

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA. MISCELLANEOUS APPLICATION NO. 42 OF 2005**

**(Arising from Civil Suit No. 58 of 2001 before Gr.I Masindi)**

**STEVEN KYALIGONZA.....APPLICANT**

**Versus**

**MUSA KASANGAKI.....RESPONDENT**

**BEFORE: HON. JUSTICE V. A. R. RWAMISAZI-KAGABA J U D G M E N T**

This is a judgment in a revisional application brought under Section 83(1) of the Civil Procedure Act. The applicant was represented by Eric Muhwezi while Asa Mugenyi appeared for the respondent.

The application seeks to revise and quash the proceedings of the Magistrate Grade sitting at Masindi in Civil Suit No. 58/2001. The suit was filed on the 3/12/2001 and judgment delivered on the 29/9/2004. The case involved a land dispute between Musa Kasangaki (Plaintiff) and Stephen Kyaligonza (Defendant).

Judgment was given in favour of the plaintiff. The defendant did not appeal against the Magistrate but has filed this application seeking a revisional order from the High Court.

It was the contention of the applicant (**defendant**) that the Magistrate had no jurisdiction to hear the case as the same had been taken away from the Magistrate's and Local Council Courts by Sections 98(6) and (7) of the Act (16/1998) which came in force on the 2/7/1998. However, a period of two years, after 2/7/1998 was granted to the Magistrates and Local Council Courts to complete the already filed land cases. This grace period was to expire on the 1/7/2000.

At the expiry of the two years, the Land (**Amendment**) Act, Act 3/2001 was passed on the 1/2/2001. That Act had a retrospective application in that its date of commencement was 2/7/2000.

The applicant's counsel submitted that section 9 of Act 3/2001 did not create new or confer any jurisdiction on Local Councils and Magistrate's Courts to hear cases filed after 2/7/1998. His view

was that Act 3/2001 only extended the period to hear cases which had been filed in Court before the 2/7/1998, and had not been disposed during the two years period granted under section 98(6) of the Land Act of 1998. **(Act 16/1998)**.

It was the counsel's submission that the Magistrate had no jurisdiction to hear a case - the present case, which was filed on the 3/12/2001. He cited *the Case of Makula International vs. Cardinal Nsubuga. Civil Appeal No. 4/1981 (1982) HCB 11*

**To support** his submission that this court should set aside the proceedings which are tainted with some illegality or irregularity.

In reply, Mugenyi opposed the application and submitted that Act 3/2001 conferred on the Magistrate's and Local Councils to hear land case filed

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before and after the coming in force of Act 3/2001. He told court that the Magistrate was vested with the jurisdiction to hear the case (land) which had been filed on the 3/12/2003.

Counsel asked court to read section 6 of Act 16/1998 and section 2 of Act 3/2001 together in order to arrive at the intentions of the legislature. He strengthened his argument by referring to the Land (Amendment) Act, 1/2004 which came in force on the 4/6/2003.

His reasoning (Counsel) was that the law would leave a vacuum if section 2 of Act 3/2001 were to be restricted to the period prior to 2/7/1998 or 2/7/2000. According to him the Magistrates and Local Council's Courts were vested with jurisdiction to hear land case before 2/7/1998 and those filed before the coming in force of Act 1/2004.

Section 83 of the Civil Procedure Act provides: The High Court may call for the record of any case which has been determined by any Magistrate's Court (now including the Local Council's Court), and if such court appears to have:-

- a) exercised a jurisdiction not vested in it by law.
- b) failed to exercise a jurisdiction so vested.
- c) acted in the exercise of its jurisdiction illegally or with injustice, the High Court may revise the said case and make such an order therein as it thinks fit.

Our main concern in this application is under sub heading (a) of this section. The Court has to decide whether the Magistrate had the jurisdiction to hear a land case filed on the 3/12/2001. Under Order VII (1)(f) of the Civil Procedure Rules it is the duty of the plaintiff to ascertain whether the Court in which he is filing his plaint has the jurisdiction under the law to hear his case. Similarly it is the legal duty cast upon the court to look at the plaint before it issues out the summons and or commences to hear the case. This is more so because the Magistrate is expected and or presumed to know the law. He is expected to use his expert knowledge to guide the parties who may not be versed with legal technicalities of the law.

***See: Assanand and Sons (Uganda) Ltd vs. East African Records Ltd (1959) E.A. 360.***

What the applicant is now raising in this application should have been raised before the trial started under Order IX IB 1(g) (2) and (3) of the Civil Procedure Rules as amended by S.I 26/1998.

It therefore falls upon this court to correct the errors which both the Magistrate and the defendant did not address at the appropriate stage.

It is fundamental law that any proceedings of the court which has no jurisdiction to hear the case are void.

***See: 1. Tayebwa vs. Bongonzya (1992-93) HCT143.***

***2. M/s Nakabago Cooperative Society vs. Livingstone Kyenga (1992)***

***III KALR 137.***

***3. Martin Judagi vs. West Nile District (1963) E.A. 906.***

***4. Mwatsahu vs. Maro (1967) E.A. 42.***

***5. Winnie Byanyima vs. Ngoma Ngime — Civil Rev. 9/2001***

With the coming in force of the Land Act 1998, the LC Courts ceased to have any jurisdiction to entertain suits concerning land. (Section 98(3) now section 95(3) Revised Edition. The section reads: “On coming into force of

this Act. (Act 16/1998) a former controlling authority shall cease to deal with any land matter which was pending before it and any such matter shall be transferred to the board”.

**The effect of Act 16/1998 was to the effect that:**

- a) All the Magistrates and the LC Courts must stop registering and entertaining new land cases from 2/7/1998.
- b) All the Magistrates and the LC Courts could complete (to hear and determine) only the land cases registered and pending in their courts before 2/7/1998.
- c) All the Magistrates and the LC Courts had to finalise those pending case within two years after 2/7/1998.

The law did not provide for what would happen in the pending cases were not finalized within two years.

According to the respondent’s counsel, sub section (6) of section 98 of the Land Act (16/1998) as amended by Act 3/2001 (which came in force on 2/7/2000) revised the jurisdiction of the LC Courts in land matters because the land tribunals had not been created. With respect to learned counsel’s submissions or interpretation of the law, section 98(6) of the Land Act was amended to cater for the uncompleted cases which had not been disposed after the dead line of two years which was stipulated under section 98(6) of Act 16/1998. In other words the amendment under Act 3/2001 was to extend the period within which the pending cases as on the 2/7/1998 could be heard and finalised. Instead of this period stopping at two years, the same was extended to such a time as the land tribunals would begin to operate.

Sub-section (6) of Section 98 of Act 16/1998 as amended by Act 3/2001 did not create or grant jurisdiction to the LC Courts to receive and hear fresh cases as had been the case under the Resistance Committees (Judicial Powers) statute (1/1998) where the LC Court or Courts purported to hear a land case, even if it was of a customary nature, which was filed in their court after 2/7/1998, such LC Court or Courts was exercising a jurisdiction not vested in then by law.

Neither did the amendment under sub section (7) of Act 16/98 amended by Act 3/2.001 create any a

new of fresh jurisdiction. All that the section was stating that the LC Courts would exercise such jurisdiction as they had enjoyed under section 4 of the Resistance Committees (Judicial Power) statute but that jurisdiction was to be exercised subject to sections 98 (6) and (7) of the Land Act - Act 16/1998.

***In Odo Tayebwa vs. Eldadi Bogonzya - Civil Revision 2/93 (1992-3) HCB 143 a Grade 1 1***

Magistrate purported to hear a Civil Case whose subject matter was Shs. 50,000/= . The Court held that the proceedings were a nullity since he had exercised a jurisdiction not vested in him by law. The Judge followed and applied the principles enunciated in ***Kivumbi vs. Matovu - h.c.c.a. 2/1989*** (High Court sitting at Mbale).

***In M/s Nakabago Cooperatives Society vs. Livingstone Kyanga — H.C. Civil Suit No. 74/1991 (1992) III***

***KALR 137. Bahigeine j*** (as then was) held that the Magistrates Grade II and III had no jurisdiction to hear suits under summary proceedings, and any such proceedings were without jurisdiction and a nullity.

***See also: (1) Byanyima Winnie vs. Ngoma Ngime— Civil Revision 9/2001 (H.C. Mbarara).***

***(2) Mwatsahu vs. Maro (1967) E.A. 42.***

***(3) Mubiru and others vs. Kayiwa (1979) HCB 212.***

Reading sub sections 6 and 7 of section 98 (now 95) of the Land Act 1998 together with the amendments of those sub sections under Act 3/2001 the obvious conclusion is that the legislature never intended to create new jurisdiction for the Local Council and Magistrate's Court in land matters.

In considering the effect of Act 3/2001 on the sub sections (6) and (7) of Act 16/1998, the court should confine itself the words used in those two statutes. The court should not wander in the abstract in search of what the legislature should have meant. The court should be guided by the Golden Rule in interpreting both Act 16/1998 and Act 3/2001. Where the language of the Act is clear and explicit we must give effect to it.

***See.1) Warburton vs. Love Lord 5 E.R. 499***

In R. vs. Judge of the City of London Court (1892) 1 Q.B. 273 at 290 - Lord

***Asher wrote: "If the words of the Act are clear, you must follow them even though they lead to manifest absurdity. The Court has nothing to do with the question whether the legislative has committed an absurdity'.***

The above - cited cases are very relevant to this case. It is not our concern to fill in the lacuna in the jurisdiction for what should happened or should have happened to the land cases arising after 2/7/1998.

I therefore, find that any new land case filed after the 2/7/1998 in the LC or Magistrate's Courts was filed in a court which was not vested with the

jurisdiction to hear such a case. Consequently the proceedings of that court were void for lack of jurisdiction which is an illegality with the meaning of section 83 of the C.P.A. and the principles enunciated in the Makula case (supra).

In conclusion, after considering the application, the submissions of both counsel, I find the Grade 1 Magistrate exercised a jurisdiction that was not vested in him. His proceedings, Judgment and the orders made thereunder are declared to be void and set aside, (the orders include the costs and eviction directed at the defendant/applicant).

Although the plaintiff may not have known that the court he was go to had no jurisdiction, he set in motion these illegal proceedings which have resulted in the defendant/applicant being put to inconvenience and expense.

Because part of the fault lay with the court I will, order that the respondent/plaintiff pays only half of the applicant's costs in this application.

V.A.R Rwamisazi-Kagaba

Judge

7/3/2006