THE REPUBLIC OF UGANDA

THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

CIVIL APPEAL NO. 0070 OF 2022

Ssemujju Richard……...Appellant

versus

Dr Patrick Twesigye ……..……...Respondent

An appeal arising from the decision of Hw. Nakibinge Latif Abubakar, magistrate grade one of the Chief Magistrate's Court of Nabweru, holden at Matugga Grade One's Court* vide *Small Claim No. 25 of 2022, arising out of the demand notice No. 63 of 2023, delivered on 19 October 2022.

Before: Hon. Justice Dr Douglas Karekona Singiza

JUDGMENT

1 Introduction

The quality of the justice system in any country is determined in part by how accessible such a system is to people of lesser means. Uganda has led the drive in what is considered 'ease of justice' for its citizens by creating specialised courts that target the needs and challenges of society. Among these courts, the Small Claims Courts (SCCs) was created to deal quickly with the resolution of small economic claims in disputes between individual citizens. The idea is that the speedy resolution of small economic disputes increases the potential of small businesses and is hence a spur to the country's economic development. The framework enables courts to resolve smaller disputes quickly, and at a lower cost, outside of the usual stricter rules of evidence and procedure.

The visible gains resulting from these courts is clear to everyone. Over the years, the judiciary reports that ever-increasing amounts of money have been released back into the economy due to the speedy resolution of the small disputes that occur between ordinary citizens. It is also the case that these courts are keeping to the short timelines envisaged for them by the rules.[1]

2 Background

The appellant, Mr Ssemujju Richard, a health worker of Ssanga, Gombe Wakiso, brought a small claims matter against the respondent, Dr Twesigye Patrick of Kawempe. This was for a claim for unpaid money for the supply of books worth UGX 8,260,000=. The key items of evidence in the claim were photocopies of the receipts. For ease of reference, I will designate the appellant as 'Ssemujju' and the respondent as 'Twesigye'.

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[1] Registry of Planning and Development *Small Claims Procedure Performance and Activity Report for the Years 2015 and 2016* Judiciary of Uganda: Kampala (March 2017) pp 1–6.

Ssemujju presented his own evidence for the claim and also relied on the evidence given by Ms. Nazziwa Agnes (the claimant's former employee) and by Mr Kafeero Micheal. During the hearing, Kafeero's evidence was rejected because he appeared not to know what he was talking about. Ssemujju's claim was dismissed by the learned magistrate because the claim relied only on invoices which showed no contractual obligation: there was no clear evidence in them of the actual prices, nor was there any evidence of a delivery note or receipt of the books. The learned magistrate disbelieved the evidence of a 'cleaner' and an 'office attendant' (PW2 and PW3) since they were not familiar with matters of contracts of supply of school medical books. Aggrieved by the decision of the court, Ssemujju appealed to this higher court.

2.1 Representation

The appellant was self-represented, while the respondent was represented by *Ms. Mumpenje & Co Advocates*. It proved very difficult for this court to appreciate either the grounds of appeal or the arguments presented by both sides. That said, this court was still able to establish the main points that needed consideration.

Grounds of appeal

Ssemujju seems to identify 10 grievances in his appeal. Whereas Ssemujju does not describe the 10 grievances as grounds of appeal, this court is of the view that at least five of those grievances stand as the true grounds of the appeal. These are summarised (with slight edits) below:

1. That the learned magistrate erred in fact and law by expunging the evidence of Kafeero Michael from the record on account that the witness could not differentiate between an agreement and an invoice.
2. That the learned magistrate erred in fact and law by not evaluating the evidence of the actual receipt of the medical textbooks.

3. That the learned magistrate erred in fact and law by refusing to allow Mr Ogeni John to testify as a witness on the grounds he was 'merely a security guard' when in fact he is the one who received the books at the facility and moved them to the respondent's car.

4. That learned magistrate erred in law when he refused to admit evidence from telephonic audio communications and text messages (SMSs) into the communication record.

5. That the learned magistrate erred in law and fact when he refused to make an order for a verificatory examination of the sample of books delivered by the respondent to Kiboga School of Nursing and Midwifery.

2.2 Ssemujju's submissions on appeal

This court notes that Ssemujju represented himself in this appeal. His submissions, like his grounds of appeal, do not adhere to the standard of neatness and clarity required. Most of the arguments that ordinarily would follow from grounds of appeal that are clearly articulated are not well presented. I have, however, been able to establish the following as his key arguments.

The first is that the learned magistrate mishandled his case due to a bias in favour of the respondent. For instance, the appellant cites the learned magistrate's rejection of presentation of evidence and witness to prove his claim.

Secondly, Ssemujju seems to argue that the contested contract was oral in nature. His contention was that since the existence of the oral contract was never challenged in evidence by Twesigye, it was not open to the learned magistrate to rewrite its terms but only to interpret it.[2] Thus, since Ssemujju had proved his claim as required by the evidential threshold,[3] what the learned magistrate should

[2] Ssemujuu cites the decision of *National Bank of Kenya Ltd v Pipeplastic Samkolit (K) Limited Professor Samson K Ongeri* Civil Appeal No. 95 of 1999.
[3] Reference was made to section 101 of the Evidence Act Cape 6 on the burden of proof.

have done was to find Twesigye in breach of the contract for the none-payment of the balance on the purchase price of the medical textbooks supplied to him on credit.

Thirdly, Ssemujju also questions how the learned magistrate was able to know which witnesses were credible since Twesigye never presented any evidence to impeach the credibility of the claimant's evidence during trial.[4] It was also argued by Ssemujju that the learned magistrate had irregularly ignored all the material evidence he presented.

He identified the following evidence as wrongly rejected by the learned magistrate:

1. The evidence of Ogengi John. His testimony was rejected on account of his status as a security guard, yet it was he who had witnessed the arrival of the textbooks and assisted in loading them onto Twesigye's vehicle.
2. The evidence of Mr Kafeero Michael Mukisa on the grounds that he did not know the difference between an invoice and an agreement.
3. In addition, the learned magistrate refused to allow Ssemujju to pick samples of books from Twesigye's library code category to establish their similarity to those that Ssemujju had purchased from the United Kingdom.
4. The learned magistrate's refusal to summon Mr Bbosa Francis who linked Ssemujju to Twesigye in their transaction.

2.3 Submission in reply by Twesigye

In reply to these submissions, Twesigye begins by raising a possible technical question: whether Ssemujju had a recourse to appeal against the decision of the

[4] Reference was made to two decisions: *Ahamed Adil Abdallah v Sheilh Hamad Isa and Ali* Khalifa (2019) EWHC 27 para 20 and *Armagas Ltd v Mundoga*.

learned magistrate. The argument seems to be that, under the small claims' procedural framework, the correct course of action would have been an application for revision.[5] Moreover, the argument suggests that this court is not equipped with the power to entertain this appeal, given the commercial nature of the dispute.[6]

Twesigye also attacks Ssemujju's appeal on several other fronts. There are three critical points:

1. first, Ssemujju refers to the irregular introduction of copies of invoices and receipts, which were in any case drawn to non-parties to dispute;

2. secondly, the contention that the reference to call data evidence was in fact obtained after the hearing of the claim, and is hence irregularly imported into this appeal; and

3. thirdly, the argument that the framework and precedents for small claims procedure permits a trial court to reject evidence which may, at the discretion of the court, be found irrelevant.[7]

3 Legal framework on small claims' procedure

Twelve years ago, the Rules Committee of the judiciary enacted the Small Claims Procedure rules in Uganda to foster speedy justice between and among individual claimants for disputes around sums not exceeding UGX 10,000,000=. Such claims are heard and determined by courts presided over by magistrates' courts, but with the oversight function vested in the high court. [8] The rules give a detailed

[5] Reliance is placed on the provisions of Judicature (Small Claims Procedure) Rules 2011.
[6] See Rule 4(4) of the Commercial Court Rules; section 17(1) of the Judicature Act Cap 13.
[7] See Rule 3 of the Judicature (Small Claims) Rules. Twesigye cites the decision of Wamala J in *Namuli Lilian and another v Abdulhakiu Kagwa High Court* (Commercial Division) SCPR No. 006 of 2019 to emphasise his point.
[8] Rule 3 provides: 'In these Rules, unless the context otherwise requires – 'Court' means the High Court and in particular the Commercial Court Division, a Chief Magistrates' Court and a Magistrate Grade 1 Court.'

format for recording evidence, including requiring the listing of witnesses and exhibits to be relied on at the trial.[9] Furthermore, it is required that a party to a small claim has to provide copies of the agreements, documents or other evidence or information to be relied on during trial.[10] During the hearing of the claim, both parties must appear in person, along with the relevant documents and exhibits; any witnesses in support of their version of things must also be present.[11]

A judicial officer has the discretion to determine which witnesses may or may not testify. As far as possible, technical rules of procedure need not be followed if the trial is fair, impartial, and free from any biases.[12] Provision is made for any party to a small claims court decision to apply for reviews of or alteration to it within six weeks of the decision. It is noted that the grounds for challenging a small claims court decision are limited. A decision may be challenged if it is void; if it is based on fraud or common mistake; if there is discovery of new and important matters; or if there is need for correction of latent errors in the record.[13]

Before I deal with the first question of whether this appeal sits properly before this court, in the paragraphs below I summarise the principles surrounding the role of the first appellate court.

4 The power of an appellant court

Courts in Uganda continue to restate the usual duties of a first appellate court. The first appellate court must re-evaluate the evidence, both oral and affidavit evidence, but in doing so, it must make allowance for the fact that it has neither

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[9] See Rule 6
[10] Rule 11.
[11] Rule 20
[12] Rule 25 mandates the court to 'hear every case before it expeditiously and without undue regard to technical rules of evidence or procedure, but in exercising its jurisdiction, the Court shall be guided by the principles of fairness, impartiality without fear or favour and adhere to the rules of natural justice, and in particular, shall ensure that – (a)each party is given an opportunity to be heard;(b)each party is accorded ample opportunity to call witnesses and to adduce any other evidence as he or she requires to support his or her case …'
[13] Rule 30.

seen nor heard the witnesses.[14] Mulenga JSC, as he then was, summarises the six principles that an appellate court must always bear in mind:[15]

1. an obligation to re-evaluate the evidence is founded on common law rather than in our own statutes;

2. an expectation on an appellate court by the parties that it makes inferences and makes its own decisions;

3. a recognition that since an appellate court never sees or hears witnesses, there is a duty to weigh conflicting evidence and draw its own conclusions;[16]

4. an acknowledgement of the appellate court's duty to rehear and consider the evidence as if it were the trial court;

5. the ability of the appellate court not to shy away from departing from the decision of the trial court if, upon consideration of the entire evidence, a conclusion emerges that the trial court's decision was mistaken; and

6. the appellate court must consider the question of whether some witnesses were impressionable, in which case the demeanour of the witness becomes an important consideration.

It is a mistake, however, not to subject the evidence at the trial court to a new and complete assessment.[17]

5 Twesigye's preliminary objection

Twesigye raised one major preliminary objection touching on the jurisdiction of this court to entertain the appeal, arguing that there is no legal provision for this.

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[14] See *Lovinsa Nankya v Nsibambi* 1980 HCB 81.
[15] *Narsensio Begumisa and Ors v Eric Tibebaga* (Civil Appeal No. 17 of 2002) [2004] UGSC 18 (22 June 2004).
[16] The court relied on the case of *Coghlan v Cumberland* (1898) 1 Ch 704.
[17] *Pady v R* (1957) EA 336.

Without citing any precedents, Twesigye argued that that the only way to challenge a decision from the small claims court was by way of revision before the Commercial Division of the High Court.

5.1 Guidance from the Constitutional Court

While it is correct that the rules do not provide for appeal, they do allow for review of SCC decisions.[18] The exclusion of the right to challenge the SCC decision by way of an appeal was itself successfully challenged in the Constitutional Court.[19]

It was argued that a rule made under statute could not vitiate a constitutionally guaranteed right which is protected by a specific statute.[20] The court rejected the idea that unless an appeal were specifically provided by law, it could not be inferred because such an argument is general in nature.[21] The attempt to rationalise the exclusion of an appeal as a right by the rules providing for quick and efficient justice was also rejected by the court. The court therefore found fault in the argument that the provision for review under the rules was in fact a sufficient oversight mechanism in cases where errors occurred. In rejecting this view, the court distinguished between the term 'review' and the term 'appeal'.[22]

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18 Rule 30 provides as follows: 'Review of certain judgments: The court may upon application by an aggrieved party—(a)review or vary any judgment granted by it in the absence of the person against whom that judgment was granted, where the application for set-down for hearing is made on a date within six weeks after the applicant first had knowledge of the judgment;(b)review or vary any judgment granted by it which was void or was obtained by fraud or as a result of a mistake common to the parties, discovery of new and important matters provided the application is made not later than one year after the applicant first had knowledge of the voidness, fraud or mistake;(c)correct latent errors in any judgment, provided, in the case of an application, the application is made not later than one year after the applicant first had knowledge of any errors.'

[19] See *Ssejemba v Attorney General* (Constitutional Petition No. 37 of 2014) [2021] UGCC 28 (5 October 2021).

[20] *Raila Odinga* & 6 *Others v Nairobi City Council Nairobi* HCCC No. 899 of 1993; [1990-1994] EA 482.

[21] *Baku Raphael Obudra and Ors v Attorney General* (2) (Constitutional Appeal No. 1 of 2005) [2006] UGSC 56 (15 March 2006).

[22] The court sought the aid of Garner B (ed.) Black's *Law Dictionary, 8th Edition* Thomson Reuters: London (2019:105) who defines these words in distinct but very similar terms.

According to the court, even though the two terms may appear similar, a review of the decisions from the SCC by the High Court has a very narrow mandate. The court thus held that the oversight role of the High Court under Rule 4(4) of the Judicature (Small Claims) Rules, read together with section 17(1) of the Judicature Act, are merely administrative in nature. It was the reasoning of the court that such an oversight mechanism can never be relied upon in the case of overturning a final decision of a magistrate sitting in a SCC. The court took the position that it was therefore unconstitutional for the rules not to provide for an appeal mechanism against the decision of a magistrate's court.

6 Determination of the jurisdiction question

The term 'jurisdiction' has been defined variously in many statutes and judgments with reference to legal power and the authority of a court of law to competently adjudicate a dispute.[23] That jurisdictional limits are intended to ensure certainty and orderliness in the adjudication process is not in question.[24] Indeed, it is legally impermissible for a court to hear and determine a matter when such a court is not endowed with the power to do so. The question of whether a high court's power to hear any disputes regarding specialised courts (including appeals regarding SCC decisions) remains fluid.[25]

It appears to me that whenever there is an error on record in a SCC decision, an option for a revision power in the High Court (whose function it is to ensure that judicial errors are minimised) remains constant. In fact, whenever the contested decision emanates from in and around Kampala city, the rules vest the revisionary oversight function in the High Court Commercial Division of Kampala. The clarification now is that if a party is not satisfied with a SCC decision, the right to

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According to Garner, an appeal is defined with reference to reconsideration of a decision by a higher authority, while a review is defined with reference to a consideration or inspection or a re-examination of a subject matter.

[23] See Bryan G (ed) *Black's Law Dictionary* West: Thomson Reuters 1999.

[24] See *Rose v Jumo* HCT (Arua) C. Rev No. 0006 of 2015 per Mubiru J.

[25] *UKI Uganda Ltd v Makoya* HCT C. Rev. No. 04 of 2015.

appeal under the existing framework rests undiminished. It was therefore within Ssemujju's right to approach this court in order to challenge the learned magistrate's decision by way of an appeal. It is therefore the firm determination of this court that the preliminary objection regarding jurisdiction cannot stand. In the paragraphs below, I deal with the merits of the appeal.

7 Merits of the appeal

If Ssemujju's appeal had arisen from an ordinary civil suit, where the rules of procedure are cast in a straitjacketed way, this appeal would have been faulted on account of its poor framing and articulation of the grounds of appeal.[26] This court is prepared to take the poor articulation of the grounds of appeal less seriously given the situation of the dispute in the small claims arena. I had initially tried to extrapolate five areas of concern in Ssemujju's appeal, but it is fair to bring these together into one key ground of appeal:

1. *that the learned magistrate wrongly excluded Ssemuju's key evidence during trial and thus came to a wrong conclusion.*

7.1 Findings of the learned magistrate

Ssemujju faults the learned magistrate for wrongly excluding his evidence during the hearing of the claim. Indeed, the record does show that the learned magistrate expunged the testimony of the claimant's key witness on the grounds that the witness was untruthful. On page 4 of the record, after the testimony of PW3, the learned magistrate made the following comments:

> Court: The witness is evasive, and a wastage of court's time. Court (sic) cannot count on him to establish the truth, because he does not know what he is talking about. His testimony is expunged from the record.

[26] Order 43 Rule 1(2) of the Civil Procedure Rules instructs that every ground of appeal must be neither argumentative nor vaguely written in general terms. It is a legal requirement that every ground should be concise and without any argument or narration.

The peculiarity of this appeal lies in the fact that this is not the only instance where Ssemujju's evidence seemed to be rejected. During the filing of the claim, Ssemujju indicates that he intended to rely on the 'photocopies of receipts', a copy of which is indicated as No. 069 dated 28 November 2022. I have also reviewed invoice nos. 027, 28, 29, 30 and 3, all copies of which are dated as submitted on 3 March 2023.

It was the finding of the learned magistrate that these invoices were not connected to the contractual obligation in the claim. For undisclosed reasons, the learned magistrate does not discuss the evidence of the receipts in question at all. The learned magistrates also 'totally failed to believe the evidence… of a cleaner and the office attendant to (sic) matters of a contract in supply of school medical books'.

7.2 Assessment

In ordinary suits, the burden of proof is on the balance of probabilities.[27] The same reasoning must also apply in small claims disputes, although the threshold for proving a claim must in fact be lower (for the reasons already indicated in sections 6 & 8 of this judgment). It is emphasised that in small claims, all that a claimant needs to do is to fairly establish the existence of a claim, even without following the usual strict rules of evidence.[28]

A review of the record of the proceedings summarised above clearly shows that the learned magistrate adopted a procedure that was strange and clearly unfair to Ssemujju. First, the learned magistrate prematurely drew conclusions that PW3 was a liar in his testimony. Even before evaluating the evidence as a whole, the entire testimony of PW3 was expunged from the record. Secondly, the learned magistrate ignored Ssemujju's evidence of a receipt when it was clearly very

[27] See *Miller Vs Minister of Pensions* [1947]2 ALL ER 372.
[28] Rule 25 mandates the court to ensure that a party to a small claim is given an opportunity to be heard by ensuring that a party calls witnesses and adduces evidence without bias.

relevant to the determination of his claim. Thirdly, the learned magistrate rejected and dismissed the evidence given by a 'cleaner' and an 'office attendant' as unreliable.

I have reviewed the evidence on the record, and I do not find any witnesses who are described either as a cleaner or as an office attendant. The record does show PW2 Nassiwa Agnes, who is described as a 'receptionist', while the reference to the evidence from a 'cleaner' refers in fact to that given by Mr Kafeero Michael (PW3) – the very person whose testimony had been expunged from the record during the hearing of Ssemujju's claim.

These two witnesses made no claim to be experts in the supply chain management of medical books. If that had been the case, then their expertise could have been questioned. Instead, the two witnesses had allegedly observed a set of events during the alleged delivery of the medical books to Twesigye. It was wrong (and rather condescending on the part of the learned magistrate) to reject their evidence on account of their low cadre employment status. It is also strange, and by all standards, illegal, for a court to consider any evidence that has already been expunged from the record. The result would then be that the main ground of appeal on wrongful rejection of evidence must succeed.

7.3 Subjecting the rejected evidence to fresh scrutiny

Case law firmly establishes that the balance of probabilities be invoked whenever a person alleges something as a fact. Indeed, our Evidence Act, 2000, places a similar burden on allegations, with the idea being that the balance of the scale sufficiently discharges the burden.[29]

There is no need here to consider in full the question of what a contract is. It is sufficient to simply restate its essential features. A contract may be made in writing, or by word of mouth, or in the form of a data message, or be implied by

[29] See *Miller v Minister of Pensions* AIIER. See also sections 101 and 103 of the Evidence Act.

the conduct of the parties concerned.[30] A contract has reference to mutuality of minds between freely consenting parties with the capacity to contract for a lawful consideration, with a lawful object, and with the intention to remain legally bound.[31]

In my view, for a person to agree to supply any goods (such as scholastic materials), there must be a contract, whether this be oral or written. Precisely because in the absence of a written contract it is difficult (or even impossible) to establish any of the terms under which the alleged books were supplied, other material evidence is required. At this point, the provision of section 10(1) of the Contract Act becomes particularly relevant.[32] Section 10(5) of the Act also requires that any contract exceeding 25 currency points (500,000/=) must be in writing.

Mubiru J explains three essential conditions that need to be met to operate as a permissible exception to the general rule:

- identification of the subject matter:
- sufficiency of the existence of the contract; and
- certainty of the material terms.[33]

It follows from this that even if an oral contract exceeded UGX 500,000= it can still be enforced where there is certainty of the subject matter and the terms thereunder. From the evidence on record, Ssemujju's claim refers to the supply of medical books to Twesigye. This information is supported by the testimony of two

[30] Section 5(1) of the Sale of Goods and Supply of Services Act, 2018.
[31] Section 10 of the Contracts Act, 2010; a good point of departure is Bamwine J in *Greenboat Entertainment Ltd v City Council of Kampala* (HCT-00-CC-CS 580 of 2003) [2007] UGCommC 21 (26 February 2007), who took the view that every contract involves an agreement much as not every agreement amounts to a contract.
[32] Section 10(1) of the Contracts Act provides that '[a] contract may be oral or written or partly oral and partly written or maybe implied from the conduct of the parties'.
[33] See *Katkar Hanumant v Miracle Motors & 2 others* HCCS No. 0800/2018 per Mubiru J.

witnesses, though one of these had her evidence removed from the record by the learned magistrate (though that same evidence was used by the magistrate to make a decision that resulted into the dismissal of the claim). It is the finding of this court that the learned magistrate made an error both in law and fact by rejecting this important evidence.

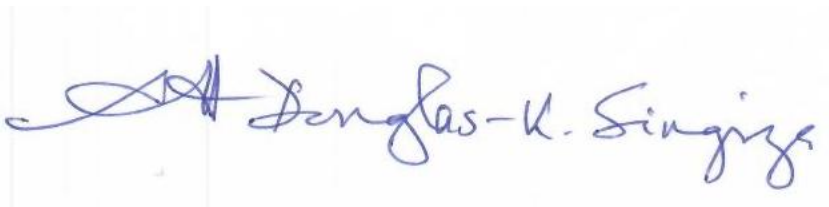
8 Final decision

Had the learned magistrate not dismissed the powerful evidence from these two witnesses (one considered as a 'mere' cleaner, the other a 'mere' office attendant), he would have reached a different and, in truth, correct conclusion.

It is my decision that an oral contract was in place, that this contract fell within the purview of exceptions under section 10 of the Contracts Act, and that the terms of this contract were certain. This conclusion is further supported by the evidence of the 'photocopies of receipts', a copy of which is indicated as No. 069 dated 28 November 2022, and invoice nos. 027, 28, 29, 30 and 31 (all dated 3 March 2023), though these were either rejected or ignored by the learned magistrate. Thus, on a balance of probabilities, I find valid reasons and grounds to allow Ssemujju's small claim against Twesigye.

I therefore allow this appeal with the following orders:

1. Dr Patrick Twesigye of Kawempe is liable for the unpaid money for supply of books of UGX 8,260,000= to Mr Ssemujju Richard,
2. Costs



Douglas Karekona Singiza

Acting Judge

18 September 2023