

**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF
UGANDA AT KABALE**

CIVIL MISC. APPLICATION NO. 007 OF 2008

(From Rukungiri Civil Misc. Application 57 of 2008)

TUMUSIIME KELLEN:.....APPLICANT

VERSUS

TURYAZAYO MOSES:.....RESPONDENT

~~BEFORE HON MR. JUSTICE J.W. KWESIGA~~

REVISION ORDER

This application for a Revision Order was filed as far back as 15th July, 2008 at the High Court Registry at Mbarara for un known reasons it was never heard until today when I have read the file and made this decision. The Application is indicated to be made pursuant to order 52 rule 1 of The Civil Procedure Rules and Section 83 of the Civil Procedure Act. The basic complaint is that The Chief Magistrate of Rukungiri while deciding Civil Miscellaneous Application No. 57 of 2008 act illegally and materially irregular leading to injustice. I have read the record of the proceedings dated 8th July, 2008. They are too brief to disclose what the application

was all about. Kellen Tumusiime and Moses Turyazayo had a land dispute which went to LC II court and Tumusiime appealed to LC III Court which was not determined. There was no presentation of the parties' case before the Chief Magistrate however she decided as follow: -

“Since there is not step taken by the Respondent ever since the LC II Judgment was read in March, 2008 I order that the LC II Chairman and his members do evict the respondent from the land ”

There is no indication under what procedure this matter came before her and what was the question for determination that led to the decision or order above quoted. Who applied and what was the application at hand? There is not valid Judgment on record originating from either LC I or LC II that was under her consideration. The learned Chief Magistrate should have recorded the points of dispute between the parties, recorded their evidence or presentation and finally decided giving reasons for her decision.

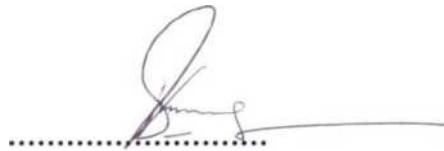
The applicant in this matter states that although she was referred to as a Respondent, she was not served with any pleadings/Application and there were no proceedings pending before the Chief Magistrate. A court decision ought to contain the point for determination, the decision thereon and reasons for the decision. The parties were unrepresented, therefore the Magistrate had a duty to set out the facts, the evidence and the decision that she derived from the proceedings. She did not consider the fact that the matter was still pending adjudication by LC III court which had told the Applicant to wait. The applicant herein stated to the Chief Magistrate that the matter was taken to LC III court but this was not accorded the consideration that it deserved. The Chief Magistrate had no jurisdiction to terminate the proceedings pending before the LC III Court as she did.

The irregular proceedings in the Chief Magistrate's court were prejudicial to the Applicant and no doubt caused miscarriage of Justice. A Court of Law can not let pass what is illegal and irregular, once brought to the attention of the court. See ~~**Makula International Ltd vs Cardinal Nsubuga & Another (1982) HCB.**~~ The Chief Magistrate's decision and order were irregular and shall

be set aside. It is hereby ordered that the ~~status quo~~ that existed before the decision now revised shall be maintained until a court of competent jurisdiction has heard and determined the case on its merits.

The Applicant if still aggrieved should file necessary proceedings before the Chief Magistrate's Court at Rukungiri for fresh hearing. The Chief Magistrates orders of 8th July, 2008 and all execution proceedings that followed the order are hereby set aside. The Applicant is granted costs of this application.

Dated at Kabale this ~~6th~~-day of ~~March, 2012.~~

A handwritten signature in black ink, appearing to read 'J.W. Kwesiga', is written over a horizontal dotted line. The signature is fluid and cursive.

J.W. KWESIGA

JUDGE
6/3/2012

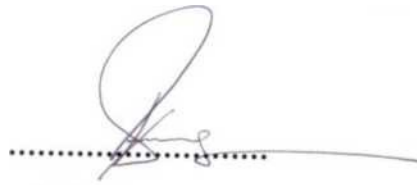
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Both parties are not present.

Ruling—delivered in open Court.

Mr. Milton Tuiyamubona - Court Clerk.

Court: Ruling to be served on parties on address in the pleadings by the Court Process Server at Rukungiri Chief Magistrate's Court.

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line that ends in a small flourish. The signature is positioned above a dotted horizontal line.

**J.W. KWESIGA
JUDGE
6/3/2012**