

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
CIVIL MISC. APPLICATION NO. 010 OF 2023
(ARISING FROM SMALL CLAIM CASE NO. 009 OF 2023)

5 **OMUGABE MBABAZI SAM ::::::::::::::::::::::::::::::::::::::::::::::::::::::: APPLICANT**
VERSUS
TUMWESIGYE DAN ::::::::::::::::::::::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. JUSTICE VINCENT WAGONA

10 **RULING**

This application was brought under Sections 33 of the Civil Procedure Act, Section 33 of the Judicature Act and Order 52 rule 1, 2 and 3 of the Civil Procedure Rules for orders that:

- 15 **1. Court be pleased to revise the decision of the Magistrate Grade One at Kasese Chief Magistrate’s Court in small claim No. 009 of 2023.**
- 2. That the applicant be allowed to bring witnesses to testify.**
- 3. That the execution be stayed pending the determination of this application.**
- 20 **4. That the costs of taking out the application be provided to the applicant.**

The application is supported by the affidavit of the applicant who averred as follows

1. That during the hearing of small case no. 9 of 2023, the respondent indicated that he demands a sum of UGX 9,900,000/= from the applicant. That he defended himself and pointed out that he already had paid UGX 8,250,000/=

which was acknowledged by the Respondent and he presented an agreement where the Respondent received a sum of UGX 2,500,000/=.

2. That he had audio recordings which prove that he had paid the sum claimed by the Respondent and that he wanted to bring witnesses to that effect.

5 The application was opposed by the Respondent through his affidavit in reply where he averred thus

1. That the applicant defaulted on the terms of the agreement dated 4th June 2022 and thus sought the assistance of court to recover the loan in default.

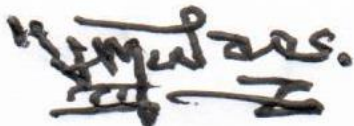
2. That the applicant was to repay the loan monthly which he defaulted on.

10 3. That court gave both parties an opportunity to bring witnesses and the Respondent did not produce the same.

4. That the applicant is still indebted to the Respondent to the tune of UGX 9,900,00/= and no injustice was caused to him.

15 In rejoinder, the applicant insisted that his witnesses were not given chance to testify in court. That he thus applied to this court to revise and have the matter heard afresh so that he brings witnesses to confirm that he paid the sum claimed by the Respondent.

20 That the Respondent sent agents to collect the money from him and he would give them the money. That he tendered in court an agreement made before the L.C1 where it was confirmed that he had paid the loan and the outstanding balance was only UGX 2,500,000/= but it was not considered by the trial magistrate. That he attempted to tender audio recordings in court and the same were not considered by the trial magistrate.

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Representation and hearing:

Both the applicant and the Respondent were self-represented and they filed written submissions which I have considered.

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Issues:

1. Whether small claim case no. 009 of 2023 is properly before court.
2. Whether the applicant has disclosed grounds for revision in his application.
3. Remedies available.

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CONSIDERATION BY COURT:

Whether Small Claim Case No. 009 of 2023 is properly before court.

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The basis of the claim was an agreement dated 4th June 2022 executed between the applicant and the Respondent where clause 4 states as follows:

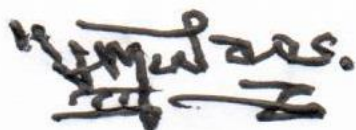
Arbitration/Dispute Resolution:

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Any conflict arising from this Agreement shall first be resolved amicably between the parties, and if they fail, the conflict shall be referred to a mediator of their own choice and in case of failure to settle any of the parties shall have a right to move to court.

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There is no evidence whether arbitration was conducted by the parties and it appears in my view that it was not done. The Respondent upon the applicant defaulting on

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his obligation to pay the loan came directly to court and filed a claim in small claim to recover the same.

5 Section 3 of the Arbitration and Conciliation Act provides for the form of an arbitration agreement which can be in form of an arbitration clause or an arbitration agreement. In this case there is an arbitral clause. There is a valid arbitration agreement between the applicant and the Respondent.

10 Section 5 of the same Act provides that when a matter is presented to Court and there is a valid and enforceable arbitral clause in the transaction documents between the parties, then court is required to stay proceedings and refer the parties for arbitration.

15 I have previously held that the Arbitration and Conciliation Act ousts the general jurisdiction of Courts except for the specific jurisdiction permitted under the Act. I also noted that Court on its own motion can also refer the case for arbitration if it is satisfied that there is a valid and enforceable arbitration agreement in the contract that a party seeks to enforce. (**See Dr. Kagoro Kaijamurubi Vs. Jeremy John Graham, Civil Suit No. 048 of 2021**).

20 It is my view that general jurisdiction ousted by the Arbitration and Conciliation Act extends to claims in the small claims court. Thus, in a matter like this, where the parties agree on the mode and forum for settlement of their disputes and document the same, Courts should be reluctant to interfere unless such arrangement is illegal or contrary to the law and the principles of natural justice.



In this case, since there was a valid and operative arbitral clause that parties had not explored. It was the duty of the trial magistrate to stay the claim and refer the parties for arbitration first. It is my view that since such was not done, the judgment delivered was a nullity since Court had no jurisdiction to entertain such claim before
5 it is subjected to arbitration.

Although the issue of the arbitral clause was not raised, it was too glaring a point of law in the evidence provided, for this court to ignore. In taking this course, I am backed by the case of **Odd Jobbs v Mubia [1970] EA 476**, where it was observed
10 that that court can decide an unpleaded matter if the parties have led evidence and addressed court on the matter in order to arrive at a correct decision in the case and to finally determine the controversy between the parties. (See also **Sinba K Ltd & 4 others Vs. Uganda Broadcasting Corporation, SCCA No. 03 of 2014**). In this case the agreement of the parties containing the arbitral clause was attached as
15 Annexure “A” to the application.

In this case I have observed that the judgment made by court contrary to the arbitral clause is a nullity by virtue of Section 5 of the Arbitration and Conciliation Act that ousts the jurisdiction Court. A decision made by a Court without jurisdiction is a
20 nullity. Thus the judgment of the court in Small Claim Case No. 009 of 2023 is hereby set aside. This finding disposes of the application and I find it unnecessary to consider the remaining issues.

The application is allowed with the following orders:



1. The judgment and decree in Small Claim Case No. 009 of 2023 before the Chief Magistrate's Court of Kasese is hereby set aside.

2. The resultant execution of the said decree is hereby set aside.

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3. The parties are directed to first explore arbitration pursuant to clause 4 of the agreement dated 4th June 2022.

4. Each party shall bear own costs in this Court and in the Court below.

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I so order.



Vincent Wagona

High Judge

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FORTPORTAL

DATE: 31/8/23

