

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MPIGI

CIVIL REVISION NO.06/2018

(Arising from Mpigi Matter 06/2018)

MUSA NKEERA:::APPLICANT

VERSUS

KYOSHABIRE FLORA:::RESPONDENT

BEFORE :HON. JUSTICE OYUKO ANTHONY OJOK

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RULING

Background

This is an application brought under S. 83 and S.98 of the Civil Procedure Act, **0.52 r1-3 of the Civil Procedure Rules**. The application seeks for orders that the decision by the trial Magistrate Her Worship Mbabazi Edith Mary (Mpigi) be revised and set-aside.

The grounds of the application are set out in the Notice of Motion supported by an affidavit of **Musa Nkeera** of C/o M/s Kagenzi & Co. Advocates, the grounds are as follows

20 This Application is brought under provisions of the law aforesaid and upon the grounds and reasons set out in the supporting

affidavit of the Applicant, **Musa Nkeera**, which shall be read and relied upon at the hearing of this application but briefly they are:

- 1) That the Respondent filed land matter No. 163 of 2008 in the Chief Magistrate's court of Mpigi at Mpigi claiming an undefined kibanja interest on the part of the Applicant's land.
- 2) That the aforementioned land matter No. 163 of 2008 was determined in favor of the Respondent by the trial Chief Magistrate Her Worship Akankwa Irene however, the Respondent's kibanja interest on the Applicant's land remained undefined.
- 3) That in 2014, the Applicant fenced off part of his land that was not being occupied by the respondent to prevent her from further encroaching on his other land, without his consent.
- 4) That the Respondent filed Miscellaneous Application No. 067 of 2015 in the Chief Magistrate's Court of Mpigi at Mpigi seeking consequential orders to determine the actual size of her alleged kibanja interest on the Applicant's land.
- 5) That Miscellaneous Application No. 067 of 2015 was dismissed by Her Worship Bareebe Rosemary Ngabirano –Chief Magistrate then.

6) That the Respondent filed another case vide Civil Suit No. 08 of 2017 in the Chief Magistrate's Court of Mpigi at Mpigi seeking to enforce the same kibanja interest on which she has been sued by the Applicant in the various aforementioned Court proceedings.

7) That the Respondent filed further applications arising out of Civil Suit No. 08 of 2017 one of which was an application for a temporary injunction vide Misc. Application No. 0024 of 2017 which was resolved by consent of the parties and their respective counsel.

8) That in the consent settlement of the aforementioned Misc. Application No. 0024 of 2017; the parties agreed that the status quo be maintained.

9) That the respondent on 13th October, 2017 filed Misc. Application No. 107 of 2017 seeking orders inter alia that the Applicant was in contempt of the temporary injunction vide Misc. application No. 0024 of 2017.

10) That on the same day the Applicant was served with Misc. Application No. 107 of 2017. On 14th November, 2017, the Applicant filed an affidavit in reply objecting to the said Application indicating that the Respondent was attempting to use that application as annexing more of the Applicant's land.

11) That on the 28th day of February, 2018, before even hearing, and delivering a ruling in Misc. Application No. 107 of 2017, the trial Magistrate Her Worship Mbabazi Edith issued a Notice to show cause why execution should not issue against me.

12) That when the application appeared in court on the 12th day of March, 2018, the trial Magistrate Her worship Mbabazi Edith ordered the Applicant to remove the fence he placed on his land in 2014 , within a week, or be detained in prison.

13) That the trial Magistrate's aforementioned orders of the 12th day of March, 2018 , in Misc. Application No.107of 2017 effectively determined the main suit, Civil Suit No. 08 of 2017 without considering the Applicant's evidence.

14) That in issuing the orders of the 12th day of March,2018, in Misc. Application No. 107 of 2017, the trial Magistrate acted in exercise of her jurisdiction, illegally and with material irregularities or injustice.

15) That it is in the interest of justice that this application be granted and he trial Magistrate Grade one Her worship MbabaziEdith's orders of the 12th day of March, 2018 , in Misc. Application No. 107 of 2017be revised and set aside.

The Respondent opposed this application, briefly are Kyosabire Flora of c/o Kwesigabo, Bawmine and Walubiristate as follows:

3) That the contents of paragraphs 2 of the affidavit of Mr. Musa Nkeera are false and I state that I did not file Land matter 163 of 2008 against the Applicant, but rather it is the Applicant who filed the said suit against me and Ms Penninah Tumwine for vacant possession of land comprised in Gomba Block 73 Plot 3 situate at Kweri which he lost and court declared me to have the right of occupancy but without visiting the locus to determine the actual size or boundaries of my land.

4) That the contents of paragraph 3 and 4 of the affidavit of Mr. Musa Nkeera are admitted to the extent that the Applicant is the registered proprietor of the suit land and that I have a Kibanja interest on the suit land.

5) That the Applicant herein purchased and acquired the said land in 2008 when I was already residing on the suit land as a customary tenant. Without my knowledge or giving me an opportunity to acquire the mailo interest on my kibanja, am advised by my said lawyers which advice I verily believe to be true, that such a sale was in contravention of the law and therefore illegal and void.

6) That in response to paragraph 5 of the affidavit of Mr.MusaNkeera, I state that the Applicant unilaterally fenced off a large chunk of my kibanja after the Judgment in which the Court had declared me a customary tenant thereon with right of occupancy and I am advised by my said lawyers that such action is in contempt of court's order.

10 7) That the contents of paragraphs 6 and 7 of affidavit are admitted and state that the purpose of Miscellaneous Application No. 067 of 2015 was to determine the actual size of my Kibanja which would have had the effect of determining the dispute in respect of the suit land.

8) That in reply of paragraph 8 of the affidavit of Mr. Musa Nkeera, I state that I filed Civil Suit No. 08 of 2017 against the Applicant to interlia restrain the Applicant from trespassing on my land, and that I have never brought any other Court proceedings against the Applicant as alleged.

20 9) That the contents of paragraphs 9,10,11,12 of the affidavit in support are accurate as far as they relate to the Application for a temporary injunction vide Misc. Application No.0024 of 2017 and the contempt proceedings vide Misc. Application No. 107 of 2017.

10) That in specific response to paragraphs 11 and 12 of the affidavit in support, I state that the contempt proceedings were instituted against the Applicant after he violated the terms of the order for a temporary injunction by further trespassing on my land, by evicting my cattle, fencing off and hiring it to third parties to grow maize. ***A copy of the application is hereto attached and marked A.***

11) That the contents of paragraphs 13,14 and 15 are denied and I state as follows:

a) The parties were directed by the previous Magistrate Grad One, Her worship Ninsiima Marion to file their respective pleadings and affidavits in Misc. Application No. 107 of 2017 in respect of the contempt proceedings.

b) At the court hearing on the 19th February, 2018 the parties were further directed to file their respective submission and adjourned the matter to 9th March, 2018 for ruling.

c) However, before the matter could come up for ruling, Her worship Ninsiima Marion was transferred and replaced with her Worship Mbabazi Edith who, after took into account the pleadings on record, then issued a Notice to show cause why execution should not issue against the Respondent for violating the subsisting order for a temporary injunction.

d) On the 19th March, 2018, the parties and their counsel appeared before the learned Magistrate who examined both parties and made reference to the affidavits already on record and accordingly ordered the applicant to remove the fence that he had erected around the land after the issuance of the order for a temporary injunction.

10 e) I am advised by my lawyers whose advice I verily believe to be correct, that the Applicant's right to be heard was observed by Court and no prejudice was occasioned by the procedure adopted by Court.

12 That in reply to paragraphs 16 and 17 of the affidavit in support, I state that the trial Magistrate took into consideration evidence adduced by both parties, the affidavits on record and the testimonies in Court and ordered the Applicant to remove the fence he had erected after issuance of the temporary injunction.

20 13. That in reply to paragraph 18 of the affidavit of Mr. Musa Nkeera, I state that the trial Magistrate's order in Misc. Application No. 107 of 2017, does not affect the entire land but only relates to the land the Applicant unlawfully fenced off after the grant of the temporary injunction.

14. That in reply to paragraph 19 of the affidavit of Musa Nkeera, I have been advised by my lawyers , Kwesigabo, Bawmine and Walubiri Advocates, whose advice I verily believe to be true, that the trial Magistrate acted within her jurisdiction and appropriately, so as to enable expedient hearing of the main suit.

10 15. That in reply to paragraph 20 of the affidavit in support, I have further been advised by my said lawyers that it was premature to carry out a locus visit at this stage of the proceedings, and the trial Magistrate made her orders on the basis of the oral and affidavit evidence adduced by both parties.

16. That in reply to the affidavit in support, in paragraph 21, 22 and 23, I state that the trial Magistrate's orders in Misc.Application No. 107 of 2017 were legal and valid and only intended to restore the prevailing status quo as it was before the grant of temporary injunction in Misc. Application No. 0024 of 2017.

20 17. That in reply to the affidavit in support, in paragraphs 24 and 25, I state that I have been advised by my said lawyers that the said application lack merit and is an abuse of Court process and only brought with the intention to use Court process to prevent compliance with Court's orders in Misc. Application No. 0024 of 2017.

18. That I depone this affidavit in opposition to the application and orders sought herein.

Issues

(1)Whether or not the Court order dismissing the points of law should be set aside

(2)Whether the trial Magistrate had jurisdiction to issue the said order.

(3)Remedies available

Representation

10 The Applicant was represented by KaganziLesta and the Respondent was represented by M/s Kwesigabo, Bamwine and Walubiri Advocates.

Both parties filed written submissions.

Applicant's written submission

The facts;

My Lord, the matter before you is an application for revision of the order of her worship Edith Magistrate Grade one of the Chief Magistrate's Court of Mpigi at Mpigi issued on the 12th day of March, 2018 in Misc. Application No. 107 of 2017.

20 This application is brought under section 83 and 98 of the Civil Procedure Act ,Cap.71, Section 33 of the Judicature Act, Cap.13 and order 52 rules 1and 3of the Civil Procedure Rules 71-1.

The Applicant seeks for orders that:

1. The learned trial Magistrate had no jurisdiction to issue the order she issued on the 12th day of March 2018 in Misc. Application No.107 of 2017.
2. The learned trial Magistrate's aforementioned order be revised and set aside.
3. The costs of the Application be provided for.

The grounds of this Application are contained in the affidavit in support of the applicant-Musa Nkeera, and follows;

10 The Respondent filed land matter No. 163 of 2008 in the Chief Magistrates Court of Mpigi claiming an undefined Kibanja, interest on the Applicant's titled land. The case was determined in the respondent's favor by the then Trial Chief Magistrate Her Worship Akankwasa Irene, however the Respondent's kibanja interest remained undefined.

In 2014, the Applicant fenced off the part of his land that was not occupied/used by the Respondent to prevent her from further encroachment on his land without his consent.

20 The Respondent filed Misc. Application No.067 of 2015, seeking consequential orders to determine the actual size of her kibanja interest and the same was dismissed by her worship Bareeba Rosemary Ngabirano the then Chief Magistrate.

The Respondent filed another case vide Civil Suit No. 08 of 2017, in the Chief Magistrates court of Mpigi at Mpigi seeking, to enforce the same kibanja interest she has been suing the Applicant over, in the various aforementioned Court proceedings arising out of this case. She also filed Misc. Application No. 024 of 2017, seeking for temporary injunction and this application was resolved by consent of the parties and their respective counsel, that both parties maintain the status quo of the suit land.

10 On the 13th October 2017 the Respondent filed Misc. Application No.107 of 2017, seeking inter alia a declaration that the Applicant was in contempt of the temporary injunction issued vide Miscellaneous Application No. 0024 of 2017. The Applicant filed an affidavit in reply objecting to the said Application indicating that the Respondent herein was attempting to use the Misc. Application No.0024 of 2017 to annex more of his land.

On the 28th of February 2018, before hearing and delivering a ruling in Miscellaneous Application No. 107 of 2017, the trial Magistrate
20 Her Worship Mbabazi Edith issued a Notice to show cause why execution should not issue against the Applicant, and when the matter came up for hearing on the 12th day March 2017, the trial Magistrate ordered the Applicant to remove the fence he had placed on his land in 2014 within a week or be detained in prison.

The Applicant filed this Application challenging the aforementioned orders of the learned trial Magistrate.

Issues

1. Whether this application reveals sufficient grounds for the grant of the prayers sought?
2. What remedies are available to the parties?

Issue1: whether this application reveals sufficient grounds for the grant of the prayers sought?

10 Section 83 of the Civil Procedure Act, Cap.71 provides that for the following grounds for revision;

1. A Magistrate Court exercising a jurisdiction not vested in it in law.
2. Failure to exercise of its jurisdiction illegally or with material irregularity or injustice;

It is the Applicant's contention in this matter that trial Grade One Magistrate was not vested with jurisdiction to issue the orders that she issued on the 12th day of March, 2018 in Misc. Application No. 107 of 2017. A copy of the impugned order is attached to affidavit in support of this application and marked "f"

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It is Applicant's contention that the trial Grade One Magistrate in issuing the Aforementioned order Misc. Application No. 107 of 2017 exercised a jurisdiction not vested in her.

This is premised on the fact that this same matter had been determined in two previous matters all handled by the then Chief Magistrates. The issues raised in Misc. Application No.107 of 2017 were res judicata as they had been determined in two earlier matters which were determined by Chief Magistrates.

As stated in paragraph 4 of the affidavit in support of this application; the Respondent filed Civil Suit No. 163 of 2008 which was determined on the 29th January, 2010 by Her
10 Worship Akankwasa Irene- Chief Magistrate, where the Respondent's undefined kibanja interest was confirmed.(see annexure B" to affidavit in support) Also as stated in paragraphs 5 & 6 of the affidavit in support of this Application; the Respondent filed Misc. Application No. 067 of 2015 seeking consequential orders to determine the actual size of her alleged kibanja. This application was on the 17th day of December 2015 dismissed by **Her Worship Bareebe Rosemary –Chief Magistrate.**

Section 7 of the Civil Procedure Act, Cap71 provides that; “No
20 **Courts shall try any suit or issue in which the matter directly and substantially in issue in a former suit between the same parties, or between parties whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or**

the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court.

In the Misc. Application No.107 of 2017, the trial Grade One Magistrate, purported to determine the question whether the Applicant violated the consent order of a temporary injunction and found that the Applicant had fenced the Respondent's kibanja, and ordered that the Applicant removes this fence. This is the same alleged kibanja interest claimed in all the previous Court matters
10 between the same parties and since Court refused to define the said kibanja interest in the two previous cases, the trial Grade One Magistrate did not have jurisdiction to impliedly define the Respondent's kibanja by asking the Applicant to remove the fence that he placed on the suit land in 2014. In this respect, the trial Grade One Magistrate had no jurisdiction to determine the contempt application on the terms she did, since that particular issue was determined in previous suits which were determined by two previous Chief Magistrates, and as such the matter was res
20 judicata and doing so offended section 7 of the Civil Procedure Act, Cap.71 .We invite this honorable Court to consider explanations 2,4 and 5 of this section; all of which support the Applicant's contention that the trial Magistrate has no jurisdiction to issue the orders which she issued in Misc. Application No.107 of 2017 and we invite this honorable Court to find as such.

Without prejudice to the foregoing, You Lordship it is also the Applicant's contention that the trial Grade One Magistrate acted illegally or with material irregularities in issuing the impugned orders in Misc. Application No. 107 of 2017. The irregularities are;

1. On the 28th February 2018 the trial Magistrate issued a notice to show cause for 12th March 2018, before even determining Misc. Application No. 1407 of 2017 which was fixed for ruling on 9th March 2018 at 2:00p.m.
2. Failure to visit the locus in quo prior to issuing orders that effectively disenfranchise the Applicant of his land and thereby leaving the Respondent at liberty to annex more of the Applicant's land.
3. Issuing an order that has effect of determining Civil Suit No. 08 of 2017 between the parties to detriment of the Applicant herein.

On the 13th October, 2017 the Respondent filed Misc. Application No. 107 of 2017 seeking inter alia a declaration that the Applicant was in contempt of the temporary injunction issued vide Miscellaneous Application No. 0024 of 2017. The Applicant filed an affidavit in reply objecting to the said Application No 0024 of 2017 to annex more of his land.

Misc. Application No. 107 of 2018 was fixed for hearing on the 19th day of February, 2018 and hearing notices to this effect were issued and served upon the applicant's lawyers. On the 19th of February, 2018, the trial Magistrate ordered the parties to file written submission and adjourned the matter to 9th March 2018 at 2:00pm for ruling.

On 28th of February, 2018, before delivering the ruling in Miscellaneous Application No. 107 of 2017, which she had fixed
10 for 9th March 2018 at 2:00pm, the trial Magistrate Her
Worship Mbabazi Edith issued a notice to show cause why execution
should not issue against the Applicant. This particular irregularity
was even highlighted by the Respondent's own lawyers in a letter
Ref. No. Civil/008/2017 filed in Court on 7th March, 2018 (a copy is
attached for ease of reference).

On the 12th day of March 2018, without even delivering the ruling
which she promised to deliver on 9th March 2018, the trial
Magistrate ordered the applicant to remove the fence he had placed
20 on his land in 2014 within a week or be detained in prison.

It is clear from the above sequence of events, that the trial
Magistrate, issued the aforementioned Notice to show cause dated
28th February, 2018 and the order issued on 12th March, 2018

before delivering the ruling in Misc. Application No. 107 of 2018 which she was supposed to issue on 9th day of March, 2018. This irregularity affected the fundamental rights of the Applicant; including the right to get a reasoned decision in Misc. Application No.107 of 2018 and even further curtailing his right to appeal against that ruling if he was dissatisfied with the decision. We invite Court to find that indeed the trial Magistrate exercised her jurisdiction with material irregularities which if not revised, will occasion substantial injustice to the Applicant.

- 10 Further the order issued by trial grade one magistrate had the effect of determining Civil Suit No. 08 of 2017 to the detriment of the Applicant herein.

My Lord in conclusion on the first issue, it is our submission that trial grade one magistrate had no jurisdiction to issue the orders were re judicata. It is the Applicant's further submission that trial Magistrate exercised her jurisdiction with material irregularities which occasioned a grave injustice to the applicant and which had an implication of determining Civil Suit No. 08 of 2017, to the
20 Applicant. Further the trial Magistrate exercised her jurisdiction illegally and with material irregularity as she did not even visit locus to confirm whether it was true that the applicant had altered the status quo of the suit land as the parties had by consent agreed in Misc. Application No. 0024 of 2017.

These reasons all provide sufficient grounds for this honorable Court to grant the prayers sought, and we invite this honorable Court to find as such and resolve the first issue in the affirmative.

Issue 2: what remedies are available to the parties?

My Lord , in light of the foregoing submission it is evident that the Applicant has proved that the trial Grade One Magistrate exercised a jurisdiction not vested in her, and or that she exercised her jurisdiction with several material illegalities or irregularities which this honorable Court has powers to revise and set aside. In the case of **Katebarirwe versus Ssenoga Revision Cause No. 12 of 2017** Hon. Justice Steven Musota, citing with approval the case of **Hitler versus Uganda (1969) 1EA 219** the Court of Appeal of Uganda held that; *“in exercising its powers of revision , the High Court could use its wide powers in any proceedings in which it appeared that an error material to the merits of the case or involving a miscarriage of justice had occurred, and further held that Court do so in any proceedings where it appeared from any record that had been called for the court or which had been reported for orders or in any proceedings which had otherwise been brought to its notice.”*

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We invite this honorable Court to find that the trial Grade one Magistrate exercised a jurisdiction not vested in her and or exercised her jurisdiction illegally and or with material irregularity when she ordered that the Applicant removes the fence on his land

within a week or detained in prison, and that the said order be revised and be set aside. We further pray that the costs of this application be paid by the Respondent in consonance with the provision of section 27 (2) of the Civil Procedure Act, cap.71

Respondent's submissions

Back ground of Revision Cause No. 06 of 2018.

1. The Applicant is the Registered Proprietor of Land Comprised on Block 73 Plot 3 situate at Kwere on which the Respondent owns and possess a kibanja.
- 10 2. The applicant filed Civil Suit No. 163 of 2002, against the respondent and Ms. PenninahTumwine inter alias seeking vacant possession on land comprised On Block 73 Plot 3 situate at Kwere when in court held that the Respondent has a right of occupancy on her land but its size was not determined in this suit.
3. The respondent later obtained a temporary injunction from the trial Magistrate Vide Misc. ApplicationNo. 002 of 2017 from Her WorshipNinsiimaMarion.
- 20 4. Thereafter, the Applicant unilaterally fenced off the Respondent's land in total abuse of the temporary injunction orders in which parties consented to maintain the status quo.
5. Upon the Applicant abusing the temporary injunction order, the Respondent's then filed an application for contempt of the Court order vide Misc. Application No. 107 of 2017 and the same was allowed hence this revision cause.

Legal arguments in opposition to this application

6. My Lord, we propose that the ultimate legal issue to be determined in this revision cause as per the orders sought is namely;

a) Whether Revision Cause No. 06 of 2018 satisfies the legal conditions for revision?

b). What are the available remedies to the parties?

7. My Lord, we wish to first address Court on the law on revision in summary;

The law applicable in summary

8The High Court may call for record of any case which has been determined by a Magistrate where it appears that Court; **see Section 83 of Civil Procedure Act 71.**

a). *“Exercised a jurisdiction not so vested in it law,*

b).Failed to exercise a jurisdiction so vested, or

c). acted in the exercise of its jurisdiction illegally or with material injustice.”

9. In the case of **MufumbaFredrick v WaakiLastone RevisionCause No. 006 of 2011**, Court cited OlegumJoseph Vrs. Betty; Civil Revision 13/2011 and inter alia held that;

“It was held that section 83 CPA only refers to irregular exercise or non-exercise of jurisdiction. It does not refer to conclusions of law or fact in which the question of jurisdiction is not involved...”

10. We hereby proceed to apply the above principle of law on revision and submit on the above issues as hereunder;

a. Whether Revision Cause No. 06 of 2018 satisfies the legal conditions for revision?

11. My Lord, we wish to specifically inform this Honorable Court that the order of the trial Magistrate sought to be challenged by way of revision as a contempt of Court Order issued against the Applicant vise Misc. Application No. 107 of 2017 for abusing the temporary injunction order issued in Misc. Application 002 of 2017. This is the basis of this revision cause.

12. The Respondent states in paragraph 9 and 10 of the affidavit in reply that, both parties to this application were party to Misc. Application No. 024 of 2017 in which Court issued a temporary injunction and the same was violated by the Applicant herein and hence the Respondent filed Misc. Application No. 107 of 2017 for contempt of trespassing on the Respondent's land, evicting her and hiring it out to third parties.

13. The Respondent further states in paragraphs 12 and 13 of the affidavit in reply that, the Applicant was ordered to remove the fence he had erected after the issuance of the temporary injunction, and said order was not limited to the entire land but that which the Applicant unlawfully fenced off.

14. My Lord this is admitted in paragraphs 9, 10 and 11 of the Applicant's supporting affidavit to this Application. It is admitted that there was a consent order for a temporary injunction issued vide Misc. Application No. 0024 of 2017 and thereafter the Respondent filed misc. Application No. 107 of 2017 for contempt of the orders issued in the temporary injunction and the same is attached as annexure "D" to the Applicant's affidavit in support.

10 15. It is also expressly admitted that the decision and orders of the Learned trial Magistrate arising out of Misc. Application No. 107 of 2017 were communicated by way of a summary ruling dated 12th/03/2018. (Ref to annexure "F",to the supporting affidavit of the Applicant.)

16. The Respondent further states in paragraph 14 of the affidavit in reply that, the trial Magistrate acted within her jurisdiction in issuing the orders of contempt against the application.

20 17. It is our submission that the learned trial Magistrate issued the notice to show cause why execution should not issue against the Applicant, and requiring the Applicant herein to appear in court on 12th March, 2018 at 9:30a.m upon perusing the glaring

evidence in support of the application for contempt that was adduced in Miscellaneous Application No. 107 of 2017.

It is trite law that revision does not refer to conclusion of law of fact in the question of jurisdiction is not involved. See ***Olegum Joseph vs. Arono Betty; Civil Revision 13/2011***

Resolution by Court.

The Law;

- 10 In Civil cases, itsun established principle that the burden of proof lies on the plaintiff to prove his/her case on the balance of probabilities.

Therefore, a party can only be called to dispute or rebut what has been proved by the other side. This is so because the person who alleges is the one who is interested in believing his contention.

“Muller versus Minister of Pensions (1947)2ALLER 372, Lugazi progressive school and Another versusSerunjogi&others (2001-2005)2 HCB 12.

- 20 In the instant case it’s therefore the duty of the applicant to prove his case to the satisfaction of this Court.

S.83 of the Civil Procedure Act;

“the High Court may call for any case which has been determined under this act by any magistrate’s Court, and if that Court appears to have exercised the jurisdiction not vested in it in law, fail to exercise of its jurisdiction illegally or with material illegality or injustice, the High Court may revise the case and may make such orders in it as it thinks fit; but no such powers of revision shall be exercised unless the party shall be given the opportunity of being heard or where, from lapse of time or other cause, in the exercise of that power will involve serious hardship to any person”.

10 Thus, the grounds for revision are that:

1. The Court failed to exercise the jurisdiction vested in it by law
2. The Court acted in excess of jurisdiction
3. The Court exercised jurisdiction but with material irregularity.

0.52 of the Civil Procedure Rules lays down the procedures which must be met by the Applicant who seeks an order for review

20 **0.46 r1 Civil Procedure Rules** and in the case of **Andrew Maviri versus Jomayi Property Consultants Ltd, Civil Application No. 274 of 2014**, the Court of Appeal at Page 8 referring to the case of **Bakaluba Mukasa Peter and another versus Nalugo Mary Margaret Sekiziyivu**, Election Petition No. 24 of 2011 it was held inter alia, that; “taking an essential step is the performance of an act by a party whose duty is to perform that fundamentally

necessary action demanded by the legal process so that subject to permission by the Court, if the action is not performed as by law prescribe, then whatever legal process has been done before becomes a nullity, as against the party who has the duty to perform that act. It was further held in that case that delay in taking the right time hinders successful parties from enjoying the fruit of their Judgment which was obtained in their favour.

Ground No1 Whether or not the trial Court had jurisdiction:

10 This was a case determined by Her worship Mbabazi Edith Grade One(Mpigi) the Plaintiff sued the defendant for trespass on the plaintiff's kibanja situated at Kyanja, Bugambo measuring 10 acre.

S.83 of the Civil Procedure Act is very clear that the Magistrate either failed to exercise her jurisdiction vested in it, acted in excess of jurisdiction or exercised the jurisdiction with material irregularity.

In the case of Rwakijuma Kabagambe & 4 others Vs Bishop Clvis Sunday ,HCT-CV-CA 005/19

20 *"It was held that in the view that when Courts of law make a decision regarding land, they do two things simultaneously, they declare one party a trespasser and therefore order that party to leave the land."*

The second thing, the Courts do simultaneously, sometimes overtly but other times only by implication, is to declare the other party the rightful owner of that property as against the trespassing party, but also as against the rest of the world.”

It will be observed that **S.83 of the Civil Procedure Act** applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal aspect of it. The section is not directed against conclusion of the law or fact in the question of jurisdiction is not involved.....as regards alleged illegality or material irregularity urged by the Applicant. According to the case of **Amir Khan Vs SheoBakshSingh(1885)**¹¹ CA 16, A237, a privy Counsel case, it is settled that; “*where a court has jurisdiction to determine a question and it determines that question .It cannot be said that it has acted illegally or with material irregularity because it has come to erroneous decision on a question of fact or even of law.*

Revision is only intended to correct errors which do not go to the merits/ substance of the dispute not the determination of the rights of the parties.”

It’s my considered opinion that this was a matter of trespass on the Plaintiff’s kibanja at Kyanja measuring 10 acres within the jurisdiction of the Magistrate Grade one. The instant application is one that does not meet the criteria outlined under **S.83 of the Civil Procedure Act.**

Since issue number one failed, automatically issue two fails since there is nothing to revise.

In conclusion

I therefore find this application incompetent and without merit. It does not certify the requirements under **S.83 of the Civil Procedure Act.**

The decision as passed by Magistrate Grade One was neither irregular nor illegal the Appellant would have appealed against the decision

10 This application for revision is dismissed with costs to the Respondent both in the Lower Court and High Court.

Right of appeal explained

**HON.JUSTICE OYUKO ANTHONY OJOK
JUDGE.**

Dated this 31st day of March 2021