

The Republic of Uganda

In The High Court of Uganda at Soroti

Miscellaneous Application No. 4 Of 2021

[Arising of the judgment of the Grade One Magistrate of Soroti Chief Magistrate  
Area Vide Civil Suit No. 067/ 2012]

Agwau John Robert :: Applicant

Versus

Odongo Faustine :: Respondent

Before: Hon. Justice Dr. Henry Peter Adonyo

Ruling

This application is brought under section 83 of the Civil Procedure Act, Order 52 rules 1, 2 and 3 of the Civil Procedure Rules for orders that;

- a) The judgment and orders of the Magistrate Grade One Her Worship Wakooli Grace delivered on the 17<sup>th</sup> November 2017, and corrected on the 15<sup>th</sup> January 2018 be called up, revised, quashed and set aside.

b) Costs be provided for.

The grounds on which this application is premised are highlighted in the affidavit in support of Mr. Agwau John Robert. They are that;

- a) The trial Magistrate exercised jurisdiction illegally by entertaining a matter that was beyond her pecuniary jurisdiction
- b) The subject of litigation upon which the respondent claimed is illegal and *void ab initio* in as far as there was no compliance with the statutory requirement of spousal consent
- c) The decision of the lower court has occasioned a total miscarriage of justice
- d) The application be allowed in the interests of justice.

### Affidavits

In the affidavit in support of the application, Mr. Agwau Robert, averred that he is the owner of the property at Plot 7B Okurut Close in Soroti City, Leasehold Register Volume 3021 Folio 15 valued at UGX 300,000,000/= (Uganda shillings three hundred million only). That, the lower court did not have the jurisdiction to handle the matter, since at the time of filing the suit it was valued at UGX 100,000,000/= (Uganda shillings one hundred million only) because it exceeded the pecuniary jurisdiction of the said court and in doing so erred in both fact and law when it upheld

a transaction that was *void ab initio*. Further that, the decision and orders of the lower court be quashed and set aside and he be restored to his rightful status of ownership of the property in issue.

A supplementary affidavit was sworn by Ms. Akello Rose, wife the Mr. Agwau, with whom they concluded a customary marriage in 1984 and have lived as husband and wife since then, in it is averred that she noticed that her husband was selling part of the house, which is their matrimonial property, to which she objected without success. That, she did not consent to the transaction.

An affidavit in reply was sworn by Mr. Odongo Faustine. He deponed that the affidavit in support of the application is defective since it does not disclose the true source of information. That, the applicant filed Civil Appeal No. 74 of 2017 but failed to prosecute it upon which it was dismissed. Furthermore, that he is the rightful owner of Plot 7B, Okurut Close in Soroti City which he purchased from the applicant at UGX 14,800,000/= as consideration and that there is no valuation report to put the property at UGX 100,000,000/= and therefore the lower court had the pecuniary jurisdiction to handle the matter filed before it. He averred that he is the holder of two decrees in respect of the same property in the lower court and in the High Court so the applicant cannot be heard to say that he is the owner of the suit property.

## Submissions

Counsel for the applicant relied on section 83 of the Civil Procedure Act, Cap. 71 which grants the High Court powers of revision and Section 14 of the Judicature Act Cap. 13 which gives the High Court unlimited jurisdiction in all matters. Counsel also cited *Makula International Vs Cardinal Nsubuga & Another (19820 HCB 14-15* and *Kaloli Mubiru & 21 Others vs Edmond Kayiwa & 5 Others Civil Suit No. 3/ 1979 COA (1979) HCB 212* wherein was highlighted the principle that jurisdiction is a creature of statute and cannot be assumed and any decision arrived at without jurisdiction is null and void.

Counsel then submitted that the trial Magistrate Grade One was in error in so far as the suit value exceeded her pecuniary jurisdiction of UGX 20,000,000/= (Uganda Shillings Twenty Million) which is her court's pecuniary jurisdiction and that what she handled did not fall under Section 207(2) of the Magistrates Act Cap. 16.

The respondent's counsel raised two preliminary objections. The first preliminary objection was that the affidavit in support of the application is defective because it does not disclose the source of information. The second preliminary objection was that service of court process to the respondent was ineffective in this matter.

That, contrary to the provisions of Order 5 rule 1, 2 and 3 of the Civil Procedure Rules since Ikopot Kristyn Jill is not a process server and that the hearing notice was also served LCI chairman who never notified the respondent.

It was also submitted that the application should be dismissed since the applicant failed to prosecute the appeal he had lodged. Counsel for the respondent also argued that when the matter was filed before the Chief Magistrate's court basing on the purchase agreement, the property was valued at UGX 14, 800,000/= and it was also purchased at the same value. That, the values of UGX 300,000,000/= and UGX 100,000,000/= that were mentioned by the applicant are not backed by valuation reports.

It was argued that since the subject matter of the suit did not exceed the pecuniary jurisdiction provided for under Section 207 of the Magistrates Courts Act then the trial magistrate had legally exercised jurisdiction which this court should find so.

#### Decision of Court:

Counsel for the respondent raised two preliminary objections. The first was that the affidavit in support of the application was defective given the fact that it did not include the required statement which is **that** *"whatever is stated herein above is correct to the best of my knowledge save for paragraphs..."* meaning that the information source was not disclosed.

Order 19 rule 3 of the Civil Procedure Rules provides that affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove, except on interlocutory applications, on which statements of his or her belief may be admitted, provided that the grounds thereof are stated.

Where a deponent states his belief, he must provide grounds for that belief.

In the present case, the applicant in paragraphs 4, 5 and 7 of his affidavit, deponed respectively, as they are reproduced here below;

*-That, I am advised by my lawyers M/s Isodo & Co. Advocates whose advice I verily believe to be true and correct that the lower court did not have power to handle the matter filed before it as it exceeded its pecuniary jurisdiction.*

*-That I am further advised by my above said lawyers whose advice I verily believe to be true and correct that the lower court erred in both fact and law when it upheld a transaction that was void ab initio*

*-That I am advised by my lawyers that this desired end can be achieved by calling up and revising the lower court record.*

As seen from the above it is clear that the applicant clearly stated the source of his belief or knowledge under paragraphs 4, 5 and 7 as required under the law. It was therefore not required to repeat the same statement at the end of the affidavit.

Moreover, in paragraph 10, the applicant further averred that, *'That what is stated herein above is true and correct to the best of my knowledge'*.

The applicant's averments were sufficient and were in accordance with Order 19 rule 3 of the Civil Procedure Rules.

In the premises, the first preliminary objection is of no value and is hereby dismissed.

The second preliminary objection raised by the respondent's counsel is that the service of process on the respondent was ineffective.

The process in contention was effected by Ms. Ikoput Kristyn Jill who swore an affidavit of service on 26<sup>th</sup> April 2021.

In that affidavit Ms. Ikoput avers that on 7<sup>th</sup> February 2021 she received a notice of motion to be served upon Odongo Faustine. That she then travelled to Anyara village in Otuboi Sub-county, Kalaki District on 1<sup>st</sup> March 2021 and that at the trading centre she met one Aweikin Charles who introduced himself as a cousin to the respondent and he offered to take her to the respondent's home where he also lived. That, when she introduced herself and the purpose of her visit, Aweikin acknowledged service by appending his signature and name on his return copy and also assured her that Odongo Faustine would receive the notice since they live in the same home.

Order 5 rule 10 of the Civil Procedure Rules it is provided that

service shall be made on the defendant in person unless he or she has an agent empowered to accept service in which case service on the agent shall be sufficient.

Further according to Order 5 rule 13 of the Civil Procedure Rules where in any suit the defendant cannot be found, service may be made on an agent of the defendant empowered to accept service or on any adult member of the family of the defendant who is residing with him or her.

According to the provision of the Order service must be personal except in cases where the defendant cannot be found, in which case, service will be done on his agent or a member of the family.

In *Wadamba David vs Godfrey Mutasa & two Others Civil Appeal No. 0032 of 2015*, the court while citing *Erukana Kavuma vs Metha [1960] EA 305* where service was effected on an adult member of the family when the defendant was away in India at that time went on to hold that there was need to hold an inquiry regarding the defendant's address before it could be concluded that he cannot be found and that some of the tenets of effective service include a statement to the effect that the respondent was personally known to the process server at the time of effecting service and secondly that since the respondent / defendant was not known to the process server, another person accompanied the process server and pointed out the person to be served.

In the instant case, the process server after arriving at Anyara Trading Centre enlisted the help of one Aweikin Charles who assured that her that he was a cousin of the respondent and that he would ensure that the respondent receives the notice of





motion since they stay in the same home. No inquiry was done to these facts for she even did not enlist the aid of the Local Council Chairperson to ensure that the respondent was served and summoned yet Aweikin was not known to her until that day. She also did not ascertain whether Aweikin was related to the respondent and whether it was true that they stayed together in the same home. Neither was there proof that Aweikin was the respondent's agent.

In law process servers are required to take all necessary steps and exhaust all avenues to ensure that service is effective as envisaged under Order 5 of the Civil Procedure Rules like was done by the process server in *Wadamba vs Mutasa & 2 Others* (cited above) who went a step further to obtain the telephone number of the defendant who she called and he came to her and they talked in the presence of the LCI Chairman and thereafter he endorsed the summons as proof of the encounter.

The situation here is quite different. Here there was no confirmation as to who Aweikin Charles was either by identification or by an independent third party such the Chairman LC1 neither did the process server obtain information that Aweikin Charles was an agent of the respondent meaning that the purported service on the respondent was ineffective.

Under Order 5 and Order 36 rule 11 of the Civil Procedure Rules a court if not satisfied that service of summons was effective, the court **MAY** (emphasis mine) order for dismissal of the suit.

Fortunately, in this case, I note that the respondent in spite of the defective earlier service on him was able to file an affidavit in reply and even submissions in response to the application leaving me to conclude that not much prejudice was occasioned on the respondent by the ineffective service which was even neutralized by the submissions of the respondent in relation to service of the hearing notice on the LCI chairman which was neither pleaded nor sufficient to provide the detail on the nature of the service in this instance. In any case, this issue was only raised in the submissions and even with a minor detail tantamounting to evidence from the bar. I will therefore not dwell on this issue any further.

The second preliminary objection is thus partially allowed.

I will now proceed to consider the substantive application. The applicant in this matter argues that the trial Magistrate Grade One did not have pecuniary jurisdiction to hear the matter and therefore seeks a revisionary order from this honourable court. The revisionary powers of the High Court are provided Section 83 of the Civil Procedure Act Cap. 71. It states;

***“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.”*

The provision of the law above allows the High Court to revise decisions of a lower court which fails to exercise jurisdiction accordingly or where he or she acts illegally or with material irregularity or injustice.

What is before me in this matter is the issue of the exercise of a higher pecuniary jurisdiction by a court presided over by a Magistrate Grade One.

Pecuniary jurisdiction of a magistrate court is provided for by Section 207 of the Magistrates Courts Act Cap. 16. It provides;

*Subject to this section and any other written law, the jurisdiction of magistrates presiding over magistrates' courts for the trial and determination of causes and matters of a civil nature shall be as follows;*

*a) .....*

*b) a Magistrate Grade 1 shall have jurisdiction where the value of the subject matter does not exceed twenty million shillings.*



In the present case, the respondent / plaintiff sued the applicant / defendant for recovery of part of the house situated at Plot 7 Okurut Close in Soroti Municipality, and general damages, special damages and costs.

The respondent / plaintiff claims that he purchased Part B of the said house from the applicant / defendant at a sum of UGX 14, 500,000 which he paid in full and thereafter enjoyed quiet possession of the property until 5<sup>th</sup> December 2015 when the defendant unlawfully evicted him.

In his defense, the applicant / defendant contends that although the respondent had showed interest in purchasing the said house, he breached the agreement by engaging the applicant / defendant to pay a loan which he had obtained using the applicant's title without the applicant's knowledge.

A careful perusal of the lower court record as well as its judgment show that the subject matter before this honourable court as well as before the lower court pertains to the purchase of a suit property at UGX 14,500,000/= by the respondent from the applicant.

The aforementioned purchase price of the suit property was not disputed by either party, especially the applicant. It is also not disputed that the respondent duly paid the full purchase price, a fact which was even admitted by the applicant in his testimony in the lower court.

However, the applicant's main claim is that the respondent took his title and obtained a loan using the said title as security for which he failed to remit outstanding balances.

The applicant further states that in an effort to retrieve his title he completed a memorandum of understanding with Bululu Co-operative Savings and Credit Ltd to clear the outstanding loan that the respondent had failed to pay and so repaid to the bank loan in order to redeem the entire property, including the part of the house that the respondent had paid for.

The loan amount which the respondent is said to have obtained is UGX 15,000,000/- which he is stated to have failed to clear and that the applicant paid the total outstanding loan amount of UGX 41, 500,000/=.

In its decision, the lower trial court found that the applicant herein did not prove this amount except for only UGX 7,500,000/- yet the applicant seeking to take back part B of the house which the respondent had paid for from the respondent given that he, the applicant had repaid the outstanding loan amount and redeemed the mortgaged property.

The lower trial court in its decision, however, found that there was no such sale of the mortgaged property and that the right to redeem a mortgaged property was only available to the mortgagor and yet the applicant / defendant was never party to the mortgage transaction.

The lower trial court further went on to find that the question before it was limited to the ownership of part B of the suit property and not the monies that amounted to the loan monies.

On the basis of those facts the lower trial court went on to find that the applicant / defendant having failed to file a counterclaim could not recover the alleged loan monies. It then went onto dismiss the applicant's / defendant's claim.

That dismissal is now being challenged before this court.

Quickly from the facts above which are not disputed, I would with swiftness proceed to state that I am in full agreement with the lower court finding that the suit which was before the lower trial court it was primarily concerned with the ownership of part B of the suit property and not the purported loan monies.

This leads to the issue before me in this application wherein it is claimed that lower the trial magistrate exercised jurisdiction beyond that which is allowed by Section 207 (1) (b) of the Magistrates Courts Act.

To prove this fact, the applicant claims through his submissions and pleadings that he owns the property situated at Plot 7B Okurut Close in Soroti City comprised in Leasehold Register Volume 3021 Folio 15 which is valued at UGX 300,000,000/= (Uganda Shillings Three Hundred Million Only) or that alternatively at the time of filing the suit it was valued at UGX 100,000,000/= (Uganda Shillings One Hundred

Million Only) which are clearly above the Shs. 20 million limit for jurisdiction of a magistrate's court.

These figures, however, are not proven by any independent professional valuation report of the market value of the property. They are merely from the head of the applicant.

That being so this court would remain with no any iota of proof to ascertain the basis of these figures. Since there is no such proof then those figures would remain a figment of imagination of the applicant leaving the figure UGX 14,500,000/= as being the value of the disputed subject matter which the lower court dealt with in its decision as the full purchase price of Part B of the disputed property.

Given that UGX 14,500,000/= falls below the upper limit of a Magistrate Grade 1 court jurisdiction of UGX 20,000,000/=, I would conclude that the suit property fell correctly within the pecuniary jurisdiction of the lower trial court as provided for by section 207 (1) (b) of the Magistrates Act rendering the applicant's claim that the lower trial court lacked the pecuniary jurisdiction to remain baseless and would thus be disallowed by this honourable court.

In the premises, therefore, this court application would fail as this court is fully satisfied that the lower court of Magistrate Grade exercised its proper legally provided jurisdiction to arrive at the conclusion in its judgment.

In the final result, this application for revision is found to lack merits and is thus accordingly dismissed with costs to the respondent.

I so order.



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Hon. Justice Dr Henry Peter Adonyo

Judge

9<sup>th</sup> July 2021

Order:

This ruling is forwarded to the Registrar of this court to have it delivered online to parties in line with the Hon Chief Justice's directions on COVID-19 SOP's.

I so order



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Judge

9<sup>th</sup> July 2021



23/7/21

Consent: Ruling delivered

via Email to advocates.

M/s Ogilvie & Co. Advocates  
Email: ogilvie@yahoos.com.

M/s Issods & Co. Advocates  
Email: jissamods@gwanl.com

~~23/7/21~~

23/07/21 AR.