THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT MBALE

HCT-04-CV-MA-0073-2010

(Arising from Misc. Application No. 140/2009)

(Arising from Civil Suit No. 51 of 2009)

1. **NADIOPE BOGERE RICHARD**
2. **GUTAKA AMUZA**
3. **WANYAMA PETER**
4. **MASARE ANTHONY**
5. **NALUKU EUNICE**
6. **OMEJJA ODALA**
7. **WAMBUYI GRACE**
8. **BEATRICE KIZZA**
9. **NAKISISA CHRISTOPHER…….APPLICANTS**

VERSUS

MALUKHU DEVELOPMENT ASSOCIATION LTD…….RESPONDENT

BEFORE: THE HON. MR. JUSTICE STEPHEN MUSOTA

RULING

This is an application brought by way of Notice under S.83 of the Civil Procedure Act and O.52 r.1 CPR. The applicants are represented by M/s Dagira & Co. Advocates and the respondents are represented by Kob Advocates and Solicitors.

The application moves this court for orders that:-

1. The record of Mbale Miscellaneous Application No.140 of 2009 arising from Civil Suit No.151 of 2009 is called for revision.
2. Provision be made for costs of the application.

The grounds of the application which are echoed in the supporting affidavit to the application are that:

(a) The learned trial Magistrate acted in exercise of her jurisdiction with material irregularity.

(b) The learned trial Magistrate acted in exercise of her jurisdiction with injustice.

The crux of the complaint by the applicants is that the learned trial Magistrate did not refer to or show the law applicable or even follow the law relating to injunctions. That she did not consider the principles relating to grant of temporary injunctions before granting the injunction. That the decision did not disclose the reasons as to why the learned trial Magistrate was granting the injunction to the respondent. Further that the ruling affected the business premises because it had to be closed and had to stop using the name “Malukhu Development Association.” That this put the association out of business thus not fulfilling its commitments to the other members and clients leading to losses to the association.

Finally that the ruling was not practical for it barred the parties from accessing the offices of the association yet it enjoins them to preserve its properties.

In reply, the respondents contend that this application is misconceived and improperly before court because it does not disclose any grounds for revision. That if a revision order is made, it will involve serious hardship to the respondent company, the Attorney General and Mbale Municipal Council.

Further that the applicants ought to have appealed against the decision or applied for review. That this application is frivolous, vexatious and an abuse of court process and ought to be dismissed with costs.

The respective parties were allowed to file written submissions in support of their respective cases.

I have considered the application as a whole. I have related the same to the respective submissions by both learned counsel. Both learned counsel are in agreement that the law governing powers of Revision by this Court is enacted under S.83 of the Civil Procedure Act.

Under the said law, the High Court may or may be moved to call for the record of any case which has been determined by a Magistrate's Court or subordinate court and revise it if it appears:

(a) That there has been a wrongful exercise of jurisdiction; or
(b) That there was failure to exercise jurisdiction so vested in the court; or
(c) That the court has acted in exercise of its jurisdiction illegally or with material irregularity or injustice.

The High Court can still call for the record of any case which has been determined by any subordinate court or Magistrate's Court and for the reasons set out in S.83 of the CPA revise the said case making such orders as it thinks fit.

The matter before the learned trial Magistrate was for an application brought by the respondent a private Limited company for a temporary injunction against the instant applicants restraining them and all their servants acting under them or with their authority from using the applicant's registered names "Malukhu Development Association" or documents with the applicant's names or their offices situated at Malukhu ADRA or their office furniture pending the determination of the main civil suit No.151 of 2009. The respondents herein sought for further orders that their office be opened to them unconditionally and costs be provided for.

In her ruling the learned trial Magistrate held that:

> ***"I have carefully studied the evidence on both sides and hereby decide and order that respondents stop using the applicant's name MDA (Malukhu Development Association until the final disposal of the main suit or further orders of court, the said offices be closed to both parties till determination of the main suit, further that the property belonging to MDA be preserved till the determination of the main suit and no business should be carried out in the names of Malukhu Development Association (MDA) by any party till the main suit is determined."***

The issue for determination in this application is whether this is a matter suitable for Revision for the reasons advanced by the applicants.

For a matter to qualify for revision, it must be apparent or shown that it involves a non exercise or irregular exercise of jurisdiction. Revision does not concern itself with conclusions of law or fact in which the question of jurisdiction is not involved. Dissatisfaction with a decision by a court with jurisdiction in favour of the other party cannot be a matter for revision.

In the instant application I am in agreement with learned counsel for the respondent that the learned trial Magistrate had jurisdiction to entertain an application for a temporary injunction in the head suit. She exercised her jurisdiction judiciously by according each party the right to be heard. She made her decision granting the application with the orders contained in the decision through a court ruling which is on record. The style or mode of writing the ruling cannot be a subject for impeachment through Revision. Even if the learned Magistrate misapplied or misinterpreted the law, such misapplication or misinterpretation of the law by a trial Magistrate who has jurisdiction cannot be a ground for Revision. Revision can only be made when it is shown that the trial court exercised jurisdiction not vested in it by law or where there has been failure to exercise jurisdiction or where the jurisdiction has been exercised illegally and with material irregularity causing injustice. Revision does not apply to conclusions of law or fact in which the question of jurisdiction is not involved.

In my view, what the applicant is complaining about should have been brought through an appeal under O.44 r. (1) (q) CPR where an appeal is allowed as of right from orders made under O.41 rr 1, 2, 4 or 8 of the CPR since they are seeking a

review of the evidence presented in support of an application for the grant of a temporary injunction.

It is through an appeal not Revision that this court can determine whether the trial Magistrate considered that the suit had chances of success and whether she considered what damage would be caused to the applicants if the name Malukhu Development Association is used and whether such damage would be irreparable. It is on appeal that this court would consider whether the balance of convenience was considered by the learned trial Magistrate. It would be prejudicial to litigants if this court dealt with matters qualified for appeal under revision since revision orders are not appealable as of right. Revision is intended to correct errors which do not go to the root of the dispute and not determination of rights of parties.
I have found no illegal assumption or irregular exercise of jurisdiction by the learned trial Magistrate in this case. The argument by learned counsel for the applicants that the learned trial Magistrate did not show under which law she granted the temporary injunction and or that she did not follow the principles for grating a temporary injunction should be matters for appeal and not revision because if these errors were committed they were committed within the Magistrate's jurisdiction.

I will finally deal with the issue raised by the respondents that save for the 6th applicant, the rest of the applicants did not swear respective affidavits to support the Notice of Motion.

The law allows a particular fact to be proved by affidavit as the court may direct (See O.19 CPR). Affidavits usually contain information within the knowledge of the deponent or have come to the deponents knowledge through information. A

person cannot swear an affidavit on behalf of another person unless he/she has powers of Attorney to do so as a recognized agent. Therefore since the applicants 1, 2, 3, 4, 5, 7, 8 and did not file affidavits in support of the application, they are not entitled to any order for revision at all.

Consequently I will dismiss this application with costs.

Stephen Musota

JUDGE

13.6.2012