

THE REPUBLIC OF UGANDA
INH THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
REVISION CAUSE NO. 12 OF 2020
(ARISING OUT OF KIRA CIVIL SUIT NO. 009 OF 2020)

1. MASEMBE RONALD
2. KAYIWA JOSEPH BBOSA:.....APPLICANTS

VERSUS

AZAAN TRADING LTD:.....RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

This application is brought under Section 83 & 98 of the Civil Procedure Act, Section 33 of the Judicature Act Cap 13, Order 52 Rules 1, 2 and 3 of the Civil Procedure Rules seeking for orders that;

1. Kira Chief Magistrate's Court Civil Suit No. 009 of 2020 AZAAN TRADING LTD vs MASEMBE RONALD be revised.
2. Execution of the decree obtained from Kira Chief Magistrate's Court Civil Suit No. 009 of 2020 be set aside.
3. The attachment of Motor vehicle Registration Number UBD 305M CHASIS NO. TRH 223-6002093 Toyota Hiace be set aside in for it was done illegally and irregularly.
4. The said Motor vehicle Registration No. UBD 305M CHASIS No. TRH 223-6002093 be released to the applicants.

5. In the alternative to 4 above, the respondent compensates the applicants with the current market value of the vehicle namely UGX 64,745,000/-(Sixty Four Million, Seven Hundred Forty Five Thousand Only) which the Respondent already attached and sold in execution of an unlawful, illegal and irregular order.
6. Any other relief court may deem fit.
7. Costs of this application be provided for.

The grounds upon which the application is based are contained in the affidavits in support of the application deposed by both applicants and briefly they are;

- a) That the Respondent filed Civil suit No. 009 of 2020 against the 1st applicant seeking for inter alia, recovery of sums of money (UGX 20,255,000/-)from an alleged breach of contract for sale of a motor vehicle for UGX 85,000,000(Eighty Five Million Shillings only), which subject matter is above the pecuniary jurisdiction of Kira Chief Magistrate's Court.
- b) Kira Chief Magistrate's court did not have territorial jurisdiction to entertain a suit whose subject matter namely the agreement was executed at Plot 16, 4th street, Industrial Area, Nakawa Division of Kampala Capital city.
- c) That before even passing judgment in the suit filed in Kira court which had no jurisdiction, and without a warrant of attachment before judgment, the respondent attached and sold the applicant's Motor vehicle Registration Number UBD 305M.
- d) That the applicants were not served with any court process except seeing an advert in the Daily Monitor Newspaper of 28th February 2020, allegedly by which the said Motor vehicle was being advertised for sale under a court order.

- e) That the said News Paper advert did not in itself disclose the particulars of which court had issued the said court order, or even the date of the order.

The Respondent opposed the application by filing an affidavit in reply deponed by Muhammad Jamshed the Managing Director of the Respondent to the effect that;

1. The contents of the Affidavit in support of the Application are full of falsehoods and thus it ought to be struck out with costs. He contended that all the prayers by the applicant are baseless, unjustified and no right of the applicant has been violated by the applicant and the same should be disallowed.
2. That the 1st Applicant was availed with the court documents in Civil Suit No. 09 of 2020 and that is why the applicants managed to file the application. The deponent further stated that the said suit was rightly instituted against the 1st Applicant as he was the owner of the vehicle pursuant to the agreement.
3. That the applicants have never objected to the agreement but they are just raising it now to frustrate the Respondent. He further stated that the Respondent was not claiming the whole purchase value of the vehicle but rather the balance which is UGX 20,255,000 and interest thereon which is within the jurisdiction of the court.
4. That the Chief Magistrate's court of Kira had the Jurisdiction to hear the case since the contract was partly performed in Namugongo, Kira Municipality Wakiso District.
5. That the applicant was aware that the said motor vehicle had been parked at the Respondent's bond since the date it was lawfully impounded in accordance with the terms of the contract but the applicant still refused to pay the outstanding debt.

6. The Respondent further adds that the application is tainted with fraud, ill motive and abuse of court process and as such, it ought to be dismissed with costs.

In rejoinder, the applicant stated that the entire transaction of negotiating, purchase and handing over of the motor vehicle from the respondent was done at the Respondent's car depot located at Plot 4/5 Spring road, Old Port Bell Road, Nakawa Division of Kampala.

That all receipts bear the Respondent's address and delivery of the motor vehicle was made at the Respondent's place of business. He further added that HCMA No. 145 of 2020 was about enforcement of Human Rights and as such, it has no bearing to the present case for revision. He argued that the vehicle was impounded on orders allegedly obtained from a court which lacked jurisdiction and as such, the process was irregular.

At the hearing, the applicants were represented by *Counsel Mark Kalyango* and the Respondent was represented by M/s T. Odeke & Co. Advocates. The court gave directives for filing of submissions, counsel for the applicants filed written submissions which have been duly considered in making this ruling while counsel for the Respondent did not file written submissions.

Issues

1. *Whether the Kira Chief Magistrate's court had the Jurisdiction to hear the matter?*
2. *Whether the application warrants the grant of an order for revision?*
3. *What remedies are available to the parties?*

Determination

Counsel for the applicant submitted that the Jurisdiction of Magistrates is presently provided for by **Section 207 of the Magistrate's court Act** which states that a Chief Magistrate shall have Jurisdiction where the value of the subject matter in dispute does not exceed fifty million shillings and shall have unlimited Jurisdiction in disputes relating to conversion, damage to property or trespass. He

stated that in regards to the pecuniary jurisdiction, the subject matter that was valued at 85,000,000/= (Eighty five Million Shillings only) as agreed upon in the memorandum of Sale of Motor vehicle. The same was attached to the Application and marked JK "V". This was also stated in paragraphs 5 and 37 of the 2nd applicant's affidavit in support of the application.

In regard to territorial jurisdiction, counsel for the applicant argued that the parties entered into a memorandum of sale at the Respondent's address at Nakawa where its bond is located. He further argued that in addition to that, all the receipts that prove payments bear its address which is plot 4/5 street Industrial Area, Spring Road, old Port bell Road Kampala. Counsel referred to the Magisterial Areas and Magistrates Court Statutory Instruments No. 11 of 2016 which gives the magisterial areas and their extents, he argued that the said instrument clearly places Nakawa Division of Kampala Capital City under Nakawa Chief Magistrate and not Kira Chief Magistrate's court.

He further added that even Nakawa chief Magistrate's court did not have the pecuniary jurisdiction to hear the matter. He cited the case of **Koboko District Local Government v 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 is at once fundamental and overarching 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."

Counsel also referred to the **case of Makula International Ltd Vs His Eminence Cardinal Wamala Nsubuga (1982)** where it was held that an illegality once brought to the attention of court overrides all questions of pleading including admissions. Counsel argued that the Chief magistrate's court of Kira exercised jurisdiction which was not vested in it and as such, it committed illegalities which empowers this court with the discretion to revise the said judgment. Counsel also

cited **the case of Hitlia vs Uganda (1969) 1EA 219**, where it was held that the High court in exercising its discretion can use wider powers in which it appears that an error material to the merits of the case or involving a miscarriage of justice had occurred. Counsel argued that it is in the best interest that this court exercises its discretion in favor of the applicants and allows the application with costs.

Analysis.

Applications of this nature are governed by **Section 83 of the Civil procedure Act** which provides for the grounds to be satisfied for the said application to be granted. For such an application to succeed, the applicant must show that the order he seeks to be revised was passed by a court which;

- 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.

As long as one of the prerequisites is successfully proved by an applicant, court is inclined to grant an application for revision for the interest of justice. Counsel for the applicants argued that the Chief Magistrate's court of Kira lacked the pecuniary Jurisdiction to try the matter considering that the purchase price of the Motor Vehicle for which the Respondents were seeking to recover the balance is UGX 85,000,000/= which is not within the value of the Chief Magistrate's court.

With all due respect, I do not agree with counsel's submission as the Respondent instituted Civil Suit No. 009 of 2020 seeking to recover UGX 20,255,00/= being the outstanding balance from the 1st applicant. In ascertaining what a plaintiff seeks to recover, court is inclined to consider the plaint which is the key pleading that lays out a plaintiff's case; not the written statement of defence or its accompanying documents because the plaintiff knows his case better. The question of whether a plaint discloses a cause of action must be determined upon perusal of the plaint alone together with anything attached so as to form part of it. See ***Kebirungi v Road Trainers Ltd & 2 others [2008] HCB 72, Kapeka Coffee Works Ltd v NPART CACA No. 3 of 2000.***

It is therefore not right to bring up the original value of the motor vehicle of 85,000,000/= when the Respondent sought to recover the balance which the applicants admit in their affidavits in support. It is therefore my conclusion that the Chief Magistrate court of Kira had the pecuniary jurisdiction to try Civil Suit No. 009 of 2020 for the recovery of the balance of 20,255,000/=.

On the issue of geographical jurisdiction, counsel for the applicant submitted that the parties entered into the memorandum of sale at the Respondent's address in Nakawa where the bond is located. The agreement together with all the payment receipts annexed to the application bare the said address. Where questions of whether or not a court has jurisdiction arise in contract matters, the provisions of Section 15 of the Civil Procedure Act pertaining contracts have to be taken into consideration.

Such questions arising out of contract are dependent on where the cause of action arose in terms of where the contract was made or where it was performed and completed and where the payment was made. See **Sebaggala & sons Electric Centre v Kenya National Shipping Lines UCL [1997-2001]**. Counsel for the applicant argued that the contract was negotiated and concluded in Nakawa at the Respondent's bond. Counsel for the Respondent did not file written submissions but in the affidavit in reply, it was deposed that the contract was partly negotiated in Namugongo which is within Kira Municipality at their other branch. No evidence was however adduced to prove the said facts. Counsel for the applicant on the other hand attached the agreement and receipts of payment all bearing Nakawa as the location in which the transaction was concluded.

The law under **Section 91 of the Evidence Act** is very clear about instances where a contract is reduced into writing; oral evidence cannot be adduced to prove terms of a written contract save for the exceptions under Section 79 of the Act. It is therefore my finding that according to the evidence on record, the contract was executed and concluded in Nakawa where the Respondent also delivered the Motor vehicle to the Applicant.

The jurisdiction of a court is the authority of that court to entertain or decide a case. It connotes the limit or extent of the power of the court. The magistrates'

court being a lower court, has no jurisdiction except that which is expressly conferred on it by statute. The statutory limitations on jurisdiction of the magistrates court is regulated by the Magistrates Courts Act based on locality, subject matter or time.

The Magistrates Court is legally empowered to operate within a defined geographical/territorial area or district. A Magistrates court cannot, therefore, unless expressly authorized by statute, exercise jurisdiction over a cause or matter arising within the specific geographical or judicial district assigned to it. The geographical/territorial jurisdiction varies from one court to another and so the precise limits of any court must specifically be determined by the ***Magistrates Courts (Magisterial Areas) Statutory Instrument No. 11 of 2017*** which is the current law or any other statute granting the jurisdiction. Territorial jurisdiction of a court is relevant for the validity of any proceedings before the court.

Therefore, any proceedings before a magistrate who sits outside his/her territorial judicial jurisdiction are a nullity and must be set aside to stop any practices of forum shopping which may bred corrupt practices. The jurisdiction of the magistrates' court is expressly limited by statute; it cannot, therefore, be presumed or implied. Therefore, a Magistrates court which tries a cause or matter, the jurisdiction of which has not been granted by law, clearly acts in excess of jurisdiction. The court cannot assume jurisdiction in the interest of justice or by misconstruing a statute. See ***PDP v Okorochoa {2012} 15 NWLR p 205(SC) African Newspaper of Nigeria Ltd v FRN (1985) 2 NWLR (pt 6) p. 137***

The Chief Magistrate's court of Kira therefore exercised jurisdiction not vested in it by law since it did not have the territorial Jurisdiction to hear the matter and as such, its decision was a nullity *ab initio*.

What remedies are available?

Absence of jurisdiction is irreparable in law and the only procedural duty of a court is to strike out the case. Once the proceedings and judgment of a trial is a nullity, the matter ends there, since you cannot put something to nothing.

- a) The Chief Magistrate's court of Kira at Kira did not have Jurisdiction to hear Civil Suit No. 009 of 2020 and the same is struck out.
- b) The judgment and orders of the chief magistrate are hereby set aside.
- c) The order for impounding Motor vehicle Registration No. UBD 305M CHASIS NO. TRH 223-6002093 Toyota Hiace is hereby set aside.
- d) The said motor vehicle be released to the applicants forthwith.
- e) The respondent should pay the costs to the applicants.

I so order.

Ssekaana Musa

Judge

14th October 2022