

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

REVISION CAUSE NO. 34 OF 2021

(Arising From Mengo Chief Magistrates Court Misc. Cause No. 69 OF 2021)

KAKANDE MICHEAL ===== APPLICANT

VERSUS

FRANK LWANYAGA ===== RESPONDENT

BEFORE: HON. JUSTICE EMMANUEL BAGUMA

RULING.

Background.

The Respondent filed Misc. Cause No. 69 of 2021 in the Chief Magistrates Court at Mengo for distress for rent amounting to 40,500,000/= (Forty million Five hundred thousand shillings) against the Applicant. His Worship Matovu Hood a Magistrate grade 1 granted the application and issued a special certificate for distress for rent against the Applicant. The applicant being dissatisfied with the orders of the trial court applied for revision of the orders in this court.

The Application.

This application is by Notice of motion under Article 28 of the Constitution of Uganda, section 83 and 98 of the Civil Procedure Act, Section 33 of the Judicature Act, Order 52 rr. 1, 2 & 3 of the Civil Procedure Rules seeking for orders that;

- a) The order to levy distress over movable property to recover rent of 40,500,000/= (forty million five hundred thousand shillings) by His Worship Matovu Hood Magistrate grade one on the 10th June 2021 be revised and set aside.
- b) The Applicant be awarded general damages for the unlawful distress
- c) The costs of this Application be provided for.

The application is supported by the affidavit of Kakande Micheal the applicant in which he deposes inter alia that;

1. The Respondent on 29th April 2021 filed an application at Mengo Chief Magistrates' Court for distress for rent against me seeking to recover rent arrears totaling to UGX. 40,500,000/=, (Forty million Five hundred thousand shillings) eviction and possession of the property situate at Mengo Kisenyi Block 12 Plot 385.
2. The Respondent is not in possession of the suit property as the same has never been legally passed unto him and he does not even know how much rent the I pay, I pay 600,000/= and not 1,500,000/= being claimed by the Respondent.
3. I am informed by my lawyers whose information I believed to be true that the trial Magistrate exceeded his pecuniary jurisdiction in entertaining the matter and awarding a certificate of distress where the monetary value exceeded UGX 20,000,000/=.
4. The learned trial Magistrate acted with material irregularity and injustice in allowing that application and granting of special certificate for distress without proof that a landlord/tenant relationship existent between the parties.
5. I have never been a tenant of the respondent herein, neither have I ever been a party to his alleged purchase, transfer and or court proceedings.
6. I am just a business man carrying on business on the land of the late Lubega John Baptist in Kisenyi with whom I have a binding contractual tenancy agreement.
7. Neither the late Lubega John Baptist nor his former lawful attorney have ever introduced the Respondent as the new landlord or purchaser to me.

8. I have always and genuinely paid all my rent as it falls due to the rightful landlord and it was wrong for the trial magistrate to order me to pay rent I had already paid and the same amounted to double jeopardy.
9. It was only Muwonge Ioannis the late Lubega John Baptist's son who was introduced to me as his father's agent and trustee in charge of collecting rent from me.
10. I am not indebted to the respondent and there is no rent arrears accrued to the respondent since I have always paid all my rent dues up to today to Lubega John Baptist and his agent Muwonge Ioannis.
11. I am informed that there exists a land dispute between the late Lubega John Baptist and the respondent at High Court Land Division vide MA No. 1706 of 2020 arising from CS No. 183 of 2015.

In a supplementary affidavit deposed by Muwonge Ioannis the administrator of the estate of the late Lubega John Baptist states that;

1. The suit premises are currently occupied by me and my siblings plus the monthly tenants including the Applicant.
2. The respondent has no rights/authority whatsoever to deal with the suit land as the same belongs to the estate of the late Lubega John Baptist.
3. There exists a tenancy agreement between the applicant and the late Lubega John Baptist entered into in 2017, the same has never been revoked and the applicant has genuinely paid his rent as it falls due.
4. The respondent and the estate of the late Lubega have a land dispute in court at High Court of Kampala Land Division.
5. There is an injunction restraining the respondent from dealing with the suit premises till the hearing and determination of C.S No. 183 of 2015.

In reply, the respondent opposed the application and deposed that;

1. The case does not deserve judicial consideration by way of revision.
2. The application is brought in bad faith, a wastage of court's time and lacks merit.

3. The Chief Magistrates' court of Mengo specifically a magistrate grade one has jurisdiction to adjudicate over a matter for distress for rent.
4. The Magistrate did not commit any illegality, irregularity or cause any miscarriage of justice whatsoever when he issued a certificate of distress for rent.
5. The applicant was given ample time to defend the suit at Mengo after being cautiously served with court process but he did not file his reply.
6. The applicant has at all material time been aware of my ownership but stubbornly disputed my title.
7. The Applicant has no interest in the suit land besides being a tenant and as such cannot restrain me from dealing with my land as I wish.

In rejoinder the applicant reiterated his averments in support of the application.

Legal representation.

Mr. Mulumba Hannington represented the Applicant while Mr. Matovu Robert represented the Respondent.

At the hearing of this application, both Counsel agreed to file written submissions.

Submissions by counsel for the applicant.

Counsel for the applicant in his written submissions raised three issues for court's determination to the effect that;-

- 1. Whether the trial Magistrate grade 1 exercised jurisdiction not vested in him by law and in so doing occasioned an injustice to the applicant.*
- 2. Whether the trial court in exercising jurisdiction acted illegally or with material irregularity.*
- 3. Whether the trial court deliberately failed to exercise jurisdiction vested in it in law and in so doing caused injustice to the applicant.*

ISSUE 1

Whether the trial Magistrate grade 1 exercised jurisdiction not vested in him by law and in so doing occasioned an injustice to the applicant.

Counsel for the Applicant submitted that the trial Magistrate entertained an application for distress for rent above its pecuniary jurisdiction.

Counsel referred to section 207 (1) (b) of the Magistrates Courts Act of 2007 which provides that;

“A magistrate grade I shall have jurisdiction where the value of the subject matter does not exceed twenty million shillings”

Counsel referred to the case of **Hectarage Partnership & another Vs Kesiime Poly HCCA No. 41 of 2015** where court held that;-

“A court cannot entertain a cause which it has no jurisdiction to adjudicate upon. It does not matter even where the defendant filed a defence without objecting to the pecuniary jurisdiction”.

Counsel further referred to the case of **Owners of Motor Vessel Lillian Vs Caltex Oil Kenya Limited [1989] KLR 1** which held that;

“A decision of a court without jurisdiction is futile”

He concluded that the Magistrate Grade had no jurisdiction to entertain an application of distress for rent to recover 40,500,000/= (Forty Millions Five Hundred Thousand Shillings).

ISSUE 2

Whether the trial court in exercising jurisdiction acted illegally or with material irregularity.

Counsel for the Applicant referred to **Article 28** of the constitution which provides that;

“In the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law”.

Counsel for the Applicant submitted that the trial Magistrate acted illegally in refusing to admit the Applicant's evidence, rejecting the Applicant's plea to file his affidavit in reply to the Respondent's claim and subsequently unfairly awarding the certificate of distress which amounted to an injustice against the Applicant. That matters of law cannot easily be comprehended by lay men more so semi illiterates like the applicant and the Applicant needed to engage a lawyer which opportunity was denied by the trial court.

Counsel further submitted that under the **Distress for rent (Bailiffs) Act Cap 76** and the rules made thereunder provides for distress for rent but the general principle of law requires existence of a landlord tenant relationship which did not exists in this case.

Counsel submitted that there is no landlord tenant relationship between the Applicant and Respondent. The Applicant rather has a valid tenancy agreement with Lubega John Baptist and his administrator Muwonge Ioannis collects rent from him.

Counsel referred to the case of **Angopa Dennis & Anor Vs Moses Atwongere T/A Best Association Auctioneers HCMA No. 2772 of 2013** where it was held that;

“The law enjoins this Court to investigate any allegation of illegality whenever it is brought to its attention; and in doing so, it must disregard all issues of pleadings.

The right to levy for distress for rent only arises where there is a landlord/tenant relationship between the parties; and there is default in the payment of rent by the tenant”.

ISSUE 3

Whether the trial court deliberately failed to exercise jurisdiction vested in it in law and in so doing caused injustice to the applicant

Counsel for the Applicant submitted that the trial court deliberately ignored all the fraud and illegalities in the Respondent's acquisition of the disputed property brought to its attention causing injustice to the applicant.

Counsel Referred to the case of **Makula International Ltd Vs His Eminence Cardinal Nsubuga & another [1982] HCB 11** where court held that;

“A court of law cannot sanction what is illegal, an illegality once brought to the attention of the court overrides all questions of pleading, including admission made thereon”.

Counsel submitted that the supplementary affidavit of Muwonge Ioannis contends that the Respondent has never legally owned Lubega John Baptist’s property to wit Block 12, Plot 385 land at Mengo Kisenyi, as registration thereon is illegal and fraudulent, thus he has no cause of action sustainable in law against the applicant because he is not and has never been his tenant whatsoever.

Submissions by counsel for the Respondent.

Counsel for the Respondent submitted that the trial Magistrate grade one had jurisdiction to hear an application for distress for rent of 40,500,000/=. Counsel referred to section 1 and 2 of the distress for rent Act which states that;-

Section 1

(a) “bailiff” means a bailiff for the purpose of distress for rent;

(b) “certifying officer” means a chief magistrate and a magistrate grade I.

Section 2

No person, other than a landlord in person, his or her attorney or the legal owner of a reversion, shall act as bailiff to levy any distress for rent unless he or she shall be authorised to act as bailiff by a certificate in writing under the hand of a certifying officer, and such certificate may be general or apply to a particular distress or distresses.

Counsel referred to the case of **Mabirizi Kiwanuka & Anor Vs Owere Franco & 3 Ors High Court Miscellaneous Application 2673 of 2014** where court held that;

“In the light of the fore stated provision of the law regarding the issuance of a certificate of levy of distress for rent, the registrar execution had no authority to do so his action was illegal....”

“..... It is unmistakably clear, from the provision of the law cited above, that the jurisdiction to issue a certificate for the levying of distress, and the appointment of the bailiff in that regard, vests solely in a Magistrate's Court; and this mandate is exclusively exercisable either by a Chief Magistrate or by a Magistrate Grade 1. Accordingly, in issuing the certificate to levy distress for rent, the Registrar Execution acted without jurisdiction; for which his act was illegal, and cannot be allowed to stand”.

Counsel for the Respondent submitted that this application is not fit for revision. He referred to the case of **Nyakiyumbu Growers Co-operative Society Ltd Vs Tembo K. Salongo, Revision Cause No. 01 of 2017** where it was held that;

“a court is said to exercise Jurisdiction illegally or with material irregularity when such a court is seized with jurisdiction but exercises it wrongly through some procedural or evidential defect”

“For a matter to qualify for revision, it must be apparent or show that it involves a non-exercise or irregular exercise of jurisdiction. Revision does not concern itself with conclusions of law or fact in which the question of jurisdiction is not involved. Dissatisfaction with a decision by a court with jurisdiction in favour of the other party cannot be a matter of revision. ”

Counsel submitted that there is no sustainable question in the Applicant’s instant case so as to warrant a Revision by this court.

In rejoinder, Counsel for the applicant reiterated his submissions in chief.

Analysis of court

ISSUE 1

Whether the trial Magistrate grade 1 exercised jurisdiction not vested in him by law and in so doing occasioned an injustice to the applicant.

Section 83 of CPA empowers the High Court to revise decisions of Magistrates’ Courts where the Magistrate’s Court appears to;

(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.

Jurisdiction of court is a creature of statute and it is expressly conferred by law. If proceedings are conducted by a court without jurisdiction, they are a *nullity*. See: *Desai vs. Warsaw (1967) EA 351*. Any award or judgment and or orders arising from such proceedings of a court acting without jurisdiction are also a nullity. Most importantly, jurisdictional issues can be raised at any time or stage and they override all other matters in the proceedings, including pleadings and admissions thereon.

Section 1 of the Distress for Rent Act, provides that : –

In this Act –

'Certifying officer' means a Chief Magistrate or a Magistrate Grade 1."

In the case of **Mabirizi Kiwanuka & Anor Vs Owere Franco & 3 Ors High Court Miscellaneous Application 2673 of 2014** court held that;

“ jurisdiction is strictly a creature of a specific law; and as such, neither can it be assumed nor be usurped by any Court..... It is unmistakably clear, from the provision of the law cited above, that the jurisdiction to issue a certificate for the levying of distress, and the appointment of the bailiff in that regard, vests solely in a Magistrate's Court; and this mandate is exclusively exercisable either by a Chief Magistrate or by a Magistrate Grade 1. Accordingly, in issuing the certificate to levy distress for rent, the Registrar Execution acted without jurisdiction; for which his act was illegal, and cannot be allowed to stand”.

In this instant case, the distress order was issued by a Magistrate Grade One HW Matovu Hood who in this case was a certifying officer.

In view of the above therefore, the trial Magistrate Grade One had jurisdiction to hear an application for distress for rent of 40,500,000/= (Forty Million Five hundred thousand shillings).

Counsel for the applicant tried to import section 207 (1) (b) of the Magistrate Court Act into distress for rent which has a specific Act governing distress for rent matters.

I accordingly find that the trial Magistrate had jurisdiction to handle a distress for rent matter.

Issue 1 fails

ISSUE 2

Whether the trial court in exercising jurisdiction acted illegally or with material irregularity.

In the case of **Angopa Dennis & Anor Vs Moses Atwongere T/A Best Association Auctioneers HCMA No. 2772 of 2013** court held that;

“The right to levy for distress for rent only arises where there is a landlord/tenant relationship between the parties; and there is default in the payment of rent by the tenant”.

Court further stated that;

“..... Court must always guard against issuing any certificate for levy of distress for rent where there is no clear evidence adduced before it, of a running tenancy between the landlord and a tenant; and further, there is no clear evidence of default in the payment of rent by the tenant.....”

In the case before me, the applicant in paragraph 14 of his affidavit in support denied ever being a tenant to the Respondent. He also stated that Respondent is not in possession of the suit premises and he has a dispute with the estate of Lubega in High court land division over the said land. This evidence is corroborated with that of Muwonge Ionnis in his supplementary affidavit in paragraph 20 where he states that;

“the consent judgment the respondent used as proof of ownership when he filed Misc. Cause No. 69 of 2021 for distress for rent had been set aside by High Court Land Division and an order for stay of any dealings on the suit property until Civil Suit No. 183 of 2015 is determined on its merit had been issued”.

I had an opportunity to read the ruling in High Court Misc. Application No. 1706 of 2020 which was delivered on 4th June 2021 and indeed Lady Justice Nkonge Rugadya at page 12 paragraph 35 had set aside the consent and stayed all dealings on the suit land until the suit is finally heard and determined. This shows that by the time Misc. Cause No. 69 of 2021 for distress for rent was filed there was a pending application.

It is my finding that by the time the Respondent filed Misc. Cause No. 69 of 2021 for distress for rent and obtained the order on 01st June 2021, it was within his knowledge that there was a pending application No. 1706 of 2020 which was still pending at land division and it was yet to determine the issue of ownership but the Respondent rushed to pre-empt the application by distressing and trying to evict the applicant to take possession of the suit property which was under a dispute.

It should be noted that, for distress for rent to issue the following conditions must be proved:-

- 1. That the applicant is the owner of the premises (landlord).**
- 2. That there is a landlord tenancy relationship between the applicant and the alleged tenant.**
- 3. That the specified sum of rent due is outstanding in rent arrears, in other words that the respondent owes rent money to the applicant.**

Where any of the above is missing, a distress for rent order cannot be issued.

In the case before me, the issue of ownership of the suit premises was still under litigation between the Respondent and the estate of Lubega. The Respondent also did not prove existence of land lord tenant relationship with the applicant by the time of distress application was filed.

I want to associate myself with the findings in the case of Angopa Dennis supra that; **“..... Court must always guard against issuing any certificate for levy of distress for rent where there is no clear evidence adduced before it, of a running tenancy between the landlord and a tenant; and further, there is no clear evidence of default in the payment of rent by the tenant.....”**

In the instant case, the applicant filed the distress application well aware of the pendency of Misc. Application No. 1706 of 2020 for setting aside the consent order that gave him right over the suit premises. It was wrong for the trial court to grant a certificate of distress for rent when there was a pending dispute over ownership of the suit premises.

In view of the above, the special certificate for distress for rent issued on 1st June 2021 was null and void.

Issue No. 2 succeeds.

Conclusion.

In the final result, this application succeeds on ground 2 and this disposes of this application with the following orders;

1. The ruling and orders of special certificate for distress for rent issued by the trial Magistrate in Misc. Cause No. 69 of 2021 are hereby set aside.
2. Basing on the nature and circumstances of this case, I will make no order as to costs.

Dated, signed, sealed and delivered at Kampala this **28th** day of **October 2022**

.....

Emmanuel Baguma

Judge