

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

HCT-00-CC-CA-0041-2015
(ARISING FROM MENG0 CIVIL SUIT NO. 1071 OF 2014)

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| 1. HECTARAGE PARTNERSHIP 2. PAUL ROSSI BAGYA | :~::~:~::~: VERSUS :~::~:~::~: | APPELLANTS RESPONDENT |
| KESIIME POLLY | | |

BEFORE: HON. JUSTICE DAVID WANGUTUSI

JUDGMENT

This is an appeal against the decision of the Magistrate Grade One seated at Chief Magistrate’s Court Mengo delivered on the 25th November, 2015 in Civil Suit 1071 of 2014. It is filed by Hectarage Partnership and Paul Rossi Bagya as the Appellants against Kesiima Polly as the Respondent.

It is grounded on the following;

1. That the Learned Trial Magistrate erred both in law and in fact when she held that the closure of the Plaintiff’s shop was unlawful.
2. That the Trial Magistrate erred both in law and in fact when she awarded special damages to the Respondent that were not proved.
3. That the Learned Magistrate erred both in law and in fact when she allowed the Respondent’s prayer for loss of income without justification.
4. That the Learned Trial Magistrate erred in law and in fact when she dismissed the Appellants’ counter-claim without justification.
5. That the Learned Trial Magistrate erred in law and in fact in her evaluation and appreciation of the evidence on record in respect to the issues and disputes and thereby arrived at a wrong decision and conclusion.

The Appellants thus sought the Orders;

- a) That the Judgment and Orders of the Learned Trial Magistrate be set aside and the Appeal be allowed.
- b) That the Respondent pays the costs of the Appeal and those of the Trial Court.
- c) That all the Appellants' prayers in the original suit and counter claim be allowed.

The background to this appeal can be discerned from the pleadings before the Magistrates court.

It is agreed by both parties that the Appellants owned property with shop space which the Respondent rented.

The terms of the tenancy were reduced into writing in tenancy agreement Exhibit P.1 dated 5th October 2012.

With this case in context the key provisions of the agreement were encased in the first 3 clauses of Article 3 which provided for Payment, Payment date, and Payment method in these terms;

- “1. The Tenant hereby initially pays 750,000/= as rent for a period of 3 months.*
- 2. After which period (initial 750,000/=) the Tenant is expected to pay 250,000/= each month not later than the 5th of that exact month.*
- 3. In the event that the tenant fails to pay by the 5th date of the month due for rent, he or she is expected to notify Hectarage Partnership “in writing” before the 15th date of this exact month beyond which if no written notification is received by Hectarage from the tenant, the tenant is no longer considered a true occupant of the rented apartment and Heritage may, by written notice to the tenant terminate this Agreement and repossess the premises immediately.”*

Article 6 was on method of Notification and it reads;

- “Any notification made by the tenant or Hectarage Partnership under this agreement shall not be effective unless made in writing.”*

The Respondent took occupancy in October 2012 and seems to have had quiet enjoyment till the 15th June 2014 when the Appellant closed the premises. The Respondent contended in paragraph 11 of her witness statement that at the time she was locked out, she was not in any rent arrears. Furthermore that when the Appellant locked the shop, she had 10,000,000/= in the drawer which she found missing at the time the Appellant opened the shop. That she had also stocked her shop with cosmetics worth 1,864,300/=, plastic products worth UGX 258,000/= and Artificial hair pieces worth 1,728,800/= all totalling 3,851,100/= which she had not yet unpacked from the boxes which also went missing.

She also stated that she raised 300,000/= daily in sales, an income she lost when the shop was closed. This she claimed under the head of financial loss as 18,000,000/= 3 months when the Appellant handed over the shop to her.

She prayed for declaration that the closure of the shop was unlawful. She sought special damages, General damages, loss of income, interest at 30% from date of cause of action and also interest at Court rate from date of judgment with costs.

Denying liability the second Defendant Paul Rossi Bagya in his written statement denied ever evicting the Plaintiff in the manner described by her. He stated that because of non-payment of rent, he gave the tenant notice to vacate which was followed with a reminder.

That when the Plaintiff left in September, the Defendant was not there.

By way of counterclaim the Defendant now Appellant contended that the Plaintiff now Respondent did not pay rent for 4 months totalling Shs. 1,000,000/=. They also alleged that the Plaintiff breached the tenancy agreement when she failed to maintain the interior of the premises in a tenantable condition and not handing over vacant possession of the premises when requested to do so. That the conduct of the Plaintiff had caused the Defendant suffering, loss and inconvenience and thus claimed General damages.

Having heard the suit, the Learned Magistrate Grade One found in favour of the Plaintiff now Respondent in the following terms;

- i) The closure of the Plaintiff's shop was illegal.
- ii) The Court awards the Plaintiff special damages as pleaded in paragraph 7.

- iii) Loss of income Shs. 7,500,000/=.
- iv) Interest on (ii) and (iii) above at 20% per annum from date of Judgment till payment in full.
- v) General damages of Shs. 2,000,000/=.
- vi) The counterclaim is hereby dismissed with costs.
- vii) Costs of the suit.

The Learned Magistrate awarded in (ii) all that was claimed in paragraph seven of the plaint, which was UGX 13,851,100/=.

Considering all the pecuniary awards together namely;

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| a) Special damages | 13,851,100/=. |
| b) Loss of income | 7,500,000/= |
| c) General damages | <u>2,000,000/=</u> |
| Totals to | <u>23,351,000/=</u> |

In my view the total above raises the question of monetary jurisdiction.

Jurisdiction of Judicial officers is given by statute.

Civil jurisdiction of Magistrates are provided for under Section 207 of the Magistrates Courts Act Cap.16 as amended by Act No. 7 of 2007.

I reproduce the section for ease of reference

207. Civil Jurisdiction of Magistrates

(1) Subject to this Section and any other written law, the jurisdiction of Magistrates presided over Magistrates Courts for the trial and determination of causes and matters of a civil nature shall be as follows-

1. a Chief Magistrate shall have jurisdiction where the value of the subject matter in dispute does not exceed fifty million shillings and shall have unlimited jurisdiction in disputes relating to conversion, damage to property.
2. a Magistrate Grade I shall have jurisdiction where the value of the subject matter does not exceed twenty million shillings.
3. a Magistrate Grade II shall have jurisdiction where the value of the subject matter in dispute does not exceed five hundred thousand shillings;

Considering that a Magistrate Grade I has jurisdiction only upto twenty million, handling any matter above that sum would be to confer upon him or herself jurisdiction which only statute can do.

A Grade I Magistrate can therefore only handle matters that are shillings Twenty million and below.

Section 207 (5) gives emphasis to these jurisdictional powers. It provides;

“5. A Magistrate’s Court may grant any relief which it has power to grant under this Act or under any written law in respect of any case or matter before the Court.”

It means the Magistrate can only grant what it has power to grant.

In case of a Magistrate Grade One, that power lies in subsection 2 of section 207 I have cited above.

The Act is elaborate enough and goes on in Section 207 (4) to cover situations where the Magistrate is uncertain of how much is being claimed by the parties. It provides;

“In any suit where it is impossible to estimate the subject matter at a money value in which, by reason of any finding or order of the Court a declaration of ownership of any money or property is made, no decree shall be issued for an amount exceeding the pecuniary limits of the ordinary jurisdiction of the Court passing the decree.”

This means that even in situations of uncertainty as to how much is claimed, the Magistrate can only issue a decree upto the limits given under 207 (1) of the Act in case of a Chief Magistrate and 207 (2) in case of a Magistrate Grade I as in the present matter.

Section 207, therefore imposes upon the Magistrate a duty to study the claim, understand the pecuniary reliefs sought by the Plaintiff or counterclaimant. If he or she finds that the claim is beyond his or her pecuniary jurisdiction he or she will advise the parties to seek the relief

sought in another or refer the matter to the right Court with jurisdiction to handle or allocate it.

In the present case before the Magistrate Grade I there was no need to estimate the money claim. The pleadings spoke loud and clear.

The Plaintiff prayed for 13,851,100/= by way of special damages and Shs. 7,500,000/= by way of loss of income. The two totalled 21,351,100/= which was obviously beyond the Magistrate's jurisdiction set by Section 207 (2) of the Magistrate Act. That notwithstanding the Magistrate aggravated it by even increasing the monetary award by the General damages she awarded.

The award is therefore not only in breach of Section 207 (2) but also 207 (4) and 207 (5) of the Act afore mentioned.

The sum total of the foregoing is that a Court cannot entertain a cause which it has no jurisdiction to adjudicate upon. It does not matter even where the Defendant filed a defence without objecting to the pecuniary jurisdiction.

The futility of deciding a case without jurisdiction is well articulated in ***Owners of Motor Vessel Lillian v. Caltex Oil Kenya Limited [1989] KLR 1***, relied upon by Justice Stephen Mubiru in ***Ozoo Brothers Enterprises v. Ayikoru Milka CS 0064 of 2011***. In ***Owners of Motor Vessel Lillian*** case, Nyarangi JA was explicit on the effect of handling a case without jurisdiction in these words;

“By jurisdiction, is meant the authority which a Court has to decide matters that are before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by statute, charter or commission under which the Court is constituted and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A Limitation may be either as to the kind and nature of the actions and matters which the particular Court has cognizance or as to the area over which the jurisdiction shall extend, or it may partake both these

characteristics. If the jurisdiction of an inferior Court or tribunal depends on the existence of a particular state of facts, the Court or tribunal must inquire into the existence of the facts in order to decide whether it had jurisdiction, but, except where the Court or tribunal has been given power to determine whether the facts exist. Where the Court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before Judgment is given.”

The Court went on to hold;

“Jurisdiction is everything. Without it; a Court has no power to make one more step. Where a Court has no jurisdiction there would be no basis for continuation of proceedings pending other evidence. A court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

It goes without saying that the moment the subject value went beyond twenty million, the Magistrate Grade I Court should have downed its tools in respect of the matter because it did not have power to take another step. There was no basis for continuation because its decision would amount to nothing.

In conclusion it was the Magistrate Court’s duty to study and tell from the claim, whether it had jurisdiction to hear the matter. If it had done so as expected, it would have stepped down and passed on the matter to a Court with jurisdiction. Its failure to do so, set it on a futile journey because its decision amounted to nothing being a proceeding in nullity.

Having found that the Court had no jurisdiction, I do not find it necessary to consider the other grounds because to do so would be to subject them to a nullity.

The sum total is that the decision of the lower Court is set aside in all aspects. It is ordered that the suit be sent back to a Chief Magistrate’s Court which has jurisdiction. Costs of this proceeding and the earlier one in the Magistrate’s Court, shall abide the decision of the trial hereafter.

Dated at Kampala this 13th day of July 2018.

HON. JUSTICE DAVID WANGUTUSI

JUDGE