

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)

CIVIL REVISION NO. 22 OF 2020

(ARISING FROM MISC. APPLICATION NO. 794 OF 2019)

(ARISING OUT OF MENGO CIVIL SUIT NO. 234 OF 2019)

1. MUGISHA HERBERT

2. NUWEWANGYE JACKLINE ::::::::::::::::::::::::::::::: APPLICANTS/DEFENDANTS

VERSUS

UMUBANO (U) LTD::::::::::::::::::::::::::::::::::::: RESPONDENT/PLAINTIFF

BEFORE: HON. JUSTICE EMMANUEL BAGUMA

RULING

This application is by a formal letter dated **21st October 2020**, brought under **Section 83** of the **Civil Procedure Act** seeking to revise the orders of the Chief Magistrate of Mengo Court in **Miscellaneous Application No. 794 of 2019** wherein the applicants' application to set aside the orders and decree in **Civil Suit No. 234 of 2019** and leave to appear and defend **C.S No. 234 of 2019** were allowed on condition that the applicants deposit UGX 20,000,000/=(**Twenty million shillings**) as security for costs before filing their written statement of defence.

The applicants being dissatisfied with the decision of the trial chief magistrate ordering them to deposit 20,000,000/= (**Twenty million shillings**) as security for costs to appear and defend **C.S No. 234 of 2019**, moved this Honorable court by formal letter dated **21stOctober 2020** for revision on ground that;

- **The trial chief magistrate failed to exercise jurisdiction so vested and/or acted in exercise of his jurisdiction with material irregularity and gross injustice.**

The applicants were represented by Mr. Maxim Mutabingwa while the respondent was represented by Mr. Kato Ramadhan.

At the hearing, both counsel agreed to file written submissions which court has put into consideration while making this ruling.

Counsel for the applicants submitted that the trial chief magistrate failed to exercise jurisdiction so vested and/or acted in exercise of his jurisdiction with material irregularity and gross injustice when he set a condition that the applicants deposit UGX 20,000,000/= (**Twenty million shillings**) before filing their written statement of defence, thus the applicants are calling upon the High Court to call for the record and revise it in the interest of justice.

Counsel for the applicants also submitted that the trial Chief Magistrate in his ruling found that there were serious allegations including an allegation of fraud which ought to be investigated through a trial.

Counsel submitted that the Chief Magistrate found that the applicants had raised a plausible defence which they should be allowed to present to court and that the case needed a full investigation. Counsel also submitted that the Chief magistrate found that there were triable issues.

Counsel further submitted that the trial magistrate set aside the default judgment and execution but gave conditional leave to the applicants to deposit UGX 20,000,000/= (**Twenty million shillings**) before filing their written statement of defence and did not explain why he set such a condition which amounted to a material irregularity and caused injustice to the applicants.

Counsel for the applicants relied on **Section 83 of the CPA** which gives High Court wide powers for revision.

Counsel also referred to the case of **Peter Mugoya V James Gidudu & Mukabani Namonye (1991) HCB 63** where court held that;

“The High court has power to make revisional orders.”

Counsel for the applicants also relied on the case of **Photo Focus (U) Ltd V Group 4 Security Ltd CACA No. 30 of 2020** where it was held that;

“It is trite that it is not a requirement of law that the applicant must establish a genuine defence before leave to appear and defend could be granted.”

On the other hand, counsel for the respondent submitted that the decision of the trial chief magistrate did not in any way fall within circumstances under which the High Court can revise matters under **Section 83 of the CPA**.

Counsel submitted that the Chief magistrate exercised a jurisdiction vested in him by law and did not in any way fail to exercise the jurisdiction so vested and that the Chief Magistrates court did not act in exercise of its jurisdiction illegally or with material irregularity or injustice.

Counsel referred to **O. 36 r. 11 of the CPR** which provides for setting aside a decree on such terms as court thinks fit.

Counsel for the respondent also referred to **O. 36 r.8** which states that;

“Leave to appear and defend the suit may be given unconditionally, or subject to such terms as to the payment of monies into court, giving security, or time or mode of trial or otherwise, as the court may think fit.”

Counsel further submitted that the trial Chief Magistrate exercised his jurisdiction judiciously without any material irregularity because the orders made were within his jurisdiction and not irregular.

Determination of court:

From the submissions on record, one can say that there is one issue to resolve in this revision application, that is;

- 1. Whether or not the trial chief magistrate failed to exercise jurisdiction so vested and/or acted in exercise of his jurisdiction with material irregularity and gross injustice.**

Section 83 of the Civil Procedure Act provides as follows;

“The High court may call for the record of any case which has been determined under this Act by any Magistrate’s court and if that court appears to have;

- a. *Exercised a jurisdiction not vested in it in law*
- b. *Failed to exercise a Jurisdiction so vested*
- c. *Acted in the exercise of its jurisdiction illegally or with material irregularity or injustice,*

The High court may revise the case and may make such orders in it as it thinks fit.”

O. 36 r.8 of the Civil Procedure Rules provides that;

“Leave to appear and defend the suit may be given unconditionally, or subject to such terms as to the payment of monies into court, giving security, or time or mode of trial or otherwise, as the court may think fit.”

In the case of *Hitila Vs Uganda (1969)1 E.A 219* the Court of Appeal of Uganda held that;

“In exercising its power of revision, the High court could use its wide powers in any proceedings in which it appeared that an error material to the merits of the case or involving a miscarriage of justice had occurred. It was further held that the court could do so in any proceedings where it appeared from any record that had been called for by the court or which had been reported for orders or in any proceedings which had otherwise been brought to its notice”

Also in the case of *Bwire & Anor v Ndyomugyenyi (H.C. Civil Revision No. 016 of 2011)* court held that;

“...the High Court has very wide powers in as far as revision of the proceedings of the Magistrates’ courts are concerned.”

Further, in the case of **Katuramu V Jain (H.C Civil Revision No.008 OF 2013)** court held that;

“The decision to grant leave or not however has to be made judiciously. The court has to exercise discretion keeping in view the basic dictates of justice when determining the question whether or not to permit the defendant to contest the suit and if so whether unconditionally or on terms and what terms.”

I entirely agree with the above provisions of the law and authorities. In the instant case, the trial Chief Magistrate in his ruling found that there were serious allegations including an allegation of fraud which ought to be investigated through a trial.

The trial Chief Magistrate also found that the applicants had raised a plausible defence which should be presented to court and that the case needed a full investigation. He finally found that there were triable issues that necessitated a full hearing.

Since the trial chief magistrate found that there were serious allegations of fraud which needed to be investigated through a trial and that there were triable issues, it was not fair neither justified in the circumstances for him to set a condition of depositing UGX 20,000,000/= (**Twenty million shillings**) before the applicants could file their written statement of defence. Such a condition was not fair and justified in the circumstances and nature of the case, since the condition was blocking the applicants from getting justice.

The learned Chief Magistrate having allowed the applicants to appear and defend themselves against the respondent's claim, it was harsh, unjust and not necessary for him to order the applicants to deposit 20,000,000/= (**Twenty million shillings**) as security for costs, basing on the circumstances of this case.

It should be noted that leave to appear and defend the suit may be given unconditionally as it is envisaged in **O.36 r. 8 of the CPR**. Also the decision *to* grant leave has to be made judiciously. The court has to exercise its discretion keeping in view the basic dictates of justice.

Basing on the facts and circumstances of this particular case as stated in the ruling of the trial court, it is fair and just that the applicants should have been given an opportunity to appear and defend the said suit unconditionally.

It is therefore my considered view that the trial Chief magistrate exercised his discretion excessively by setting a condition of depositing UGX 20,000,000/= (**Twenty million shillings**) before the applicants could file their written statement of defence.

In the final result, the learned Chief Magistrate's order directing the applicants to deposit UGX 20,000,000/= (**Twenty million shillings**) before filing their written statement of defence is hereby set aside.

The applicants are granted unconditional leave to appear and defend **C. S No. 234 of 2019** within a period of 15 days from the date of this ruling.

The file be sent back to Mengo Chief Magistrates Court and the matter be heard on its own merits.

Costs to be in the cause.

It is so ordered.

.....

Emmanuel Baguma

Judge

21/01/2021