



IN THE HIGH COURT OF UGANDA SITTING AT GULU

Reportable
Misc. Civil Revision No. 002 of 2020

In the matter between

**BOZONGOZA ALEX t/a EXPRESS INTEGRITY
AUCTIONEERS & COURT BAILIFFS**

APPLICANT

And

ORYEM AURIC

RESPONDENT

Heard: 23 June, 2020

Delivered: 23 July, 2020.

Civil Procedure — Revision — section 83 of the Civil Procedure Act, Cap 71 — court is empowered 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. A miscarriage of justice occurs when it is reasonably probable that a result more favourable to the party appealing would have been reached in the absence of the error. — 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 — Under section 10 (1) (e) of The Local Council Courts Act, 2006 and item (a) of the Third Schedule thereto, Local Council Courts have unlimited jurisdiction over disputes in respect of land held under customary tenure. Section 11 (1) (c) of the Act. — The 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.

Civil Procedure — *Small Claims Procedure* — Rule 5 (1) of *The Judicature (Small Claims Procedure) Rules, 2011* — The small claims procedure was created so that litigants would have a speedy, reasonably inexpensive, uncomplicated means of determination of their claims, where the amount sought to be recovered does not exceed ten million Uganda shillings — A litigant who opts for the small claims procedure, may choose to reduce the amount of his or her claim, thereby giving up the rest of the claim in order to stay within the small claims court's monetary limit on claims, and is thus deemed to have waived his or her right to any claim over and above shs. 10,000,000/=

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 ex-parte judgment of the Chief Magistrate's Court delivered on 2nd May, 2018 under the small claims procedure. It is contended by the applicant that in making that decision, the Chief Magistrate exercised a jurisdiction vested in him illegally or did so with material irregularity.
- [2] The background to the application is that the applicant is a court bailiff. On or about 22nd May, 2015 the court issued him a warrant of attachment and sale of immovable property, owned by a one Obwona Vinancio, in satisfaction of a decree entered against the latter. The applicant sold that property to the respondent on or about 5th November, 2015 at the price of shs. 7,000,000/= However, the judgment debtor did not vacate the land since he had filed proceedings challenging the decree being executed. The respondent having failed to secure possession of the land sold to him, reported a case of obtaining money by false pretence to the police. The applicant was arrested and while under arrest, signed an agreement undertaking to refund the shs. 7,000,000/= and an additional shs. 1,000,000/= as survey costs incurred by the respondent.

On basis of that agreement, the respondent then sued the applicant under the small claims procedure, for recovery of the purchase price. The claim was filed on 30th April, 2018 and fixed for hearing on 2nd May, 2018. The applicant protested the short notice but the court proceeded ex-parte and entered judgment on 5th May, 2018.

- [3] The court awarded the respondent shs. 8,000,000/= as the principal sum and general damages of shs. 3,000,000/= Despite the fact that the applicant had filed an application for setting aside that decree, the court on 22nd May, 2018 issued him with a Notice to Show Cause why the decree should not be executed. When he appeared in court on 31st May, 2018 as required by the notice, he was remanded to civil prison for failure to pay the decretal amount of shs. 11,000,000/= He later paid that sum and was released from custody. The applicant contends that as a result of the Chief Magistrate's illegal or irregular exercise of a jurisdiction vested in him, the applicant has paid shs. 4,000,000/= in excess of what was due from him to the respondent and has thus suffered an injustice.

Respondent's arguments.

- [4] In his reply to the application, the respondent contends that following the applicant's failure to hand over vacant possession of the land sold to him, the applicant on 28th December, 2016 signed an undertaking to refund the purchase price of shs. 7,000,000/= and an additional shs. 1,000,000/= as costs incurred by the respondent in having the land surveyed. In the suit he filed for recovery of that sum, he claimed general damages for money had and received, whereupon the court awarded him shs. 3,000,000/= the applicant having absented away from those proceedings.

Applicant's arguments.

- [5] In his submissions, the applicant argued that the court below did not have jurisdiction to award general damages in respect of a claim concerning immovable property. Similarly, it did not have jurisdiction to award costs to the respondent. He prayed that the court allows the application and orders the respondent to refund shs. 3,000,000/= the applicant paid in damages, shs. 1,000,000/= he paid as costs of survey and the costs of the application.
- [6] In response, the respondent submitted that in the underlying proceedings, the applicant instead of attaching land belonging to the judgment debtor (Obwona Vinancio), attached land decreed to the plaintiff (Apiyo Mary). As a result the applicant sold the respondent land that was not available for attachment. The applicant undertook to refund the money paid by the respondent as the price of the land and the costs of its survey but failed to fulfil his promise. The respondent reported a criminal case to the police whereupon the applicant executed an undertaking to refund the money. It is on basis of that undertaking that the claim was rightly decided in his favour. The application should thus be dismissed.

Revision.

- [7] 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.

[8] 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.

[9] 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.

The small claims procedure.

[10] The small claims procedure was created so that litigants would have a speedy, reasonably inexpensive, uncomplicated means of determination of their claims,

where the amount sought to be recovered does not exceed ten million Uganda shillings (see rule 5 (1) of *The Judicature (Small Claims Procedure) Rules, 2011*). The purpose of small claims courts therefore is to provide an informal, uncomplicated process to resolve small disputes that do not involve substantial amounts of money to warrant the expense of formal litigation. A litigant who opts for the small claims procedure, may choose to reduce the amount of his or her claim, thereby giving up the rest of the claim in order to stay within the small claims court's monetary limit on claims, and is thus deemed to have waived his or her right to any claim over and above shs. 10,000,000/= Once the dispute is heard and decided by the small claims court, the right to collect the amount waived will be lost forever by virtue of *res judicata*. Therefore if a litigant aims at recovery of more than shs. 10,000,000/= he or she should consider the ordinary or summary suit.

[11] In the first place, rule 5 (1) of *The Judicature (Small Claims Procedure) Rules, 2011* limits the pecuniary jurisdiction of court acting at first instance in a small claim to shs. 10,000,000/= In the instant case it awarded a total of shs. 13,000,000/= which award was thus beyond the pecuniary limits conferred to the court under that procedure. Where there is a high likelihood that general damages, when assessed may be beyond the pecuniary limit of a small claim, the correct procedure is to invoke s. 218 (1) (b) (i) of *The Magistrates Courts Act*, and rule 33 of *The Judicature (Small Claims Procedure) Rules, 2011* to convert the claim into an ordinary suit, and where necessary, to transfer it to a court with competent jurisdiction, otherwise if the court proceeds to award damages beyond its pecuniary jurisdiction, the award will be a nullity, since an order made without jurisdiction is a nullity (see *Mubiru Kaloli and 21 others v. Kayiwa Edmond and 5 others* [1979] HCB 212; *Mugoya Peter v. Gidudu James* [1991] 63 and *Desai v. Warsama* [1967] 1 EA 351).

[12] Secondly, under section 46 (2) of *The Judicature Act*, an officer of the court or other person bonded to execute any order or warrant of the court is not be liable

to be sued in any civil court in respect of any “lawful or authorised act” done in the execution of any such order or warrant. The need to free the judicial process of harassment or intimidation justifies the extension of judicial immunity beyond the judicial officers themselves, to include other officers of court. A bailiff as a court officer is thus protected from a suit for any lawful or authorised act done in execution of a warrant. The protection is available only when the bailiff acts lawfully (see *Maria Onyango Ochola and others v. Hannington Wasswa and another* [1988-1999] HCB 102). A bailiff is not entitled to absolute judicial immunity though. A bailiff incurs personal liability only when he or she acts illegally or in excess his powers given by the warrant of attachment (see *Bifabusha v. Turyazooka* [200] 2 EA 330). A court bailiff acting within the scope of a facially valid warrant of attachment is immune from a suit for damages. The qualified immunity is justified and defined by the functions it protects and serves, not by the person to whom it attaches. This enables them to carry out their duties without fear of unwittingly laying themselves open to a claim for damages.

[13] Qualified immunity balances two important interests; the need to court bailiffs accountable when they exercise power irresponsibly and the need to shield them as officers of court from harassment, distraction, and liability when they perform their duties reasonably, as long as their actions in question were within the scope of their jobs. It shields court bailiffs from liability for damages when it is not clearly established that they acted in a plainly incompetent manner or knowingly violated the law. Victims of a wrongful execution can pursue legal action against court bailiffs only if the bailiff acts illegally, negligently, insolently or oppressively. In the small claim made by the respondent against the applicant, there was no allegation of such conduct on the part of the applicant or allegation of any material irregularity in the execution of the warrant or conduct of the sale. It was a claim for money had and received.

[14] According to section 49 of *The Civil Procedure Act*, where immovable property is sold in execution of a decree, the sale becomes absolute on the payment of the

full purchase price to the court, or to the officer appointed by the court to conduct the sale. Order 43 rules 4 (1) and (2) of *The Civil Procedure Rules* provides that an appeal to the High Court does not operate as a stay of proceedings under a decree or order appealed from and neither may execution of the decree be stayed by reason only of an appeal having been preferred from the decree. By analogy, an application for revision does not operate as a stay of execution of the decree. The decree has never been set aside the sale has never been annulled and even if the sale in execution were void, a separate suit was not maintainable as the question raised in the suit related to the execution, discharge or satisfaction of the decree which, according to section 34 (1) of *The Civil Procedure Act*, are questions to be determined by the court executing the decree and not by a separate suit. "All questions arising" means all questions which could properly arise or which could properly have been raised in the execution proceedings between the parties to the suit or their representatives.

- [15] Once the matter in dispute relates to execution, discharge or satisfaction of the decree, that the real question in controversy is whether the sale in execution was void or voidable and the price therefore recoverable is immaterial. The sale having taken place in execution of the decree, all questions regarding the validity of that sale had to be decided in execution of the decree, not by a separate suit. Section 34 (1) of *The Civil Procedure Act* confers exclusive jurisdiction upon the Court executing a decree to decide all questions relating to execution discharge or satisfaction of the decree, and a separate suit for that purpose is barred. A void sale in execution of a decree does not give a party to the suit or any person deriving title therefrom a right to institute a fresh suit either for declaration of title, for recovery of the price or for recovery of possession. The procedure ordinarily available by way of suits is substituted by one of applying to the executing Court, by which the legal rights of the parties arising within the context of that execution have to be considered and adjudicated. What the respondent complained of was not irregularity or illegality in the publication or conduct of the sale or that the sale was conducted wholly without jurisdiction, but rather that the applicant attached

and sold to him land that was not available for attachment. Whether the sale is void and the price paid thus recoverable, that question had to be agitated and appropriate relief sought under that provision, not as a small claim.

[16] For all the foregoing reasons, the court below exercised a jurisdiction not vested in it and when it purported to do so, exceeded the pecuniary limit set by the rules. It therefore acted illegally when it entered judgment in favour of the respondent. It is not denied that if a Court, by an error of law in deciding whether it had jurisdiction, exercised a jurisdiction not vested in it, the High Court has power to interfere under 83 of the *Civil Procedure Act*. This Court faced with a decree passed after a Magistrate's Court erroneously gave itself jurisdiction, which decree therefore was passed without jurisdiction, has the duty to set it aside. Consequently, the judgment and decree are a nullity and are therefore hereby set aside.

Order:

[17] In the final result, since the court executing the decree is yet to pronounce itself on the matter in controversy, each party is to bear its costs of these proceedings.

Delivered electronically this 23rd day of July, 2020

.....Stephen Mubiru.....
Stephen Mubiru
Resident Judge, Gulu

Appearances

For the applicant:

For the respondent: