

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

CIVIL REVISION NO. 27 OF 2021

(Arising from Civil Suit No. 366 of 2019 At Nakawa Chief Magistrate Court)

KIBIRIGE MEDDISON ===== APPLICANT

VERSUS

1. DIDAS NIWAMANYA

2. MARTA DYMLING ===== RESPONDENTS

BEFORE: HON. JUSTICE EMMANUEL BAGUMA

RULING.

Background.

The Applicant (**formerly plaintiff**) filed Civil Suit No. 366 of 2019 in Nakawa Chief Magistrates Court for recovery of USD 9,600 against the Respondents (**Formerly defendants**) who never filed a defence. A magistrate grade entered a default judgment on 04th November 2019 and cancelled it 19th November 2019 for lack of jurisdiction and forwarded the file to Chief Magistrate who also entered a default judgment on 22nd November 2019.

The Applicant realizing that there were some errors on the issue of jurisdiction by the Magistrate grade 1 and Chief Magistrate applied to this court for revision.

The application.

This is an application by way of notice of motion under section 83 & 98 of the CPA and order 0.52 rule 1 of the CPR seeking for orders that;

- 1. The default judgment of Her Worship Kagoya Jackline, Magistrate Grade 1 in Civil Suit No. 366 of 2019 and all subsequent proceedings arising before or thereafter be revised and or set aside by this court.*
- 2. That the costs of this application be provided for.*

The application is supported by the affidavit of **Kitenda Jesse Stephen** an advocate representing the Applicant whose details are on record but briefly states that;

1. The applicant filed Civil Suit No. 366 of 2019 for recovery of USD 9,600 and costs of the suit.
2. The matter was allocated to a Magistrate Grade one who proceeded to enter a default judgment upon failure of the Respondents to file a defence despite being served with summons.
3. On conversion of USD 9,600 to Ugandan shillings, it comes to UGX 34, 000, 000/= which is way above the pecuniary jurisdiction of a magistrate grade 1.
4. The trial Magistrate grade 1 upon realizing that she lacked jurisdiction forwarded the file back to the chief Magistrate who without following proper procedure proceeded to issue a default judgment.
5. There is an illegality on record hence warranting a revision.

The Respondent, just like in the civil suit did not file an affidavit in reply despite being served with this application.

Legal Representation.

The applicant was represented by Mr. Kinaalwa Musa and Opio Moses of M/S Sekabanja & Co. Advocates.

Counsel for the Applicant was directed to file written submissions which he did.

Submissions by Counsel for the applicant.

Counsel referred to **section 83 of the Civil Procedure Act** which 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”;

Counsel submitted that revision entails a re-examination or careful review for correction, improvement of a decision of a magistrate court, after satisfying as to

the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings of a Magistrate court.

He referred to the case of **Tolit Charles Okiro Vs Otto Ciprian Civil Revision No. 02 of 2019**.

Counsel submitted that the application seeks to re-examine a decision passed and subsequent proceedings by Her Worship Kagoya Jackline the Magistrate Grade One on ground that she did not have jurisdiction to entertain civil suit No. 366 of 2019. That this is clearly shown under paragraphs 4,5 and 6 of Kitenda Jesse Stephen's affidavit in support of the notice of motion.

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

“ A Magistrate Grade 1 shall have jurisdiction where the value of the subject matter does not excess twenty million shillings”.

Counsel submitted that the Trial Magistrate upon realizing that she did not have jurisdiction, administratively referred the file back to the chief Magistrate on the basis that the sum claimed is above her pecuniary jurisdiction. The Chief Magistrate thereafter allocated the file to himself and commenced proceedings without first setting aside the Magistrate Grade One's decision which was also erroneous.

Counsel concluded that the Trial Magistrate lacked jurisdiction to entertain a claim of UGX; 34,000,000/=.

Analysis of court.

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 207(1) of the Magistrates court Act provides that;

“ A Magistrate Grade 1 shall have jurisdiction where the value of the subject matter does not excess twenty million shillings”.

In the instant case, the claim was for a liquidated sum of USD 9,600 which the lawyers say it was is equivalent to UGX 34,000,000/= at the time. This was clearly above the pecuniary jurisdiction of a Magistrate Grade 1 which is stated to be UGX 20,000,000/=. This makes the default judgment entered by a magistrate grade 1 a nullity.

After the trial Magistrate entering the default judgment, she concluded the matter and became *functus officio* and could not cancel the same. The learned Chief Magistrates actions of re-allocating the file to himself and proceeding to enter another default judgment was also irregular and illegal.

The chief Magistrate ought to have forwarded the file to High Court for revision but not to act on illegalities created by a magistrate grade one.

This issue succeeds.

Conclusion.

In the final result, this application succeeds with the following orders;

1. The default judgments, decree entered and subsequent proceedings by both the Magistrate grade one and Chief Magistrate in Civil Suit No. 366 of 2019 are a nullity and are hereby set aside.
2. Basing on the nature and circumstances of this case, no order as to costs.

Dated, signed, sealed and delivered at Kampala this **30th** day of **March 2023**

Emmanuel Baguma

Judge