

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
REVISION CAUSE NO. 016 OF 2023
(ARISING FROM T.A NO. 21 OF 2023, EXECUTION CASE NO. 24 OF
2023 & FPT 59 OF 2020)

- 1. UWAR MAWEJJE**
- 2. MUHINDO HASSAN ::: APPLICANTS**
- 3. IDDI ASUMAN**
- 4. ABAN ABDU**

(T/a MEMBERS OF BUNDIBUGYO DRIVERS & GUIDE GROUP)

VERSUS

YIGA ABDULLAH ::: RESPONDENT

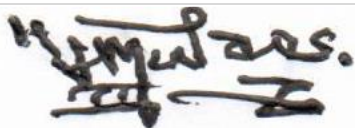
BEFORE: HON. JUSTICE VINCENT WAGONA

RULING

Introduction:

This applicant was brought under Section 83 and 98 of the Civil Procedure Act Cap. 71, Section 17 (2) of the Judicature Act and Order 52 of the Civil Procedure Rules for orders that:

- 1. The decision of the trial Magistrate Kagwa John Francis (Chief Magistrate Fort Portal) be revised and or set aside.**
- 2. A retrial be directed in a Court with competent jurisdiction.**



3. **The execution and taxation proceedings in Civil Suit No. 59 of 2020 and Tax Case No. 024 of 2023 and execution in Case No. 21 of 2023 be stayed and or set aside.**
4. **That the costs of taking out the application be provided for.**

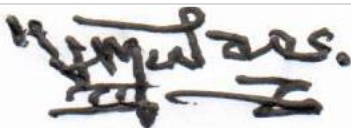
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Background:

The Respondent filed Civil Suit No. 59 of 2020 against the applicant in the Chief Magistrate’s Court at Fort-portal for a claim over motor vehicle reg. No. UAW 530 G. The transactions had taken place in Bundibugyo where both parties resided. It is
10 contended that the Chief Magistrate Fort-portal lacked the territorial jurisdiction to entertain the matter as Bundibugyo had been gazzated a Chief Magisterial area in 2017. That the summons in Civil Suit No. 59 of 2020 were never served and that on account of want of jurisdiction and service, court should revise and set aside the judgment and orders of the chief magistrate in Civil Suit No. 59 of 2020 and all
15 subsequent execution and taxation proceedings.

The application was served upon the defendant and later on his attorney of M/s KRK Advocates who acknowledged receipt of the summons by signing and stamping on the return of service attached as annexure A to the affidavit of service deponed by
20 Mr. Byamukama Ibrahim, a process server attached to the chambers of M/s Kisembo DB & Co. Advocates a copy of which was received by court on 22nd August 2023. I am satisfied that service was effective and thus I will proceed to consider this application exparte.

25 **Representation and Hearing:**



The Applicants were represented by M/s Kisembo DB & Co. Advocates who filed written submissions.

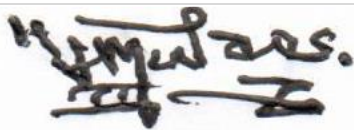
Issues:

- 5 I will resolve the matter under the following issues:
1. **Whether this is a proper case for revision by this court.**
 2. **Remedies available to court.**

Submissions for the Applicant:

- 10 It was contended for the applicant that the learned trial magistrate heard no territorial jurisdiction as the transaction had happened in Bundibugyo as stated in the plaint and the parties were all resident in Bundibugyo which is a Chief Magisterial area and as such his decision ought to be revised and set aside.
- 15 It was further contended that the total of the sum awarded by Court in Civil Suit No. 059 of 2020 specifically the damages translate into a sum of Ugx 245,000,000/- plus the decretal sum of shs 28,000,000/- which way above the pecuniary jurisdiction of the Chief Magistrate.
- 20 It was submitted that a decision made by a Court without jurisdiction renders the entire proceedings a nullity and he cited the case of *Ajuna Jackson Francis & 2 others v Lake View Enterprises & anor, HCMC No. 02 of 2019* to support his position. The court was thus asked to invoke its supervisory powers and set aside the orders made by the Chief Magistrate.

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Consideration by Court:

Section 83 of the Civil Procedure Act provides that:

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;

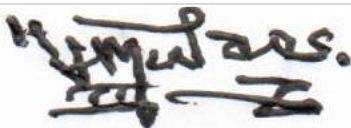
(b) failed to exercise a jurisdiction so vested; or

(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.

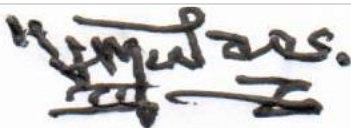
In Court of Appeal Civil Appeal No. 190 of 2013, **Kibalama Mugwanya Vs. Butebi Investment Enterprises Ltd**, it was observed at page 7 in relation to revision powers of the High Court thus: *Section 83 of the Civil Procedure Act gives the High Court power to revise the case which has been called for Revision on ground that the court appears to have exercised jurisdiction not in it in law, or failed to exercise jurisdiction so vested; or acted in the exercise of its jurisdiction illegally or with material irregularity or injustice. Upon such revision having taken place, the High court has discretion to make such order as it thinks fit however no such power of Revision shall be exercised unless the parties are given opportunity*



of being heard unless where from the lapse of time or some other cause the exercise of that power would involve serious hardship to any person.

Therefore, the powers of revision stem from the supervisory powers of the High Court to keep the lower courts in check and to ensure that decisions made by those courts are in line with the proper exercise of jurisdiction vested in them by law. In the present case, learned counsel contended that the trial Chief Magistrate had no territorial jurisdiction to entertain the matter at hand.

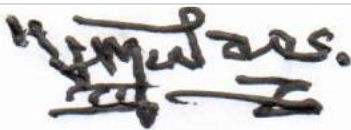
10 In the persuasive dicta in **Owners of Motor Vessel Lillian “s” v. Caltex Oil Kenya Limited [1989] KLR 1** in which *Nyarangi JA*, citing **Words and Phrases Legally Defined vol. 3 I-N page 13** observed thus: *By jurisdiction, is meant the authority which a court has to decide matters that are before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed*
15 *by statute, charter or commission under which the court is constituted and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters which the particular court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these*
20 *characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it had jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where the court takes it upon itself*
25 *to exercise a jurisdiction which it does not possess, its decision amounts to nothing.*

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Jurisdiction must be acquired before judgment is given. It was further held that:
Jurisdiction is everything without it; a court has no power to make one more step.
Where a court has no jurisdiction there would be no basis for continuation of
proceedings pending other evidence. A court of law downs its tools in respect of
5 *the matter before it the moment it holds the opinion that it is without jurisdiction.*

Jurisdiction therefore is the power or authority vested in court to "decide matters that
are before it" or "to take cognisance of matters in a formal way for its decision." One
cannot speak of jurisdiction without the power or authority to make a decision on
10 the merits. (*See Uganda v Wadri & 31 Ors (Criminal Revision 2 of 2018) [2018]*
UGHCCRD 151 (20 August 2018)). Jurisdiction in civil proceedings in Uganda is in
two broad categories that geographical and pecuniary jurisdiction.

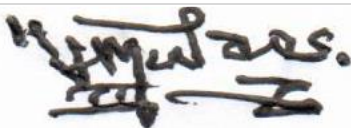
Geographical or local jurisdiction is the territory within which authority is granted
15 to a Court to deal with legal matters, to make legal decisions and judgments and to
direct justice (*See Uganda v Wadri & 31 Ors (Criminal Revision 2 of 2018) [2018]*
UGHCCRD 151 (20 August 2018)). Under Section 212 of the Magistrate's Court
Act as amended, suits are to be instituted where the subject matter is situated. The
geographical extent of every magisterial area is prescribed by the Magistrate's Court
20 (Magisterial Areas Instrument 2017, S.I 11 of 2017. Under the schedule to S.I 11 of
2017, item 11, Bundibugyo a gazette chief magisterial area with different
magistrate's courts. Therefore, all disputes that arise within Bundibugyo chief
magisterial area must be filed and heard by the courts under that magisterial area.



In Civil Suit No. 59 of 2020 the plaintiff was filed in the Chief Magistrate's Court of Fort Portal. The plaintiff/Respondent indicated that he was a resident of Kavule Village, Kavule Parish, Central Ward, Bundibugyo Town Council. The plaintiff indicated under paragraphs 2, 3 and 4 that all the defendants were resident in Bundibugyo. In the particulars of the claim, it was stated that the transaction regarding the sale of motor vehicle registration number UAW 530G mini bus and the subsequent impounding of the same by the Regional Commander, Rwenzori West all happened in Bundibugyo District. Therefore the case should have been filed at Bundibugyo Chief Magistrates Court and not Fort-portal, a court without territorial jurisdiction. Where a magistrate in one magisterial area is circuiting in another magisterial area, cases must still be filed in the court with jurisdiction. I therefore agree with learned counsel for the applicant that Civil Suit No. 59 of 2020 was heard by a court that lacked the requisite geographical jurisdiction.

It was further contended that the trial court also lacked the requisite pecuniary jurisdiction on the basis that the amounts awarded by court were above the pecuniary limits of a Chief Magistrate of UGX 50,000,000/= (*See. Section 207(1) of the Magistrate's Court Act; and Section 4 of the Civil Procedure Act*).

I have perused the plaintiff and found that the claim by the Respondent was for breach of contract and the contract sum was UGX 28,000,000/-. The plaintiff also asked for an order to have the suit motor vehicle returned or a refund of the contract sum at a commercial rate of 33% from 30th December 2017 till payment in full. He also asked for special damages of UGX 200,000/= per day being the lost daily income from the day it was impounded till return or payment in full with interest thereon at a

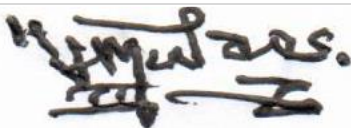
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commercial rate of 33% per annum from 24/2/2020 till full payment and general damages at interest of 20%.

Therefore, a quick glance at the contract sum and the relief claimed at the time fell
5 well within the pecuniary limits of the Chief Magistrate.

The fundamental follow up question would be whether or not a Chief Magistrate has the competence to grant reliefs beyond his or her pecuniary limit. Kiryabwire J (as he then was) in *National Medical Stores v Penguins Ltd (HCT-00-CC-CA 29 of*
10 *2010) [2012] UG Comm C 39 (3 May 2012)* cited with approval the dicta of the Court of Appeal in *Mubiru & others V Kayiwa (1979) HCB 212 CA* where the court of appeal observed thus; **“an order made without jurisdiction is a nullity”**. **In the instant case, since the order of the trial magistrate awarding general damages in the sum of Ushs 2, 400,000/= to the plaintiff was made without appropriate**
15 **jurisdiction. It was a nullity ab-initio.**” Therefore, Magistrate’s Courts are required to make awards that fall within their pecuniary limits save for interest. However, an award of general and special damages must be within the pecuniary jurisdiction of the trial Court. Any award beyond what is provided for under the law renders the whole decision a nullity for want of jurisdiction.

20 In this case, the plaintiff was awarded a sum of shs 28,000,000/= being the contract sum. He was further awarded special damages of shs 200,000 per day being the loss for the impounded vehicle from the day it was impounded till the defendants pay shs 28,000,000 in full. In paragraph 6 of the plaint, the plaintiff averred that the vehicle
25 was impounded on 24th February 2020 meaning special damages starting accruing



from then and the judgment of court was delivered on 18th December 2020. In a simple computation this means that arrears at the time of making the decision in terms of special damages translated into 9 months and 25 days if you multiply this by 200,000/= per day, it translates into approximately shs 59,000,000/= (Fifty-Nine Million Shillings). The trial magistrate also awarded a sum of shs 2,000,000/- as general damages. This means that the total amount awarded is shs 89,000,000/= which is way beyond the pecuniary jurisdiction of a Chief Magistrate which is shs 50,000,000/=. It is therefore my further finding that the learned Chief Magistrate also lacked the requisite pecuniary jurisdiction to award these amounts.

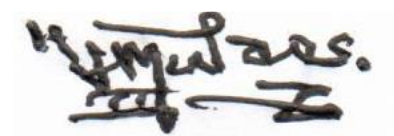
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In the result, this application succeeds and it is granted with the following orders:

1. **That the judgment, decree and orders of the learned Chief Magistrate in civil suit No. 59 of 2020 are declared a nullity and set aside.**
2. **That all resultant execution proceedings and taxation are a nullity and the same are hereby set aside.**
3. **Each party shall bear their own costs.**

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It is so ordered.



Vincent Wagona

20 **High Court Judge / FORTPORTAL**

DATE: 11th/10/2023

