IN THE HIGH COURT OF UGANDA SITTING AT GULU

Reportable
Civil Revision No. 002 of 2019

In the matter between

TOLIT CHARLES OKIRO **APPLICANT**

And

OTTO CIPIRIANO **RESPONDENT**

Heard: 3 April 2019

Delivered: 11 April 2019

Summary: complaint against trial court's forced closure of plaintiff's case.

RULING

STEPHEN MUBIRU, J.

Introduction:

[1] This revision was initiated by way of a letter of complaint written by one of the administrators of the estate of the deceased plaintiff, dated 20th December, 2018. In that letter, it was contended that the trial Magistrate had erroneously ordered closure of the plaintiff's case, proceeded to hear the defence and visit the *locus in quo* before the plaintiff had called all his witnesses. Upon receipt of the letter of complaint, this court called for and perused the record of the court below in order to ascertain the facts and found that the plaintiff (now deceased) sued the defendant for recovery of approximately six acres of land situate at Orute West village, Palenga Parish, Pajule sub-county, Aruu County in Pader District, general damages for trespass to land, a permanent injunction and costs.

[2] The gist of the complaint is that the plaintiff's case was closed prematurely by order of court, the defence opened and the *locus in quo* was visited. The judgment has been pending since the demise of the plaintiff. The applicant contends that in directing closure of the plaintiff's case, the trial court acted in the exercise of its jurisdiction illegally or with material irregularity or injustice since the plaintiff was prevented from calling all his witnesses. He sought revision of the proceedings by way of ordering a re-trial. Although notified of this contention, the respondent did not appear in court to provide a response.

<u>General principles</u>;

[3] 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.

<u>Justification of the forced closure</u>;

[4] It is provided under Order 17 rule 4 of *The Civil Procedure Rules*, that where any party to a suit to whom time has been granted fails to produce his or her evidence, or to cause the attendance of his or her witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the court may, notwithstanding that default, proceed to decide the suit

immediately. The rule is limited in its application to cases when the following conditions are satisfied: (1) the adjournment was granted to enable a party to produce his evidence or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit; (2) such party does not perform the act or acts for which time had been granted to him; and (3) the hearing had been adjourned at the instance of the party which committed default.

[5] In the instant case the order to close the plaintiff's case was made on 8th July, 2016 after three consecutive adjournments at the instance of the plaintiff, over a period of three years. I find that the trial court's decision to order closure of the plaintiff's case was justified. The Court properly exercised it broad powers of case management to achieve the objective of facilitating the just, efficient, timely and cost-effective resolution of the real issues in dispute.

[6] An order for retrial is an exceptional measure to which resort must necessarily be limited. A trial *de novo* is usually ordered by an appellate court when the original trial fails to make a determination in a manner dictated by law. A retrial should not be ordered unless the following conditions are met; (i) that the original trial was null or defective; (ii) that the interests of justice require it; (iii) that the witnesses who had testified were readily available to do so again should a retrial be ordered; and (iv) no injustice will be occasioned to the other party if an order for retrial is made. These conditions are conjunctive and not disjunctive. The context of each retrial is unique, and its impact can only be addressed by taking into account this individual context. None of those grounds is evident on the face of the record.

<u>An order for re-opening of a party's case</u>;

[7] The alternative is to consider granting the applicant leave to re-open his case. There are four recognised classes of case in which a court may grant leave to re-open a party’s case, which are; (i) where fresh evidence, unavailable or not

reasonably discoverable before, becomes known and available; (ii) where there has been inadvertent error; (iii) where there has been a mistaken apprehension of the facts; and (iv) where there has been a mistaken apprehension of the law. These classes are not closed but the present falls into none of them, and no applicable new category is suggested. The overriding principle is that the court consider whether, taken as a whole, the justice of the case favours the grant of leave to reopen and any prejudice in re-opening the case should be minimal. Other considerations the court should take into account include: the reason why the evidence was not led timeously, the degree of materiality of the evidence, the possibility that it might have been shaped, the balance of the prejudice, the stage that the litigation had reached, the general need for finality in judicial proceedings and the appropriateness of visiting the advocates remissness on the head of his client.

[8] In the instant case, none of those grounds is evident on the face of the record. The number of witnesses intended to be called and nature of evidence intended to be adduced through them is undisclosed. Therefore the materiality of the evidence cannot be determined and the possibility that it might have been shaped cannot be ruled out. Re-opening the plaintiffs case this late in the proceedings after the defence has closed its case and court has visited the *locus in quo* is substantially prejudicial to the defence.

Public policy in favour of expeditious trials;

[9] Public interest emphasises efficiency and economy in the conduct of litigation, in that the courts' resources should be used in such a manner that any given case is allocated its fair share of resources, the most important of which in civil litigation is time. Each case whose trial in unduly prolonged deprives other worthy litigants of timely access to the courts. Courts must ensure that each suit is dealt with expeditiously and fairly, allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

Order :

[10] I have accordingly not found any merit in the complaint and the resultant revision sought. Accordingly the application by way of complaint is dismissed, with the following orders;.

a) The court below is directed to substitute the name of the deceased plaintiff with those of the administrators of his estate and proceed to deliver its judgment.
b) The original trial record and this order should be returned to the trial court for that purpose.
c) This revision not having been prompted by direct application of the applicant but rather a formal complaint, each party is to bear their costs of these proceedings.

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Stephen Mubiru

Resident Judge, Gulu

Appearances

For the applicant : Mr. Anywar Patrick and Ayot Carla appearing *pro se*.

For the respondent : Mr. Patrick Abore.