

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MPIGI**  
**CIVIL REVISION NO.02/2018**

*(Arising from Mpigi Chief Magistrate's Court Case No. 28/2016)*

**REV.CAN.PATRICK LUBWAMA:.....APPLICANT**

**VERSUS**

**KAMYA STEPHEN:.....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, O.52 r1-3 of the Civil Procedure Rules. The application seeks for orders that the decision by the trial Magistrate H/W Ninsiima Marion (Mpigi) be revised and set-aside, the matter was bound by res judicata, the Plaintiff sued a wrong party and that Civil suit No. 28/2016 was instituted against the same party which was the basis of dismissal.

20 The grounds of the application are set out in the Notice of Motion supported by an affidavit of **Rev.** Can. Patrick Lubwama of C/o M/s KageziKasozi& Co. Advocates, the grounds are as follows;

1. That I am advised by my lawyers KageziKasozi& Co. Advocates which advise I believe to be truthful, that there was an error on the face of record which needs to be corrected when the Trial Magistrate concentrated or based her

ruling on one ground of res judicata in isolation of other grounds, which had the effect of disposing off the entire suit.

2. That it was an error on the face of the record when the trial magistrate ignored another technical ground of having sued wrong party instead of suing the registered trustees of Church of Uganda a very factor which caused the respondent to withdraw Civil suit No. 70/2015 to bring a new suit when he had sued correct party, which was the advice given by Court but still was abused.
- 10 3. That it was an error on the face of the record when the Trial Magistrate based her ruling on submissions by the Respondents' Counsel which were filed out of time fixed by Court.
4. That entertaining response which was filed out of time would be to sanction an illegality.

The Respondent opposed this application through his affidavit in reply briefly are;

- 1 That I am further informed by my lawyers that the instant application is misconceived, erroneous and does not disclose a cause of action and will at the earliest opportunity pray that it is struck out with costs.
- 20 2 That the Respondent denies the contents of paragraph 2 in toto and the applicant shall be put to strict proof.
- 3 That in reply to paragraphs 3 & 4. I am advised by my lawyers KM Advocates & Associates whose advice I verily believe to be true, that the Applicant trespassed over the Respondent's kibanja and as such this constitutes a proper cause of action. In further reply to paragraphs 3 & 4, am advised by my lawyers whose advice I verily believe to be true that the Applicant's actions have been sanctioned by the Registered Trustees of the Church of Uganda since this entity is not the owner of his kibanja.
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4 That in reply to paragraph 5&6 ,am advised by my lawyers whose advice I verily believe to be true that it was within the court discretion to consider the Respondents submissions.

5 That I thus pray that the Applicant's application is dismissed with costs.

### **Grounds**

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

(2) Whether the matter was bound by resjudicata

10 (3) Remedies available

### **Representation**

KageziKasozi& Co. Advocates for the Applicant and KM Advocates for the Respondent.

### **Submission**

Both parties never filed their submissions.

### **Resolution by Court.**

The Law;

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.

20 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 the believing his contention.

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

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”.*

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 conditions which must be met by the applicant who seeks an order for review

**O.46 r2 of the Civil Procedure Rules** also lays down some conditions to be fulfilled:

*“A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except where the ground of the appeal is common to the applicant and the appellant, or when. Being Respondent, he or she can present to the appellant court the case on which he or she applies for review.”*

**Ground No1 Whether or not the trial Court had jurisdiction:**

This was a case determined by H/W Ninsiima Marion Grade One Magistrate(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 his jurisdiction vested in it, acted in excess of jurisdiction or exercised the jurisdiction with material irregularity.”

It's my considered opinion that the instant application is not the one that meets the criteria outlined under **S.83 Civil Procedure Act**.The Magistrate had powers and she exercised it correctly.

Since ground one failed, automatically groundtwo fails since there is nothing to revise.

**In conclusion**

I therefore find this application incompetent and lacking merit, itdoes not certify the requirements under **S.83Civil Procedure Act**.

The decision as passed by Magistrate Grade One was neither irregular nor illegal.

10 The Applicant would have preferred an appeal if he was dissatisfied with the decision of the Magistrate and filed the memorandum within the time frame, and therefore not convinced that this is an application for revision

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

Right of appealexplained

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**HONJUSTICE OYUKU ANTHONY OJOK**

**JUDGE**

*Dated this 31<sup>st</sup> day of March 2021*

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