THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HC CV APPLI. NO. 001 OF 2011

BEFORE HON. MR. JUSTICE MIKE J. CHIBITA

RULING

This was an application brought by Notice of Motion for orders that the order dismissing Civil Suit KAS CV CS 0044 of 2008 be revised and appropriate orders be made in the circumstances.

The application also seeks for orders that the provision for costs be made.

The Applicants were represented by learned Counsel Geoffrey Sibendire while the Respondent was represented by learned Counsel Richard Bwiruka. They filed written submissions.

The major issue of contention is whether the learned Chief Magistrate erred and acted unjustly and with material irregularity when he dismissed the applicant's suit for being *res judicata*.

The case of **Munobwa Muhammed vs. Uganda Muslim Supreme Council Civil Revision No. 1 of 2006** was cited by learned Counsel for the Applicant. Indeed in that case, Justice Irene Mulyagonja, as she then was stated as follows:

"Decisions are revised whenever the trial Magistrate fails to exercise his/her jurisdiction or where he/she acts illegally or with material irregularity or injustice."

Similarly learned counsel for the Respondent contended that section 83 of the Civil Procedure Act provides for specific instances of revision, to wit:

- Exercise of jurisdiction not so vested.
- Failure to exercise jurisdiction so vested and
- Exercise of jurisdiction illegally or with material irregularity.

He therefore asked court not to entertain the application because it is an appeal under disguise.

The two are therefore agreed on the law of revision as contained in section 83 of the Civil Procedure Act and its application.

The learned Chief Magistrate entertained a preliminary point of law. After listening to both sides he decided that the matter was *res judicata* and dismissed it.

The learned Chief Magistrate had jurisdiction to entertain the case. He exercised that jurisdiction rightly. There was nothing illegal or materially irregular with his decision.

Learned Counsel for the applicant posited that the learned trial magistrate acted with material irregularity and injustice by wrongly applying the principle of res judicata.

I agree with learned Counsel for the Respondent that the option available to the Applicant was to appeal against the decision but not to apply for revision.

In my view, whether a case is res judicata or not, is a question of law that an appellate court will decide. Whether a trial Magistrate acted with material irregularity or illegality is a question of fact subject to revision.

The decision by my brother judge Rugadya Atwooki in the case of **Kadibu Eric vs. Bernard Bagwire & 2 others HC CR No. 011** of 2004, which was followed by this court in the case of **Kisembo Patrick vs. Kyaligaba Richard HC CV CR. No. 010 of 2010** refers.

Whether the trial Magistrate was right or wrong in declaring a matter *res judicata* belongs to an appellate not a revisional court.

As a consequence, the application is dismissed with costs to the Respondent.

The judgment and orders of the lower court are hereby upheld.

Dated at Fort Portal this 26th day of November, 2012

JUSTICE MIKE J. CHIBITA

The ruling is to be read and delivered the Assistant Registrar.

•••••	• • • • • • • • • • • • • • • • • • • •	• • • • • • • • •	• • • • • • • •	 • • • • • • • • •	•
	MIKE	E J. CH	IBITA		

JUDGE