi Court instead of the Court at Paidha and when he proceeded to issue the warrant of commitment to of the applicant to civil imprisonment from the Court at Nebbi instead of the Court at Paidha.

For the reasons stated above, I therefore declare that all proceedings listed in the foregoing paragraph above as conducted by the trial court following the filing of the final submissions, are null and void and are hereby set aside. The Registrar of this court is by this ruling instructed to cause the trial court file to be remitted to the trial magistrate, for him to date and sign the judgment. That magistrate should determine whether he is to deliver the judgment himself at the court in Paidha or instead send it to the incumbent Grade One Magistrate at that Court to deliver it on his behalf. The court file should thereafter be returned to the Grade One Magistrate at Paidha for delivery of the judgment after due notice to the parties and for that court to undertake all subsequent proceedings thereafter until the matter is brought to its logical conclusion.

The applicant sought the costs of this application. The application has however succeeded only in part and the errors on basis of which part of the proceedings have been set aside were essentially committed by the trial court without any material contribution of the respondent. In any event, the record reveals dilatory conduct on the part of the applicant and his counsel in the manner in which they set about defending the suit. It is therefore only fair that each party is to bear his costs of this application.

Dated at Arua this 10<sup>th</sup> day of January 2017.

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Stephen Mubiru  
Judge