THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT F0RT PORTAL

CIVIL APPEAL NO. DR. MFP 2/1990

(Original Kasese Court C.S. No. MFP 5/90)

MRS. AMINA ISMAIL::APPELLANT

VERSUS

TOM SSEJEMBA::RESPONDENT

BEFORE: THE HONOURABLE MR. JUSTICE I. MUKANZA

RULING

The appellant Mrs. Amina Ismail was the plaintiff in Kasese Civil Suit No.MFP 5 OF 1990. The suit was filed in the court of Magistrate Grade I and she was suing the respondent/Defendant for a liquidate sum of Shs, 213,400/= which arose as a result of 58 bags of Maize supplied to the respondents for grinding in the latter's maize mill and the value of the gunny bags. When the appeal was called for hearing the learned counsel representing the respondent raised some preliminary objections to the appeal. He submitted that he had two preliminary points of law to make. The first was that the memorandum of appeal was not accompanied by decree as required by law. That it was a requirement under S. 232 of the Magistrates Courts Act where it is laid down that an appeal shall lie on original decrees from the Chief Magistrate or Magistrate Grade I courts. That a decree was a formal adjudication of a judgment as pronounced by a judge or Magistrate and the content of a decree are contained in Order 18 Rule 6 of the Civil Procedure Rules. That his quarrel with the decree which accompanied the memorandum was signed by a Magistrate who did not hear the case. That made the decree defective. Under Order 18 Rule 7 (3) the decree has to be extracted by the judge or Magistrate who heard the case. That the trial Magistrate Mr. Tugume is dead. The decree was filed after the appeal had been filed because the

late Tugume was alive. He died about September 1990 and if the appeal was filed in May1990 when he was still: alive the decree should have been put before him for signing in order to accompany the memorandum of appeal. The current grade I Magistrate Kasese should not be the proper Magistrate to sign the decree. The decree should have had the names of Tugume who decided the case and the successor could have signed for him. But for the successor Ntejje to sign the decree that was wrong. He submitted that there was no proper decree accompanying the memorandum. He prayed that the appeal was incompetent and should be struck out with costs.

On his second preliminary point of law, he submitted that his objection related to the jurisdiction of the court before which the case was placed. As regards the proceedings the plaint was drawn on 13th February, 1990 and there was a claim for specific amount of Shillings 213,400/=. When the case was filed the court (Magistrate Grade I Court) had no pecuniary jurisdiction to hear a case involving that amount. That the pecuniary jurisdiction of the Grade I Magistrate until Act 4 of 1985 after the revision of the currency was Shs. 10,000/=. Under Act 4 of 1985 the jurisdiction of Magistrate Grade I was one million shillings. That situation was obtained when the Government changed by striking off the 2 notes. So the jurisdiction of Magistrate Grade I came to 10,000/=. Therefore when Amina filed her case on 13/2/90 she was filing a case of 213,400/= in a wrong court. If she had waited until September she could have been redeemed because on 17/9/90 a statute conferring new jurisdiction was passed conferring upon the grade I Magistrates matters not exceeding 5 million shillings commencing on 20/9/90. That he had the opportunity to peruse a copy of the judgment of justice Karokora. The case is cited as Sarah Kivumbi .vs. Betty S. Matovu HCCS No.2 of 1989 decided on 26/2/90 about the same time the appellant filed her case. In that case the court held that the effect of the currently reform decree was to reduce the jurisdiction of the Magistrate Court by striking off the two notes. The trial Magistrate was therefore wasting his time because he did not have the jurisdiction and it would be wasting courts time to enter arguments of this appeal, I was referred to statute 6 of 1990.

The learned counsel representing the respondent submitted that he opposed the preliminary objections with regard to the issue of the decree under Order 18 r 7 (3) of the CPR a decree shall be drawn and signed by the Judge who pronounced it or by his successor. A close look at the decree as extracted reveals the following.

"This suit coming before Tugume Esq. It did not hide the fact that the suit was before Tugume Senior Magistrate Grade I. It is only when it comes to the signing that the names of his successor, comes into play. Tugume could or would not sign the decree so the successor did and the decree was properly extracted. It would be therefore redundant to say that the decree was not properly drawn."

On the issue of jurisdiction Mr. Mugamba submitted the victim in Sarah Kivumbi's case was an attempt to Interprets the law which this court could overturn or could distinguish. That the Act quoted by his learned friend did not amend the law. It amended section 219 of the Magistrates courts Act 1970. But last time section 219 had been amended by ct 4 of 1985. That it takes time an act to amend an act so that from 1985 when the pecuniary jurisdiction of courts was last obtained it was not until the Amendment Statute of 1990 was promulgated (Act of 1990) and when the pecuniary jurisdiction was quoted that indicated his point that Sarah Kivumbi's case was an interpretation of the law. It was not good law because if it was, the amendment would have made reference to the law concerning the currency reform law but only makes reference to section 219 as left by Act 4 of 1985. The learned counsel then went on to argue that what happened in May, 1987 especially regarding the statement by the Ag. Chief Registrar was inordinate and irregular means of amending the act the circular could not under any imagination have amended the law. Equally the Legislation in currency reform could not under legal construction, in any way have altered the Magistrates court Act 1970 without specifically or expressly referring to it. He therefore submitted that till 28th September 1990 the position regarding pecuniary jurisdiction remained as obtained by Act 4 of 1985 The appeal was properly lodged before the court and the case was heard initially by the court with proper jurisdiction. But in case he was wrong he invoked the decision in Nasanga & Nanyonga's case. (The counsel never gave the citation of the above case). He prayed however that the preliminary objections be overruled,

In reply Mr. Kagaba learned counsel appearing for the respondent submitted that the law laid down in the judgment of Kivumbi's case was clear and final. His learned friend did not advance any reason to distinguish this case from the one decided by Justice Karokora on the issue of Jurisdiction. And lastly that Nasanga's case or sections 101 & 103 of the CPA could not be invoked. They are inapplicable because they intend to invoke equity. The case was filed in a

court that had no jurisdiction and he maintained his earlier prayer that the appeal be dismissed as being incompetent.

Beginning with the preliminary point of law, that the memorandum of appeal was not accompanied by the decree and that the decree that as later on extracted was not signed by the trial Magistrate but by his successor Mr. Ntegye. I think this is a right moment to restate the law in connection with this matter. Under section 232 (1) a of the Magistrate courts Act 1970 an appeal lies to this court from the decrees or any part of decrees and from the orders of a Magistrates court presided over by a Chief Magistrate or a Magistrate Grade I in the exercise of its original Civil jurisdiction.

There is also ample authority for saying that this court has no jurisdiction to entertain an appeal where a decree embodying the terms and judgment has not been drawn up. See Alexander Marrison vs Ms Versi and another 1953 20 EACA 26, Mukasa vs Ocholi [1968] EA P. 89. In Kiwege and Nuda Sisal Estate ltd vs Manathwani 1952 EACA P. 160. It was laid down that without a decree the appeal was incompetent and premature.

And under Order 18 rule 6 of the Civil Procedure rules, the decree shall agree with the judgment. It shall contain the number of the suits the names and descriptions of the parties and particulars of the claim and shall specify clearly the relief granted or other determination of the suit.

Whereas rule 7 (3) of the same order states:-

“In a Magistrates court or subordinate court the decree shall be drawn up and signed by the judge who pronounced it or his successor.”

Applying the above principle to the present case there is as of now before this court a decree embodying the terms of the judgment of the Magistrate Grade I. It is dated 17th May, 1990. It contains the number of the suit the names and description of the parties and the particulars of the claim and it clearly spells out the relief granted as stipulated under Order 18 rule 6 of the Civil Procedure rules. The learned counsel appearing for the respondent submitted the decree was defective because it was not signed by Mr. Tugume who pronounced the judgment Tugume we are told passed away in September 1990. The counsel argued that the decree could have been

brought before him for signature or Mr. Ntegye the succeeding Magistrate should have signed the decree for Tugume Senior Magistrate Grade I. Order i8 rule 7 *(3)* as stated above the decree in a Magistrates court or subordinate court shall be drawn up and signed by the judge who pronounced or his successor The term judge as referred to in the order embraces Magistrates since no judge ever presides over a Magistrates or subordinate court.

In the premises I am of the view that Mr. Ntegye as the successor to the late Mr. Tugume Senior Magistrate Grade I had the requisite jurisdiction to sign the decree. It being immaterial that when he signed the decree Tugume had not passed away. I find so because Mr. Kagaba did not allege that the dates shown on the decree were not genuine. The appeal was filed here on 13th June 1990 and the decree was dated 17th May, 1990 and yet the judgment was delivered on this same date as was the decree. It is a considered opinion of this court that the appeal is properly before this court in that there is a memorandum of appeal accompanied by an extracted decree signed by Mr. Ntegye the successor to the late Tugume Senior Magistrate Grade I and even if I might be wrong in my finding rules of Civil Procedure are a guide to the orderly disposal of suits and should never be used to deny a party who is entitled to a remedy see Nasanga's case.

Turning to the second preliminary objection that the Magistrate Grade I court had no pecuniary jurisdiction to try this case whose value Shs. 213,400/= Act 4 of 1985 (The Magistrates Courts Amendment Act 1985 amended S.219 of the Magistrates Court Act 1970 by increasing the pecuniary jurisdiction of the Magistrates Courts as follows:-

> "Under section 219 (1)(a)A Chief Magistrates pecuniary jurisdiction was increased from ten thousand shillings to 2 million Shillings
>
> (b) The Grade I Magistrate pecuniary jurisdiction was increased from 5000/= shillings to one million Shillings.
>
> (c) The Magistrate Grade II from one thousand shillings to 500,000/= shillings
>
> (d) whereas the pecuniary jurisdiction of the Magistrate Grade III was raised from 500/= Shillings to 250,000/= (two hundred and fifty thousand shillings.

Act 4 of 1985 came into operation with effect from 14th June, 1985. There was yet another Act Amending section 219 of the Magistrates Court Act 1970 (referred to as the principal Act) that was the Magistrates Court (Amendment) Statute 1990 Statute 6 of 1990. The said Act increased the pecuniary jurisdiction of a Chief Magistrate and Grade I Magistrate by replacing section 219 (1) (a) and (b) as follows:-

> (a) A Chief Magistrate shall have jurisdiction where the value of the subject matter does not exceed Shs.5,000,000/= and shall have unlimited jurisdiction in dispute relating to conversion damage to property or trespass

Whereas (b) Magistrate Grade I shall have jurisdiction where the value of the subject matter does not exceed 2,000,000/= (2 million Shillings Act 6 of 1990 came into operation with effect from 28th September 1990

From the above provision of the law it is pertinent to note that when the appellant filed in his plaint before the Magistrate Grade I Court Kasese on 13th June 1990 the matter 'has governed by Act 4 of 1985 in that the Magistrate Grade I had pecuniary jurisdiction to handle a case not exceeding the value of one million Shillings.

Under the currency Reform Statute 2/87 there was a fundamental alteration in our currency in this country from what we had, therefore all legislation prior to this Statute where money was involved two zeros had to be knocked off. There was controversy over this matter in as much as the judiciary was concerned whether as explained above the pecuniary jurisdiction of the various cadres of Magistrate could be struck off by two zeroes. This matter was dealt with exhaustively by Karokora J., in Sarah Kivumbi vs Betty Matovu in the High Court Civil Appeal MM 2 of 1989. In that case it was held that a Chief Magistrate had no jurisdiction to entertain a case whose value exceeded 50,000/= (that is after knocking off the 2 zeros from his pecuniary jurisdiction of Shs. 5,000,000/=.
Similarly a Magistrate grade I could not entertain a suit whose subject matter exceeded Shs. 10,000/= (That is after knocking off two zeroes from 1,000,000/=.

In Kikaba k Kidyedye vs Gedion Kibanda High Court Civil Appeal No. 9/88 original Iganga Civil, Suit No. 19/88 reported KALR 1989 Page 104 there the Magistrate Grade I Iganga

entertained a claim for Shs, 73,000/=, It was held that the Magistrate Grade I was not empowered to entertain a claim which exceeded 10,000/=.

The facts in the above two case are similar to the instant case and the proposition of the law expounded these in are in my opinion good law and are authorities to the instant case and I would follow them. I entirely agree with the learned counsel appearing for the respondent that the late Tugume Senior Magistrate Grade I had no jurisdiction to entertain a claim of Shs. 213,400/= Shillings because the pecuniary jurisdiction of Magistrate Grade I did not exceed Shillings 10,000/=. In the premises the trial before him was a nullity.

As stated earlier on the decree as extracted from the judgment was held not to be defective but in the light of what has just transpired above it was a decree that was extracted from a court that had no jurisdiction. Everything done prior and after the decree had been drawn was a nullity. I would in the premises uphold with costs the preliminary objections to the ap1eal. In that the trial at the Magistrate Grade I court Kasese was a nullity. The case therefore ought to be filed before a court with competent jurisdiction to handle the same and so I order.

I. MUKANZA

J U D GE

23/5/91