

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(CIVIL DIVISION)**  
**REVISION APPLICATION NO. 0034 OF 2019**

**SSONKO METAL CRAFT LTD ::::::::::::::::::::::::::::::::::: APPLICANT**  
**VERSUS**  
**SARANA LTD ::::::::::::::::::::::::::::::::::: RESPONDENT**

**BEFORE: HON. MR. JUSTICE BONIFACE WAMALA**

**RULING**

**Introduction**

This application was brought by Notice of Motion under Sections 98 and 83 of the Civil Procedure Act (CPA), Section 33 of the Judicature Act and Order 52 of the Civil Procedure Rules (CPR) seeking orders that:

1. This Court revises the ruling on preliminary points of law made by Her Worship Mbabazi Edith Mary, Magistrate Grade 1 (hereinafter referred to as **“the trial Magistrate”**) which was to the effect that a Magistrate Grade 1 has jurisdiction over garnishee proceedings heard and determined by a Registrar of the High Court.
2. The costs of the application be provided for.

The grounds of the application are set out in the Notice of Motion and in an affidavit in support of the application sworn by **Ssemwanga Hannington**, the Managing Director of the Applicant Company. Briefly, the grounds are that:

- a) The trial Magistrate lacked jurisdiction to entertain the case and, as such, her ruling was barred in law and an abuse of court process.

- b) It was wrong for the Respondent to seek an order committing a director of the Applicant company to civil prison yet he was neither a party to the suit nor had he ever acted in an individual capacity in relation to the matter in issue. M.A No. 288 of 2018 from which the impugned court order arose was against the Applicant company which at law is a separate entity.
- c) Pursuant to Section 34 of the Civil Procedure Act, all questions arising between the parties to the suit in which the decree was passed or their representatives and relating to the execution, discharge or satisfaction of the decree, must be determined by the court executing the decree and not by a separate suit.
- d) The order to garnishee the Respondent's bank account in DFCU Bank for recovery of UGX 11,692,700/= was issued by the then High Court Execution and Bailiffs Division vide M.A No. 450 of 2018; which order has never been set aside or appealed from. The order was effected as passed; which was before the Respondent had applied for setting aside of the ex parte judgment before the trial Magistrate.
- e) The Respondent applied and the trial Court was misled into issuing an order to refund the monies that had been garnished well knowing that the same was within the mandate of the High Court.

The Respondent opposed the application through an affidavit in reply, deposed by **Mohideen Meeran**, the Managing Director of the Respondent, who stated that he had been advised by the Respondent's advocates that the application is res judicata and an abuse of court process. The deponent was further advised that there are no grounds to support the application and the Applicant is merely engaging in dilatory conduct to frustrate the hearing and determination of Civil Suit No. 227 of 2013. It is in the interest of justice that this application is dismissed.

The Applicant filed an affidavit in rejoinder, the contents of which have also been taken into consideration.

### **Brief Background**

The Applicant filed Civil Suit No. 227 of 2013 for recovery of UGX 5,345,000/= for works done for the Respondent. An ex parte judgment and decree was passed in favor of the Applicant. The judgment and decree was executed under orders issued by the then High Court Execution and Bailiffs Division. The Respondent filed M.A No. 288 Of 2018 seeking to set aside the ex parte judgment and decree. The Respondent also sought an order that the garnisheed sum of UGX 11,692,700/= from the Respondent's bank account be refunded or deposited into Court until determination of the main suit. The application was granted by the trial court. The Applicant sought leave to appeal against the said ruling and orders, which was denied. The Applicant then filed the present motion.

### **Representation and Hearing**

At the hearing, the Applicant was represented by Ms. Nalubega Shamim while the Respondent was represented by Ms. Nampeera Angella on brief for Mr. Benard Mutyaba. It was agreed that the hearing proceeds by way of written submissions which were duly filed.

### **Issues for determination by the Court**

The Respondent raised some issues that were in the form of preliminary objections. The same shall be handled at the same time as the merits of the application. I have therefore framed the following issues for determination by the Court:

1. Whether the application is barred by law on account of being res judicata.
2. Whether the application is an abuse of the court process.

3. Whether the application discloses any grounds for revision of the proceedings, ruling and orders of the trial Magistrate.

## **Court Determination**

**Issue 1: Whether the application is barred by law on account of being res judicata.**

### **Submissions by Counsel for the Respondent**

Counsel for the Respondent relied on Section 7 of the CPA to submit that this application is res judicata. Counsel pointed out that the Respondent had shown in the affidavit in reply that the issues the Applicant is alluding to in this application have already been heard and determined severally in a number of other applications, namely, No. 454 of 2018; No. 288 of 2013; and No. 312 of 2018. Counsel submitted that the Applicant had filed for leave to appeal against the order to return the garnisheed money which application was heard and determined by the court and all issues in respect of the garnisheed sums between the parties were resolved. Counsel relied on the Court of Appeal decisions in ***Maniraguha Gashumba Vs Sam Nkundiye, CA Civil Appeal No. 23 of 2005*** and ***Ponsiano Semakula Vs Susane Magala & Others, 1993 KALR 213***.

### **Submissions by Counsel for the Applicant**

For the Applicant, Counsel submitted that the principle of res judicata is in its nature an “estoppel” against the losing party from again litigating matters involved in previous action but does not have that effect as to matters transpiring subsequently. Counsel referred the Court to the case of ***Dubo & Another Vs Minduni & Others, Civil Revision No. 1 of 2017***. Counsel concluded that the instant application for revision is a matter transpiring

subsequently from the decision of the trial Magistrate. The application was brought as a remedy for the aggrieved party and not as a fresh suit.

### **Resolution by the Court**

The doctrine of *res judicata* is well encapsulated under Section 7 of the Civil Procedure Act which provides as follows:

*“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has to be heard and finally decided by that Court.”*

The law on *res judicata* was also succinctly put by the Court of Appeal in ***Ponsiano Semakula Vs Susane Magala & Others, 1993 KALR 213*** which was cited with approval in the latter case of ***Maniraguha Gashumba Vs Sam Nkundiye, CA Civil Appeal No. 23 of 2005***. The Court had this to say:

***“The doctrine of res judicata, embodied in S.7 of the Civil Procedure Act, is a fundamental doctrine of all courts that there must be an end of litigation. The spirit of the doctrine (is) succinctly expressed in the well-known maxim: ‘nemo debet bis vexari pro una et eada causa’ (no one should be vexed twice for the same cause). Justice requires that every matter should be once fairly tried and having been tried once, all litigation about it should be concluded forever between the parties. The test whether or not a suit is barred by res judicata appears to be that the plaintiff in the second suit is trying to bring before the court in another way and in the form of a new cause of action, a***

***transaction which he has already put before a court of competent jurisdiction in earlier proceedings and which has been adjudicated upon. If so, the plea of res judicata applied not only to points upon which the first court was actually required to adjudicate but to every point which properly belongs to the subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time”.***

The essential elements of the doctrine of res judicata therefore are:

- a) There was a former suit between the same parties or their privies;
- b) The matter was heard and finally determined by the court on its merits;
- c) The matter was heard and determined by a court of competent jurisdiction; and
- d) The fresh suit concerns the same subject matter and same parties or their privies.

**See: *Bithum Charles Vs Adoge Sally, HCCS No. 20 of 2015* which relied on *Ganatra v. Ganatra [2007] 1 EA 76; Karia & Another v. Attorney General & Others [2005] 1 EA 83 at 93 -994; and Attorney General & Anor vs. Charles Mark Kamoga MA 1018 of 2015.***

Applying the above law to the present facts, the application before me is for revision of the proceedings, ruling and orders of the trial Magistrate. The power of revision is not available for magistrates' courts. It is a power based on the supervisory powers of the High Court over magistrates' courts under Section 17 (1) of the Judicature Act. One way the High Court exercises this power in the judicial sense is through the function of revision. The provisions of Section 83 of the Civil Procedure Act (CPA) are therefore meant to operationalize the jurisdiction of the High Court to call for and scrutinize the proceedings of magistrates' courts. As such, when a complaint is made that calls for invocation of the jurisdiction of the High Court pursuant to this power, it is not

possible that the High Court is barred from handling such a matter on account of the same having been heard and determined by a magistrate's court. A plea of res judicata cannot, therefore, be made in this regard.

With all due respect, this argument by the Respondent's Counsel is misconceived and devoid of substance. It is not possible that the magistrate's court entertained an application for revision. Even where the claim is that the magistrate's court heard and determined the same issues, provided the complaint discloses grounds for revision under the law, the jurisdiction of the High Court to call for and revise proceedings and decisions of the lower court cannot be fettered. It is therefore not possible for an application for revision to be res judicata on account of an earlier proceeding of a magistrate's court. It is only possible if the earlier proceeding was conducted by the High Court. As such, none of the essential elements of the doctrine of res judicata is capable of being satisfied on the present facts. This point of objection by the Respondent's Counsel was therefore based on a misconception of the law, is devoid of merit and is dismissed accordingly.

**Issue 2: Whether the application is an abuse of the court process.**

It was submitted by Counsel for the Respondent that this application was brought in abuse of the court process because the Applicant has consistently indulged in dilatory conduct intended to frustrate the hearing and disposal of the main suit on its merits; which case has been pending since 2013. Counsel further submitted that the Applicant had come to court with unclean hands since he has acted in contempt of the Court. The Applicant was directed to return the monies garnisheed from the Respondent's bank account but refused to comply despite clear knowledge of the said order. Counsel submitted that an application by a party who is in contempt of a court order will not be entertained until the party has purged themselves of such contempt. Counsel relied on the decisions in ***Nakitende Scovia & Another Vs John Kigozi***

***Ssebaggala & Others and Housing Finance Bank Ltd Vs Edward Musisi, M.A No. 158 of 2010.***

Counsel for the Applicant did not make any response to this submission.

Abuse of the court process involves use of process for improper purpose. See: ***Uganda Land Commission vs James Mark Kamoga & Another, SCCA No. 08 of 2004.*** The question therefore is whether the Applicant has used the court process for an improper purpose. The Respondent pointed out two aspects, namely; indulging in dilatory conduct through filing multiple applications and thus preventing the main suit from being heard and determined; and secondly, coming to the court with unclean hands on account of refusing to comply with a clear order of the court thereby being guilty of contempt of the court.

On the aspect of dilatory conduct, examination of the record reveals that after the Applicant secured an ex parte judgement and decree, he applied for execution, which by then was done by the High Court Execution and Bailiffs Division. The Applicant took out execution by way of a garnishee order; which was granted leading to an order of attachment of UGX 11,692,700/= from the Respondent's account in DFCU Bank. Through M.A No. 288 of 2018, the Respondent sought for setting aside of the ex parte judgement, decree and execution; which led to the impugned orders issued by the trial magistrate. Through M.A No. 454 of 2018, the Applicant sought for leave to appeal against the orders of the trial magistrate passed in M.A No. 288 of 2018. The application for leave to appeal was heard and determined against the Applicant. The Applicant then filed this application. These are the facts upon which the Respondent bases to allege use of the court process for an improper purpose.



I do not see any step that the Applicant took that was not necessary. If the Applicant was aggrieved by the decision of the trial Magistrate in M.A No. 288 of 2018, it was well within its right to seek leave to appeal. Upon being denied leave to appeal, where the Applicant believed that the decision of the trial court disclosed illegalities or irregularities that called for revision, the Applicant was not barred from pursuing the remedy of revision. The filing of the application for revision cannot therefore be deemed unnecessary, improper or a delaying tactic. If such an application raises material allegations, such have to be investigated on their merits. I therefore do not see any element of abuse of the court process in the steps taken by the Applicant. This leg of this objection fails.

The second leg involves the allegation of the Applicant coming to the Court while they are in contempt of a court order. As shown from the synopsis of the facts above, when the order to return the monies the subject of the garnishee order was passed by the trial Magistrate, the Applicant was aggrieved and sought leave to appeal since he had no automatic right of appeal. It is after the application for leave to appeal was refused that they filed this application.

Under the law, where a party opts to challenge an order issued by a court either by way of appeal or revision, he cannot be expected to comply with the order until after the challenge is resolved against them. As such, during the pendency of such challenge, or if not yet filed, where the party is still within time to lodge such a challenge, they cannot be cited for contempt of the court order on account of their refusal or failure to satisfy such an order. It would be expected that the party would first exhaust the avenues available to them in their pursuit to challenge such an order.

In light of the facts before the Court, it cannot be said that the Applicant came to this Court with unclean hands on account of refusal to abide by the very

orders they seek to challenge. The Applicant cannot be cited for contempt upon the present set of facts. The allegation by the Respondent that the Applicant came to the Court with unclean hands and in abuse of the court process is therefore not made out and is devoid of any merit. This point of objection also fails and is dismissed accordingly.

**Issue 3: Whether the application discloses any grounds for revision of the proceedings, ruling and orders of the trial Magistrate.**

**Submissions by Counsel for the Applicant**

It was submitted by Counsel for the Applicant that the trial Magistrate exercised a jurisdiction not vested in her. Counsel submitted that the Magistrate acted illegally and without jurisdiction when she purported to set aside a ruling and a garnishee order passed by the High Court in EMA No. 450 of 2018 and thereby ordering the Applicant to return the garnisheed monies.

Counsel further submitted that the trial Magistrate acted illegally by passing an order committing the Applicant to civil prison for failure to refund the garnisheed sum yet the Applicant was never a party to the suit in his individual capacity. The summation of the Applicant's submissions in this regard is that a decree passed against a company cannot be executed against an individual. Counsel relied on the case of ***Berlamina Gowda vs. Ranjith Narth 2019 SCC online Bum 588*** to support this submission.

Counsel concluded that the above pointed out aspects constituted illegalities and disclosed grounds for revision of the trial court's ruling and orders. Counsel prayed that the application be allowed and the orders of the trial Magistrate be set aside with costs.

### **Submissions by Counsel for the Respondent**

For the Respondent, it was submitted that the garnishee order had already been deliberated upon and finally determined between the parties and, as such, the matter was *res judicata*. Counsel submitted that the Applicant sought to appeal, which application was denied and instead the Applicant filed the current application in abuse the court process. However, neither the Respondent in the affidavit in reply nor their Counsel in submissions directly responded to the illegalities alleged by the Applicant as being disclosed by the ruling and orders of the trial Magistrate.

### **Resolution by the Court**

The jurisdiction of the High Court and the conditions for revision of a record of a magistrate's court are provided for under Section 83 of the CPA as follows:

*“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”.*

It is clear in the instant case that this application is not barred by virtue of paragraphs (d) and (e) of the above set out provision. This application was taken out by the Applicant and the Respondent was notified. The application

was brought without unreasonable delay. Therefore, no apparent hardship is likely to be occasioned to the Respondent due to the exercise by the Court of the power to revise the decision of the trial court and to make such orders as the Court may deem fit. This application is therefore properly before this Court.

The application by the Applicant is mainly based on two grounds, namely that;

- a) By setting aside a garnishee order issued by a Registrar of the High Court, the trial Magistrate exercised a jurisdiction not vested in her; and
- b) By ordering the committal to civil prison of the Applicant's Managing Director to enforce recovery of a decree passed against the Applicant company, the trial magistrate exercised her jurisdiction illegally or with material irregularity or injustice.

Regarding the exercise by the trial court of jurisdiction not vested in it, the application in issue (M.A 288 of 2018) was filed by the present Respondent seeking to set aside the ex parte judgment and decree in C.S No. 227 of 2013, stay of execution of the said decree, and return of all monies garnisheed from the Respondent's DFCU bank account pending disposal of the main suit. Whereas the trial Magistrate had the power to set aside the ex parte judgment and decree passed by herself, she did not have the jurisdiction to set aside execution passed by a Registrar of the High Court. It is trite that when a Registrar of the High Court sits to determine matters in accordance with Order 50 of the CPR, he/she sits as a High Court. **See: *Degeya Trading Stores (U) Ltd versus Uganda Revenue Authority Civil Application No. 16 of 1996.***

At the time of execution of the said decree, the High Court Execution and Bailiffs Division was still in place. The Division had been administratively created to take over execution of all decrees and orders from High Court Divisions and all Magistrates' courts in Kampala. It should be understood that although decrees and orders of Magistrates' courts could be executed by

Registrars sitting at the Division, the arrangement was not meant to give the Magistrates concurrent jurisdiction with the High Court Registrars. Where execution was done pursuant to an order of the Registrar, the instrument creating the Division did not confer jurisdiction on the Magistrate's court to set aside such execution. As such where such a decree or order had been passed ex parte, while the magistrate's court retained its jurisdiction to set aside such an ex parte order, it could not assume jurisdiction to set aside execution of such an order passed by the High Court. Such conduct would amount to interference with an order of a higher court.

In the instant case, pursuant to an application for a garnishee order, a Registrar of the High Court Execution and Bailiffs Division had ordered attachment of UGX 11,692,700/= from the Respondent's bank account in DFCU Bank. The decree absolute issued and the monies were transferred. By the said application No. 288 of 2018, the Respondent sought to set aside that order and an order of return of the said monies either to the Respondent or into the court account pending determination of the main suit (upon setting aside of the ex parte proceedings and judgment).

As I have indicated above, while the trial Magistrate was well within her power and discretion to set aside the ex parte proceedings, judgment and decree passed by her, she was not vested with the jurisdiction to set aside an order passed by a Registrar of the High Court in execution of the said decree. The trial Magistrate ought to have referred the issue of execution to the court that had passed the same. Accordingly, when the trial Magistrate set aside the order of execution passed by the High Court, and ordered return of the monies attached through the garnishee order, she exercised a jurisdiction that was not vested in her. This constitutes a sufficient ground for revision of the proceedings, ruling and order of the trial Magistrate.

The second ground of the application was that by ordering the committal to civil prison of the Applicant's Managing Director to enforce recovery of a decree passed against the Applicant company, the trial Magistrate exercised her jurisdiction illegally or with material irregularity or injustice. The allegation by the Applicant is that following the order to return the monies attached pursuant to the garnishee order, the same was sought to be enforced personally against the Managing Director of the Applicant company through committal to civil prison. It is the Applicant's contention that by doing this, the trial Magistrate acted illegally since a company is a separate legal entity from its directors or shareholders.

Upon perusal of the record, I notice that when the Applicant was ordered to return the garnisheed monies and they did not comply, the Respondent filed M.A No. 95 of 2019 seeking, among others, orders that;

*"The Managing Director of the Respondent company, Mr. Ssemwanga Hannington, be summoned to court to show cause why he should not be committed to civil prison ... for breach or disobedience of an order of this court vide M.A No. 288 of 2018; an order for committal to prison of Mr. Ssemwanga Hannington in event of his failure to show cause why the monies ... have not been paid to court as ordered ..."*

The record further indicates that this application was still under hearing at the time the Applicant lodged this application for revision. Therefore, the order for committal had not yet been passed. The jurisdiction of this Court to revise the record of the magistrates' courts, however, extends to proceedings that may still be pending in that court. The question, therefore, is whether the proceedings before the trial court vide M.A No. 95 of 2019 involved exercise of jurisdiction by the trial magistrate illegally or with material irregularity or injustice.

The law is that a company is a separate legal entity from its shareholders or directors. As such, unless the corporate veil is lifted, shareholders or directors of a company cannot be held liable for the debts and obligations of the company. It follows therefore that a decree or order passed against a company cannot be enforced personally against a Director of the company without first lifting the corporate veil.

On the matter before me, the application No. 95 of 2019 was not for lifting the corporate veil. It sought for automatic enforcement of the order passed against the Company against the Managing Director of the Company. The trial Magistrate ought not to have entertained this application since any resultant orders would be null and void for being passed illegally. This is especially so, since the trial Magistrate even lacked the jurisdiction to order return of the said monies. Therefore, by entertaining this application, the trial Magistrate acted in exercise of her jurisdiction illegally. The second ground of the application also bears merit.

### **Decision of the Court**

The preliminary objections raised by the Respondent to the application failed and are accordingly dismissed. The application has succeeded on its merits on both grounds. My finding is that while the trial Magistrate was within her power and discretion to set aside the ex parte judgement and decree in C.S No. 227 of 2013, the order to set aside execution passed by a Registrar of the High Court was passed by the trial Magistrate in exercise of jurisdiction not vested in her. Secondly, by entertaining an application seeking to enforce an order passed against the Applicant company, against the Managing Director of the said company personally, in absence of a process to lift the corporate veil, amounted to exercise of the trial Magistrate's jurisdiction illegally.

In light of the above findings, the Applicant has satisfied the Court that the proceedings, ruling and orders of the trial court ought to be revised. I accordingly issue the order of revision and make the following orders:

1. The proceedings, ruling and orders of the trial Magistrate vide M.A No. 288 of 2018 that had the effect of setting aside the execution process by way of a garnishee order issued by a Registrar of the High Court, are revised and set aside.
2. The proceedings of the trial Magistrate vide M.A No. 95 of 2019 seeking to enforce an order passed against the company, personally against the Managing Director of the said company, in absence of a process to lift the corporate veil, are revised and set aside.
3. The trial court shall proceed with the hearing of Civil Suit No. 227 of 2013 on its merits following the setting aside of the ex parte judgment and decree by the trial Magistrate.
4. The costs of this application shall be paid to the Applicant.

It is so ordered.

***Dated, signed and delivered by email this 9<sup>th</sup> day of March 2021.***



**Boniface Wamala**

**JUDGE**