

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
REVISION CAUSE NO.007 OF 2019
(Arising from Wakiso Civil Suit No.156 of 2016)

TWESIGYE EPHRAIM:.....APPLICANT

VERSUS

MBABAZI WINFRED:.....RESPONDENT

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

RULING

This application was brought by notice of motion under Section 83 and 98 of the Civil Procedure Act Cap 71, Section 33 of the Judicature Act Cap 13, and O.52 r1 & 3 of the Civil Procedure Rules SI 71-1 seeking for orders that;

1. The ruling and orders of Her Worship Karungi Doreen- Grade One Magistrate issued on the 1st day of March, 2019 in Civil Suit No.165 of 2016 be revised and set aside.
2. The Court makes appropriate orders as it deems fit.
3. Costs of the application be provided for.

The grounds of the application, which I shall refer to in the ruling, are supported by an affidavit deposed by the Applicant. The

application is contested by the 1st Respondent on grounds which I shall also refer to in the ruling. Both parties are represented by Counsel who filed written submissions in support of the respective sides. These I shall consider in resolving the dispute.

Before dwelling on the contents in the affidavits, I find it necessary to give a brief background of the application. The Respondent filed Civil Suit No.156 of 2016 in the Chief Magistrate Court of Wakiso at Wakiso seeking, *inter alia* declaratory orders of ownership of, and cancellation of titles for **land comprised in Busiro Block 269 Plots 1092 and 1101 at Kavumba** registered in the Applicant's name; the cause of action being fraud and trespass.

According to the sale agreements dated 25th November 2015, each of the two plots of land was purchased at Ugshs.13,000,000/- (*thirteen million shillings*) hence the aggregate of Ugshs.26,000,000. The matter was handled by a grade one Magistrate sitting at the Wakiso Court. At the hearing, the Respondent raised one preliminary objection to the suit that is; that the Court lacked jurisdiction to entertain the suit where there is a prayer for cancellation of titles.

Dismissing the objection, Her Worship Karungi Doreen ruled as follows, I quote verbatim;

1. This Court has powers to make a recommendation to High Court to have the certificate of title cancelled, to be enforced through application for consequential orders.

2. This Court has powers to grant certain orders and to object to some where it finds it necessary since prayers are divisible.
3. The cause of action here is trespass and fraud of which this Court has jurisdiction to handle.

Being dissatisfied with the above ruling, the Applicant brought this revision application on ground that Her Worship exercised her powers illegally. Besides the ruling in the above, the Applicant also raises another ground of objection to jurisdiction of the lower Court that is;

1. That the Court lacks jurisdiction to try the suit whose subject matter is way beyond Ugshs.20,000,000/-, *twenty million shillings*) the pecuniary jurisdiction of a Grade One Magistrate.

For emphasis, this above objection was never raised before the lower Court by the Applicant. In his written statement of defence, however, he indicated that the current market value of the two disputed plots is Ugshs.60,000,000/- (*sixty million shillings*) in 2019. Despite the omission to raise this objection, I shall nonetheless consider this objection for the reasons I shall give later in this ruling.

The above background is similar to the contents in the Applicant's affidavit. I shall therefore not reproduce the same. But before even considering the Respondent's affidavit, the Applicant's Counsel raised an objection to it which I shall first address before going into the merits of the application. According to Counsel for the Applicant, the Respondent's affidavit was filed out of time that is 35

days from the date of service, and it ought to be struck off the record. He relied on O.12 r.3(2) of the Civil Procedure Rules, a rule applicable to filing of interlocutory applications after scheduling conference, and **Stop and See (U) Ltd versus Tropical African Bank HCMA No.333 of 2010.**

In reply, Counsel for the Respondent disputed the application of the above Order and Rule to the instant case on ground that no scheduling conference was held in this case. Admitting that the Respondent's affidavit was filed out of time, he urged me to consider Article 126(2)(e), Constitution of the Republic of Uganda, 1995 and allow the affidavit because delay was occasioned by the Respondent's being abroad.

Firstly, I agree with the Respondent Counsel's view that O.12 r3(2) of the Civil Procedure Rules is inapplicable to this case given that no scheduling conference is envisaged in applications of this nature. That said, the jurisprudence available suggests that replies in a like case must be made within 15 days after service of the application failure of which puts the reply out of time. See **Stop and See (U) Ltd versus Tropical Africa Bank Ltd HCMA No.333 of 2010; Stirling Civil Engineering Limited versus Abram Kitumba Peter Mulangira Lutaya & Others Misc. Appl. No.1164 of 2018.**

It undisputed that the Respondents' affidavit in reply was filed out of time. The only excuse given for the default is that the Respondent was out of the country, and as such he could not be

reached to depone the affidavit. To me, this is a ridiculous excuse by Counsel for the Respondent. Not even an appeal to Article 126(2)(e) of the Constitution can render it attractive especially since there was an option of Counsel seeking leave to file the affidavit out of time which he deliberately chose to ignore. The worst absurdity is that it is Counsel giving evidence as to the Respondent's whereabouts to justify the default. This ought not to be allowed.

Accordingly, the Respondent's affidavit in reply should and is hereby struck off the record for the reasons above. Ultimately, the Applicant's application remains unopposed save on matters of law to which the Respondent Counsel's submissions shall be considered.

According to Counsel for the Applicant, a Grade One Magistrate has no jurisdiction to order cancellation of an entry on a certificate of title because this power is a preserve of the High Court by virtue of Section 177 of the Registration of Titles Act Cap 230.

In addition to that, that since Her Worship lacked jurisdiction, she equally had no jurisdiction to transfer the case file, and that the only option available was for her to dismiss the suit. He relied on *David Kabungu versus Zikabenga & Others HCMA No.39 of 1969, and Petronilla Omal versus Godfrey Obbo Ondhoro & Anor HCMA No.174 of 2013* where it was observed that a suit filed in a Court without jurisdiction cannot be transferred from that Court.

Further, that since the aggregate pecuniary value of disputed land according to the sale agreements is Ugshs.26,000,000/- (twenty six

million shillings), Her Worship equally had no jurisdiction to handle the matter. He relied on Section 207(b) of the Magistrates Courts Act Cap 16, as amended, which limits the pecuniary jurisdiction of Grade One Magistrates to Ugshs.20,000,000/- (*twenty million shillings*). He thus faulted Her Worship for not looking at all prayers in the plaint, especially prayer (a), and annextures attached thereto.

In reply, Counsel for the Respondent cited Section 207(a) of the Magistrates Courts Act Cap 16, as amended, to argue that that the lower Court has unlimited jurisdiction to try the main suit since it is premised on fraud and trespass. Alive to Section 177 of the Registration of Titles Act Cap 230, he argued that the Section does not bar Magistrates Courts from making declarations for cancellation of title.

Further, that the main suit is only aimed at recovering the suit lands, and that this is demonstrated by prayer (f) in the plaint which ends with a statement that “this order shall be enforced by an application for a consequential order in the High Court.” Accordingly, he argued that the plaintiff was not seeking for conclusive orders in the main suit but rather declarations with an intention to apply to this Court for consequential orders. That this shows that the Respondent was alive of the lack of jurisdiction by the lower Court to cancel a certificate of title.

He then referred me to *Darlington Kampama versus The Registrar of Titles HCMC No.12 of 2013*, to emphasize his view that a

Magistrate Court can order cancellation of title upon recovery of land and then forward that order to the High Court for implementation. In the alternative he argued that the orders sought in the plaint are divisible that is; the lower Court may grant some and deny the cancellation orders of which it has no jurisdiction. Ultimately, he prayed that the application be dismissed with costs.

In rejoinder, the Applicant's Counsel laughed off his colleague's submissions to reiterate his earlier submissions. Further, that consequential orders are not meant to regularise illegalities, and that since the Grade One Magistrate lacked jurisdiction, she could not preside over a case she has no powers to grant prayers sought otherwise it was misleading.

Jurisdiction is very central to the validity of any judicial proceedings. For emphasis, reference is made to ***Umar Asuman versus Olila Moses HCCR No. 1/2006*** where *J. Musota* observed that:

“Jurisdiction of Courts is a creature of statute and a judicial officer worth the name must keep abreast with developments in our laws and ensure jurisdiction.... for..... It is trite law that where a suit is filed in a Court without jurisdiction, it is a non-existent suit. Whatever is decided in such a suit amounts no decision.”

The question now is whether in the case before me, the learned trial Magistrate had no jurisdiction to entertain the matter. Under *Section 177, of the Registration of Titles Act Cap 230*, the powers to

order cancellation of title is exclusive to the High Court. This power is contingent upon the recovery of land in a suit. Logically, this means that no Magistrate's Court has power to grant an order of cancellation of title upon recovery of land.

This, however, does not bar such Court to hear claims for recovery of land. In such situations, the practice has been for the successful party to apply to the High Court for consequential orders in order to give effect to the lower Court's judgment. See *Re. Ivan Mutaka [1981] HCB 28; Gladys Nyangire Karumu versus Mohammed Kaliisa & Anor HCMA No. 731 of 2015, Kiir Deng Kiir versus The Administrator of the Estate of the Late James Katubale Kagudde Nukasa HCMA No. 67 of 2018.*

According to the plaint, the Respondent prayed for the following orders;

- (e). A declaration that the 1st defendant's name be cancelled on the title...*
- (f). An order of cancellation of the 1st defendant's name on the title and the plaintiff be registered as the owner of the suit lands which shall be enforced by an application for consequential orders by the High Court.*

Can one now say that the lower Court lacked jurisdiction to entertain the main suit because of the above prayers? In my view, the answer to this is in the negative.

As noted above, jurisdiction is a creature of statute. Subject to any written law, once a Magistrate Court has the pecuniary or territorial jurisdiction to hear a particular matter, this cannot be deterred by its inability to grant consequential reliefs. In this case, the main dispute is for recovery of land. To me, any competent Magistrate could handle this dispute save that he or she could not proceed to grant any consequential orders, in particular cancellation of certificate of title, which is the preserve of the High Court.

On this, I am impressed by the learned trial Magistrate's observations to the effect that the lower Court had "*powers to grant certain orders and to object to some where it finds it necessary since prayers are divisible*". This is simply to say that she had jurisdiction to hear the dispute but was not prepared to grant the prayer of cancellation of certificate of title because she had no powers to grant so. The Respondent appeared somewhat prepared for this situation for the reason that his plaint contemplates, albeit ambiguously, making an application to this Court for consequential orders in case he was successful in recovering the disputed land. In the circumstances, I find no merit in the Applicant's contention that the trial Magistrate had no jurisdiction to try the main suit merely because she lacked powers to grant consequential orders. As such, I entirely agree with the submissions of the Respondent's Counsel on this contention.

This now takes me another contention; whether the trial Magistrate had the pecuniary jurisdiction to handle the dispute? As already noted, this objection was never raised in the lower Court. It is usually required that objections as to jurisdiction ought to be raised at the earliest opportunity the Court is seized with the matter. See *Lilians versus Caltex Oil (Kenya) Ltd [1986-1989] 305 CAK.* However, following the authority of *Desai versus Warsama (1967) EA 351* that:

“lack of jurisdiction goes far beyond any error, omission, or irregularity nor can it be regarded as a mere technicality and that there is in law nothing to be reversed or altered and there is a complete absence of any material from which an appeal can be heard.....”

And the observations in the case of *Makula International Ltd versus His Eminence Cardinal Nsubuga & Another [1982] HCB 111*, that;

a “Court of law cannot sanction what is illegal and illegality once brought to the attention of the Court overrides all questions of pleading including admissions made thereof”.

I find that this objection (concerning illegality) supersedes the omission of raising the objection before the lower Court as and it can be pointed out at any time before Court.

According to *Section 207(b), Magistrates Courts Act Cap 16*, as amended, a Grade One Magistrate has jurisdiction where the value of the subject matter does not exceed Ugshs.20,000,000/-. I have

already noted hereinabove that the subject matter of the suit was Ugshs.26,000,000/-. In his written statement of defence, the defendant indicated that the value of the subject matter was Ugshs.60,000,000/-.

This I shall, however, not consider because the subject matter is valued on the plaint. Further, there is also no proof to confirm the Applicant's allegation in the plaint. Ultimately, I shall stick at the value of Ugshs.26,000,000/- as estimated from the annextures on the plaint. What is clear now is that this value was beyond the pecuniary jurisdiction of the trial Magistrate. He therefore had no jurisdiction to hear the dispute.

What then should she have done?

According to the Applicant ought to Counsel, the trial Magistrate to have dismissed the suit because a suit filed in a Court without jurisdiction is a nullity. He then faulted the trial Magistrate for transferring the suit to this Court. According to him, a suit filed in a Court without jurisdiction cannot be transferred since there is nothing to transfer. Much as I agree with the Applicant's Counsel on principle, I doubt that the present case could face such a consequence.

It is clear that that the main suit was filed in the Chief Magistrates' Court of Wakiso at Wakiso. According to Section 207(1)(a) Magistrates Courts Act Cap 16, as amended, a Chief

Magistrate has jurisdiction to handle a dispute of a subject matter not exceeding Ugshs.50,000,000/- (*fifty million shillings*).

I have already noted that the subject matter in this case was Ugshs.26,000,000/- at the time of filing. It can then be said that the suit was filed in a Court with the relevant jurisdiction, and therefore valid. As such, it could be heard by a Chief Magistrate at that Court.

According to *Uganda Civil Justice Bench Book - 1st Edn, Jan. 2016 - page 46*, *"If Court finds that it has no jurisdiction to handle the matter, the proceedings should be halted and transferred to the relevant Court where possible."*

Consequently, the option of transferring the suit to a Court presided over by a Chief Magistrate was available. Ultimately, I find that this objection partially succeeds. The following orders are hereby given;

1. That the case file be transferred to the Chief Magistrates Court of Wakiso at Wakiso for hearing before the Chief Magistrate at that Court.
2. That each party bears its own costs.

I so order.

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Henry I. Kawesa

JUDGE

5/12/2019

5/12/19:

Mr. Kasa Emmanuel for the Applicant.

Applicant in Court.

Mr. Kasingye S. for the Respondent.

Respondent absent.

Grace – clerk.

Counsel for the Applicant;

Matter is for Ruling. We are ready to receive it.

Court:

Ruling delivered in chambers in the presence of the above parties.

Sgd:

Atukwasa Justine

ASST. REGISTRAR

5/12/19

