

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
MISC. APPLICATION NO. 662 OF 2003
(Arising from MISC. No. 65 of 2003)

PIUS OCUWAIAPPLICANT

Versus

MARGARET OCUWAIDEFENDANT/RESPONDENT

BEFORE: HON. JUSTICE V. A. R. RWAMISAZI-KAGABA

J U D G M E N T

This is an application for review filed by Mr. Emesu George, Counsel for the applicant under Order 42(2)(a) and 8 of the C.P.R. and section 10 of the C.P.A. The application is supported by the affidavit of the applicant and is grounded on one main ground that the judgment and decree passed by the High Court in Misc. Application No. 65/2003 whereby the High Court made an order dismissing the applicant's appeal should be reviewed as the proceedings in Misc. Application No. 65/2003 related to the application for leave to amend the

respondent's pleadings and not the merits of the case/petition that was before the Chief Magistrate (*Divorce Cause No. 1/2000 before the Chief Magistrate sitting at Entebbe*).

At the end of his submissions, Mr. Emesu observed he had filed his application under the wrong provisions of the law which would make his application senseless and meaningless.

Under section 98 of the P.C.A. the court has inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. Such powers would include allowing an amendment of the pleadings where a relevant law is omitted or a wrong provision of the law is pleaded. The limitation placed on the court's discretion under this section is where there is a specific provision of the law which is not pleaded.

See: (1) Standard Chartered Bank vs. Clouds 10 Ltd (1988) HCB 24.

(2) Bahemuka vs. Anywar & another (1987) HCB 71.

In allowing the counsel to amend his pleadings by putting the relevant or correct provisions of the law I am guided by the decision of the Court of Appeal in the case of ***Raniga vs. Jivra and others (1965) EA 700*** where the court held that the power of the court to amend its judgment in order to give effect to the intention of the court extends to counsel who applies to the court to make good an omission resulting from an oversight by counsel.

I will therefore in the exercise of the powers vested in this court under the above-mentioned section grant leave to counsel for the applicant to substitute Order 42 rule 1(a) 2 and 8 of the C.P.R. and section 101 (now 98) of the C.P.A. instead of the provisions of the law which counsel put there erroneously and or through an oversight.

The application was opposed by Mr. Wairugala Fred who submitted that the law under which is brought is non-existent. Secondly, counsel submitted, the present application is incompetent in law and has no merit.

In my Judgment of 22/8/2003 I pointed out many irregularities with which the proceedings before the Chief Magistrate at Entebbe in Divorce Cause 1/2000 and the applications there under, were tainted. The applicant presented his application to amend his pleadings, first orally and then under section 232 of the Magistrate's Courts Act. I laboured at length to show that Chief Magistrate should have rejected the application brought under section 232(1)(c) as the Chief Magistrate was not sitting as an appellate court. Even invoking Order 40 of the C.P.R. did not help the situation as "the order refusing leave to amend the pleadings, (*I presume under Order VI rule 18 of C.P.R.*) is not provided for as one of those situations under that order.

Under Order 40 of the C.P.R., the applicant/appellant may appeal to the High Court:

- a) after the trial court granted leave to appeal,
- b) after the trial court has refused leave to appeal and,
- c) after the High Court has granted leave to appeal to it after the trial court has withheld it from the intending appellant.

I also discussed the purpose of seeking to amend the written statement defence at that late stage, without notice to the other party and when the main issue of the dissolution of marriage was already determined. I rightly observed that this was an obvious abuse of the process of the Court and or a calculated process to delay the disposal of the suit/petition.

I will now turn to the present application. Under Order 42 rules 1(a) and 2 of the C.P.R., under that sub-rule, an application for review may be made to the judge who passed the decree or made the order on the grounds that there is a clerical mistake or error on the face of the record or for any other cause.

H.C. Misc. Application No. 65/2005 was a follow up to Miscellaneous Application No. 21/2002 where the Chief Magistrate dismissed the application for leave to appeal to the High Court on the 24/2/2003. The heading of Misc. Application No. 21/2002 reads as follows:

Notice of Motion

“Under O.40 rule 1 (2)(3) and (4) of the CPR and section 101 of the C.P.A.”

As already pointed out, the Chief Magistrate erred in approaching the application using the principles laid out under section 232(1)(c) of the Magistrate’s Courts Act. This section relates to applications to appeal from the decisions and orders of the Chief Magistrate made in appeal. The Chief Magistrate was not sitting in appeal. She was sitting as a Court in its original jurisdiction. (see pages 11 and 12 of her judgment). I have therefore observed that there was an error apparent on the proceedings of the Chief Magistrate. The Chief Magistrate, using Order VI rule 18 dismissed the application on the ground that it was not just to grant the application in the first place, and to grant it, would amount to the abuse of the process of the Court.

The present application No. 65/2003 is headed as follows:

Notice of Motion

[Under 232 (4) of the M.C.A. 1970 and Order 40 rules (1)(2)(3) and (4) of the C.P.R. and section 101 of the C.P.A.

Rule 1 of Order 40 does not include order refusing leave to amend the pleadings under O.VI rule 18 of the C.P.R. Subsection (2) of that order clearly states:-

“An appeal under these rules shall not lie from any other order save with leave of the court making the order or the court to which an appeal would lie if leave was given.”

Since an application under O.VI, rule 18 is not one of the orders envisaged under rule 1(a) to (u) of Order 40, the proceedings brought under O.40 rule (1)(2)(3) and (4) of the C.P.R. were misconceived in law.

In the second alternative, there could be no competent application to appeal to the High Court since the Chief Magistrate was not sitting as an appellate court. The application of section 232 (4) of the Magistrates Courts Act was misconceived, misplaced and misapplied by both the Chief Magistrate and the appellant’s counsel. It was a situation where, to use the words of section 83 (c) of the Civil Procedure Act, the Chief Magistrate acted in the exercise of her (its) jurisdiction illegally or with material irregularity or injustice.

As a consequence of what I have said above, no competent application could be lodged to the High Court from an illegal or void order made by the Chief Magistrate in Misc. Application No. 21/2002.

See: (1) Tayehwa vs. Bongonzya (1992-3) HCB 143

(2) Mutemba vs. Yamulinga (1968) EA

(3) *Thomas James Arthur vs. Nyeri Electricity Undertaking*
(1961) EA 492

The main concern of Mr. Emesu is the use of a word “**appeal**” which appears at p.9 of my judgment. I upheld the orders of the Chief Magistrate dismissing the applicant’s applications for leave to amend his written statement of defence made on the 5/7/2002 and 24/2/2003 respectively.

Mr. Emesu contends that this was an error on the face of the record. It is true Order 42(1)(a) permits court to review its decision on account of some mistake or error apparent on the face of the record or for any other sufficient reasons.

See: (1) Tamitaha Ltd. vs. Mawa Handles Anstalt

Civil Case No. 32/1956 (1957) EA 215

(2) Mohamed Haji Abdulla vs. Ghela Manek Singh

(1956) 23 EACA 342.

The issue raised by Mr. Emesu can be rectified under sections 99 and 100 of the Civil Procedure Act where it is provided:

“ **Section 99 provides:** 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.”

Section 98 of the Civil Procedure Act states:

“Nothing in this Act shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.”

and section 100 of the same Act provides:

“The court may at anytime, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in the proceedings in a suit, and all necessary amendments shall be made for the purpose of determining the real questions or issue raised by or depending on such proceeding.”

The powers of the court under the above quoted provisions of the Civil Procedure Act are wide. It can rectify any error which appears on the face of its record. This includes its judgment provided the court is not *funtus officio* and the amendment does not alter the nature of the proceedings or relief.

See: (1) *Tamitalia Ltd (supra)*

(2) *Ali & Abdulkarim vs. Amritlal Ujamshi Sheth* 17 EACA 88

(3) *Friis vs. Paramount Bagwash Co. Ltd (1940)* 1 K.B. 611

In ***V. K. Ramiga vs. M. Jivraj and others – Civil Appeal No. 89/1962 (1965) EA 700*** (the Court of Appeal for Eastern Africa then) held: a slip order” may be made to rectify omissions resulting from the failure of counsel to make some

particular application. The power to make slip orders extend to the court where the court is satisfied the making of that amendment in the judgment is to give effect to the intention of the court at the time.

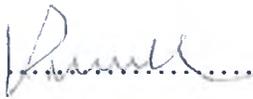
At P.9 of my judgment, I stated that I was upholding the orders of the Chief Magistrate dismissing the applicant's application to amend his pleadings. That dismissal was followed by Misc. Application No. 21/2002 which also aborted.

In the exercise of the powers vested in this court by sections 98, 99 and 101 of the Civil Procedure Act, I will review and amend my judgment to read in the last paragraph:

“On the basis of what I have said, the learned Chief Magistrate exercised her discretion properly when she refused to grant leave to the first respondent to add another amendment to his other amendments in the same suit. I will, there uphold the Chief Magistrate's orders of 5/7/2002 and 24/2/2003 dismissing the first respondent's applications for leave to amend his pleadings, which applications were turning the court into a circus.

This application is therefore dismissed with costs on this ground and other reasons of the incompetence of the application(s) which I dealt with earlier in my judgment.

I will remit this petition to the Chief Magistrate to hear and determine on the issues and reliefs that follow upon the nullification of Marriage under the Divorce Act.”

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V. A. R. Rwamisazi-Kagaba

J u d g e

30/6/2005