

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
CIVIL APPEAL No 97 OF 2017
(ARISING FROM MISCELLANEOUS APPLICATION No. 276 of 2017)
(ARISING FROM CIVIL SUIT No. 39 of 2017)**

**1. HUSSAIN GRINDING MILL LTD ===== APPELLANTS
2. ZAKIR HUSSAIN**

VERSUS

ASM MINERALS PROCESSORS LTD ===== RESPONDENT

BEFORE: HON. JUSTICE MICHAEL ELUBU

JUDGMENT

This appeal was filed by **Hussein Grinding Mill Ltd** and **Zakir Hussain** against **ASM Mineral Processors Limited** challenging the ruling and orders of **HW Byaruhanga Jesse Ruggyema**, the Deputy Registrar Jinja High Court, which was delivered in MA 276 of 2017 on the 5th of October 2017.

The background to this matter is that the Respondents, **ASM Mineral Processors Ltd**, filed a suit against appellants, **Hussein Grinding Mill Ltd & Another**, in which they sought, inter alia, orders that a stone grinding machine be attached. The Respondent then filed Miscellaneous Application No. 276/2017 seeking a Temporary Injunction to preserve, in the courts custody, the stone grinding machine which is the subject matter in the civil suit. When the matter came up for hearing before the Deputy Registrar, Counsel for the Respondent objected challenging the jurisdiction of the Deputy Registrar to handle an application for Temporary Injunction, which in his view, ought to be heard by the Trial Judge.

The Deputy Registrar overruled Counsel for the Respondent in a ruling delivered on the 5/10/2017.

The Respondents then filed this Appeal, by a lodging a Memorandum of Appeal with 3 grounds, against the ruling of the Deputy Registrar.

The grounds of Appeal are:

1. That the Learned Deputy Registrar erred in law and fact when he overruled the Appellants' objection as to his jurisdiction to hear and determine Misc. Application No. 276 of 2017 as Registrar hence denying the Appellants a proper forum to make their case.
2. That the Learned Deputy Registrar erred in law and fact when he assumed jurisdiction to hear and determine the substantive Application No. 276 of 2017 without specific delegation by the Judge and/ or the law thus occasioning an illegality.
3. That the Learned Deputy Registrar erred in law and fact when he failed to refer and/or place Misc. Application No.276 of 2017 before the Honourable Judge for determination and thereby indulging in an illegal process likely to result in a nullity.

The appellants were represented by Mr Jacob Osillo. Mr Stephen Muzuusa appeared for the respondents.

It was argued by the respondent that this appeal ought to be dismissed as it was filed on the 10th of October 2017 and yet challenged the Courts orders made on the 12th of the same month. I disposed of this matter in the preliminary objection and shall not dwell on it again.

Grounds 1 and 2

- 1. That the Learned Deputy Registrar erred in law and fact when he overruled the Appellants' objection as to his jurisdiction to hear and determine Misc. Application No. 276 of 2017 as Registrar hence denying the Appellants a proper forum to make their case.***

- 2. That the Learned Deputy Registrar erred in law and fact when he assumed jurisdiction to hear and determine the substantive Application No. 276 of 2017 without specific delegation by the Judge and/ or the law thus occasioning an illegality.***

Mr Osillo argued grounds 1 and 2 jointly. He argued that the Registrar did not have the power under Order 50 of the Civil Procedure Rules to handle an application such as the one in MA No 276 of 2017. He conceded that a Registrar may handle several different types of interlocutory applications, but under Practice Direction No 1 of 2004 the Chief Justice excluded this particular kind of application.

Mr Muzuusa replied that Order 50 of the Civil Procedure Rules gives the Registrar the powers to deal with all interlocutory matters and as such he could competently handle application No 276 of 2017. He relied on the Court of

Appeal decision in **Mohamed Kalisa vs Nyangire & Ors COA Civil Ref No 139 of 2013**. He argued that the ruling of the Court of Appeal supported this position and therefore the Deputy Registrar had the Jurisdiction to dispose of the application.

Turning now to the merits, and as I see it, the appellants are challenging the jurisdiction of the Deputy Registrar to handle an application filed under Order 41 of the Civil Procedure Rules.

It is true that Order 50 r. 3 of the Civil Procedure Rules stipulates that all formal steps preliminary to the trial, and all interlocutory applications, may be made and taken before the registrar. It has also been clarified by the Chief Justice in Practice Direction No. 1 of 2003 what powers Registrars may exercise. Temporary injunctions and other interlocutory orders under Order 41 are not included in the Practice Direction. These directions have the force of law as envisaged in Art 133 (1) (b) of **The Constitution of The Republic of Uganda** which provides that The Chief Justice may issue orders and directions to the courts necessary for the proper and efficient administration of justice.

In MA 276 of 2017 the Deputy Registrar overruled an objection to his jurisdiction, raised by the applicants, who asked for the application to be placed before the judge for determination. That application sought orders of preservation under Order 41 r 7 of the CPR. As can be seen from the Practice Direction No.1 of 2003, the Deputy Registrar had no powers to hear and determine that application.

I therefore find that the DR erred in law when he heard the said application and as such Grounds 1 and 2 of the Appeal succeed.

Ground 3

That the Learned Deputy Registrar erred in law and fact when he failed to refer and/or place Misc. Application No.276 of 2017 before the Honourable Judge for determination and thereby indulging in an illegal process likely to result in a nullity.

It was argued by the appellants that the Registrar should have referred the matter to the Judge as Order 50 r.7 stipulates. The registrar declined to do so and went on to hear the application. It was contended that as the registrar had no powers and still went ahead to hear the matter then this ground of appeal ought to succeed.

The respondent opposes this and submitted that the rule is not couched in mandatory terms and for that reason, the registrar was well within his jurisdiction not to refer a minor issue to the judge.

Order 50 r. 7 that if any matter appears to the registrar to be proper for the decision of the High Court the registrar may refer the matter to the High Court and a judge of the High Court may either dispose of the matter or refer it back to the registrar with such directions as he or she may think fit.

It appears from the circumstances of this case that this would have been the proper thing to do considering that the registrar had no jurisdiction to dispose of the matter.

For the foregoing reason the third ground of appeal succeeds.

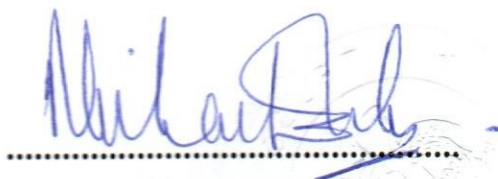
The applicants have prayed that this court should invoke its inherent powers in Section 98 of the Civil Procedure Act and under Section 33 of the Judicature Act set aside the subsequent orders made under MA 276 of 2017.

It should be noted that a decision of a court without jurisdiction is a nullity and as such is something which a person affected by it was entitled to have set aside *ex debito justitiae* (see **Mubiru Vs Edmond Kayiwa**[1979] H.C.B. 212).

It is true that the DR Ordered that the machine which was the subject of the MA 276 of 2017 be placed under the custody of the Court in his order of the 12th of October 2017.

This order has now been brought to the attention of the Court. It is clearly a nullity as it was issued by a court that did not at the time have powers to issue it. As such the order should be and is hereby set aside.

This appeal is therefore allowed with costs.



Michael Elubu

Judge

1.12.17