

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

CIVIL REVISION APPLICATION NO. 0010 OF 2022

(Arising from Misc. Application No. 61 of 2021)

(All arising from Civil Suit No. 227 of 2016)

EAST AFRICA COCOA & COMMODITIES-SMC LTD:.....APPLICANT

VERSUS

D’ALESSANDRO LOGISTICS LTD:.....RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The applicant filed this application under Sections 83 and 98 Civil Procedure Act, Cap 71, Section 33 of the Judicature Act, Cap 13, Order 52 Rules 1, 2, & 3 of the Civil Procedure Rules SI 71- 1 for orders that;

- 1. The ruling dated 21st of April 2022 in Miscellaneous Application No. 061 of 2021 and its orders dismissing the same Application be revised;*
- 2. The ruling dated 21st April 2022 in Miscellaneous Application No. 061 of 2021 in which the trial magistrate reversed the orders that were made on the 28th of March 1022 be set aside;*
- 3. The ruling delivered on 28th March 2022 in which Miscellaneous Application No. 061 of 2021 was allowed be confirmed.*
- 4. Costs of this application be provided for.*

The application was premised on the following grounds;

1. That the learned trial Magistrate Grade one acted in the exercise of her jurisdiction illegally, or with material irregularity or injustice.
2. That the Trial Magistrate failed to exercise a jurisdiction so vested in her by declining to endorse the orders made in the ruling she delivered on the 28th of March 2022 and avail a copy of the said ruling to the applicant.
3. That the trial magistrate irregularly applied the Provision of Section 99 of the Civil Procedure Act, Cap 71 to reverse the orders made on the 28s March 2022 in Miscellaneous Application No. 061 of 2021 when she was already *functus officio*.
4. That there is sufficient cause for revision of the ruling and the orders made on the 21st of April 2022 dismissing Miscellaneous Application No.061 of 2021.

The respondent opposed this application on the following grounds;

1. The application is unmeritorious, misconceived, and bad in law.
2. That there was no ruling or court order on the court record setting aside the attachment and/or ordering the release of the attached property.
3. That the trial magistrate never delivered her ruling on 28th March 2022 for reasons that she explains in her ruling on 21st April 2022.

4. The trial magistrate couldn't issue the applicant with a certified copy of a ruling which she had only read but hadn't signed or endorsed to give it efficacy as a decision of the court.
5. That the unverified and uncertified alleged recording of court proceedings which was conducted by the applicant's employee without the trial court's notice and/ or permission cannot be relied upon in evidence as the trial court's official record for purposes of revising the trial court's ruling and orders in misc. application no. 061 of 2021.

The applicant was represented by *Tumwesigye Eric* while the respondent was represented by *Renato Kania*

The parties filed written submissions that were considered by this court.

Determination

In submissions, counsel for the applicant raised a point of law that the application was unopposed. Counsel submitted that the respondent had been served on the 21st of September 2022 and ought to have filed an affidavit in reply by the 5th of October 2022. That the respondent had not sought leave to file the affidavit in reply out of time. Counsel prayed that the court find that this application was unopposed.

Counsel for the respondent on the other hand prayed for the validation of the affidavit in reply.

Validation of the affidavit in reply, in this case, would not prejudice the applicant in any way. The respondent's affidavit in reply is therefore validated.

Whether the learned trial Magistrate exercised jurisdiction illegally or with irregularity?

The applicant contends that they filed an objector application vide misc. application no. 061 of 2021 on the 28th of September 2021 in the Chief Magistrates court of Nakawa at Luzira seeking for orders inter alia that the applicant's machinery attached in the execution of a Decree in Civil Suit No. 227 of 2016 be released from attachment. That the application was heard inter parties and allowed on the 28th of March 2022 with the Trial Magistrate finding that the attachment of the applicant's property had not followed due process of the law and the attachment was set aside and ordered the attached property to be released to the applicant.

The applicant contended however that despite their efforts to extract an order in terms of the ruling and filing the same for endorsement, the Trial Magistrate refused to endorse the same and avail a copy of the said ruling to the applicant. That the Trial Magistrate instead issued summons dated 19th April 2022 addressed to the parties and their respective lawyers to appear before her in the same matter without indicating the purpose of the summons.

It was the applicant's contention that when they appeared on the 21st April 2022 the Trial Magistrate caused an injustice to the applicant when she irregularly re-opened the case, re-evaluated the evidence and reversed her ruling in the matter under the pretext of the provisions of Section 99 of the Civil Procedure Act.

Counsel for the respondent argued that the Trial Magistrate had only read a draft ruling on the 28th of March 2022 and that before she could sign it she had realized that she had made a mistake to release the property on a wrong position of the law and facts which informed her decision to rectify the mistake in the final ruling of 28th March 2022. Counsel argued that the judgment was not complete until it was signed as per Order 21 Rule 3(1)

Civil Procedure Rules hence the applicant was confusing a draft ruling which wasn't signed with the final court ruling which was signed.

In rejoinder, counsel for the applicant submitted that the argument by the respondent's counsel that what was read in court was a draft judgment was a strange procedure alien to our laws of Uganda. Counsel submitted that Order 21 Rule 3(1) cited by the respondent by its reading envisioned that the judgment pronounced in court was the final decision and that the procedure of convening parties adopted by the trial magistrate to read a draft ruling was strange and alien to the court.

Analysis

Section 83 of the Civil Procedure Act 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 if that court appears to have —

(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, the High Court may revise the case and may make such order in it as it thinks fit; but no such power of revision shall be exercised —

(d) unless the parties shall first be given the opportunity of being heard; or

(e) where, from lapse of time or other cause, the exercise of that power would involve serious hardship to any person.

The applicant in this case contends that in the exercise of her jurisdiction, the trial magistrate acted illegally with irregularity and caused an injustice.

The court proceedings show that the court ruling was read in chambers on the 28th March 2022. On the 21st April the Trial Magistrate stated that she

had issued summons to the parties because she had made an accidental mistake on the 28th March 2022 by releasing the attached properties on a wrong proposition of the law and thereby rectified that under S.99 of the Civil Procedure Act and gave her ruling in Misc. Application No. 61 of 2021 on 21/4/2022. The trial magistrate also stated that what was read on the 28th of March 2022 was a draft.

Section 99 of the CPA is to the effect that clerical or mathematical mistakes in judgments, decrees or orders, or errors arising in them from any accidental slip or omission may at any time be corrected by the court either of its own motion or on the application of any of the parties.

The trial magistrate on the court's own motion moved to correct her ruling under section 99 for reasons that she had released the properties on the wrong position of the law. The trial magistrate altered her decision completely from releasing the attached properties to finding that the applicant had failed to make a case for the release of the properties from attachment. This in my humble view amounted to a new decision/ ruling in the same matter and not correction of a clerical or mathematical error under S.99 of the Civil Procedure Act.

Furthermore, the argument by the respondent and pronouncement by the trial magistrate that the decision that had been read to the parties on the 28th of March 2022 was a *draft ruling* is incomprehensible. Our laws do not provide for the pronouncement of draft rulings or draft judgment/decisions to parties. Order 21 Rule 3 (1) provides that a judgment pronounced by the judge who wrote it shall be dated and signed by him or her in open court at the time of pronouncing it. This means that the decision/ judgment pronounced is presumed to be final, dated, and signed. There is no provision for the pronouncement of draft rulings/judgments.

There was a contention as to whether the trial magistrate was *functus officio* when she issued summons to the parties for the 21st of April 2022.

*Black's Law Dictionary, 5th Edition, a Page 606 explains the expression **Functus officio** as follows:*

(a) A task performed.

(b) Having fulfilled the function, discharged the office, or Accomplished the purpose, and therefore of no further force or authority.

It is a trite principle of law that a court is *functus officio* once it has delivered its judgment/order. The court is not empowered to vary or change its regularly obtained judgment or order.

The trial magistrate only possessed powers to clarify the terms of an order and to make ancillary orders primarily to give effect to the decision or judgment handed down but not to vary her entire decision.

A court can only revisit its decision in an application for review under Section 82 of the Civil Procedure Act and Order 46 of the Civil Procedure Rules or in an application to set aside a ruling. The trial court does not have luxury of altering or varying a ruling or orders made or duly delivered in court under the guise of correcting errors as the trial Magistrate did in this case.

Any judgment or ruling, however well written as final, if given without jurisdiction or within jurisdiction but illegally or with material irregularity or injustice is no judgment or ruling at all.

With the foregoing, this court finds that it was illegal, unjust, and irregular for the trial magistrate to alter and deliver a new ruling in the same matter where she had already pronounced herself.

The ruling dated 21st April 2022 in Miscellaneous Application No. 061 of 2021 in which the trial magistrate reversed the orders that were made on the 28th of March 1022 is set aside

The ruling delivered on 28th March 2022 in which Miscellaneous Application No. 061 of 2021 was allowed is confirmed. The applicant's properties be released from attachment forthwith.

Costs to the applicant.

I so order

SSEKAANA MUSA

JUDGE

14th December 2022