

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

**HCT-04-CV-MA-0013-2012  
(Arising from HCMA No. 12/2012)  
(Arising from HCCA No. 0013/2012)  
(Arising from Sironko Civil Suit No. 004/2009)**

**BWAYO CLEMENT.....APPLICANT**

**VERSUS**

**SAM KULOBA.....ACCUSED**

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

**REVISION ORDER**

This matter was referred to me by the Hon. Principal Judge for direction. On record is an internal memorandum from the Inspector of Courts addressed to the Principal Judge proposing a Revision.

The reasons are contained in the memorandum.

Prior to the matter going to High Court, a complaint had been raised at Mbale about the manner in which the Magistrate Grade I Magistrates Court Sironko handled the dispute between the parties hereto. I am of the view that since I could

not give an outright legal advice to the complainant because I sit in judgment I directed as contained in a letter dated 10 June 2011 addressed to both **Mr. Sam Kuloba** and **Mr. Clement Bwayo** which *inter alia* advised that:

***“The file has been perused by the Hon. Resident Judge. Since there is a Decree from Sironko dated 26.8.2009 that is not set aside; the aggrieved party is enjoined to take legal steps towards that regard to resolve his grievance. This advice is crucial since complaints on their own cannot solve or set aside the decree on record.”***

One way of setting aside the decree is the one proposed; Revision proceedings.

After perusing the lower court’s record and the correspondences on record. I agree with the views of the Inspectors of Courts that there are fundamental errors on the face of the record regarding the manner in which the learned trial Magistrate conducted the proceedings before him.

On 26<sup>th</sup> August 2009 both plaintiff and defendant appeared before the Magistrate. They were unrepresented.

Before hearing the two, the magistrate immediately gave the following order;

***“I have perused the file and discovered that annexure ‘A’ to the WSD of the 1<sup>st</sup> defendant is a judgment in respect of the same suit property already adjudged in favour of the defendant. Besides, it is in the court’s knowledge that the same suit land passed***

*title to defendant 2 and defendant 3 long before this suit was preferred in court.*

*Again to prefer the case against the adjudged former owner of the land who no longer owns or possesses it would amount to a travesty of justice. In the circumstances, I dismiss the case for lack of a cause of action against defendant 1 with costs.”*

This was a grave misdirection by the trial Magistrate because he got the facts wrong in the first place. The judgment referred to is in favour of Defendant No.1. The plaintiff in that suit was not the present plaintiff **Bwayo Clement** but rather another person in the names of **Bernard Zema**.

By his pronouncements, the learned trial Magistrate descended into the Arena by becoming a Judge in his own cause. He based his conclusions on his knowledge and declared conclusively that defendants Numbers 2 and 3 derive title from defendant one before giving the parties a hearing. This was gravely unconstitutional. The case was dismissed against defendant 1 but left hanging against defendants 2 and 3.

Basing on his personal conclusions, the learned Magistrate awarded costs amounting to shs.7,000,000/= to counsel for the plaintiff without a single appearance recorded. What counsel only did was to file a written statement of defence.

The court meted out injustice to the complainant by authorizing execution of the so called Decree and ‘judgment’ by attachment and sale of the plaintiff’s land to

recover the costs yet as I have stated above, a case is still pending against the two other defendants. Court sought to execute orders in a pending suit.

By virtue of the powers entrusted to this court, I am of the view that this is a proper case to warrant a Revision order.

There was no trial in this case. The so called judgment/Decree, and orders of the lower court are quashed and set aside.

It is ordered that if parties are still interested the file shall be remitted to the trial court for hearing in accordance with the law and civil procedure. Costs shall abide the formal trial.

I so order.

**Stephen Musota**

**JUDGE**

**16.08.2012**