

5 **THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA HOLDEN AT GULU**

**CIVIL REVISION CAUSE NO. 05 OF 2022**

10 **(ARISING FROM MISC. APPLICATION NO. 001 OF 2020  
ITSELF ARISING FROM JUDGMENT OF LC111 COURT OF PADIBE  
EAST SUB-COUNTY, LAMWO DISTRICT)**

15 **OKANA DAVID.....APPLICANT**

**VERSUS**

20 **OCAYA ROBERT.....RESPONDENT**

**BEFORE: HON. MR. JUSTICE GEORGE OKELLO**

25 **RULING**

The Applicant has by Motion, sought the exercise of this Court's  
revisionary powers. He prays that the Court calls for and revises the record  
30 of Miscellaneous Application No. 001 of 2020 adjudicated by Her Worship  
Nambozo Joy, the Chief Magistrate, Kitgum, contending, it is a nullity on  
account of (alleged) condoning of an illegality (allegedly) committed by LCII  
Court of Wangit Parish, and LCIII Court of Padibe East Sub County,  
Lamwo District, from which the present matter has its root. The  
35 Application is based on sections 17 and 33 of the Judicature Act Cap 13,  
sections 83 and 98 of the Civil Procedure Act (CPA) Cap. 71, and Order 52  
rule 1 of the Civil Procedure Rules, S.I 71-1.

5 The brief history of the matter is that the Applicant had a land dispute  
with the Respondent. The Applicant first sued the Respondent in the Local  
Council II Court of Wangit Parish (or Wangtit as called by the Respondent)  
in 2008, claiming ownership of some land. The Applicant lost but appealed  
to the LCIII Court of Padibe East Sub- County, which decided against the  
10 Applicant, in a Judgment given on 27<sup>th</sup> May, 2008. Being aggrieved and  
dissatisfied, the Applicant lodged Civil Appeal No.036 of 2008 in the Chief  
Magistrates Court of Gulu holden at Gulu. The Applicant withdrew the  
Appeal on 24<sup>th</sup> September, 2009, before His Worship Omodo Nyanga  
Joseph, the then Chief Magistrate of the Court. After over slightly ten  
15 years, on or about 20<sup>th</sup> January, 2020, the Applicant lodged Misc.  
Application No. 001 of 2020 in the Chief Magistrates Court of Kitgum  
holden at Kitgum, for revision of the decision of the LCIII Court which had  
been appealed but which Appeal was withdrawn.

20 The Revision application in the Chief Magistrate Court sought for an order  
setting aside the LCIII Court Judgment. That Application came before Her  
Worship Nambozo Joy, who dismissed it with costs, in a Ruling given on  
1<sup>st</sup> June, 2022. The Applicant then lodged the present Application before  
the High Court on 22<sup>nd</sup> August, 2022, seeking revision of the decision of  
25 the Learned Chief Magistrate. In the present Application, the Applicant  
further seeks for a declaration that the impugned Ruling of the Court, as  
well as the Judgments of the LCII and LCIII Courts, be declared illegal, and

5 be set aside. He also prays that the Respondent and his agents give vacant possession of the suit land. He further seeks for compensation for loss, and injustice occasioned by what he terms illegal proceedings. He finally prayed for costs of the Application.

10 **Affidavits**

The Application is not supported by any affidavit, but is opposed by the Respondent who swore an affidavit. I will address the issue shortly.

**Representation**

15 Mr. Ocorobiya Lloyds appeared for the Applicant, while the Respondent represented himself. Both parties filed written submissions which Court has considered, and is grateful.

**The competence of the Motion**

20 The Application raised grounds which are not supported by any affidavit. The Applicants attaches the impugned Ruling of the Chief Magistrate, and Judgment of the LCII and LCIII Courts, respectively, to the Application. He also attached a copy of the Notice of Motion which he had lodged in the  
25 Chief Magistrate's Court in 2020, which was disposed of vide the Ruling by Her Worship Nambozo, hence the present matter.

5 The Applicant seeks to justify the absence of the affidavit in support, by  
averring in the Motion that, the matters raised are all matters of law, and  
therefore, there was no need to lodge an affidavit in support. I have  
considered this assertion. Although the Respondent has not objected to  
the competence of the Application on this basis, this Court has treated the  
10 matter as important, hence the need to decide on it, preliminarily. I am  
justified in this course by the wisdom espoused by Scrutton L.J, in Phillips  
Vs. Copping [1935] 1 KB 15, at p.21 thus,

“But it is the duty of the Court when asked to give a judgment which is  
15 contrary to a statute to take the point although the litigants may not take  
it.”

Scrutton L.J was cited with approval by the Court of Appeal of Uganda in  
Makula International Ltd Vs. His Eminence Cardinal Nsubuga & Rev.  
20 Father Kyeyune, Civil Appeal No. 4 of 1981. This authority is more often  
quoted for the principle that a Court of law cannot sanction that which is  
illegal and illegality once brought to the attention of Court overrides all  
questions of pleading including any admissions made thereon. The dictum  
of Doanldson ,J. in Belvoir Finance Co. Ltd Vs. Harold G. Cole Ltd [1969]  
25 2 All E.R, 904 at p.908 was quoted with approval by the Ugandan Court  
of Appeal. I am bound by the decision.

5 Turning to the Application, I have noted that, procedurally, it cites only rule 1 of Order 52 CPR. The rule states

“Procedure Under this Order: All applications to the court, except where otherwise expressly provided for under these Rules, shall be by motion and  
10 shall be heard in open court.”

Rule 3 of O.52 which is pertinent (but not adverted to by the Applicant) provides,

15 “Contents of notice: Every notice of motion shall state in general terms the grounds of the application, and, where any motion is grounded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion.”

20 The Applicant’s averment that since the Application is grounded on matters of law only and therefore, he could opt to do away with the filing of an affidavit, in my view, with respect, is based on erroneous interpretation of the Civil Procedure Rules. In my considered view, rule 1 of O.52 CPR must be read together with rule 3 thereof, for better  
25 appreciation of what a Motion must contain.

5 Rule 3 is clear and a literal construction yields the result that, all motions  
must first of all contain grounds. Second, the grounds must be supported  
by evidence. Third, the mode of adducing evidence is by affidavit. Fourth,  
a copy of the affidavit must be attached to the Motion, and of course served  
with it. This last bit of service may not apply especially if the Motion is  
10 exparte.

I do not therefore see any other mode of adducing evidence in support of a  
Motion, other than by way of affidavit. A motion must be supported with  
evidence. Even where a deponent is cross examined with leave of Court,  
15 under O.19 rule 2 of the CPR, the evidence given during cross examination  
and re-examination, if any, does not substitute the affidavit evidence, but  
becomes part and parcel of evidence in the matter. It is therefore  
instructive to pay deference to case law which has dealt with some-what  
similar matter.

20  
In Kaingana Vs. Dabo Boubou [1986] HCB 59, Karokora, Ag. J (as he then  
was), struck out an affidavit deposed by a husband of the applicant in a  
representative capacity, for being incompetent, because the deponent  
lacked authorization of the applicant. After the strike out order, the Court  
25 held that the Notice of Motion can not on its own, be a complete  
application, without an affidavit. Court concluded, the Notice of Motion

5 alone was not enough. It therefore struck out the Application for being incompetent as it lacked affidavit in support.

In the present matter therefore, I find that the Motion is incurably defective. It is accordingly struck out. However, in case I am wrong, I  
10 proceed to consider the merit of the Application, for completeness.

### **Merit arguments**

In his Motion and submission, the Applicant averred, and argued that the LCII Court of Wangit illegally adjudicated the land dispute filed by the  
15 Applicant, as it lacked jurisdiction. He contended that, the LCII Court purported to sit as a Court of first instance, yet it could only have sat as a first appellate Court. He reasoned, therefore, the Appeal the Applicant preferred to the LCIII Court, which the LCIII Court entertained, was a nullity. He further contended that, given the Constitutional Court  
20 Judgment (in Rubaramira Ruranga Vs. The Electoral Commission and Attorney General, Const.Petition. No. 21 of 2006, delivered on 3<sup>rd</sup> April, 2017), in which it was (allegedly) held that the Local Council Courts generally lacked jurisdiction, unless they were constituted under Multiparty Political System, the LC II Court that decided the Land dispute,  
25 acted illegally, and consequently, the Appeal to the LCIII Court was based on a nullity.

5 The Applicant also averred, and argued that, by its decision refusing to  
revise the LCIII Court Judgment, the Learned Chief Magistrate condoned  
an illegality which had been brought to its attention. It is also averred, and  
argued that, the Chief Magistrate failed to exercise supervisory jurisdiction  
vested in it by the Local Council Courts Act 2006, and *ipso facto*, acted  
10 illegally and with material irregularity and injustice against the Applicant.

The Applicant concluded that, it is in the interest of justice that the Court  
sets aside the impugned Ruling of the Chief Magistrate, and the  
Judgments of the Local Council II and Local Council III Courts,  
15 respectively, and that the same are declared null and void. The Applicant  
also prayed for an order of vacant possession of the suit land (whatever  
that meant), and compensation for loss and injustice suffered.

**Reply**

20 In his reply, the Respondent agreed that the Applicant sued the  
Respondent over a land dispute, in the LCII Court of Wangtit Parish but  
lost (the Applicant calls it Wangit). That, the Applicant unsuccessfully  
appealed to the LCIII Court of Padibe East Sub- County, Lamwo District.  
The Respondent deposed, and argued that, the Applicant further appealed  
25 to the Chief Magistrate Court, vide Civil Appeal No. 036 of 2008 which  
came before his Worship Omodo Nyanga Joseph, when the Applicant  
withdrew the Appeal. The Respondent also deposed, and argued that, the

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5 Applicant paid costs of the withdrawn Appeal, and gave vacant possession of the suit land. He further argued that, therefore, the instant Application is overtaken by the events, after many years. The Respondent referred to a Copy of the Decree/ Order endorsed by His Worship Omodo Nyanga Joseph, dated 24<sup>th</sup> September, 2009.

10

The Respondent further deposed, and argued that, the Application is a waste of Court's time, an abuse of Court process, unreasonable, and brought in bad faith, to delay execution of the taxed costs of Misc. Application No. 001 of 2020 ( before H/W Nambozo Joy), and ought to be  
15 dismissed with costs.

The Applicant did not file an affidavit in rejoinder, especially to the deposition that he appealed the Judgment of the LCIII Court to the Chief Magistrate, but withdrew the appeal, and that he vacated the suit land. This aspect of the case therefore is not controverted.

20

### **Determination**

From the perusal of the Motion and the affidavit in Reply, two issues arise, namely,

- i) Whether the case is a proper one for revision, and
- 25 ii) Remedies available to the parties.

I will resolve both issues together.

- 5 The revisionary jurisdiction of this Court is not in doubt. Under section 83 of the Civil Procedure Act (CPA), the High Court may call for the record of any case which has been determined under the CPA by any Magistrates Court and may revise it, and may make such order as it thinks fit.
- 10 The High Court may however only exercise its powers if it appears that the Magistrate's Court has exercised a jurisdiction not vested in it in law; failed to exercise a jurisdiction so vested; or acted in the exercise of its jurisdiction illegally or with material irregularity or injustice. In his submission, the Applicant emphasizes that his complaint is based on the
- 15 ground that the Learned Chief Magistrate acted illegally and with material irregularity or injustice, in exercising its jurisdiction, to dismiss the application.

Under the CPA, revisionary power is only exercisable when the parties have

20 been given an opportunity of being heard. This is not in issue here. The High Court may however decline to exercise this power if from the lapse of time or other cause, the exercise of that power would involve serious hardship to any person.

25 As understood, Revision is the action of revising or looking over again, especially critical or careful examination or perusal with a view to correcting or improving (something). See Oxford English Dictionary. This

5 meaning was adopted by the then East African Court of Appeal in J Hoareau Vs. R [1962] 1 EA 809.

Revision therefore entails examination by the High Court, of the record of proceedings of the Magistrates Court for the purposes of the High Court  
10 satisfying itself as to the correctness, legality and the regularity of proceedings of the Magistrate Court. See: Mabalangaya Vs. Sanga [2005] 1 EA 236 (CAT).

The purpose of examination of the record of the subordinate Court is therefore to correct the conclusions of that Court, if necessary. Revision is  
15 therefore an exercise of discretion which must be done judiciously. Discretion here, basically, is the faculty of deciding or determining in accordance with circumstances, and what seems just, fair, right, equitable, and reasonable in those circumstances. It also involves latitude of individual choice according to the particular circumstances. Discretion  
20 differs from a case where the decision follows *ex debito justitiae* where facts are known (that is, by reason of an obligation of justice/ where court has no discretion to refuse/or where an applicant has a remedy as of right) See: Yahaya Kariisa Vs. the Attorney General and another, Civil Appeal No. 7 1994 (SCU) digested in [1997] HCB 29; Jenkins Vs. Bushby (1189) 11 Ch. 484, Per Kay L.J, the latter case having been cited with approval  
25 by the Court of Appeal of Uganda in National Enterprises Corporation Vs. Mukisa Foods Ltd, Civil Appeal No. 42 of 1997.

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In the present matter, the Applicant lodged a Motion, which in my view, is one of the accepted modes of seeking revision, had it not been for want of an affidavit in support. On perusal of the Motion, I have further noticed that the Applicant did not attach the record of the proceedings before the  
10 Learned Chief Magistrate, Her Worship Nambozo Joy. The only documents (irregularly) annexed to the Motion, are a copy of the Application disposed of by that Court, and the Ruling therein. The affidavit in support of that application, and affidavit in reply, are not on record before me, and the copy of the submissions made before that Court. Having preferred a formal  
15 Motion, the Applicant ought to have complied with the requirements of the law. Lack of a complete record is fatal to the Application for revision. This application should fail on this ground. See: Jaffer Vs. Gupta [1959] EA 406; Gulu Municipal Council Vs. Nyeko Gabriel & others, [1997] 1 KALR 9; Wadri Mathias & 4 others Vs. Dranilla Angella, Civil Revision No. 0007  
20 of 2019 (Hon. Justice Bashaija K. Andrew).

Be that as it may, and for completeness, proceeding to consider the scanty material before me, I have perused the Ruling sought to be revised. The Learned Chief Magistrate noted that, Court was being asked to revise the  
25 Judgment of the LCIII Court, which was first appealed by the Applicant, vide Civil Appeal No. 036 of 2008. Court also noted that, the said appeal had been withdrawn by the Applicant, meaning the Applicant could not

5 turn around and challenge the LCIII Court Judgment, by way of revision.  
The Learned Chief Magistrate also noted that the revision Application was  
lodged after a long time (over 13 years according to the Court) from the  
date of the Appeal withdrawal in 2009. Court was cognizant of the fact that  
the Applicant had conceded that he paid costs (of the withdrawn appeal)  
10 and had vacated the suit land. Court therefore held that litigation must  
come to an end. It also found that the Application lacked merit and  
dismissed it with costs.

I am unable to fault the learned Chief Magistrate. Court was alive to the  
15 supervisory powers it has over the Local Council Courts, conferred by  
section 40 of the Local Council Courts Act, 2006. The supervisory powers  
are similar to that conferred by section 17 of the Judicature Act Cap 13,  
to the High Court, over the Magistrates Court. Therefore, under section 40  
of the Local Council Courts Act, 2006, the Chief Magistrate may exercise  
20 supervisory powers over the Local Council Courts, on behalf of the High  
Court. This include revisionary powers, as a High Court Judge would do.  
Being an exercise of discretionary powers, the Chief Magistrate considers  
the circumstances of the matter, and considers what seems just, fair,  
right, equitable, and reasonable.

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In the matter that was placed before the Learned Chief Magistrate, she  
considered rightly, in my view, the time lag, noting that the Application

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5 was being preferred in the year 2020 when the Judgment of the LCIII Court was given in 2008, and an appeal against it withdrawn in 2009. In my view, Court was right to take into account the time span. It accords with the rule which the High Court considers before deciding whether or not to make a revision order. See section 83 of the CPA (*supra*). See also Opoka  
10 Santo Vs. Ali Marino, Misc. Application No. 0147 of 2014 (Stephen Mubiru, J.)

In the present matter, the Learned Chief Magistrate was correct to consider the fact of the withdrawal of the Appeal against the LCIII Court Judgment  
15 and decision. This implied, the Applicant was no longer aggrieved and conceded the decision of the LCIII Court. He could not be seen, in a roundabout fashion, to purport to challenge the same LCIII Court Judgment, in a revision application before the very Court from whom he had withdrawn his appeal. Revision is no substitute for appeal. To my  
20 mind, the Applicant's conduct also amounted to approbation and reprobation of the LCIII Court Judgment. In Ddegeya Trading Stores (U) Ltd Vs. Uganda Revenue Authority, Civil Appeal No. 44 of 1996, the Court of Appeal considered this concept. It simply means that a party who has accepted and acted upon or acquiesced and recognized a Judgment, order,  
25 or decree of Court, cannot on the same breadth take an inconsistent position with reference to it. Such a person waives the right to have the same reviewed by the appellate Court.

Just as the superior Court noted in the above precedent, I too, observe that, mayhem would be created if a litigant were to be allowed to approbate and reprobate Court Judgment, Order, or Decree. A litigant would tie down his/her adversary in different directions over the same subject matter of litigation. Moreover, public resources would be wasted, in disregard of other equally deserving matters that often compete for Court's attention. A floodgate for abuse of the justice system would have been flanked open to litigants and their legal advisors and/ or suitors. Litigation would never come to an end. Yet it is a principle of great importance in the administration of justice that, in the interest of all persons, there should be an end to litigation. See: Lakhmashi Brothers Ltd Vs. R. Raja & Sons (1966) E.A 313, at p.314 (Per Sir Charles Newbold P., referring to Rainga case (1965) E.A 703.

In the present case therefore, the Applicant's conduct of the matter before the Chief Magistrate Court was in flagrant abuse of Court process. He was engaging the machinery of justice for improper purpose. See: Hon. Gerald Kafureeka Karuhanga Vs. The AG and 2 Others, Misc. Cause No. 060 of 2015 (Stephen Musota, J (as he then was). It is clear that the Applicant conceded the Judgment and decision of the LCIII Court, and had even paid costs of the withdrawn appeal, and vacated the suit land. His later conduct was and remains inconsistent with the earlier conduct. I therefore hold

5 that the Learned Chief Magistrate properly exercised her discretion in the  
circumstances and reached the right conclusions. I have not been  
persuaded that a contrary decision should have been reached. The  
Application before the Chief Magistrate was clearly an afterthought. I have  
therefore neither found any irregularity or illegality in the exercise of that  
10 Court's power. Even if I had found one, given the lapse of time, and the  
apparent hardship the Respondent would be subjected to, by an Order of  
revision, I would still have declined the application.

Before I take leave of this matter, I am a little puzzled that the Applicant,  
15 who filed his application before the LCII Court and subsequently, pursued  
an appeal to the LCIII court, could be the very person to raise the issue of  
jurisdiction now before me, after over 14 years when those decisions were  
made. With respect, I think the Applicant and counsel are taking the  
principle in Makula International case (*supra*) too far. If accepted, it would  
20 mean that a party could resurrect very old and closed court files, for the  
purpose of arguing a point which ought to have been raised at the time the  
dispute was still live in the judicial system. This is not the intention of the  
law. That aside, the High Court in any case, cannot purport to revise  
decisions of LC Courts, as the powers to do so are delegated by legislation,  
25 to the Chief Magistrate, by section 40 of the Local Council Courts Act,  
2006. They do it on behalf of the High Court. Section 83 of the CPA



5 presently limits revisionary powers of the High Court Judge to matters determined by Magistrates Court and not LC Courts.

In this matter, I also understood the Applicant to be inviting this Court to exercise the revisionary and other powers over the impugned LC Court  
10 Judgments. The orders further being sought are, compensation, and vacant possession of land. I am afraid these prayers are alien to the scope of the orders available when this court sits in the exercise of its revisionary powers. I am aware that section 83 of the CPA allows this Court to revise the case determined by the Magistrates Court and make *such order in it as*  
15 *it thinks fit*. My view is that, "*such order in it as it thinks fit*", would not, in the circumstances of this case, cover extraneous orders such as those being sought herein, which is being sought alongside the order of revision. Such Orders as envisaged within the purview of section 83 of the CPA, could cover aspects such as a fresh trial and adjudication before a  
20 competent Court, which may in a given case, require that a fresh suit is lodged, but of course subject to the law of limitation. I however refrain from deciding the category of matters that could rightly come within the purview of section 83 of the CPA. It suffices that the extra Orders sought herein are not covered by section 83 of the CPA, and are therefore extraneous.

25

Hanson

5 In the upshot, aside from being incompetent, the Application is grossly  
misconceived. I dismiss it with costs to the Respondent.

I so order.

10 Delivered, dated and signed in open court this 22<sup>nd</sup> December, 2022.

*George Okello* 22/12/2022

George Okello

JUDGE HIGH COURT

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5 Ruling read in court in the presence of;

Ocorobiya Lloyds, Counsel for the Applicant.

The Applicant is absent

The Respondent is absent.

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**Mr. Ocorobiya Lloyds:** We received Ruling Notice late from Court and that could have explained why the Applicant was unable to travel. He lives in Ireland. The Respondent resides in Padibe, Lamwo District. He was, I think, unable to travel as well.

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**Court:** Is there any prejudice if the Ruling is given in the absence of your client, and the respondent, given that you are before Court?

20 **Mr. Ocorobiya:** No prejudice will be suffered. I will personally inform both parties about the Court Ruling and decision, so, I am ready to receive the Ruling of Court.

**Court:** Ruling read in open Court in the presence of Counsel for the  
25 Applicant, dated, and signed.

30

*Hutoon. 22/12/2022*  
George Okello

JUDGE HIGH COURT

22<sup>nd</sup> December 2022