

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT JINJA**  
**REVISION CAUSE No. 02/2016**

**ISANGADIT TITUS**

=====

**APPLICANT**

**VERSUS**

**MBABAZI PROSSY**

=====

**RESPONDENT**

**BEFORE: THE HON MR. JUSTICE MICHAEL ELUBU**

**RULING**

The Applicant herein, **ISANGADIT TITUS**, brings this application under Sections 83 and 98 of the **Civil Procedure Act**. The Respondent is **MBABAZI PROSSY**.

The orders sought are:

- i. The proceedings and orders of the learned trial magistrate in Civil Suit No. 88 of 2015 at the Chief Magistrates Court holden at Mukono be revised and set aside
- ii. Retrial of the Civil Suit No. 88 of 2015 at the Chief Magistrates Court of Mukono doth issue
- iii. Costs of this application be provided for.

The background to this matter is that the respondent sued the applicant in the Chief Magistrates Court of Mukono for an order of vacant possession for a house and land situate at Gwafu Seeta in Mukono district. The trial Magistrate entered an interlocutory judgement following failure of the applicant to file his written statement of defence in time. The matter had proceeded exparte in the first instance. When the suit first came up the applicant here did not file a defence prompting the trial magistrate to order that the matter proceed exparte. On the 19<sup>th</sup> of January 2016 the trial magistrate reconsidered her decision to try the case

exparte taking into account that as a land case it ought to be determined on its merits. The applicant (defendant) was given leave to file a defence which he did on the 10<sup>th</sup> of February 2016. The learned trial Magistrate ruled that this defence was out of time, heard the matter exparte and delivered judgement on the 6<sup>th</sup> of September 2016. It is against this background that this application is filed.

The pleadings and submissions filed are on record and shall not be reproduced here. I have studied them and will refer to them in the determination of the issues which in my view are:

- a. Whether the applicant is entitled to the orders sought
- b. What remedies are available in the circumstances

**a. Whether the applicant is entitled to the orders sought**

This application is brought principally under Section 83 of **the Civil Procedure Act** which provides,

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; or
- (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; but no such power of revision shall be exercised—

- (d) unless the parties shall first be given the opportunity of being heard; or
- (e) where, from lapse of time or other cause, the exercise of that power would involve serious hardship to any person.

It has been held that,

the High Court has only to see whether the requirements of the law have been duly and properly obeyed by the court whose order is the subject of revision. As was

observed by their Lordships of the Privy Council in *Balakrishna v. Vasudeva* ((1917), 44 I.A. 261):

“It will be observed that the section applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved (see **Matemba v Yamulinga [1968] 1 EA 643**).

I have examined the plaint in the lower Court. It indicates that the dispute arose from the sale of a house, at 49,000,000/- (forty nine million shillings), which sale was concluded on the 15<sup>th</sup> of November 2013. The applicant states the value of the sale shows that the trial, by a Grade I Magistrate, was done without pecuniary jurisdiction.

s. 207 of **The Magistrates Court’s Act** as amended provides for Pecuniary Jurisdiction. A Grade I Magistrate is limited to matters where the subject matter does not exceed twenty million shillings in value.

It was argued that the pecuniary jurisdiction was irrelevant here as the suit was brought in trespass to the land by the respondent.

With regard to pecuniary jurisdiction **the Civil Procedure Act** provides in Section 4 that,  
Except insofar as is otherwise expressly provided, nothing in this Act shall operate to give any court jurisdiction over suits the amount or value of the subject matter of which exceeds the pecuniary limits, if any, of its ordinary jurisdiction.

Therefore whether it was a suit in trespass or otherwise, the determinant in establishing the limits of pecuniary jurisdiction of a Court is the value of the subject matter. Here the plaintiffs own annexures to the plaint (Sale agreement) place the subject matter at 49,000,000/- (forty nine million shillings).

In this regard the suit subject matter exceeded that reserved for handling by a Grade I Magistrate.

It was held in **Mubiru vs Kaviwa (1979) HCB 212** as follows, it is settled law that a judgment of a Court without jurisdiction is a nullity and as such it was something which a person affected by it was entitled to have set aside *ex debito justitiae*.

The other question in this application is with regard to time. The Trial Magistrate on the 19<sup>th</sup> of January 2016 allowed the applicant time to file a defence which the applicant did on the 10<sup>th</sup> of February 2016. Under Order 8 rule (1) (2) of **the Civil Procedure Rules** the applicant had fifteen days to file a defence. Excluding the public holidays and weekends when the Court is closed and cannot receive documents, then the applicant was in time when he filed his WSD on the 10<sup>th</sup> of February, as that was the fifteenth and last day he could file.

In that case it was irregular and unjust to exclude a defence that was filed in time.

Lastly the respondent submitted that a grant of this application shall visit serious hardship on the respondent who has already sold the property. There was no evidence to this effect in the respondent's affidavit in reply. In that regard therefore the case for serious hardship is not made out.

For the above reasons the applicant is entitled to the Orders sought.

**b. What remedies are available in the circumstances**

In the circumstances this Court Orders that:

- i. The proceedings and orders of the learned trial magistrate in Civil Suit No. 88 of 2015 at the Chief Magistrates Court holden at Mukono be revised and set aside
- ii. Retrial of the Civil Suit No. 88 of 2015 at the Chief Magistrates Court of Mukono
- iii. The applicant shall have the Costs of this application.



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**Michael Elubu**

**Judge**

**2.5.18**