

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
(CIVIL DIVISION)**

**REVISION APPLICATION NO. 18 OF 2019
(ARISING FROM CIVIL SUIT NO. 1071 OF 2017)**

ENGAANO MILLERS LTD..... APPLICANT

VERSUS

NGEYE BAKERY LTD RESPONDENT

BEFORE HON. JUSTICE MUSA SSEKAANA

JUDGMENT

BACKGROUND

BEFORE HON. JUSTICE SSEKAANA MUSA

RULING

This is an application for a revision order against the ruling of the Chief Magistrate's court of Mengo in which he refused enter judgment on admission and also set aside an earlier order for conditional leave to appear and defend the suit.

The applicant filed a summary suit in the Chief Magistrates court seeking the following; Recovery of 40,000,000/=. The respondent filed an application for leave to appear and defend the suit.

The court heard the application (MA 734 of 2017) and granted the respondent conditional leave to appear and defend on 22nd 10-2018. *"The applicant is granted conditional leave to appear and defend the suit upon depositing 4,000,000/= in court as security within 14 days from the date of this ruling for fulfilment of any orders that may arise"*

The applicant commenced execution proceedings upon the respondent failing to deposit security after the court entered judgement for the applicant. The

respondent's property was attached in execution of the said judgment vide EMA 3042 of 2018.

The respondent had filed another application (MA 0002 of 2019) for leave to appear and defend and the same was heard and court granted the respondent leave to appear and defend in the following terms; *"the applicant is granted unconditional leave to appear and defend the civil suit No. 1070 of 2017; The applicant shall file its written statement of defence within 10 days from the date of delivery of this ruling"*.

The respondent filed a defence on 6th-6- 2019 but the same was endorsed by court on 10th June 2019. In the said defence paragraph 20 the defendant/respondent contended that; *" the defendant after the institution of the suit on 22nd day of May 2018, continued to pay for the Drum Wheat Flour supplied, by making further deposits on the plaintiff's Stanbic Bank Account to the tune of 3,000,000/= which left unpaid balance of 20,700,000/="*.

The applicant upon reading the said defence and specifically upon perusal of paragraph 20 of the defence. On 11th-06-2019, the applicant made an application for judgment on admission to be entered by the Chief Magistrate and further intimated in the said letter to court; *"Furthermore, once judgment is entered; the reminder of the plaintiff's claim is hereby withdrawn; This is done to save loss of value for money by our client."*

The defendant opposed the application for judgment on admission contending that; *Judgment on admission cannot be endorsed for a sum admitted but not sued for, without amending the plaint. That Judgment on admission cannot be endorsed with interest on the decretal amount which was not agreed upon by the parties"*.

The Learned trial Chief Magistrate refused to enter the judgment on admission and this prompted applicant to file this application to challenge the refusal as well as the earlier ruling made in court for granting leave to appear and defend.

The applicant was represented by *Mr Kasiisa Ronald* and the respondent was represented by *Mr Yiga Steven Geoffrey*. 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, Section 33 of the Judicature Act and Order 52 r1 &3 of the Civil Procedure Rules for Orders that;

- a) The learned Chief Magistrate erred in law when he failed to consider the application, affidavit in reply and submissions in MA No. 2 of 2019.
- b) The learned Chief Magistrate erred in law when he returned the same ruling in MA No. 2 of 2019 with varying orders from those in the earlier ruling in MA 734 of 2017.
- c) The learned Chief magistrate erred in law when he granted unconditional leave to appear and defend Civil Suit No. 1071 of 2017 in MA No. 2 of 2019 while he was *functus officio*.
- d) The learned Chief Magistrate erred in law when he failed to enter judgment on admission upon request.
- e) The learned Chief Magistrate erred in law when he entertained objections to an application for judgment on admission.
- f) Costs be paid by the respondent.

The application was supported by the affidavit of Eva Wangadya.

In opposition to this Application the Respondent filed an affidavit in reply by Kasule Abdul who vehemently opposed the revision orders sought by contending that the court had jurisdiction to hear the new application for leave to appear and defend and also to deny the applicant's application for judgment on admission.

I have considered the respective submissions, however I must state that counsel for the respective parties did at some extent venture into issues and preliminary points of law that in my opinion are not fit for consideration in the application of this nature.

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 challenging the chief magistrate on all the above grounds set out in the law.

The application and orders sought by the applicant are crafted as grounds of appeal rather than as orders of revision being sought.

The applicant contends that the court lacked jurisdiction to hear the second application for leave to appear and defend having already determined the earlier application and granted conditional leave to appear and defend. It was the applicant's submission that the court was *functus officio*.

The respondent's counsel submitted that the court has power to set aside its judgment and this does not mean it is *functus officio*.

I have considered the respective submissions.

The following issues were proposed for determination by this court.

- 1. Whether the learned chief magistrate exercised a jurisdiction not vested in him in law when he granted unconditional leave to the respondent in MA No. 2 of 2017**
- 2. Whether the learned chief magistrate failed to exercise a jurisdiction so vested when declined to enter judgement on admission.**

3. Whether the learned chief magistrate acted with material irregularity of injustice when he:

a) Failed to consider the application, affidavit in reply and submissions in MA No.2 of 2019.

b) Returned the same ruling in MA No. 2 of 2019 similar to that earlier delivered in MA 734 of 2017 but with varying orders

c) Granted remedies not sought by the respondent.

4. What remedies are available to the parties?

DETERMINATION OF ISSUES

Issue 1

Whether the learned chief magistrate exercised a jurisdiction not vested in him in law when he granted unconditional leave to the respondent in MA No. 2 of 2017

Submissions

Counsel for the applicant submitted that the chief magistrate having granted conditional leave to the respondent in MA 734 of 2017 was functus officio as regards the question of leave to defend. The respondent had neither appealed the magistrate's decision nor applied for a review of that decision and thus the learned magistrate could not vary the terms upon which he had allowed the respondent to enter into defense of the case. Counsel defined the term 'functus officio' to mean "without further authority of legal competence because the duties of the original commission have been fully accomplished (*see; Goodman Agencies Ltd v Attorney General & Anor Const. Petition No. 03 of 2008*).

Counsel therefore prayed that this court find that the learned magistrate could not reconsider his own decision and as such exercised a jurisdiction not vested in him in law.

Counsel for respondent disagreed with the argument of the applicant and submitted that the law of Civil Procedure allows a court to set aside its own judgement or order and it cannot be said to be functus officio in that respect. Counsel stated that where a decision as such as was made in the circumstances of this case , the court still has wide discretion in the proceedings to correct, alter and or supplement whatever its decision is under Order 36, Rules 8, 9,10 and 11 of the Civil Procedure Rules. Counsel further argued that where leave to appear and defend the suit is granted conditionally and the party fails to fulfill the condition as was in this matter, then the court cannot give judgement from which a decree can be extracted. It was argued that after court making a finding that the defendant has raised a defense with triable issues that merit judicial consideration, the same court cannot and should not, without a hearing inter parties on merit, give judgement from which a decree can emanate.

Counsel therefore submitted that the learned chief magistrate had all the powers to vary the terms and under these powers, the court granted the respondent unconditional leave and allowed it to file its defense.

Counsel for the applicant in his submissions in rejoinder reiterated his submissions and stated that the respondent had already sought and obtained leave in MA 734 of 2017 and that it was not seeking leave in MA No. 2 of 2019 as this had been resolved by court. Counsel further submitted that the provisions of Order 36 referred to by counsel for the respondent were cited out of context as none of them empowers any court to revisit its own decision without being so moved and without hearing the parties on the issue.

He stated that the rationale of the rule of functus of official is to ensure closure of issues determined by court by barring it from reopening the questions it has determined lawfully. He therefore prayed that court answers thi issue in affirmative.

Determination

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 that;

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,

the High Court may revise the case and may make such order in it as it thinks fit...

The High Court can 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 (*see; Munoba Muhammed v Uganda Muslim Supreme Council CR No.1 of 2006*). This court therefore has wide discretionary powers under section 83 of the CPR to revise decisions from the magistrates' courts.

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.”

In the circumstances of this case, the applicant contends that the chief magistrate was *functus officio* having granted the respondent conditional leave to defend in MA 734 of 2017.

The doctrine of *functus officio* as defined in Osborn’s Concise Law Dictionary arises where court has fully excised its powers over a case. Where a decision has been made the court is deemed to have exhausted its powers and cannot act again on the same matter (*see; ABC Capital Bank Ltd vs A-1 Industries Ltd & 2 Ors (Misc. Application No. 1059 of 2016)*).

The *functus officio* principle is rarely applied in civil matters since the court is vested with inherent powers to revisit its decision under inherent powers of court. The court in exercise of its powers can entertain any matters or set aside any of its orders in the interest of justice.

The court is empowered under Order 36 rule 11 allows any application to set aside its orders as well as section 98 Civil Procedure Act. The grant of conditional leave to defend is an exercise of discretion under Order 36 rule 8. The court could revisit the terms set by itself and it would be wrong to assume that the court which exercised its discretionary powers to set terms cannot revisit the same.

The court under Order 36 rule 10 is vested with jurisdiction to give all directions and make all orders as to pleadings, issues, and any further steps in the suit as may then appear reasonable or necessary, or may order the suit to be immediately set down for hearing.

I agree with the submissions of counsel for the respondent, the learned chief magistrate had fully exercised his powers guided by principles of justice equity and good conscience and especially where it realized an injustice being meted out to the party. Section 33 of the Judicature Act, the court may grant any such remedies appropriate to parties before the court.

Issue 1 is therefore resolved in the negative.

Issue 2

Whether the learned chief magistrate failed to exercise a jurisdiction so vested when he declined to enter judgement on admission

Submissions

Counsel for the applicant submitted that the applicant applied for judgement on admission and was advised to serve a judgement notice. On the date of judgement, the learned magistrate rather than deliver the judgement entertained objections to the application for judgement on admission.

Counsel cited Order 13, Rule 6 of the CPR on judgement on admission and further stated that the rationale is to save court's time and ensure prompt disposal of cases where an admission was made by the opposite party.

He therefore submitted that it was a lapse to exercise jurisdiction for the learned chief magistrate to entertain objections to the application rather than enter judgement and prayed that court answers this issue in affirmative.

Counsel for the respondent submitted on this issue and stated that chief magistrate did not endorse the judgement for the reason that the respondent raised objections to its endorsement as it contained falsehoods. He stated that it is not automatic for court to endorse such judgement on admission without

affording the respondent an opportunity to be heard on the same. Counsel stated that the grant of a judgement on admission is not as of right but a matter for the exercise of judicial discretion with regards being had to all circumstances of the case (see; **Wright Kirke v North [1895] CH 747**). He therefore submitted that the learned chief magistrate did not fail to exercise his jurisdiction so vested when he declined to enter judgement on admission.

Counsel for the applicant in rejoinder submitted that the respondent by its written statement of defence was admitting to being indebted to a tune of UGX. 20,700,000/= in clear terms. He therefore prayed that this issue be answered in affirmative.

Determination

The applicant's application is for judgement on admission brought under the provisions of Order 13, Rules 6 of the Civil Procedure Rules which provides as follows:

"Any party may at any stage of the suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon the admission he or she may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon the application make such order, or give such judgment, as the court may think just."

An admission of facts can be made either on the pleadings or otherwise. Secondly, the rule applies to any party to the suit whether the plaintiff or defendant. This is because a party may apply for judgement or order as upon the admission he or she may be entitled to. Of course the defendant cannot apply for judgement on the claim not pleaded other than for an order of dismissal of the Respondent's suit or disallowing the claim or such other orders as a defendant may be entitled to in the defense. This is particularly so when the defendant has no counterclaim against the plaintiff.

In this case, the plaintiff argues that the defendant made an admission in its written statement of defence as to be indebted to a sum of UGX. 20,700,000/= in clear terms. Raising objections against this admission when the applicant applied for judgement on admission as to falsehoods was astonishing.

The nature of the judgment on admission must be appreciated from the circumstances of the case. The applicant came to court asking for a sum of 40,000,000/= and when the respondent clarified to court that the amount known to them was 20,700,000/= in its defence.

The applicant came to court with dirty hands to the extent that he sought to recover more money than what was actually owed. The cause of action was brought and founded on bounced cheques to a tune of 40,000,000/= and yet the applicant was fully aware that the respondent had made some payments and the same had reduced about 23,700,000/=. That was an act of bad faith or abuse of court process to squeeze the respondent into a payment beyond what was due.

The applicant attempted to carry out an execution for an entire sum of 40,000,000/= and yet the amount had since reduced to a sum of 20,700,000/=. As court of justice we condemn the act of obtaining judgment by concealing the real amount due.

The learned trial Chief Magistrate was justified to interrogate the reduced figure by insisting on a preliminary hearing so that it could exercise its discretion justly and fairly due to the circumstances of the case.

Be as it may, court has the discretion to make such order, or give such judgment, as the court may think just in cases where a party applies for judgement on admission.

This issue is therefore answered in the negative.

Issue 3

Whether the learned chief magistrate acted with material irregularity of injustice when he:

- a) Failed to consider the application, affidavit in reply and submissions in MA No.2 of 2019.***
- b) Returned the same ruling in MA No. 2 of 2019 similar to that earlier delivered in MA 734 of 2017 but with varying orders***
- c) Granted remedies not sought by the respondent.***

This ground has already been covered when arguing grounds one. I have addressed my mind to the submissions of both counsel in respect of this issue and having found issue one in negative, I believe this is also disposed of thereunder. This court also answers this issue in the negative.

Issue 3 is therefore answered in the negative

Issue 4

What remedies are available to the parties?

This court makes the following orders that;

- a) Judgment on admission of UGX. 20,700,000/= is entered for the applicant.
- b) The applicant is awarded interest at a rate of 10% per annum from the date of ruling until payment in full.
- c) The applicant is denied costs of the suit due to their conduct in filing a suit for an amount over and above what was due to them.
- d) This court makes no order as to costs in respect of this application.

I so order.

SSEKAANA MUSA

JUDGE

13th March 2020