

(Arising from Misc Cause N0.178/2017)

VERSUS

BEFORE: HON: JUSTICE OYUKO ANTHONY OJOK

RULING

This is an application brought under S. 83 Civil Procedure Act, S.33 Judicature Act and Art 50(1) 1995 Constitution. Seeking for orders that;

- (a) The decision of the trial Magistrate to entertain a matter of recovery of land and eviction by way of Notice of Motion be revised and set aside.

- (b) The decision of the trial Magistrate to entertain a consent which was not interpreted to the Applicant in the Luganda language she understands best, be revised and set aside.

- a) The decision of the trial Magistrate of committing the applicant to Civil Prison vide a clear consent agreement which gave an alternative sale of land, be revised and set aside.

- b) The decision of the trial Magistrate committing the applicant to civil prison for failure to pay Ug. Shs 10,000,000/= (ten million shillings) only without filing a summary suit for recovery of the same be revised and set aside.

The Applicant's affidavit in support of this application are briefly stated below;

I, **NANFUKA AGNES** of c/o Luzige, Lubega, Kavuma & Co. Advocates state as follows:

- 1) That the Respondent filed Misc. Cause No. 178 of 2017 against me in the Chief Magistrate's Court of Mpigi at Nsangi for eviction orders and an order of vacant possession. (See annexure Notice of motion).
- 10 2) That vide the said case, the trial Magistrate issued eviction Notices and a warrant of attachment of my house. (See Annexures B warrant of attachment and sale of my property).
- 3) That I am informed by my lawyer Joseph Luzige, which information I verily believe to be true by virtue of his legal training and expertise, that the respondent did not file a Plaint or a summary suit as required in law since the matter was for recovery of land.
- 20 4) That I am further informed by my lawyer Joseph Luzige which information I still believe to be true by virtue of his legal training and expertise that the trial Magistrate entered a consent in favor of the Respondent which I did not understand and contravenes provisions of the illiterate persons' protection act, since the same was not interpreted to me in the Luganda Language I understand best. (See annexure C consent).

5) That in the said consent though contested was a clear term that the respondent would sell the house in case of default.

6) That I was instead committed to civil prison where I am very sick (see annexure D warrant of arrest in execution).

7) That therefore, the decision of the trial Magistrate to proceed and do all the above indicated be revised and set aside.

10 8) That I am informed by my lawyer Joseph Luzige which information I verily believe to be true by virtue of his legal training and expertise that the trial Magistrate could not proceed and do all the above issues as the law provides otherwise.

9) That I shall suffer irreparable injury and also unnecessary costs arising out of double litigation if the said decision is not revised, set aside and I get released from civil prison .

The Respondent opposes the Applicant's application in reply on the following grounds;

I, **KATUSIIME IMMACULATE** of c/o M/s Mudawa & Kyogula Advocates, that
20 I have read the content of both the application and the supporting affidavit whose contents my lawyers have fully explained to me to which I respond as hereunder.

1 That the affidavit contains a lot of falsehoods and the deponent is hereby put on notice that, at the hearing of the application, she shall be cross examined by my advocate on the content of her affidavit.

2 That I have been advised by my lawyers herein above, whose advice I verily believe to be true that, the procedure I adopted when I proceeded by Miscellaneous Cause No. 178 of 2017, did not in any way affect my claim.

3 That it is not true that the Applicant did not understand the content of the consent order dated 28th November, 2017, because she personally suggested that we go to a one Mugabi Kireru Geoffrey who was working at court to reduce our agreed terms in writing.

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4 That the Applicant even told the said Mugabi Kireru what to write, who after writing read the content, agreed terms back to both of us in Luganda dialect which language the Applicant understands very well and we confirmed the same as the true reflection of our agreed terms.

5 That it was after that the said Mugabi took us before the trial Magistrate, Her Worship Sarah Basemera, who also read back to us the content while explaining the same in Luganda language, and the effect of the consent order was entered.

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6 That it was upon our confirmation while appearing before the Trial Magistrate that the content of the consent was a true reflection of what we had agreed upon, that she then asked us to append our signatures in her presence and thereafter, she also appended her signature still in our presence and returned a copy to each one of us.

7 That MugabiKireruGeoffrey has sworn a supplementary affidavit to also confirm what happened, and that he interpreted the content of the consent order to both the Applicants.

8 That I have been advised by my lawyers herein above, which advice I verily believe to be true, that I have been refunded UgX 10,000,000/= (ten million shillings) by the applicant pursuant to the consent order in partial satisfaction of the claim as per the said consent order. The Applicant is stopped from claiming that she did not understand the terms set out in the
10 consent order for being an illiterate person.

9 That I have further been advised by my lawyers herein above, which advice I verily believe to be true that by the applicant relying on the term in the consent, that the Respondent would sell the house in case of default; instead of execution by committal to civil prison, it is a clear demonstration that the applicant clearly understood the terms of the consent, but is merely using the issue of illiteracy to invade from her liability.

20 10 That I have also been advised by my lawyers herein above, which advice I verily believe to be true that, I as the judgment creditor, was at liberty to choose any mode of execution to recover my money from the applicant and the mode of execution by committal and detention in civil prison was as a result of default by the applicant pursuant to the consent order.

11 That I have been advised by my lawyers herein above, which advice I
verily believe to be true that the execution mode I opted for does not
prejudice the judgment creditor and sickness has never been ground for
revision of orders of court like in the instant case.

12 That the application is lacking in content to meet the grounds for
revision, and I swear this affidavit in opposition of the orders sought by
the Applicant to which I pray for dismissal of the application with costs.

10 Representation

The Applicant was represented by M/s Luzige, Lubega, Kavuma Advocates while
the Respondent was represented by M/s Mudawa&Kyogula Advocates.

Submissions

Both parties never filed submissions.

Resolution by Court.

S.83 Civil Procedure Act;

20 *“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”.*

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.

O.52 of the Civil Procedure Rules lays down the procedures which must be met by the Applicant who seeks an order for review

O.46 r 2 of the Civil Procedure Rules also lays down some conditions to be fulfilled:

Ground No1 Whether or not the trial Court decision of entertaining a matter for recovery of land and eviction by way of Notice of Motion be revised and set aside.

10 This was a case determined by H/W Basemera Sarah Anne Grade One (Nsangi), where a suit was filed against the Respondent for Vacant Possession, and eviction order, or else to refund the purchase price of the house at Namagoma. The applicant and Respondent entered into a consent dated 28th November, 2017.

The court had an opportunity to hear from both parties as regards the consent which was filed before the trial Magistrate as per the proceedings; It indicates that the Respondent and Applicant voluntarily agreed with the contents of the consent agreement hence being bound by the terms there was no viating element to overturn the consent

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

The instant application therefore is to the effect that the Magistrate had no jurisdiction.

It's my considered opinion that the instant application is not the one that meets the criteria outlined under S.83 Civil Procedure Act.

In any case the consent was entered between the parties voluntarily and thus bound by the terms. This ground therefore fails.

Ground Two; whether the consent which was not interpreted to the Respondent can be revised?

I had the benefit to peruse through the record of proceedings on the file, but it clearly shows that the consent was read and interpreted to the parties in Luganda that both parties understood therefore ground two fail.

10 Since ground number one and two failed automatically the other grounds also fails.

In conclusion

I therefore find this application incompetent and lacking 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 Applicant would have preferred an appeal if he was dissatisfied with the decision of the Magistrate and file the memorandum within the time frame, and therefore I am not convinced that this is an application for revision

20 This application is dismissed with costs to the Respondent both from the Lower Court and High Court.

Right of appeal explained.

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HON JUSTICE OYUKO ANTHONY OJOK
JUDGE

Dated this 31st day of March 2021