

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
CIVIL REVISION NO.04 OF 2018

(ARISING FROM MENGO SMALL CLAIMS CASE NO.572 OF 2018)

KIBALAMA SAMUEL----- APPLICANT

VERSUS

NAMATITI BRIAN----- RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is an application for a revision order against the ruling of a Magistrate grade One of Mengo in which he gave judgement in favour of the respondent. The court heard the matter and determined in favour of the respondent on the basis of the new evidence availed by both parties specifically of a one Kiggundu James.

The applicant filed this application contending that the trial magistrate lacked jurisdiction and that the orders given by court be revised.

The applicant was represented by Barnabas Dyadi Kamyia and the respondent was represented by Rukundo Seth. In the interest of time court directed the counsel for both parties to file written submissions.

The application was brought by way of Notice of Motion under Section 83 & 98 of the Civil Procedure Act, and Order 52 r1 &3 of the Civil Procedure Rules for Orders that;

1. This Honourable court be pleased to call for the record in the Chief Magistrates court of kampala at Mengo, Small Claim Case No. 572 of 2017 for purposes of revision.

2. An order that the proceedings and judgments dated 3rd November 2017 and 20th December 2017 vide Small Claim Case No. 572 of 2017 made therein are contrary to the law and therefore a nullity for lack of jurisdiction among others.
3. The Grade one Magistrate H/W KULE MOSES LUBANGULA's Judgement/decree and /orders dated 3rd November 2017 and 20th December 2017 in small Claim Case No. 572 of 2017 be revised and set aside.
4. An Order prohibiting the respondent from executing the orders and decree arising from the judgment in the small claim case no. 572 of 2017.
5. The costs of this application be provided for.

The application was supported by the affidavit of Kibalama Samuel

In opposition to this Application the Respondent filed an affidavit in reply by Namatiti Brian wherein he vehemently opposed the revision orders sought by contending that the court had jurisdiction to hear and determine the matter before it.

This application is confined to the provisions of Section 83 of the Civil Procedure Act and that is strictly revision and such an application cannot be used as an Appeal against findings of the magistrate's court.

Section 83 provides;

The High Court may call for the record of any case which has been determined under this Act by any magistrate's court, and 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 exercise of its jurisdiction illegally or with material irregularity or injustice,

In this application the applicants are only challenging the magistrate grade one for exercising jurisdiction not vested in it.

The applicant raised these issues for determination.

Whether the trial court exercised jurisdiction not vested in it by law and in so doing occasioned an injustice to the applicant.

The applicant raised this issue on the basis that the case before the small claims was time barred since it was a contract and it could only be brought within six years.

The question of jurisdiction of court is very important in determining the authority to be exercised by the court as it was explained in **Koboko District Local Government vs Okujjo Swali High Court Miscellaneous Application No. 001 of 2016** where court noted that;

“One of the “policies of court” is the question of jurisdiction that it is at once fundamental and over-arching as far as any judicial proceeding is concerned. Jurisdiction is the first test in the legal authority of a court and its absence disqualifies the court from exercising any of its powers. Jurisdiction means and includes any authority conferred by the law upon the court to decide or adjudicate any dispute between the parties or pass judgment or order. A court cannot entertain a cause which it has no jurisdiction to adjudicate upon.”

I do not agree with submission of counsel on this issue, because the court is vested to hear any matter whether it is time barred. It is the value of the subject matter and territory jurisdiction that would bar the trial. Otherwise the court must determine the issue of limitation once raised before and it does not go to the jurisdiction of the court.

Therefore the court properly exercised its jurisdiction and the jurisdiction of court is not taken away by reason of the Limitation Act.

Limitation of Action is determined by leading evidence and it is upon court being satisfied that the time has expired and there are no exceptions to the limitation of action.

As a matter of law being raised I will proceed to evaluate the evidence in order to establish whether the case was indeed time barred as alleged by the applicant.

The parties seem to agree that indeed the claim arose in 2010 but the date the cause of action arose is the starting date for computation of time. It does not mean that the date when the money was allegedly given is when the cause of action arose.

The applicant's counsel is very wrong on the computation of time for limitation. When did the respondent expect the money to be paid or delivery of the said stalls in satisfaction of the agreement? They all alleged to have pooled money together for purposes of the business.

According to the evidence on record, most witnesses avoided giving any dates when the cause of action arose. However DW 3 Namuleme Eldan stated that;

“ The defendant shared money with the claimant which they used to deposit on their account. The defendant is my husband, they shared their said money at the stall in Owino on 14/1/2014. The defendant got 600,000/= and the claimant took 1,300,000/=”

This evidence was corroborated by the evidence of PW 5 who also testified he caused a meeting with both claimant and defendant. They revealed and confirmed the truth and the defendant/applicant looked at his books of accounts and he said he had partly paid 1,900,000/= which money they got from the bank account they had jointly opened. Up to now they did not tell me their aim of contributing money and open joint account. Up to now the defendant has never paid the balance to the claimant.

It therefore implies the cause of action of the respondent arose when the applicant had made a part payment as his wife DW3 testified and the respondent demanded for the balance which was outstanding.

The respondent's claim was not time barred as alleged by the applicant and court had jurisdiction to hear the suit.

Whether the trial Magistrate in exercise of Jurisdiction acted illegally or with material irregularity.

The applicant's counsel contends that the magistrate allowed introduction of a new cause of action from the purchase /sale of land to purchase /sale of market stalls.

The magistrate acted with material irregularity and injustice in relying on a statement of account which was not exhibited.

The proceedings of the small claims court are intended to be informal and that is the reason why advocates are not allowed to appear in such matters. It is surprising that counsel for the applicant is raising technical issues which could not in any arise under the nature of proceedings.

Rule 25 of the Judicature (Small Claims) Rules provides;

The Court shall hear every case before it expeditiously and without undue regard to technical rules of evidence or procedure, but in exercising its jurisdiction, the court shall be guided by the principles of fairness, impartiality without fear or favour and adhere to the rules of natural justice,.....

This ground for revision is totally misplaced and devoid of any merit.

The applicant has also challenged the award of costs to the respondent. The trial Magistrate was in error to award costs since the rules provides under rule 29 that;

A party to a claim under these rules shall bear his or her own expenses

In these proceedings advocates are not allowed to appear or represent any of the parties. This therefore means that no costs are incurred but only expenses to the litigant and the same are unrecoverable.

The applicant should have made an application for review of the judgement under Rule 30 but instead opted to file an application to the High Court

In the result for the reasons stated herein above this application has no merit and is hereby dismissed with costs to the Respondent in this court only.

It is so ordered.

SSEKAANA MUSA

JUDGE

16th /08/2018