

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA**

CIVIL REVISION NO.04 OF 2018

**(ARISING FROM MISCELLANEOUS APPLICATION NO.19 OF 2018 Itself arising from
Civil Suit No. 12 of 2016 AT KASANGATI)**

- 1. KAWAGA LAWRENCE**
- 2. SULAIMAN NTEEZI----- APPLICANTS**
- 3. NAMUSAMULA SARAH**

VERSUS

**ZIWA & SONS PROPERTY CONSULTANTS LIMITED.....
RESPONDENT**

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is an application for a revision order against the ruling of a Magistrate grade One of Kasaganti in which he overruled a preliminary objection that he lacked jurisdiction to hear and determine the matter before him.

The respondent filed a suit in a Magistrates court seeking the following orders;

- A declaration that the defendants are trespassers,
- Vacant possession of land;
- A Permanent injunction restraining the defendants, their agents, employees and/or anyone claiming title under them from undertaking any further dealings with the suit land;
- General damages for trespass and inconvenience caused;
- Costs of the suit

The respondent filed an application for a temporary injunction and before the hearing of this application raised several objections out of which this application for revision arose.

The applicants were represented by Jingo Christopher and the respondent was represented by Matovu Muhamad. In the interest of time court directed the counsel for both parties to file written submissions.

The application was brought by way of Notice of Motion under Section 83 & 98 of the Civil Procedure Act, and Order 52 r1 &3 of the Civil Procedure Rules for Orders that;

1. A revision order be issued by this Honourable court revising the ruling and orders of His Worship Achoka Egesa Freddy Grade One Magistrate of Kasangati under the Chief magistrate's Court of Nabweru for Exercising a jurisdiction not vested in it.
2. The applicant also prayed for costs of this application.

The application was supported by the affidavit of Kawaga Lawrence.

In opposition to this Application the Respondent filed an affidavit in reply by Robert Ziwa wherein he vehemently opposed the revision orders sought by contending that the court had jurisdiction to hear and determine the matter before it.

I have considered the respective submissions however I must state that counsel for the respective parties did at some extent venture into issues and preliminary points of law that in my opinion are not fit for consideration in the application of this nature.

This application is confined to the provisions of Section 83 of the Civil Procedure Act and that is strictly revision and such an application cannot be used as an Appeal against findings of the magistrate's court.

Section 83 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 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 exercise of its jurisdiction illegally or with material irregularity or injustice,

In this application the applicants are only challenging the magistrate grade one for exercising jurisdiction not vested in it.

The applicants contend that the court lacked jurisdiction to hear the matter the value of the subject matter according to them was above 70,000,000/=. The respondent on the other hand contends that the said suit was for trespass to land and the magistrate has jurisdiction to hear and determine the matter.

This matter was before a Magistrate Grade One who noted in his ruling as follows;

“ Iam persuaded by section 207 (1)(a) of the M.C.A which gives Magistrates Unlimited jurisdiction in Disputes relating to conversion, damage to property or trespass. Counsel cannot depart from pleadings. I overrule the objection”

The law cited by the learned trial magistrate is only applicable to the Chief Magistrate. The Jurisdiction of a Magistrate grade one is provided under section 207(1)(b); ***a magistrate grade 1 shall have jurisdiction where the value of the subject matter does not exceed twenty million shillings.*** The learned trial magistrate vested himself with jurisdiction of a Chief Magistrate which was very erroneous. The jurisdiction of the magistrate grade one is determined by the value of the subject matter of the suit before it. Section 207(3) provides;

Whenever for the purposes of jurisdiction or court fees it is necessary to estimate the value of the subject matter of a suit capable of money valuation, the plaintiff shall in the plaint, subject to any rules of court, fix the amount at which he or she values the subject matter of the suit;

In the present case, the respondent deliberately refused to give an estimate of the value of the subject matter in the plaint but attached a copy of the said agreement marked 'A' which shows that he bought the said property for a total of 70,000,000/=.

The question of jurisdiction of court is very important in determining the authority to be exercised by the court as it was explained in **Koboko District Local Government vs Okujjo Swali High Court Miscellaneous Application No. 001 of 2016** where court noted that;

“One of the “policies of court” is the question of jurisdiction that it is at once fundamental and over-arching as far as any judicial proceeding is concerned. Jurisdiction is the first test in the legal authority of a court and its absence disqualifies the court from exercising any of its powers. Jurisdiction means and includes any authority conferred by the law upon the court to decide or adjudicate any dispute between the parties or pass judgment or order. A court cannot entertain a cause which it has no jurisdiction to adjudicate upon.”

In the present case, the learned trial Magistrate was proceeding as if he was the Chief Magistrate. The actions for trespass without considering the value of the subject matter are confined to Chief magistrate only.

There is need to draw a clear distinction between an action for trespass to land envisaged under the Magistrates Courts Act section 207(1)(a) as a common law tort and an Action for recovery of land.

An action for trespass to land occurs when the person directly enters upon another's land without permission and remains upon the land, places or projects any object upon the land. (*See Salmond and Heuston on the Law of Torts, 19th Edition*). It is a possessory action where if remedies are to be awarded, the plaintiff must prove a possessory interest in the land. It is the right of the owner in possession to exclusive possession that is protected by an action for trespass. Such possession must be actual and this requires the plaintiff to demonstrate his or her exclusive possession and control of the land. The entry by the defendant onto the plaintiff's must be unauthorized. The defendant should not have had any right to enter into the plaintiff's land. In order to succeed, the

plaintiff must prove that; he or she was in possession at the time of trespass; there was an unlawful or unauthorized entry by the defendant; and the entry occasion damage to the plaintiff.

In an action for recovery of land, this is a substantive claim for getting declaratory orders as to the rightful ownership of land. Where there are two competing interests on the land. The duty of the court is to determine between the two parties who is the rightful owner of the said land i.e between two titles or interests (Lessor and Lessee) (registered proprietor and Kibanja Owner/Lawful Occupant).

In the instant case the respondent/plaintiff has pleaded in paragraph 5 of the plaint;

- (i) “ that when the plaintiff company’s representative, a one Zziwa Robert, confronted the defendants and notified them of the said trespass, the same claimed to be owners and have hitherto neglected to vacate the land.
- (j) That the defendants are threatening away the plaintiff company’s customers and are denying them access to the land.”

The applicants/defendants have pleaded in their Written Statement of Defence;

Paragraph 5 “the 1st defendant shall aver that he purchased one acre of land in Kyadondo Block 111 Plot 479”

Paragraph 12 “.....it is plaintiff’s agents who are trespassing on the suit land”

Paragraph 13 “ the defendants shall aver that they took possession of the suit land immediately after the purchase and they are still in possession of the same”.

Both parties are clearly alleging trespass against each other. The foundation of an action for trespass to land is possession and to maintain trespass against a wrongdoer it is not necessary that the plaintiff possession be lawful. **See Kalinga v Kalumwana [1990-1994] EA 137.**

The case that is before the trial court is simply for recovery of land and inevitably would involve orders for vacant possession and eviction orders. The court would have to determine between the plaintiff and the respondents who is the rightful owner since they both claim to have bought from different vendors.

In the case of **Sheikh Mohammed Lubowa v Kitara Enterprises Ltd Civil Appeal No. 4 of 1987(CAU)[1992] KALR 126** Court noted that;

“In order to prove alleged trespass, it was incumbent on the appellant to prove that the disputed land indeed belonged to him, that the respondent had entered upon that land and

that entry was unlawful in that it was made without his permission or that the respondent had no or right or interest in the land.”

It is my finding based on the pleadings of both parties that this was not a case for trespass but rather for recovery of land. The plaintiff indeed pleaded that they have been denied access to the land.

Since the case before court was for recovery of land although pleaded as trespass to land, the respondent/plaintiff should have disclosed the value of the subject matter which clearly would have indicated to court that it never had the pecuniary Jurisdiction to hear the same.

The application succeeds on this ground.

The applicants also raised the issue of lack of territorial jurisdiction for the court to hear this matter which arose at kiteezi, Nangabo sub county Wakiso district.

This ground of revision falls squarely within the provisions of Section 83 of the Civil Procedure Act.” **exercised a jurisdiction not vested in it in law;**

A court of law cannot adjudicate upon a subject matter, which does not fall within its province as limited or defined by law.

The applicants in their submission have cited a law which was repealed and replaced i.e Magistrate Court (Magisterial Areas) Instrument 2007 this law was revoked and replaced by The Magistrates Courts (Magisterial Areas) Instrument 2017 SI No. 11 of 2017.

Kasaganti Court was seized with territorial Jurisdiction to hear a matter that arose at Kiteezi, Nangabo Sub county.

The rest of the grounds for revision have been found to be falling outside the provisions of section 83 of the Civil Procedure Act and I have opted not to waste valuable time in resolving them.

In the result for the reasons stated herein above this application succeeds in part. i.e the trial court has no pecuniary jurisdiction to hear the matter.

Each party shall bear its costs

It is so ordered.

SSEKAANA MUSA
JUDGE

25/05/2018