

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA

AT SOROTI

HCT-09-CV- CR. NO. 0001/2012

OPWANYA DANIEL.....APPLICANT

VERSUS

ODOO STEOHEN IPOROTUM.....RESPONDENT

RULING

BEFORE: HON JUSTICE MUSOTA STEPHEN.

This is an application for revision brought by way of Notice of Motion for orders that:-

- (a). The exparte judgment in Katakwi Civil Suit No. 019 of 2008 and subsequent orders be set aside.
- (b). The dismissal of Katakwi Claim 19 of 2010 and its subsequent orders be set aside.
- (c). An order for a retrial be made for the matter to be determined on merits.

In the alternative that court directs that civil suit 19 of 2010 be reinstated and heard on merit. The Applicant narrates in his supporting affidavit that he was the claimant in Civil Suit No. 19 of 2010. While answering criminal proceedings, he was informed that the respondent obtained an exparte judgment in claim 10 of 2008 later he was served with a warrant to give vacant possession in the alleged exparte judgment by Agole Gerefance & Co court Bailiffs. That he had never seen the exparte judgment but after complaining to the police the exercise was halted to date. The applicant further explains that he filed claim 19/2010 in Katakwi Magistrate's Court which was later dismissed on account of res judicata. That in

doing so, the learned trial Magistrate acted with material irregularity in dismissing claim No. 19 of 2010 thus causing injustice. The applicant sought an order from this court reinstating claim 019 of 2010 to be heard and determined on merit or a retrial be ordered before a court of competent jurisdiction.

S.83 of the Civil procedure Act provides for revision. This can be done where a court appears to have:-

- (a) Exercised a jurisdiction not vested in it in law.
- (b). Failed to exercise jurisdiction so vested; or
- (c). Acted in exercise of its jurisdiction illegally or with material irregularity or injustice.

Throughout the submissions by Mr. Erabu of the applicant. Nowhere does he impeach the actions by the learned trial Magistrate on account of jurisdiction. It is not claimed that in passing an exparte judgment on declaring civil suit 19 of 2010 resjudicata the learned Magistrate had no jurisdiction to do so. He had jurisdiction to do so since the complainant or the non exercise or irregular exercise thereof causing injustice, this application is not suitable for a revision order.

The law under which an exparte judgment can be set aside is 0.9 r. 12 CPR which provides that:-

“where judgment has been passed pursuant to any of the proceedings rules of this order or where judgment has been entered by the registrar in cases under order 1 & 10 of these

rules the court may set aside or vary the judgment upon such terms as may be just”

In case of setting aside an ex parte decree, then the law applicable is 0 9 r.27 CPR.

The aggrieved party applies to and satisfied court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing. The court may then appoint a day for proceeding with the suit before setting aside an ex parte decree, it is mandatory that service be made on the opposite party.

This court cannot therefore set aside an ex parte judgment through Revision proceedings. Neither can it order a new statement of a suit dismissed on account of res-judicata through revision since the trial court had jurisdiction to entertain the matter.

This application is therefore misconceived and is dismissed with no order as to costs.

Musota Stephen,

JUDGE

9.7.2012