

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[LAND DIVISION]

CIVIL APPEAL NO.029 OF 2015

ALIKISANDERENA NAKINTU:.....APPELLANT

VERSUS

KIRAZA PAUL:.....RESPONDENT

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

JUDGMENT:

The Appellant raised this appeal vide a memorandum of Appeal raising five grounds of appeal.

The Appellant prays that;

- i) The appeal be allowed and the judgment passed by the Learned Trial Magistrate be quashed and set aside,
- ii) Costs of the appeal and;

This appeal was filed by the Appellant who filed submissions. As a first Appellate Court, it is the duty of this Court to review the evidence and give it a fresh scrutiny in order to reach its own conclusions thereon.

The Court however, notes that in the arguments raised for the Applicant underground I, the Appellant's counsel referred Court to an illegality committed during the trial, which, if proved, vitiates the entire lower Court findings.

This is the fact that the trial magistrate had no authority to pass the judgment because she had been retired from service by the Judicial Service Commission.

The Appellant drew to the attention of Court the fact that the hearing of the case in the lower Court was concluded and *locus* visited on 7th January 2015. The Magistrate was however involved in disciplinary proceedings in the Judicial Service Commission in the matter of *Namata Harriet (Grade I) and Ibrahim Kibuuka*.

The Appellant attached a certified copy of the Judicial Service Commission proceedings, showing that the trial Magistrate was charged, the trial conducted and she was found guilty and was convicted.

As a consequence, the Judicial Service Commission receded that she be retired in in the interest of the public. The decision is dated February 11, 2015. However, inspite of the above, she sat in the Judgment of this matter and pronounced it in this case on July 9, 2015 after the forced retirement. This is very fatal.

As rightly argued by the Appellant's Counsel, a trial Magistrate should be clothed with power to try a matter as per Section 5 of the Magistrates Court Act.

This case is unfortunately one, covered by the principle in ***Makula International versus His Eminence Cardinal Wamala Nsubuga (1982) HCB II***, where Court held that;

“An illegality once pointed out to Court, vitiates everything and cannot be allowed to stand”.

Mubiru & Ors versus Kayiwa (1979) HCB 212 guides that;

“A judgment passed without judicial incident is a nullity”

Therefore a Magistrate retired in February 2015, could not write a judgment on July 2015 when the jurisdiction had been removed from her. It follows that the judgement is nullity and cannot be allowed to stand. The *a nullity* judgment does not warrant an examination of other grounds raised under it since the findings themselves are a nullity.

This issue terminates this appeal in that the judgment was *a nullity* and it cannot stand and it is struck out.

This Court allows this appeal and makes an order that the file be remitted back to Luwero and a fresh trial be conducted (retrial) before another competent Magistrate.

Costs are allowed to the Appellant.

I so order

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Henry I. Kawesa

JUDGE

08/11/2021

08/11/2021:

Katamba Sowali for the Appellant.

Appellant present.

Both the Respondent and Counsel absent.

Court:

Judgment delivered to the parties above.

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Henry I. Kawesa

JUDGE

08/11/2021