

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

**CIVIL REVISION NO. 13 OF 2011
(From Misc. Application No. 0004 of 2010)**

OLEGUM JOSEPH.....APPLICANT

VERSUS

ARONO BETTY.....RESPONDENT

BEFORE: THE HON. MR. JUSTICE STEPHEN MUSOTA

RULING IN REVISION

Through M/s D & G Associated Advocates the applicant **Olegum Joseph** filed this application against the respondent **Arono Betty** represented by M/s Oging & Co. Advocates for orders that:

- 1) A Revision order be issued or made against the orders of the Chief Magistrate of Pallisa in Misc. Application No.4 of 2010.
- 2) Costs of the application be provided for.

The grounds of the application are that:

- a) The applicant was a Respondent in a matter (No.2 of 1992) filed by the Respondent in a Resistance Council Court of Abila in Pallisa in 1992 which resulted into a decree against him dated 31st May 1992.

- b) The Respondent since the date of the decree took no legal steps to execute the said decree until 16th February 2010 when by Misc. Application 4 of 2010. She sought to execute the said decree.
- c) There is no evidence on record either by way of an application for execution of a decree, notice to show cause why execution should not be carried out against the applicant or a Return filed showing why execution of the said decree failed between 31st May 1992 and 16th February 2010.
- d) The decree sought to be executed by the respondent in Misc. Application No.4 of 2010 is barred in law by limitation and the Chief Magistrate of Pallisa acted in the exercise of his jurisdiction illegally with material irregularity and injustice in dismissing the objection on a point of law raised by the Applicant regarding the same.
- e) The irregularity and illegality in (d) above have occasioned such grave injustice to the applicant as to justify intervention by the High Court.
- f) It is fair and equitable and in the interest of substantive justice that this application be granted.

In the lower court, the learned Chief Magistrate Pallisa dismissed a preliminary objection raised by the applicant's counsel. He made reference to sections 35(1) and 35(2) (a) of the Civil Procedure Act and held that:

“Attachments to the affidavit of the applicant indicate that attempts were made by the Resistance Council II Chairman of Kibale to prevent the respondent from continued occupation of the suit land after the Resistance Council Court had decreed it to the applicant. There is sufficient evidence therefore to show that the respondent continued to

occupy the disputed land even after judgment had been passed against him. It is his conduct that prevented execution of the judgment of the Resistance Council 1 Abila. The instant application therefore falls under the exception of S.35 (2) (a). counsel's objection is accordingly overruled with costs."

It is upon this ruling that this application was filed.

Both **Mr. Malinga** for the applicant and **Mr. Oging** for the respondent submitted in support of their respective cases.

I have considered the application as a whole. I have related the same to the law and the lower court's record.

Revisional powers of this court are derived from S.83 of the Civil Procedure Act. Under that law, the High Court may revise a case and make such order in it if the trial 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 exercise of its jurisdiction illegally or with material irregularity or injustice.

In my considered view, the above section refers to irregular exercise or non-exercise of jurisdiction. It does not refer to conclusions of law or fact in which a question of jurisdiction is not involved.

No doubt the learned Chief Magistrate had jurisdiction to hear and determine the objection raised by learned counsel for the applicant. Indeed the substantive application on this matter was filed before him. He went ahead and judiciously determined the objection against the applicant after considering the law relied upon by the applicant. Deciding against the applicant cannot therefore amount to an illegality or irregularity. The decision of the learned Chief Magistrate involved conclusions of law and fact which were within his jurisdiction to decide upon. A wrong or erroneous conclusion of law or fact or misinterpretation of the law but within the jurisdiction of a judicial officer cannot be a subject for revision because such conclusions are neither illegal nor irregular. They are independent conclusions within the judicial oath of any judicial officer which are not subject to revisional orders.

Consequently I cannot fault the decision of the learned Chief Magistrate through a revision order.

This applicant is dismissed with costs.

Stephen Musota

JUDGE

27.06.2012