



IN THE HIGH COURT OF UGANDA SITTING AT GULU

Reportable
Misc. Civil Revision Cause I No. 065 of 2017

In the matter between

CONNECT FINANACIAL SERVICES LIMITED

APPLICANT

And

MIDDLENORTH CO-OPERATIVE UNION LTD

RESPONDENT

Heard: 23 June, 2020.

Delivered: 23 July, 2020.

Civil Procedure — Revision — section 83 of the Civil Procedure Act, Cap 71 — High court is empowered 71 to revise decisions of Magistrates' Courts where the magistrate's court appears to have; (a) exercised a jurisdiction not vested in it in law; (b) failed to exercise a jurisdiction so vested; or (c) acted in the exercise of its jurisdiction illegally or with material irregularity or injustice. It entails a re-examination or careful review, for correction or improvement, of a decision of a magistrate's court, after satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings of a magistrate's court. — Non jurisdictional errors are not subject to the power of revision. This provision applies to jurisdiction alone, the irregular exercise of or non-exercise of it or the illegal assumption of it — Court will not in its revisional jurisdiction consider the merits of the case however erroneous the decision of the court below is on an issue of law or of fact but will interfere only to see that requirements of law have been properly followed by the court whose order is the subject of revision. — It is trite that whether a particular order is expedient or not is not a ground on which the High Court can interfere by way of revision. Unless the subordinate court has exercised jurisdiction where it had none or exercised it illegally or with material irregularity, the High Court cannot interfere with the order of the subordinate court, even when the order sought to be revised be erroneous or not in accordance with the law. — The power of revision is discretionary; it will not be exercised where, from lapse of time or other cause, it would involve serious hardship to any person. The High

Court is not bound to interfere merely because the conditions are satisfied and therefore the power of revision will ordinarily not be exercised except where it would finally dispose of the suit or other proceeding, or if allowed to stand, the order would occasion a failure to justice or cause irreparable injury to the applicant.

RULING

STEPHEN MUBIRU, J.

Introduction:

- [1] This is an application made under section 83 of the *Civil Procedure Act*, Rule 29 of *The Judicature (Small Claims Procedure) Rules, 2011* and Order 52 rules 1 and 2 of *The Civil Procedure Rules*, seeking revision by way of setting aside, the ruling of the Chief Magistrate's Court delivered on 15th November, 2012 awarding shs. 19,100,000/= as arrears of rent in distress for rent proceedings. It is contended by the applicant that in making that decision, the Chief Magistrate failed to exercise a jurisdiction vested in him when he disregarded the applicant's defence and counterclaim to the application for distress. The respondent did not file an affidavit in reply.
- [2] The background to the application is that by a memorandum of understanding registered on 31st December, 2009 the Respondent handed over some buildings for a period of thirty years, during which the applicant was to take possession, renovate or refurbish them, and the cost thereof was to be offset from the rent. The applicant having defaulted on rent payments, the respondent-initiated distress for rent proceedings. While opposing those proceedings, the applicant contended that the amount claimed was not recoverable since the memorandum of understating constituted a partnership agreement and, in the alternative,, that the costs of renovation incurred by the applicant, a sum of shs. 141,815,000/= far exceeded the amount claimed by the respondent. On 15th November, 2012 a ruling was delivered in favour of the respondent for recovery of a sum of shs. 19,100,000/= as arrears of rent.

- [3] The applicant sought leave to appeal out of time but the application was dismissed with costs which on 7th December 2015 were by consent set at shs. 5,475,000/= In execution of the order, a warrant of arrest was issued against the applicant's Managing Director, Mrs. Onekalit Esther, whereupon she paid the amount decreed.
- [4] In their submissions, Counsel the applicant argued that in disregarding the applicant's defence and counterclaim and in issuing a warrant of arrest against the Applicant's Managing Director, Mrs. Onekalit Esther, in execution of the resultant decree, the trial Magistrate acted illegally or with material irregularity in exercise of a jurisdiction vested in him. By disregarding the applicant's defence and counterclaim, the trial Magistrate failed in his duty to enforce the parties' memorandum of understanding, thereby denying the applicant its right to be heard. The respondent did not file submissions in response.
- [5] This court is empowered by section 83 of the *Civil Procedure Act, Cap 71* to revise decisions of Magistrates' Courts where the magistrate's court appears to have; (a) exercised a jurisdiction not vested in it in law; (b) failed to exercise a jurisdiction so vested; or (c) acted in the exercise of its jurisdiction illegally or with material irregularity or injustice. It entails a re-examination or careful review, for correction or improvement, of a decision of a magistrate's court, after satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings of a magistrate's court.
- [6] An application for revision can lie only on the ground of jurisdiction, and the High Court in exercise of its revisional jurisdiction is not a court of appeal on a question of law or fact. This provision applies to jurisdiction alone, the irregular exercise of or non-exercise of it or the illegal assumption of it (see *Matemba v. Yamulinga [1968] EA 643*). This Court will not interfere under this section merely because the court below came to an erroneous decision on a question of fact or of law. This Court will not in its revisional jurisdiction consider the merits of the

case however erroneous the decision of the court below is on an issue of law or of fact but will interfere only to see that requirements of law have been properly followed by the court whose order is the subject of revision. Where a court has jurisdiction to determine a question and it determines that question, it cannot be said that it has acted illegally or with material irregularity because it has come to an erroneous decision on a question of fact or even of law. A court is said to exercise jurisdiction illegally when it assumes a jurisdiction that is not vested in it by law, and is said to exercise jurisdiction with material irregularity when such a court is seized with jurisdiction but does so wrongly through some procedural or evidential defect.

[7] Non jurisdictional errors are not subject to the power of revision. This power of the High Court is only available where the court below has exceeded its jurisdiction, refrained from exercising a jurisdiction vested in it, or it acted illegally or with material irregularity in the exercise of that jurisdiction, namely committed such an error of procedure and the error had resulted in failure of justice. Within those confines, an application for revision entails a re-examination or careful review, for correction or improvement, of a decision of a magistrate's court, after satisfying oneself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings of a magistrate's court. It is a wide power exercisable in any proceedings in which it appears that an error material to the merits of the case or involving a miscarriage of justice occurred, except if from lapse of time or other cause, the exercise of that power would involve serious hardship to some person.

[8] The grounds upon which revision is sought in the instant application are that in allowing the application for distress for rent, the court below failed to take into account or disregarded the applicant's defence and counterclaim. Had it done so, it would have off-set the applicant's claim against that of the respondent. It is further argued that had the learned Chief Magistrate realised that the parties were partners, which he failed to do, he would have found that the rent claimed

was in itself not recoverable, due to the partnership existing between the parties and the extent of substantial investments made by the applicant in the joint venture. The applicant, so it is argued, was denied a fair hearing when the trial Magistrate refused to determine the counter-claim, failed to determine her claims for the developments in the demised premises and failed to consider the alternative prayer for a setoff of the rent arrears, if any, from the cost of renovations and developments undertaken on the dilapidated structures rented out to the applicant.

[9] It is trite that whether a particular order is expedient or not is not a ground on which the High Court can interfere by way of revision. Unless the subordinate court has exercised jurisdiction where it had none or exercised it illegally or with material irregularity, the High Court cannot interfere with the order of the subordinate court, even when the order sought to be revised be erroneous or not in accordance with the law. The expression "to have failed to exercise a jurisdiction so vested" requires the court to have refrained from invoking an authority or power vested in it by reason of misdirection as regards the limits of its jurisdiction, where the court committed an error in regard to its view of what the limits of its authority as a result of which it refused to make an order which it could have made, not errors on the merits of the case. Where the subordinate court has jurisdiction to determine a question, it has jurisdiction to decide wrong as well as right, hence a wrong decision is not an irregular exercise of jurisdiction. The mere fact that the decision of the subordinate court is erroneous, whether it be upon question of fact or of law, does not amount to an illegality or material irregularity unless it is an error that affected the jurisdiction of that court.

[10] Acting illegally or with material irregularity in the exercise of jurisdiction comes after the Court has validly assumed jurisdiction. After assuming such a jurisdiction which is vested in the Court, the Court acts illegally or with material irregularity when there is exercise of jurisdiction which the Court possesses, but the exercise has been in a manner which is illegal or materially irregular i.e., by

committing some error of procedure in which the question of jurisdiction is involved, in the course of the trial which is material in that it may have affected the ultimate decision. A contention that the court ignored or failed to have regard to evidence relied upon by one of the parties cannot be the subject matter of an allegation of a failure to exercise a jurisdiction so vested or material irregularity that affected the jurisdiction of the court. Counsel for the applicant's argument that when the learned trial Magistrate ignored the applicant's claims completely without evaluating its strengths and weaknesses, when he ignored the admissions and the nature of the relationship of the parties being partners, was a complete failure to exercise the jurisdiction vested in him, is an argument to the merits rather than jurisdiction. The argument that he acted in a manner that was materially irregular constituting denial of the applicant's right to be heard, too is not borne out by the record.

[11] The purpose of revisionary jurisdiction is supervisory in nature, and its object is the proper administration of justice. It is not primarily or solely directed at the relieving of grievances of a party. The High Court in exercise of its power of revision is concerned with due process and not whether the court below has made the correct findings of fact or law. If the Magistrate's Court has not referred to evidence in its reasons, there may be a variety of reasons. For the High court to determine why Magistrate's Court has not referred to that evidence would require an assessment of the entirety of the evidence. This is the trial Court's role, not that of the High Court on revision.

[12] In contrast, an appeal is a remedy by which a cause determined by an inferior court is reconsidered by a superior court for the purpose of testing the correctness of the decision given by the inferior court. The higher court reconsiders the decision of the lower court on questions of fact or questions of law, with jurisdiction to confirm, reverse, modify the decision or remit the matter to the lower court for fresh decision in terms of its directions. It is necessary to distinguish the purpose of an appeal from that of a revision. Where it is

contended that the decision was wrong on merits, as opposed to jurisdiction, the appropriate remedy is appeal not revision. To the extent that they relate to errors of procedure in which the question of jurisdiction is not involved, the grounds raised by the applicant in the instant application are matters for appeal, not revision. That a warrant of arrest was subsequently erroneously issued against the applicant's Managing Director, Mrs. Onekalit Esther, cannot form the basis of revising the order of 15th November, 2012 awarding shs. 19,100,000/= as arrears of rent in the distress for rent proceedings. The purpose of revisionary powers is not to relieve grievances of a party but to correct any errors, irregularities or illegalities in lower court orders.

[13] The power of revision is discretionary; it will not be exercised where, from lapse of time or other cause, it would involve serious hardship to any person. The High Court is not bound to interfere merely because the conditions are satisfied and therefore the power of revision will ordinarily not be exercised except where it would finally dispose of the suit or other proceeding, or if allowed to stand, the order would occasion a failure to justice or cause irreparable injury to the applicant. This application was filed on 7th April, 2017 nearly five years after the decision sought to be revised. It is therefore patent that the applicant took inordinate delay in filing it. Unexplained delay in coming to Court is considered as bar in obtaining relief in discretionary remedies. Delay defeats equity and the longer the aggrieved person sleeps over his or her rights without any reasonable excuse, the more his or her chances of success in applications for revision dwindle as the Court may reject the application on the ground of unexplained delay. But the delay in coming to Court has to be considered in reference to the circumstances of each case.

[14] Where it would be practically unjust to give a remedy either because the party has, by his or her conduct done that which might fairly be regarded as equal to a waiver of it, or where by his or her conduct and neglect he or she has, though perhaps not waiving that remedy, yet put the other party in a situation in which it,

would not be reasonable to place him or her if the remedy were afterwards to be asserted, in either of these cases lapse of time and delay are most material.

[15] An application for revision should be filed within a reasonable time from the date of the Order which the applicant seeks to have quashed. What is reasonable time and what will constitute undue delay will depend upon the facts of each particular case. In paragraph 12 of the affidavit in support of the application, the applicant sought to explain the delay as a consequence of his former advocates' decision to file multiple applications which they continually withdrew. By inference, the applicant waited to see the outcome of those applications, when they failed, this application was filed after nearly five years. In the meantime, the order was executed and stands satisfied. In the circumstances, this is not a reasonable explanation for the delay. By her conduct, the applicant placed the respondent in a situation in which it would not be unreasonable to remove it from, if the remedy were to be asserted this late in time. The long period of inaction and failure to seek timely relief on the part of the applicant is fatal to this application on the facts of the case.

[16] The court below had jurisdiction to decide the claim of distress for rent and even if it is contended that it decided wrongly, it neither failed to exercise any jurisdiction vested in it nor did it exercise its jurisdiction illegally or with material irregularity. Whether the court decided on the relevance of the applicant's defence and counterclaim rightly or wrongly, it had jurisdiction to decide the case; and even if it may have decided wrongly, it did not exercise its jurisdiction illegally or with material irregularity. Overall, I find that the court below decided the matter on merits considering the affidavit and documentary evidence which was placed before it, thus I cannot find fault with it that justifies revision.

Order:

[17] In the final result, the application has no merit and it is accordingly dismissed. Since the respondent neither filed an affidavit in reply

Delivered electronically this 23rd day of July, 2020

.....Stephen Mubiru.....

Stephen Mubiru

Resident Judge, Gulu

Appearances

For the applicant : M/s Odongo and Co. Advocates.

For the respondent :