

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA**

**HOLDEN AT MBALE**

**HCT-04-CV-MA-005-2012**

**(Arising from Misc. Application No.0019 of 2012)**

**(Arising from Civil Suit No. 21/2008)**

**IN THE MATTER OF AN APPLICATION FOR REVISION**

**THE REGISTERED TRUSTEES OF**

**THE CHURCH OF UGANDA.....APPLICANT**

**VERSUS**

**1. KACHIRA INVESTMENTS**

**2. MBALE DISTRICT LAND BOARD.....RESPONDENTS**

**BEFORE: THE JUSTICE HON. MR. JUSTICE STEPHEN MUSOTA**

**RULING**

The applicant, the Registered Trustees of the Church of Uganda Mbale Diocese filed this application for Revision by way of Notice of Motion under sections 19, 98 and 83(a) (b) (c) and (d) of the Civil Procedure Act (CPA) and O.52 rr (1) and (3) of the Civil Procedure Rules (CPR). The orders sought to be revised were made by the learned Magistrate Grade 1 Mbale in Civil Suit 21 of 2008 between Kachiru Investments Co. Ltd and Mbale District Land Board.

The orders sought in this application are that:

- (a) The judgment and orders passed by **His Worship R. Mukanza** in Civil Suit No. 21 of 2008 on 7<sup>th</sup> April 2011 be revised.
- (b) The applicant be declared the legal proprietor of the Suit land.
- (c) An order be issued to protect the interests of the applicant.
- (d) Costs hereof may be provided for

The detailed grounds of application are contained in the affidavit of Canon Joshua **Makonje Muliro** and **Mr. John Faith Magolo** who deponed jointly that:

The learned trial Magistrate exercised jurisdiction not vested in him at law.

That he failed to exercise a jurisdiction so vested in him. Further that the learned Magistrate acted illegally and with material irregularity and injustice and that it is the interest of justice that court may revise the case and may take such further orders as it thinks fit.

Both holders of powers of Attorney for the applicant for the applicant, **Canon Joshua Makhonje Muliro** and **Mr. John Faith Magolo** deponed a “joint affidavit in support of the motion” saying that they came to know about the judgment and orders in Civil Suit 21 of 2008 on 28.12.2011 when a court bailiff in the names of **Kutosi Micheal Pekee** attempted to execute the orders of the lower court. That the trial Magistrate exercised jurisdiction not vested in him at law by declaring the plaintiff’s (1<sup>st</sup> respondent) legal owners of plot 25-27 yet the applicant already held a freehold certificate of title. Further that the value of the suit land was beyond the pecuniary jurisdiction of a Grade 1 Magistrate and the land was under the Registration of Titles Act as a freehold. That the trial Magistrate acted illegally occasioning material irregularity and injustice.

Attached to the supporting affidavit is annexure ‘A’ a Certificate of title for 1.047 Hectares of plots 19-27 Maluku Road and M. 95 Registered on 9.11.2010 at 10:30A.M. Under Instrument 438933.

In the affidavit in reply one Sadrudin A. Alani the General Managing and Attorney of the 1<sup>st</sup> respondent Company deponed that the company is Registered proprietor of the land comprised in a Certificate of title described as leasehold Register Volume 2665 Folio 13 also known as plots 25-27 Maluku Road Mbale. A Certificate of title is annexed as "A" Registered on 13.10.98 on Instrument 297090 issued on 26.10.1998. That the 1<sup>st</sup> respondent's title was issued under the authority of the 2<sup>nd</sup> respondent based on a 49 year lease agreement starting 1<sup>st</sup> January 1998. That the applicant's title erroneously refers to and includes and swallows up the entire land for the 1<sup>st</sup> respondent without denoting the 1<sup>st</sup> respondent company as the lease of any part of the parcel thereof.

The 1<sup>st</sup> respondent's manager further depones that the 2<sup>nd</sup> respondent acted illegally irrationally and improperly when they purported to deprive the 1<sup>st</sup> respondent of her land by misdescribing the 1<sup>st</sup> respondent's land as part of the applicant's title. Further that the Applicant and 2<sup>nd</sup> respondents acted illegally, irrationally and improperly when they purportedly applied for and/or caused the registration or issue of the applicant's title yet they knew or ought to have known that the 1<sup>st</sup> respondent's title had been registered prior in time and had not previously been revoked or rescinded by competent authorities and despite the 1<sup>st</sup> respondent's numerous complaints with competent authorities and a 'Caveat Emptor' in annex 'B'. That the respondent successfully sued the 2<sup>nd</sup> respondent in Civil Suit 21 of 2008 and got judgment and trial Magistrate who vested with jurisdiction to entertain the matter in question and there was no material irregularity or application for revision in civil suit of 2008.

The 2<sup>nd</sup> respondent did not depon any affidavit in reply.

During the hearing of this application, **Mr. Kayabakaya** submitted on behalf of the applicant. **Mr. Lumbe** of the Attorney General's Mbale office submitted on behalf of the 2<sup>nd</sup> respondent and **Mr. Isaac Nabende** submitted on behalf of the 1<sup>st</sup> respondent.

Basically, all learned counsel echoed the deponments by their clients except **Mr. Lumbe** who supported the applicant.

According to **Mr. Kyabakaya** for the applicants, when the trial was going on, the applicants were not party to the suit. That trial Magistrate had no jurisdiction and misused his discretionary powers and authority when he ordered that the 1<sup>st</sup> respondent was the registered proprietor of the

suit land yet the lease had expired way back in 2003 and in law the land reverted to the controlling authority.

That the decision of the trial Magistrate occasioned injustice to the applicant. In reply, **Mr. Isaac Nabende** submitted that his client, the 1<sup>st</sup> respondent, sued as proprietors of the suit land comprised in LRV 2665 Folio 13 Plots 25-27 Maluku road. That they sought declaratory orders and general damages. That the trial Magistrate had jurisdiction to issue the declaration orders that the 1<sup>st</sup> respondents were the owners who were seeking renewal of their lease. That his client was registered earlier in time and the title was not yet rescinded. That the 2<sup>nd</sup> respondent did not act illegally by causing registration of the respondent. **Mr. Nabende** further submitted that the applicant's title was issued on 10.12.2012 when the 1<sup>st</sup> respondent had put a notice.

As I said earlier **Mr. Lumbe** for the 2<sup>nd</sup> Respondent submitted in agreement with Mr. Kyabakaya that a Magistrate Grade 1 has no authority to cancel an entry on a Certificate of title. That by implication the 2<sup>nd</sup> respondent's written statement of defence suggested so since a letter for Mbale Municipal Council was attached. That the trial Magistrate ought to have known the matter before him needed cancellation of an entry on a Certificate of title. When the trial Magistrate failed to sense this then he exercised jurisdiction not vested in him. That the judgment amounted to cancellation of an entry on title which is not within the jurisdiction of the trial Magistrate.

Under Section 83 of the Civil Procedure Act, this Court is empowered to call for the record of any case which has been determined under the Civil Procedure Act by any Magistrate's Court, and if the 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 these omissions exist, then the High Court may revise the case and may make such orders in it as it thinks fit: but no such power for revision shall be exercised.

- (d) unless the parties shall first be given the opportunity of being heard; or

(e) Where from the lapse of time or other cause, the exercise of that power would involve serious hardships to any person.

After a careful consideration of this application as a whole in relation to the above provisions of the law, and after considering the submissions by respective counsel in support of their respective cases, I will go ahead and determine whether this is a fit and proper case for revision by the High Court. This can best be done after starting the background to this application.

The dispute between the respondent hereto began in Mbale District Land Tribunal vide Claim No.87 of 2006. It was between Kachiru Investments Co. Ltd and Mbale Land Board.

Apparently the Mbale District Land Tribunal entered an *ex parte* judgment against Mbale District Land Board which later sought to have it set aside vide Misc. Application MDI.T 46 of 2006. It appears the District Land Tribunal refused to set aside the *ex parte* judgment whereupon Mbale District Land Board appealed to the High Court vide Civil Appeal 72 of 2006.

The High Court allowed the appeal and set aside the *ex parte* judgment on 9.10.2006. The appellant was allowed to file a defence and a defend claims 86 of 2006 and 87 of 2006 within 14 days from the date of the High Court judgment of 9.10.2006.

Indeed Mbale District Land Board compiled and filed a defence on 5<sup>th</sup> September 2006 in the Land Tribunal.

In their defence, the defendants never challenged the jurisdiction of the District Land Tribunal to handle the dispute.

In their joint memorandum of scheduling Conference under No.5 of the agreed facts, it was stated that:

*“Both parties submit to the jurisdiction of this honourable court.”*

This was after the Land Tribunals had ceased jurisdiction and all land matters were referred to the Chief Magistrate’s Courts for further handling. The suit file was still referred to as Claim No. MDLT 86 of 2006. It was subsequently renumbered civil suit 21 of 2008.

Given that this dispute was in first instance taken cognizance of by the District Land Tribunal of Mbale, but was only transferred to Magistrate's Court, did the Magistrate's Court have jurisdiction to try the matter? The answer is an unequivocal yes.

According to S.76 of the Land Act jurisdiction of District Land Tribunals was provided for. It is enacted that:

(1) The jurisdiction of a District Land Tribunal shall be to

(a) determine disputes relating to grant, lease, repossession, transfer or acquisition of land individuals, the commission or other authority with responsibility relating to band

(b) determine disputes in respect of relating of land the value of which exceeds the amount stipulated relating to land.

(c) make consequential orders relating to cancellation of entries on Certificates of title or cancellation of title and vesting of title in cases handled by the lower land tribunals; and

(d) determine any other dispute relating to land under this Act.

The above jurisdiction is echoed in Rule 31 of the Land Tribunals (Procedure) Rules 2002 SI No.33. The disputes referred to in S.76 (c) of the Land Act are those whose value exceed 2500 currency points in other areas and those which exceed 5000 currency points in urban areas then those which exceed 12500 currency points in Divisions. Since a currency point is equal to 20,000/= (Twenty thousand shillings) 2500 currency points translate into 50,000,000/= 5000 currency points translates into 100,000,000/= Yet 12500 currency points translates into 250,000,000/=.

Although it is not clear what the value of the adjudged land was at the time of trial is apparent that the District Land Tribunal from which the suit was transferred had jurisdiction to handle the land dispute. It had indeed handled it and entered an *ex parte* judgment for the 1<sup>st</sup> respondent. The

tribunal refused to set aside the *ex parte* judgment and the 2<sup>nd</sup> respondent herein appealed to the High Court which set it aside and allowed the 2<sup>nd</sup> respondent to defend itself.

All along the 2<sup>nd</sup> respondent was defendant and at no one time did the issue of jurisdiction arise. I think this is because parties knew very well that the land tribunal had jurisdiction to handle the dispute. When the tribunals were suspended, an administration circular was issued allowing Chief Magistrate's Courts to continue handling cases originally filed in land tribunals from where the tribunals stopped. Since this was a part heard matter there was no basis to challenge the jurisdiction of the successor Magistrate. In any case tribunals were at the level of Magistrate Grade 1. The Magistrate Grade 1 had jurisdiction to entertain the suit. Given the pecuniary jurisdiction stated above, it is erroneous to say that the G.1 could not handle this suit. I therefore agree with the submission of **Mr. Nabende** that the learned Magistrate Grade 1 had jurisdiction to complete hearing Land Tribunal Claim 46 of 2006 renumbered Civil Suit 21 of 2008. It is not correct to say the learned Magistrate exercised jurisdiction not vested in him nor did he fail to exercise jurisdiction vested in him.

The learned Magistrate Grade 1 did not act in the exercise of his jurisdiction illegally or with material irregularity or injustice he was directed to complete a pending matter before Mbale District Land Tribunal which had been suspended.

District Land Tribunals had jurisdiction to entertain or adjudicate over disputes under the Land Act and could make consequential orders relating to cancellation of entries on certificates of title or cancelation of title and vesting of title in cases handled by lower land tribunals.

My decision would have been different if the matter was filed in the Magistrate Grade 1's court for the first time or as a fresh case. This was not the case here.

That notwithstanding and even if this was a proper case for revision it would not have succeeded because the applicant here was not a party to the original suit.

In my considered view only parties to a dispute should move the High Court to order revision of a matter by a Magistrate's Court. This is why under S.83 (d) only parties shall first be given the opportunity of being a revision order is made.

In the instant application the applicants were not party to the case before either the District Land Tribunal or the Magistrates Court in the first place. They have endeavoured to introduce new evidence which was not before the trial Court when it was making its decision. This evidence has not been tested or proved. It is prejudicial to the original parties if a revision order is made in favour of a non-party who is coming with new evidence yet there is no right of appeal against revision orders. More over the applicants have sought for orders outside the ambit of Revisional powers such as the applicant being declared proprietor of the revival claim. This is a contentious matter which can be settled through revision.

It is a matter of evidence to challenge the validity of the claim by the first respondent and or the actions by the 2<sup>nd</sup> respondent. The applicants herein ought to have pursued their claim through other legal channels but not through revision.

Another consideration which would have acted against the applicants is the time lag this issue has stayed in the legal system. It should be noted that the original dispute had lasted for over six years in the judicial system. Revising a matter after such a long time and when parties submitted to the jurisdiction of the trial court would have involved serious hardships to the party who be affected by the revision order.

Lastly the omnibus affidavit in support of the application would not have helped the applicant.

For the reasons I have given I am unable to revise the orders of the learned trial Magistrate Grade 1 S.83 CPA is not applicable to the circumstances of this case.

The application will be dismissed with costs.

**Stephen Musota**

**JUDGE**

**05.07.2012**



