

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT SOROTI

CIVIL REVISION NO. 8 OF 2011

(ARISING FROM KUMI GRADE ONE COURT CIVIL SUIT NO. 43 OF 2008)

ELECTORAL COMMISSIONAPPLICANT

VERSUS

AMONG FLORENCE.....RESPONDENT

BEFORE HON. LADY JUSTICE H . WOLAYO

RULING

In this application, the applicant through its counsel Henry Dungu of Sekaana & Co. advocates seeks orders that

- a) The lower court failed to exercise jurisdiction vested in it
- b) the lower court acted in the exercise of its jurisdiction illegally or with material irregularity or injustice by enforcing an illegality.
- c) Costs be provided for.

Mr . Odekel of Odokel & Co. advocates appeared for the respondent.

Background

The following facts are not disputed. The respondent filed CS 158 of 2006 in the High Court at Kampala but the case transferred to Mbale High Court then to Soroti High Court and finally to Kumi Grade one court. While at Soroti High

Court, the case was set down for formal proof before Justice Musota who set aside the interlocutory judgment and ordered the case proceeds inter parties.

Subsequently, the case was transferred to Kumi grade one court and the case proceeded inter parties.

On 8.2.2011, the defense closed its case and the trial magistrate ordered both parties to file written submissions before 1.3.2011. Judgment was delivered on 6th April 2011 in the presence of plaintiff's counsel but in the absence of defense counsel. The judgment awarded special damages of 6,575,000/ and general damages of 20,000,000/ plus costs.

The grounds of applicant's case are set out in the affidavit of Jennifer Angeyo , an advocate with Sekaana & Co. Advocates.

Mr. Dungu submitted that the judgment of the grade one magistrate is based on an illegality principally because special damages were awarded for carrying supporters yet the vehicles did not bear police stickers as required by section 11 (7) and (8) of the Parliamentary Elections Act. Para 14 of the affidavit. That this was an illegality that cannot be condoned by the High Court.

Counsel further submitted that the applicant was denied an opportunity to file written submissions and therefore denied the right to a fair hearing.

Mr. Odokel opposed the application for revision orders submitting that it is an abuse of the court process . That the trial magistrate exercised jurisdiction vested in him . The respondent's case is supported by the affidavit in reply of Ms Florence Among.

Whether the trial court exercised jurisdiction with material irregularity.

The issue before court is whether the magistrate acted without jurisdiction and if he had jurisdiction whether he failed to exercise it or exercised it with material irregularity. Provided a revision order will not be made if time has lapsed since the decision was made and revising the decision may cause serious hardship to any person who has relied on the decision.

The applicant's main bone of contention is that the magistrate awarded special damages when there was no proof that the applicant had obtained police stickers to allow transportation of supporters. Pages 5 & 6 of the proceedings show the details of special damages. i.e, hire of vehicle to Nsamizi 300,000/; nomination fee 200,000/; 4 trips to transport supporters 800,000/; airtime for supporters 2,000,000/ ; 1,800,000/ for posters; 3,000,000/ for T-shirts; hire of small car at 250,000 plus fuel; hire of big vehicle at 1,200,000/ ; feeding supporters at 1,200,000/ at Kumi; feeding and accommodating supporters at Kampala 165,000 and 990,000/ respectively for 11 days. Receipts were tendered for all these expenses without objection from counsel for the defendant/applicant.

A summation of all these sums come to approx. 11,900,000/. If the cost of hire of vehicles is deducted from this sum, which is 800,000 and 1,200,000/ respectively, the balance would come to about 8,000,000/. The trial magistrate awarded 6,575,000/ as special damages much less than what was proved.

With regard to the failure to secure police stickers, this issue was never raised during the trial . Nevertheless, I find that when the cost of hire of vehicles is deducted, the amount of special damages awarded is much less than what was proved. In the premises, the magistrate did not act with material irregularity and a I decline to make a revision order on that ground.

Counsel for the applicant contended that the case did not disclose a cause of action. Para 16 of the affidavit in support refers. It is not fair for counsel to raise this issue on revision when he should have done so at the commencement of the trial . Nevertheless, the trial magistrate established there was a cause of action , hence the award of special and general damages .

Award of damages in excess of pecuniary jurisdiction

I find that the total sum of damages (26,575,000) is beyond the pecuniary jurisdiction of a grade one magistrate . Section 207(1) (b) of the MCA puts the upper limit at 20,000,000/. Section 207 (4) goes further to provide that where it is impossible to estimate the monetary value of the subject matter, no decree shall be issued for an amount on the claim exceeding the pecuniary limits of the court passing the decree.

In the premises, I reduce the general damages by 6,575,000/ to 13,425,000/ . The awards will stand as follows:

6,575,000/ special damages

13,425,000/ as general damages.

Denial of right to a fair hearing

Mr. Dungu submitted that he was denied the right to make written submissions. However, the court record shows a time frame for filing written submissions was given in the presence of both counsel. The magistrate cannot be faulted for sticking to the time set for delivery of judgment. I find that the applicant was not denied the right to a fair hearing.

In the premises, as the application for revision, partially succeeds , each party will bear its own costs of this application. However, costs of the lower court to the respondent.

DATED AT SOROTI THIS 2nd DAY OF SEPTEMBER 2014

HON. LADY JUSTICE H. WOLAYO