

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA

H.C.C.M.A. NO.24 OF 2000

(Arising from Misc. Appl. No. 13 of 1999

and

Civil Suit No. 19 of 1998 of the Chief Magistrate's Court Bushenyi)

ZUKULA NAKALANZIAPPLICANT

-VS-

BISHAMUNYU GERSOMRESPONDENT

BEFORE: THE HON. JUSTICE P. K. MUGAMBA

RULING

The applicant filed this notice of motion under S.84 (b) and (c) of the Civil Procedure Act and Order 48 r 1 of the Civil Procedure Rules. What she seeks is for this court to revise the order of the Acting Chief Magistrate Bushenyi who on 27th January 2000 dismissed an application by this applicant made under O. 19 r 55 of the Civil Procedure Rules.

Section 84 of the Civil Procedure Act states that before the High Court can revise an order it may call for the record of any case which has been determined by a Magistrate's Court. This provision is different from that regarding review where a party deeming itself aggrieved may apply. The proper procedure the applicant should have followed would have been to appeal that order of the Chief Magistrate.

Be that as it may, since an apparent grievance has been brought to my attention I shall deal with it in concert with Article 126(2) (e) of the Constitution which allows for substantive justice to be administered without undue regard to technicalities. The form in which an issue is allowed to come to court's attention should not be allowed to take precedence over the substantive issue. I may also refer to Makula International Ltd – vs Cardinal Nsubuga [1982] HCB 11.

Did the applicant have cause to put forth her objections? Did she comply with the law?

The respondent argues that the applicant has no locus standi. Order 19 rule 56 provides that the claimant or objector shall adduce evidence to show that at the date of the attachment he had some interest in the property attached. In the Chief Magistrate's Court the applicant herein was the objector. She had no letters of administration as the Chief Magistrate properly noted. The Chief Magistrate also noted,

‘---The applicant may actually be in possession of the attached premises, but legally in the absence of proof to this effect, it will be taken and it is taken that she is not in possession of the premises and therefore has no interest in the premises.’

The application before the Chief Magistrate was supported by an affidavit intended to support the objector's claim. I find that the objector was not allowed to adduce necessary evidence in line with Order 19 rule 56 because Court allowed this to abort when it decided on a preliminary objection. Court should have allowed the claimant or objector to adduce what evidence she had and then determine the matter on merit. The learned Chief Magistrate shot himself in the foot when he reached the conclusion he did and recorded the words quoted above from his record because he did not allow the very proof he sought to be made by the objector.

In the result I hold that the learned Chief Magistrate erred when he did not comply with the requirements of objector proceedings under O. 19 and that what he did was done with material irregularity and occasioned injustice.

The proper procedure is to hear out the proceedings and make an informed ruling at the end of the process.

That is what objector proceedings are about.

P. K. Mugamba

Judge

10th September 2002

10th September 2002

Mr. Bazaare for applicant

Both parties present.

Mr. Dhabangi holding brief for Mr. Ngaruye for respondents.

Mr. Bakunda court clerk

Court:

Ruling read in court.

P. K. Mugamba

Judge