THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT JINJA

CIVIL REVISION NO. 006 OF 2010

[Arising from Jinja H.C.M.A. No. 119 of 2003 and

Iganga Magistrates Court (Kaiti) Civil Suit No. 003 of 2002]

KALALI CHRISTOPHER:::::::::::::::::::::::: COMPLAINANT/APPLICANT

VERSUS

NAMBUBI SARAH:::RESPONDENT

BEFORE: HON. LADY JUSTICE IRENE MULYAGONJA KAKOOZA

REVISION ORDER

This matter came to my attention through a complaint lodged before the Assistant Registrar in respect of the alleged wrongful execution of an order in revision that was made by my Brother, V.T. Zehurikize, J., in Miscellaneous Cause No. 119 of 2003. The complainant/applicant herein was the respondent in the application, while the respondent herein was the applicant.

In H.C.M.A No 119 of 2003, the respondent complained that the judgment that the complainant herein obtained against her in C.S. No. 003 of 2002 in the Grade II Court at Kaiti was a nullity because she had previously obtained judgment against him in the LCII Court at Nabikabala. Zehurikize, J. declared the subsequent judgment a nullity and awarded costs of the application to the complainant herein (then respondent). He now complains that following the ruling in M.A. 119 of 2003, the Deputy Registrar appointed emissaries to go and hand over the suit land to the respondent herein, yet the revision order had nothing to that effect in it. He seeks to have the order of the D/Registrar set aside, alleging that it was illegal and a nullity. In effect the applicant seeks for an order that the land in dispute now be handed back to him. The main ground that he relies upon is that he filed an appeal against the decision of the LCII Court that is pending hearing in the LCIII Court.

In his letter to the D/Registrar, counsel for the applicant called this proceeding a review. I did not think that was the right description of the proceeding because applications for review are specifically provided for in Order 46 CPR. According to O48 rule 8, applications for review are

brought by notice of motion. The A/Registrar referred the matter to me as a revision pursuant to the provisions of s.83 of the CPA. I entertained the matter as a civil revision because of the need to save time; but I am of the view that the proceeding against the order of the Registrar should have come by way of an appeal under the provisions of Order 50 rule 8 CPR. It is also my view that the powers of this court under s.83 of the CPA may extend to orders made by the registrar. In the event that they do not, s.98 of the CPA gives this court very wide powers to make orders to prevent the abuse of court process, and I proceed to do so.

Since it was the genesis of the complaint, I perused the judgment of the LCII Court at Kiwanyi dated the 1/05/2002. The court was unanimous in its decision that the complainant herein, Kalali failed to satisfy the court that he bought the suit land from the parents of the respondent (Nambubi Sarah). The Court found that one of the agreements that Kalali relied on was not satisfactory; he failed to prove that he paid the full purchase price for the land. It was also found that the agreement had been rescinded and money refunded to Kalali. A second agreement that was in issue was found to be a forgery.

The complainant claims to have lodged an appeal in the LCIII Court but he did not furnish court with any documents to prove that he did so. According to the Executive Committees (Judicial Powers) Act, which was the law in force immediately after judgment was handed down in favour of the respondent, an appeal had to be lodged within 14 days from the date of the decision appealed from. In this case, the complainant ought to have appealed by the 15th May 2002, at the latest. If he did appeal, which was not alluded to in the previous application before this court, then by the time H.C.M.A No. 119 of 2003 was disposed in this court on 30/05/2007, his appeal had been pending in the LCIII Court for a period of 5 years. However, in paragraph 4 of her affidavit in support of H.C.M.A No. 119 of 2003, Nambubi deposed that Kalali did not appeal against the judgment of the LCII Court. Kalali did not rebut this averment in his affidavit in reply. It is therefore clear that the allegation that he lodged an appeal was an afterthought that may have been calculated to delay Nambubi from reaping the fruits of the judgment in her favour.

The LCII Court already found in favour of Nambubi and by the time the ruling in H.C.M.A No. 119 of 2003 was delivered, she had been denied of the fruits of the judgment for 5 years. In their

report to the D/Registrar dated 22/01/2008, the emissaries reported that the persons they found in occupation of the land were one David Sidawo and Twairi Muhooto. The emissaries further reported that the two peacefully removed their property from huts on the land. The emissaries were informed that elders in the area warned Twairi Muhooto, David Sidawo, Bazaale Fredrick and Yokosofati Nsavu not to buy land from the complainant but the four did not heed their warning. They went ahead and bought because the complainant was selling the land cheaply. The conclusion to be drawn from all this is that the complainant was no longer in possession or occupation of the land in dispute. He had purported to sell it and perhaps that is why he left the appeal, if at all there was one, in abeyance.

As to whether the D/Registrar had the powers to direct emissaries to hand over the land, there is evidence that the D/Registrar was moved by Nambubi to send emissaries to hand over the land to her by her letter dated 4/10/2007. The D/Registrar responded on the 23/10/2007 by appointing emissaries to do so. Order 50 rule 4 of the Civil Procedure Rules provides that formal orders for attachment and sale of property and for the issue of notices to show cause on applications for arrest and imprisonment in execution of a decree of the High Court may be made by the registrar. In this case, the High Court ruled that the order of the Grade II Court was a nullity. This meant that the parties would revert to the orders that were issued by the LCI Court, that Nambubi Sarah was the owner of the land. There being no information that had been given to the court that there was an appeal pending against the said order {which according to s. 27(2) of the Executive Committees (Judicial Powers) Act would have operated as a stay of execution} the registrar was well within his powers to appoint emissaries to hand over vacant possession of the land to the successful party in H.C.M.A No. 119 of 2003.

Section 83 of the CPA under which I entertained this application provides that this court may revise a matter and make such orders in it as it thinks fit, after hearing the parties thereto. But no such power of revision shall be exercised where from lapse of time or other cause, the exercise of that power would involve serious hardship to any person. I did not think it necessary to entertain submissions from the respondent because I was of the view that the matter could be disposed of on the proceedings before me, and the allegations made by counsel for the applicant in his letter of 26/02/10.

With regard to the issue whether or not hardship would be occasioned to any of the parties if orders are made in revision, I considered that Sarah Nambubi was given vacant possession of the land in dispute sometime in October 2007. It is now more than 2½ years after that event. The applicant did not protest it till 26/02/10. I am of the view that forcing Nambubi out of the land now would entail extreme hardship to her. And given the discussion above, the complainant is not entitled to any such order.

If indeed there is an appeal before the LCIII Court, as was alleged by the complainant/applicant, then he should pursue his appeal, for whatever it is worth. He would then be entitled to execute any lawful orders that flow from it if the appeal turns against the respondent. This application is accordingly dismissed with no order as to costs.

Irene Mulyagonja Kakooza
JUDGE
15/06/2010