

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

CIVIL REVISION NO. 019 OF 2023

(Arising from Civil Suit No. 231 of 2012 at Makindye Chief Magistrate's Court)

JAMES OVON :::::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON. LADY JUSTICE IMMACULATE BUSINGYE
BYARUHANGA

This application was brought by way of Notice of Motion under Sections 83 and 98 of the Civil Procedure Act, Sections 17 and 33 of the Judicature Act and Order 52 rules 1, 2 and 3 of the Civil Procedure Rules seeking the following orders;

- a. That the Judgment of the Learned Trial Magistrate, His Worship Kakooza Elias, Chief Magistrate in Civil Suit No. 231 of 2012 be revised and set aside.
- b. Any and all applications, Rulings and Orders arising from Civil Suit No. 231 of 2012 be set aside.
- c. That the Learned Trial Magistrate, His Worship Kakooza Elias, Chief Magistrate, illegally exercised jurisdiction not vested in him by law by entertaining and disposing of the Civil Suit No. 231 of 2012 not falling within his pecuniary jurisdiction.
- d. Stay of execution of the decree and or orders arising from Civil Suit No. 231 of 2012.
- e. Costs for this application be provided for.

5 This application was supported by an affidavit sworn by the application **Ocan Walter Okot** and the grounds of the application are laid out in the application and the affidavit in support of the application.

In reply, the respondent filed an affidavit in reply deposed by the respondent, **James Ovon**, wherein they all denied and rebutted the contents of the application.

10 Representation

During the hearing of the application, the applicant was represented by Ms. Athien Constance from **Kratos Advocates** holding brief for Mr. Geoffrey Turyamusima while the respondent was represented by Ms. Amusugut Grace Ruth holding brief for Mr. Sebunya from **M/s Kwesiga, Wangutusi Ssebunya & Co Advocates**.

15 Parties' submissions

During the hearing of this application, court directed the parties to file written submissions and the same was done. I have thoroughly perused the submissions and the authorities that were cited and the same shall be considered in my decision.

The issue for determination before this court is *whether the decision of the Trial*
20 *Court can be revised?*

It is counsel for the applicant's submission that the trial Magistrate lacked pecuniary jurisdiction to hear and decide the Trial case since the subject matter was valued at UGX 80,000,000 (Eighty Million Uganda shillings) which is over and above the Trial Chief Magistrate's pecuniary jurisdiction. It is counsel's further submission
25 that the respondent's cause of action stems from a contractual relationship hence placing it out of the confines of trespass, conversion or damage to property.

Counsel went ahead to submit that jurisdiction is a statutory creation and not a matter of the parties' agreement.

- 5 In reply, it was counsel for the respondent's submission that the cause of action of the trial suit was trespass and the value of the suit land was never a point of contention. Counsel went ahead to submit that the prayers that were sought for the trial court were in relation to trespass, specific performance, mesne profit, general damages all of which fell within the Chief Magistrate's jurisdiction.
- 10 Counsel for the respondent further submitted that, if the applicant was dissatisfied with the decision of the Trial Chief Magistrate, he ought to have appealed against the said decision within the stipulated time limits. It was counsel's humble submission that as an afterthought, the applicant used his revision to smuggle an appeal so as to frustrate the respondent's execution process of accessing the fruits of the
- 15 respondent's judgments.

Decision

The jurisdiction of this court in matters of Revision is provided for in **Section 83 of the Civil Procedure Act**.

- The section provides that the High Court may call for the record of a subordinate
- 20 Court if it appears that;
- a. It exercised jurisdiction not vested in it.
 - b. Failed to exercise jurisdiction vested in it.
 - c. Exercised its jurisdiction with material irregularity or injustice.

- In matters of Revision, the matter is either called for by the High Court on its own
- 25 motion or the matter is forwarded by the Registrar or judicial officer for consideration. It is however not uncommon for Counsel to initiate the proceedings and draw the irregularity to the attention of court for rectification. (See **Chelogoi George Versus Saik Stephen HCCR 005 of 2013**).

5 According to the case of **Cardinal Nsubuga v. Makula International (1982) HCB 11**, illegalities once pointed out to court supersede all questions of pleadings. In the instant application, Illegalities have been pointed to. it is the applicant's averment that the Trial Chief Magistrate was not vested with the pecuniary jurisdiction to hear the trial suit since the value of the subject matter was Ugx 80,000,000 which is over
10 and above the Chief Magistrate's pecuniary jurisdiction.

As rightly pointed out by both Counsel, **Section 207 (1) (a) of the Magistrates Courts Act**, provided that a Chief Magistrate has jurisdiction where the value of the subject matter in dispute does not exceed fifty million shillings and possesses unlimited jurisdiction in disputes relating to conversion, damage to property or
15 **trespass**. (*emphasis on the underlined*)

I have critically perused the lower court Judgment and all pleadings in this revision cause, alongside arguments of counsel. According to paragraph 4 of the plaint filed by the respondent in the Chief Magistrate Court of Makindye, the plaintiff/ respondent' claim against the defendant/ applicant was for an order of eviction from
20 Block 244, plot 5869 (herein after referred to as the suit property), and among the prayers sought for was a declaration that the defendant was a trespasser on the suit land, specific performance, mesne profits, general damages and costs.

The question for this court to determine is whether the respondent's claim in the trial court related to trespass. Upon close perusal of the trial Court pleadings, it is evident
25 that trespass was not the only cause of action. The gist of the trial suit was breach of an alleged sale agreement for land and a house which suit property was valued at Uganda Shillings 80,000,000 (Uganda Shillings eighty million) as per the agreement of sale of land a house dated 5th December 2010 (See annexure "A" to the affidavit in support of this application specifically paragraph 4 (c) and (d)

5 referring to the value paid in respect of the suit property) and the issue of trespass only arose in the prayer for eviction in paragraph 7 (a).

The main issue for determination by the trial court was to determine the true ownership of the suit land as a result of the alleged sale of land agreement and the issue of trespass only came at the end in the prayer for eviction. The same was confirmed by the trial Chief Magistrate who stated in his Judgment that the gist of the of this case lies on an alleged sale of the suit property which the defendant disputes.

Trespass has been defined as the unauthorized entry on someone else's land. According to the authority of Justine E.M.N. Lutaaya vs Starling Civil Engineering Co. SCCA No.11 of 2002, trespass to land is premised upon interference with the possession of land. Having perused the facts relating to the cause of action in paragraph 4 of the plaint, the respondent was never in possession of the suit land but rather the defendant and his family and as such the issue of trespass is not a standalone.

20 In the case of **Opendo Patrick & 16 ors versus Kiconco HCCR No. 33 of 2018**, it was held that jurisdiction of the court should not only be determined from the cause of action or value of the subject matter where it applies but also the remedies being sought from the court as well. Upon perusal of the trial Court plaint, the plaintiff/respondent sought for an order that the defendant specifically perform his obligations in the sale agreement executed on 5/12/2010. This in itself points to the fact that there was an alleged breach of contract.

Whereas, the applicant never bothered to raise an issue with the jurisdiction of the trial court during the hearing of the said issue and waited till execution proceedings to commence, which in itself is negligent conduct, it is trite an illegality once brought

5 to the attention of court, overrides all pleadings, proceedings or any admissions made. The issue of adhering to jurisdiction is a statutory requirement and not an issue to be dispensed with or agreed upon by the parties.

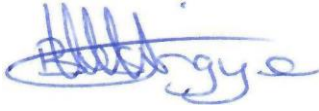
Therefore, I find that the cause of action of the trial suit was not only trespass but was predominantly breach of contract and as such the trial Chief Magistrate's court
10 had no pecuniary jurisdiction to entertain the suit since the value of the suit property was over and above the Chief Magistrate's pecuniary jurisdiction.

It is settled law that the Judgments and orders of a court without jurisdiction however precisely certain and correct are a nullity and are only fit to be set aside. To this end, I order as follows;

- 15 a. The Judgment and orders of Chief Magistrate His Worship Kakooza Elias in Civil Suit No. 231 of 2012 are declared null and void and are hereby set aside.
- b. The parties should refile their suit before the right forum which is the High Court.
- c. All the rulings and orders arising out of Civil Suit No. 231 of 2012 at
20 Makindye Chief Magistrates' Court are hereby set aside.
- d. The execution proceedings arising from the decree/ orders made under Civil Suit No. 231 of 2012 at Makindye Chief Magistrates' Court are hereby set aside.
- e. The prayers in High Court Land Division Miscellaneous Applications 1300
25 of 2023 for interim stay and 1298 of 2023 for stay of execution are hereby granted since the application for revision has been granted.
- f. The respondent shall bear the costs of this application.

I so order.

5 Ruling delivered at High Court, Land Division via ECCMIS this **25th day of January, 2024.**



Immaculate Busingye Byaruhanga

Judge

10 **25-01-2024**