

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-CV-CR-0020-2021**

(Arising from MBR-00-CV-NO.005-2021)

ORISHABA WILBROAD ::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

RUTANDARO STEVEN ::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON LADY JUSTICE JOYCE KAVUMA

RULING

Introduction.

[1] This is an application by way of Notice of Motion brought under **Article 28(1) and 44(c)** of the 1995 Constitution of Uganda as amended, **Sections 83 and 98** of the CPA and **Section 33** of the Judicature Act seeking for orders that;

1. This honourable court be pleased to examine the propriety of the ex-parte judgment and proceedings in **MBR-00-CV-No. 005 of 2021**.
2. Court be pleased to quash and set aside the said ex-parte judgment and proceedings in **MBR-00-CV-No. 005 of 2021**.
3. Court quashes the ruling and orders in Miscellaneous Application No. 85 of 2021 and set them aside.
4. Court order the Respondent to pay the Applicant the costs of this application.

The grounds upon which this application was based were briefly set out in the motion as;

1. That the ex-parte judgment in **MBR-00-CV-No. 005 of 2021** was entered on the basis of false and defective affidavits of service.
2. That the applicant had never been served with court summons at all and he was not aware of the claim.
3. That the applicant was denied his constitutional right to a fair hearing since the proceedings were ex-parte
4. That the applicant was denied his right to a fair hearing because he was denied the right to a personal lawyer to represent him in MA no. 85 of 2021.
5. That the learned trial Magistrate erred in law and fact when she failed to evaluate the evidence in the affidavit in rejoinder of the applicant proving that he had discharged his debt obligation which occasioned a miscarriage of justice.
6. That the learned trial Magistrate erred in law when she relied on the evidence of Kabandize Daniel who claims to have served the applicant while in prison and yet the applicant has never been in prison.

The application was supported by the affidavit sworn by Applicant and opposed by an affidavit sworn by the Respondent. In coming to this ruling, I have taken cognizance of the contents of both affidavits.

Representation.

[2] The Applicant was represented by M/s Kaganzi & Co. Advocates while M/s Ngaruye Ruhindi, Spencer & Co. Advocates represented the Respondent. Only counsel for the Applicant filed submissions and I have taken cognizance of them.

Analysis and decision.

[3] **Section 83** of the **Civil Procedure Act** contains the law on revision and it provides as follows;

“The High court may call for the record of any case which has been determined under this Act by any Magistrate’s court and if that court appears to have;

- a) Exercised a jurisdiction not vested in it in law*
- b) Failed to exercise a Jurisdiction so vested*
- c) Acted in the exercise of its jurisdiction illegally or with material irregularity or injustice, The High court may revise the case and may make such order in it as it thinks fit”*

It is not in dispute from the record of **MBR-00-CV. No. 005 of 2021** that it was heard ex-parte and determined in favour of the Respondent.

[4] In the case of **Mabalaganya vs Sanga (2005) E.A 152**, it was held that; in cases where High Court exercises its Revisional powers, its duty entails examination of the record of any proceedings before it for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings before the Magistrate court.

Therefore, decisions are revised when the trial Magistrate fails to exercise his or her Jurisdiction or where he or she acts illegally or with material irregularity or unjustly. In an application for revision, one has to prove that the judicial officer acted without jurisdiction, or failed to

exercise the jurisdiction so vested or acted illegally, irregularly or unjustly

Section 83 of the Civil Procedure Act can only be invoked when or if it appears that the lower Court acted in the exercise of its jurisdiction illegally or with material irregularity or injustice. In the case of **Matembe vs Yamulinga (1968) 1 EA 643**, court held that;

“Revision applies to jurisdiction alone, the irregular or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved.”

(See also **Bozongoza Alex t/a Express Integrity Auctioneers & Court Bailiffs vs Oryem Auric Misc. Civil Revision No. 002 of 2020**).

[5] In the instant application, the affidavit in support simply describes what transpired or ought to have transpired during the trial before the trial Magistrate and raises matters that have no bearing on the exercise of jurisdiction by the trial Magistrate.

The decision of the trial Magistrate involved conclusions of law based on the facts before her which were within her jurisdiction to decide upon. A wrong or erroneous conclusion of law or fact or misinterpretation of the law but within the jurisdiction of a judicial officer cannot be a subject for revision because such conclusions are neither illegal nor irregular.

Revision is only intended to correct errors, which do not go to the merits/substance of the dispute and not the determination of the rights of the parties. Consequently, I cannot fault the decision of the trial magistrate through a revision order.

It is my considered view that this application is not proper for revision. The Applicant if dissatisfied with the decision in the ex parte judgment would have either applied to have it set aside or filed an appeal.

This application is therefore dismissed with costs to the Respondent.

I so order.

Dated, delivered and signed at Mbarara this ^{13th}.....day of ^{December}.....2022.



Joyce Kavuma
Judge