

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**CIVIL DIVISION**

**MISC. CAUSE NO. 185 OF 2014**

**WALUKAGA MATHIAS ::::::::::::::::::::::::::::::::::: APPLICANT**

**- VERSUS -**

**KABANDA JOHN ::::::::::::::::::::::::::::::::::: RESPONDENT**

**BEFORE: HON.JUSTICE STEPHEN MUSOTA**

**RULING**

This is an application for Judicial Review brought by Notice of Motion under Section 37 Judicature Act and Rules 3, 6 and 8 of the Judicature (Judicial Review) Rules 2009. The applicant was represented Mr. Jude Mbabaali of Mbabaali Jude & Co. Advocates while the respondent is represented by M/S Twesigye & Co. Advocates.

The orders sought in this application are:

1. An order of certiorari to quash plus a declaration that proceedings and judgment in the Small Claim Case No. 275 of 2014 Kabanda John Vs Walukaaga Mathias holden in the Chief Magistrates' Court of Mengo are contrary to the law and therefore a nullity for lack of jurisdiction among other reasons.
2. An order of prohibition prohibiting the respondent from executing the orders and decree arising from the judgment in the Small Claim Case.
3. An order awarding general damages and costs in respect of this application.

According to the affidavit in support, it is explained that:

- (i) The learned trial Magistrate lacked territorial jurisdiction to entertain the case.
- (ii) The trial Magistrate lacked pecuniary jurisdiction as the total sum of the monies involved exceeded the limit of 10 million granted under the small claims procedure.

- (iii) That the nature of the claim arises out of a contract of service which under rule 5 (2)(g) cannot be brought under small claims procedure.
- (iv) That the learned trial Magistrate delivered judgment in favor of claimant without evaluating the evidence adduced.
- (v) The trial Magistrate awarded costs yet this is not allowed in small claims.
- (vi) That the trial Magistrate allowed introduction of a new cause of action.
- (vii) That the claims were taken to court merely as a calculation to annoy, demean, humiliate and embarrass and damage the image of the applicant.

In his affidavit in reply, the respondent Kabanda John opposed this application emphasizing that his claim was of 9million shillings and the cause of action arose at Hotel Babados on Rubaga Road in Mengo along Rubaga road in the jurisdiction of Mengo Court. That even if the agreement was for more than 10million, part of the money was paid and the amount claimed by the respondent is 9million and not 14million as stated by the applicant.

Court allowed parties to file written submissions in support of their respective cases. I will not reproduce the submissions. However I have studied and comprehended the same. I have considered the application and the law applicable. Issues for resolution in this application are as follows;

1. Whether this is a proper case for Judicial Review.
2. Whether the applicant is entitled to the reliefs sought.

I will first resolve issue 1 whether this is a proper case for Judicial Review.

It was held in the case of ***John Teira & Another Vs Makerere University Council High Court Misc. Cause 49 of 2010*** per Bamwine J (as he then was) and I agree that: \_

***“any person natural or artificial bound to explain and defend in any forum the decision he or she makes in the performance of his or her duties is answerable to Judicial Review”***

And in Owori Arthur & 8 Others Vs Gulu University Misc. Application 18 of 2007 per Kasule J (as he then was) the essence of Judicial Review is concisely explained thus:

***“The essence of Judicial Review jurisdiction is for this court to ensure that the machinery of justice is observed and controlled in its exercise by those inferior bodies in society that happen to be vested with legal authority to determine questions affecting the rights of subjects. Such parties or individuals have a duty to act judicially. Prima facie a duty to act judicially arises in the exercise of power to deprive one of a livelihood, legal status, liberty or proper rights.”***

Therefore Judicial Review is concerned not with the decision but rather the decision making process and assessment of the manner in which the decision was made. It is not an appeal and court’s jurisdiction is exercised in a supervisory manner not to vindicate the rights as such but to ensure that public powers are exercised in accordance with the basic standards of fairness and rationality.

In the instant application the respondent went to court following a set procedure under small claims. A judicial officer handled the case and made decisions therein. The applicant appears not to have been satisfied with the said decisions hence this application. From the reading of the pleadings and the submissions by learned counsel for the applicant, he is trying to show that the decision reached by the learned trial Magistrate and not the respondent since the respondent never made any decision in the matter was not right. The applicant has strenuously tried to explain the errors made by the trial Magistrate and is inviting this court to sit in appeal regarding the said decisions which is not the concern of Judicial Review. As I have stated, Judicial Review is about the decision making process and is not concerned with the merits of

the decision. The respondent Kabanda John never made any decision complained of. The applicant wants this court to investigate the correctness of the lower court and whether procedure was followed. This can most appropriately be handled through revision proceedings given the facts of this case and the law under which the proceedings were conducted.

Revision is provided for under Section 83 of the Civil Procedure Act which empowers this court to call for the record of any case which has been determined by any Magistrate's court and revise it if court appears to have

- (a) exercised a jurisdiction not vested in it in law;
- (b) failed to exercise jurisdiction so vested; or
- (c) acted in exercise of its jurisdiction illegally or with material irregularity or injustice.

With this clear remedy in place the applicant ought to have resorted to that available remedy before resorting to an application for Judicial Review. By so doing the applicant would have targeted the actual decision and not the respondent who did not make any decision in this matter. It was held in *Preston Vs IRC [1995] 2 All ER 327 at 330*, a decision followed with approval in *Micro Care Insurance Ltd Vs Uganda Insurance Commission Misc. Application No. 218 of 2009* and *Nagoya Customs Bonded Warehouse Vs Commissioner Uganda Revenue Authority, Misc. Cause 158 of 2011* by Lord Scarman that:

***“my fourth position is that a remedy by way of Judicial Review is not available where an alternative remedy exists. This is a position of great importance. Judicial Review is a collateral challenge; where parliament has provided by statute appeal procedures as in the taxing state, it will only be very rarely that court will allow a collateral process of Judicial Review to be used to attack an appealable decision”.***

The general import of this decision is that once the law provides an alternative remedy, one cannot resort to Judicial Review which is discretionally unless it is shown that the alternative remedy is not adequate which is not the case here.

Consequently I will find that this was not a proper case for Judicial Review. The respondent made none of the decisions complained of since the decisions complained of were in a trial, then the proper remedy lay in an application for revision. I do not need to handle the second issue and other prayers. This application stands dismissed with costs.

**Stephen Musota**

**J U D G E**

**30.09.2015**

**Mr. Ssemwanga:**

In view of the decision of this court, we have instructions to apply for leave from this honorable court to appeal against the decisions of this court. I so pray.

**Mr. Muhamye:**

We oppose the counsel's submissions and prayer, we wonder whether counsel has instructions at this time to appeal since even his client is not in court and the ruling has just been read he was not sure whether he would lose. I pray that the counsel's prayer be disregarded.

**Mr. Ssemwanga:**

We are dully instructed advocates who have been handling this matter and the absence of the applicant does not mean that we are acting without his instructions. It is within the power and

mandate of this court to grant this prayer. I still re-echo my earlier prayer that this honorable court be pleased to grant us leave to appeal against the decision.

**Court:**

No sound reason or points of law in error and of great importance have been advanced by learned counsel for the applicant to warrant grant of leave to appeal. Leave to appeal is accordingly refused.

**Stephen Musota**

**J U D G E**

**30.09.2015**