

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CIVIL APPEAL No. 0045 OF 2014
(Arising from the Arua Chief Magistrates Court Civil Application No. 029 of 2013)

KASSIANO WADRI **APPELLANT**

VERSUS

NURU JUMA **RESPONDENT**

Before: Hon Justice Stephen Mubiru.

JUDGMENT

The appellant sued the defendant in the Chief Magistrate’s Court of Arua, seeking recovery of two plots of land situate at Baruku village in Arua Municipality. The court entered judgment in favour of the appellant and by a decree dated 31st March 2006, directed the respondent to hand over vacant possession of the land and to pay shs. 23,758,800/= damages inclusive of interest, shs. 16,224,000/= in costs and shs. 2,750,000/= as court bailiffs costs. The respondent had filed a notice of appeal on 10th April 2006 and applied for a certified copy of the record of proceedings. By a post-judgment agreement between the parties, the respondent undertook to hand over vacant possession of the land to the appellant on or before 31st August 2010.

Upon being served with a warrant in execution of the decree, the respondent on or about 14th August 2010 lodged a complaint with the Inspector of Courts, seeking a review of the appellant’s bill of costs which he claimed was taxed ex-parte. Pending the determination of that complaint, the respondent on 27th August 2010 proceeded to file an application for stay of execution before the trial court. The court proceeded to grant that order on 7th December 2010. Being dissatisfied with the order of stay of execution, the appellant on 27th June 2013 filed an application seeking to set aside the order of stay of execution, claiming that the order was issued in error in as much as the Inspectorate of Courts did not have the power to grant the relief sought by the respondent. In

his affidavit in reply, the respondent opposed the application and contended that he took the impugned step as a poor and un-represented litigant to complain to the Inspectorate of Courts. In its decision of 14th October 2014, the trial court found that the remedy of the respondent in challenging the results of taxation of the appellant's bill of costs lay by way of an appeal to the High Court under section 62 of *The Advocates Act* and not by way of complaint to the Inspector of Courts. The order of stay of execution was therefore made erroneously. The learned Magistrate however found that other than apply for the order to be set aside, the appellant ought to have sought for its review (sic) under s. 82 of *The Civil Procedure Act*, and therefore dismissed the application with costs. Being dissatisfied with the decision, the appellant immediately sought leave to appeal the decision which was granted.

In the appellant's memorandum of appeal, it is contended that;

1. The learned trial magistrate erred in law and fact when he held that the Chief Magistrate's Court lacked jurisdiction to set aside its own orders.
2. The learned trial magistrate erred in law and fact in holding that the remedy of the appellant was review (sic) under s. 82 of *The Civil Procedure Act* and dismissing the Appellant's application with costs to the respondent.

At the hearing of the application, counsel for the appellant Mr. Jogoo Tabu argued that the power of magistrates' courts to set aside their own orders is conferred by section 219 of *The Magistrates Courts Act*, which makes provisions of *The Civil Procedure Act* applicable to magistrates' courts. The trial magistrate should therefore have invoked section 98 of *The Civil Procedure Act* and granted the application. The trial magistrate having found that the order of stay of execution had been made in error, should have proceeded to set it aside. Section 82 of the Civil Procedure Act was inapplicable to the facts before the trial magistrate since considerations stated therein did not arise. He cited *Karoli Mubiru and 21 others v. Edmond Kayiwa and 5 others, S.C. Civil Appeal No. 3 of 1978* in support of his submissions.

In response, counsel for the respondent, Mr. Henry Odama argued that the trial court came to the proper conclusion having considered that the respondent was an un-represented litigant. The respondent was not a proper party to the proceedings but was a mere witness to the post-judgment agreement, the proceedings went on ex-parte against him, only to be served with a

warrant in execution of the decree with an exorbitant amount. The court was therefore justified in invoking s. 98 of *The Civil Procedure Act* to grant him a stay of execution. The Court was therefore right in its subsequent decision when it directed that the application ought to have been made under section 82 of *The Civil Procedure Act*. He prayed that the appeal be dismissed.

The trial court appears to have mixed up the concept of revision with that of review. Revision, under section 82 of *The Civil Procedure Act*, envisages a correction of error apparent on the face of the record. But, the correction is done by a higher court, not the same court. A review, on the other hand, is also a correction of errors apparent on the face of the record. But, this is done by the same court that gave the earlier judgment.

The general rule is that a court has no power to set aside or vary a final judgment or order granted in finality of any matter which has been passed and entered, because of the public interest in the finality of litigation (see *DJL v Central Authority*, (2000) 170 ALR 659; *State Rail Authority of NSW v Codelfa Construction Pty Ltd* (1982) 150 CLR 29 at 38, 45-6; and *Autodesk* (1992) 176 CLR 300 at 302, 310, 317). Finality of judicial decisions is important so that litigants are afforded the certainty they require to operate effectively. In *Lakhamshi Brothers Limited versus R. RaJa and Sons* [1966]_EA 313, at page 314 paragraph E-F, Sir Charles Newbold, P. made the following observation:-

But this application, and the two or three others to which I have referred, go far beyond that. It asks, as I have said, this Court in the same proceedings to sit in Judgment on its own previous Judgment. There is a principle which is of the very greatest importance in the administration of Justice and that principle is this: It is in the interest of all persons that there should be an end of litigation.

The ability to revisit and change decisions could easily disrupt the lives litigants affected by the decisions, and cause them hardship and loss. The rule is premised on the idea that, overall, the advantages of avoiding uncertainty (and its consequences) outweigh the reasons a court might have for wanting to change a decision in a particular case. Once a validly-made final decision has been issued by court, the court becomes powerless to change it, other than to correct obvious technical or clerical errors, or unless specifically authorised to do so by statute or regulations. At some point Judicial officers become *functus officio* and the jurisdiction to intervene comes to an

end. The importance of the finality of judicial decisions generally strongly militates against the existence of an inherent jurisdiction and power of court to set aside its own decisions made in finality of the matters before it. Such a power must be vested by statute or rules specifying the limited circumstances in which it is exercisable.

Such a power can only be conferred by statute, for example setting aside of default judgments (for failure of service or other sufficient cause under O 9 r 12, 27 and O 36 r 11 or for absence of a party O 9 r 23 of *The Civil Procedure Rules*), a third party in default of appearance (O 1 r 16) variation of interlocutory orders (for example under O 41 r 4), the slip rule (where there is a clerical mistake or an error arising from an accidental slip or omission, in a judgment or order, or in a certificate), consent orders and judgments obtained by fraud, review (for errors apparent on the face of the record such as where the court's order does not correctly reflect its decision, as contained in its reasons), a suit declared to have abated or dismissed upon death of a party (under O 24 r 8), a suit dismissed for failure to furnish security (under O 26 r 2 (2), etc. The inherent power of the Court is meant to prevent its process from being misused in such a way as to diminish its capability to arrive at a just decision of the dispute. It is invoked where it is clearly established that a significant injustice had probably occurred and there was no alternative effective remedy.

Once a magistrate's court has determined a suit, it has no residual jurisdiction to reopen the case. However, a judgment debtor may move the court for a stay of execution of the judgment, or for some other order, on the ground of matters occurring after the date on which the judgment takes effect, such as the existence of a pending suit between the parties, and the court may, on terms, make such order as the nature of the case requires. According to section 219 (1) of *The Magistrates Courts Act*, every suit in the court of a chief magistrate or a magistrate grade one is to be instituted and proceeded with in such manner as is prescribed by rules applicable to suits instituted in the High Court. It is beyond contention that there is no statute or rule of the court conferring jurisdiction on a magistrates court to set aside its order of stay of execution, which is an order granted in finality of that matter, except by way of review.

A magistrate's court is not a court of unlimited jurisdiction. It is a creation of statute and enjoys only such jurisdiction as is conferred on it by statute. Its inherent jurisdiction is conferred by section 98 of *The Civil Procedure Act*. The inherent power of the Court is meant to prevent its process from being misused in such a way as to diminish its capability to arrive at a just decision of the dispute. It is invoked where it is clearly established that a significant injustice had probably occurred and there was no alternative effective remedy, it is therefore a power that is sparingly used.

In the instant case, the respondent in his application for stay of execution chose to invoke the inherent power of the trial court yet the order of stay of execution could be obtained from the High Court, to which he intended to appeal, under O 43 of *The Civil Procedure Rules*. In allowing its inherent power to be invoked by the respondent, the trial court did not specify why it deemed it appropriate to do so. In any event, the ground upon which the order was granted, the fact that there was a pending complaint to the Inspector of Courts, is not provided for under any provisions of the law. It was a most erroneous decision. Courts should indeed not be too exacting towards un-represented litigants in demanding of them perfection with their pleadings such as would be expected of advocates. Nevertheless, this is not a justification for courts to entertain applications based on totally erroneous steps taken by unrepresented litigants, unrelated to the established procedures for the disposal of suits, such as happened in this case.

When the matter came up before the same court with an application to set it aside, the court rightly found that although it was an erroneous decision, there was no statutory provision or rule in the rules of court which enabled that court to set it aside. This was most especially true considering that the order was made by a magistrate other than the one to whom the application to set it aside was made. The order made by the previous magistrate was an order in finality to the extent that there was then no other pending litigation between the same parties before that court. It is an order in respect of which the *functus officio* rule would apply.

In my view, the subsequent magistrate invoking the inherent jurisdiction of the court to set aside an order in finality made by a magistrate of the same grade would not be a proper exercise of the inherent jurisdiction of the court. The magistrate correctly found that the error could only be

addressed within the context of section 82 of *The Civil Procedure Act*, by way of an application for revision to the High Court. To that extent, the appeal fails.

However, the inherent power of this Court is meant to prevent its process from being misused in such a way as to diminish its capability to arrive at a just decision of the dispute. It is disturbing to note though that the respondent filed a notice of appeal on 4th October 2013. It is now three years since and there is no apparent step taken by the respondent in prosecuting that appeal.

The inherent power of this court is invoked where it is clearly established that a significant injustice had probably occurred and there is no alternative effective remedy, in the instant appeal I have to bear in mind that the overriding objective, in the administration of justice is to do substantive justice. Although the appellant in this case ought to have proceeded by way of an application for revision of the erroneous decision to stay execution made by the court below rather than appeal, this is an illegality that has been brought to the attention of this court which it cannot permit to go without redress on account of technicalities. For that reason, the order of the court below staying execution is hereby set aside.

In the final result, the appeal is dismissed on account of being the wrong procedure for the relief sought. Although the relief has been granted under the inherent power of this court, the appellant shall meet the costs of this appeal.

Dated at Arua this 8th day of December 2016.

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Stephen Mubiru

Judge