

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
CIVIL REVISION NO.29 OF 2015

**(ARISING FROM SMALL CLAIM NO. 106 OF 2015 AND CIVIL SUIT NO. 144 OF 2013 OF
MAKINDYE CHIEF MAGISTRATES COURT)**

MANSOUR MOHAMMAD----- APPLICANT

VERSUS

MUGISHA PAUL----- RESPONDENT

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is an application for a revision order against the ruling of Chief Magistrates Court of Makindye under the small claim procedure claim 106 of 2015 and civil suit No. 144 of 2013 in which his worship Mafabi Richard entered judgment in favour of the respondent against the applicant.

The applicant filed civil suit No. 144 of 2013 against Wamala Edward and Bunjo Mahad for an Order of payment of 2,900,000/= and 20,786,500/= as special damages, general damages, compensation, permanent injunction, declaration of quiet possession, an order for repair of premises, interest and costs of the suit.

The applicant's case-civil suit No 144 of 2013 was heard exparte and judgement was entered in favour of the applicant by her worship Margaret Aanyu on 25-2-2014.

The defendants successfully filed miscellaneous application No. 146 of 2014 to set aside the ex-parte judgement and stay of execution and was allowed to file a defence.

On the 17th April 2015, the respondent filed a small claims case No. 106 of 2015 at the Chief magistrates court of Makindye seeking an order for payment of rent arrears of 6,170,000/=.

The two cases pending in the same court were consolidated to avoid multiplicity of suits and enable final determination of suits.

On 25th May 2015, court proceeded with the matter and the court decided the small claims case only claim No. 106 of 2015. The court ordered the defendant to pay rent arrears worth 6,170,000/= plus 82,000/= totalling.

The applicants were represented by Nyanzi, Kiboneka & Mbabazi Advocates and the respondent was represented by Luzige, Lubega, Kavuma & Co Advocates. 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 of the Civil Procedure Act, and Order 52 r1 & 3 of the Civil Procedure Rules for Orders that;

1. An Order for revision doth issue against the respondent revising the decision of His Worship Mafabi Richard Chief Magistrate of Chief magistrates Court at Makindye under small claim procedure claim No. 106 of 2015 and civil suit No. 144 in which the court entered judgement in favour of the respondent.
2. The applicant also prayed for costs of this application.

The application was supported by the affidavit of Mansour Mohamad

In opposition to this Application the Respondent filed an affidavit in reply by Mugisha Paul 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 applicant is only challenging the Chief magistrates decision for exercising jurisdiction with material irregularity and injustice when he solely relied on the evidence in Small Claim No. 106 of 2015 at the exclusion of the evidence in Civil Suit No. 144 of 2013 yet the suits had been consolidated.

The applicants contend that the court exercised jurisdiction with material irregularity when it considered evidence in the small claims and ignored the evidence of the applicant in respect of Civil Suit No. 144 of 2013.

According to the Judgment, the court noted as follows;

Judgment is entered in favour of the claimant.

The above decision is based on:-

- a. Reciepts annexed to the claim;***
- b. Testimonies of the area L.C.1 chairman, Bunjo Mahad and the claimant.***
- c. Dishonesty of the defendant's assertion that he never knew the claimant;***
- d. Annexure B2 presented by the Defendant.***

The said decision does not mention the applicant's evidence and does not mention any thing about his earlier case civil suit 144 of 2013. The court failed or refused to consider the applicant's case.

The applicant was condemned unheard in respect of his case and this violated his right to be heard as enshrined in the Constitution.

An irregularity is defined in the Black's Law dictionary 8th Edition on page 2431 to be an act or practice that varies from the normal conduct of an action. While an injustice is defined as unjust state of affairs; unfairness.

Exercise of jurisdiction with material irregularity has no precise definition or meaning. But the errors contemplated relate to material defects of procedure and not errors of either law or fact after the formalities which the law prescribes have been complied with. See ***Civil Procedure and Practice in Uganda by Ssekaana 2nd edition pg 460***

The irregularity does not refer to the decision arrived at but the manner in which it is reached.

A court is deemed to have exercised its jurisdiction with material irregularity in the following circumstances;

- Where it decides a case without considering the evidence on record;
- Decides on evidence not legally taken or otherwise inadmissible;
- Decides a case without recording reasons for its judgment;
- Does not apply its mind to the facts and circumstances of the case;
- Fails to follow a decision of the High court to which it is subordinate;
- Follows a decision which does not apply to the facts of the case;
- Decides a case in the absence of the party or without giving an opportunity of being heard to the party whose rights are adversely affected by such decision.

The learned trial Chief magistrate consolidated two suits but at the end of the trial failed to consider the evidence of one of the suits and made a decision that was not reflective of the evidence adduced by the applicant.

An applicant invoking the revisional jurisdiction of the High Court must therefore, show not only that there is jurisdictional error but also that the interests of justice call for the interference.

The trial court at page two of the record of proceedings informed both parties of the consolidation of the two claims (i.e 106/15 and 144/13).

The submission of counsel for the respondent that the two matters were never consolidated is baseless and devoid of any merit.

But while the court was finally deciding the consolidated matter it only considered one case and this was a material irregularity that would call for exercise of powers of revision in order to correct this anomaly by the court.

The court ought to have considered this case as one and it could have raised issues for determination that would cover both suits and also make appropriate orders that would ensure that justice is seen to be done to both parties in respective of the two suits.

I agree with decision cited by counsel for the applicant; *Mubiru & Others v Kayiwa [1979] HCB 212* that where there has been a procedural irregularity in proceedings leading to judgment or order such order ought to be treated as a nullity or set aside for revision.

This application succeeds and the decision of learned chief magistrate is set aside.

The applicant's case should be consolidated as directed by the learned Chief Magistrate with the respondent's claim as a counter-claim. The applicant should amend the pleadings to reflect the proper parties and the respective defendants should file their defences and the respondent should include his claim for rent as a counter-claim. This should be done within 60 days to facilitate an expeditious disposal by the trial court.

In the result for the reasons stated herein above this application has merit and is allowed with no order as to costs.

It is so ordered.

SSEKAANA MUSA
JUDGE
31st/08/2018

