

**THE REPUBLIC OF UGANDA,  
IN THE HIGH COURT OF UGANDA AT MUKONO  
REVISION CAUSE NO 03 OF 2021  
(ARISING FROM MISC. APPLICATION NO. 23 OF 2021)  
(ARISING FROM CIVIL SUIT NO. 0081 OF 2018)**

**CHINA INTERNATIONAL WATER &  
ELECTRIC CORPORATION .....APPLICANT**

**VERSUS**

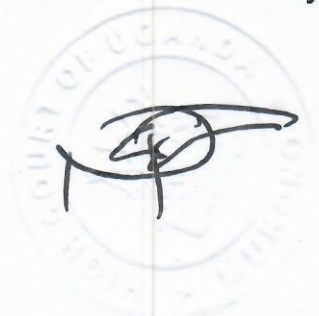
**PETER ODYAMA .....RESPONDENT**

**BEFORE HON. LADY JUSTICE FLORENCE NAKACHWA**

**RULING**

**Background**

1. The Respondent sustained injuries while working with the Applicant/1<sup>st</sup> Defendant company as its mechanic and he filed Civil Suit No. 0081 of 2018 at Mukono Chief Magistrate's Court against the Applicant /1<sup>st</sup> Defendant and another party for the following orders:
  - (a) General damages for injuries, anguish, mental suffering, immense inconvenience and pain occasioned on the Plaintiff;
  - (b) Interest on (a) at the rate of 22% per annum from the day the cause of action arose;



- (c) Interest on the decretal sum from the dates of judgment till payment in full;
- (d) Costs of the suit;
- (e) Any other remedy that the court may find appropriate and fit.

2. The Defendants failed to file a written statement of defence and the case was heard ex-parte. An ex-parte judgment was entered against the Defendants for damages of UGX. 45,000,000/= for mental anguish suffered by the Respondent / Plaintiff. Taxed costs of UGX. 6,040,300/= were awarded to the Respondent/Plaintiff. Upon the Applicant noticing the above court's order, it filed Miscellaneous Application No. 77 of 2018 which was dismissed for want of prosecution since no effort was made to have it fixed for hearing. Subsequently, the Applicant filed Miscellaneous Application No. 23 of 2021 for review. That application was again dismissed for non-appearance of either the Applicant's representative or the Applicant's counsel on the hearing date hence this application for revision.

#### **Application for revision**

3. This was an application brought under Article 28 of the Constitution of the Republic of Uganda, 1995, Sections 33 & 38 of the Judicature Act, Cap. 13, Sections 83 and 98 of the Civil Procedure Act, Cap. 71 and Order 52 rules 1, 2, 3 of the Civil Procedure Rules, SI 71-1. The Applicant sought for orders that; the order of Her Worship Kagoya Jackline, Magistrate Grade 1 delivered on 22<sup>nd</sup> April, 2021 in



Miscellaneous Application No. 23 of 2021, be revised and set aside and that costs of the application be provided for.

4. The grounds of the application are set out in the Notice of Motion supported by an affidavit of Mugaju Michael - a law clerk attached to M/s Nazaami & Co. Advocates. The grounds are as follows:
  - (a) That on the 11<sup>th</sup> February, 2021, the Applicant's advocates received a letter from E. Wamimbi & Co. Advocates, stating that they had received judgment in Civil Suit No. 81 of 2018 against the Applicant;
  - (b) That on the 9<sup>th</sup> March, 2021, the Applicant's lawyers filed Miscellaneous Application No. 23 of 2021 for an order that a default judgment entered by Mukono Chief Magistrate's court on the 29<sup>th</sup> May, 2018 be reviewed and set aside and judgment of court dated 19<sup>th</sup> October, 2020 before the same court be reviewed and set aside;
  - (c) That among the grounds for Application No. 23 of 2021 were that there was an error apparent on the face of the record and that the Respondent had duly received his due compensation as under the Workers Compensation Act;
  - (d) That the application was endorsed by court on the 11<sup>th</sup> March, 2021 and set for hearing on the 22<sup>nd</sup> April, 2021 at 11:00 a.m;
  - (e) That Mr. Odongo Fred attached to M/s Nazaami & Co. Advocates served Application No. 23 of 2021 to E. Wamimbi & Co. Advocates



on the 18<sup>th</sup> March, 2021 and an affidavit of service prepared by him and filed in court on the 22<sup>nd</sup> March, 2021;

- (f) That the Respondent filed an affidavit in reply on the 31<sup>st</sup> March, 2021 and served on the Applicant's advocates on the same day;
- (g) That during a weekly law firm meeting, the Applicant's lawyers realized that on the 26<sup>th</sup> February, 2021, they filed Miscellaneous Application No. 005 of 2021 arising from Civil Suit No. 051 of 2017, China International Water & Electric Corp. Vs Nalubega Margaret at the Chief Magistrate's court of Lugazi at Njeru, this application was on 5<sup>th</sup> March, 2021 fixed for hearing on 22<sup>nd</sup> of April, 2021 at 10:00 a.m;
- (h) That since Misc. Applic. No. 005 of 2021 was before a Grade 1 Magistrate in Njeru and Misc. Applic. No. 23 of 2021 was equally before a Grade 1 Magistrate in Mukono, the Applicant's lawyers thought it wise that Applic. No. 005 of 2021 earlier fixed in Njeru takes precedence over Applic. No. 23 of 2021 fixed later in Mukono;
- (i) That on the 9<sup>th</sup> April, 2021, the Applicant's advocates prepared a letter and filed in court on the 12<sup>th</sup> April, 2021 informing court about this predicament and requesting court to re-fix Application No. 23 of 2021 since it had been fixed earlier on the same date. That the said advocates equally prepared new hearing notices and filed them on court record to enable court sign early and be in position to serve the opposite counsel in time;

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- (j) That the file movement book in the Registry of Mukono Chief Magistrate's Court in the custody of Okullu Keren (Court Clerk), clearly shows that file No. 23 of 2021 moved from the registry to court on the 14<sup>th</sup> April, 2021 to Her Worship Kagoya Jackline's Chambers with all documents including affidavit in rejoinder, adjournment letter for re-fixing and signing on hearing notices and it never returned to the Registry up to 22<sup>nd</sup> April, 2021;
- (k) That ever since the Applicant's lawyers filed these documents, the deponent went several times to the Registry of court to check whether their application had been re-fixed and hearing notices signed but he would always be informed by Keren in the Registry that the file has never returned to the Registry and on asking Her Worship's Clerk, a one Prossy, she would inform him that the file was on Her Worship's desk and not yet re-fixed and signed on and when the Deponent requested to enter her Chambers, the same clerk would say that the Magistrate is busy and cannot see people;
- (l) That on the 22<sup>nd</sup> April, 2021, counsel Nazaami Robert in personal conduct decided to go and argue the Applic. No. 005 of 2021 and lawyer Odongo Fred went to Makindye High Court (Family Division) to attend a mediation in Mediation Case No. 20 of 2020 and that the only person left to attend to Misc. Applic. No. 23 of 2021 at Mukono Chief Magistrate's Court for purposes of getting a new date was the Deponent;
- (m) That the Deponent never appeared in court on 22<sup>nd</sup> April, 2021 as counsel but instead as a clerk and he clearly told Her Worship

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that he was a clerk and that the Applicant's lawyers earlier on wrote a letter requesting for re-fixing of the application;

- (n) That the Magistrate refused the Deponent to say anything insisting that he should produce a practicing certificate before he can say anything in her court or else she would order for his arrest to which he moved out of her court;
- (o) That it is not true that the letter requesting for an adjournment had just been put on record on 22<sup>nd</sup> April, 2021 as it had been on record on 12<sup>th</sup> April, 2021 and the file sent to Her Worship's Chambers on 14<sup>th</sup> April, 2021 where it never returned to the main Registry of court;
- (p) That consequently, Her Worship Kagoya Jackline unjustly and without reading contents of the documents on record allowed the Respondent's counsel to proceed ex-parte in Misc. Applic. No. 23 of 2021 on 22<sup>nd</sup> April, 2021 resulting into dismissal of the application;
- (q) That the applicant is aggrieved by the decision of Her Worship Kagoya Jackline made on 22<sup>nd</sup> April, 2021 wherein the learned trial Magistrate Grade 1 exercised her power with material irregularity or injustice;
- (r) That through the Applicant's lawyers, this application has been instituted without delay and that the deponent is not guilty of dilatory conduct;

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- (s) That this court has power to call for the record of any case which has been determined by any Magistrate's Court and if that court appears to have exercised its jurisdiction with material irregularity or injustice this court may revise the case and may make such orders as it thinks fit; and
- (t) That it is just and equitable that the said ruling and decision of the learned Magistrate Grade 1 be revised and set aside;
5. The Respondent opposed the application in an affidavit in reply sworn by Okiror Morris Andrew - a Legal Assistant attached to M/s E. Wamimbi Advocates and Solicitors on the following grounds:
- (a) That it is procedurally and jurisdictionally improper for the Applicant to seek for the setting aside of a ruling of Magistrate Grade 1 before the High Court;
- (b) That an application for setting aside a ruling can only be entertained by the very court which issued the said ruling;
- (c) That the Applicant's prayer to set aside the ruling of Her Worship Kagoya, Magistrate Grade 1 cannot be sought from the High Court;
- (d) That the Applicant and their lawyers M/s Nazaami & Co. Avocates have throughout the course of Civil Suit No. 81 of 2018 had the practice of not appearing in court for scheduled dates;
- (e) That this trend led to a default judgment being entered against the Applicant by the trial Magistrate in Civil Suit No. 81 of 2018;

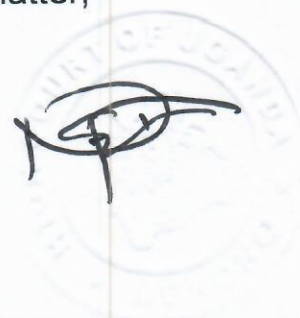
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- (f) That the Applicant represented by M/s Nazaami & Co. Advocates has also displayed a trend of filing applications and not prosecuting them;
- (g) That the Applicant first filed Misc. Applic. No. 077 of 2018 on 24<sup>th</sup> July, 2018 seeking to set aside judgment as entered by the trial Magistrate;
- (h) That the Applicant and their counsel never prosecuted the said application which was left hanging;
- (i) That no steps were taken by the Applicant or its counsel to fix or prosecute Miscellaneous Application No. 077 of 2018;
- (j) That the trial Magistrate Her Worship Pacual eventually dismissed the unprosecuted application and that the fact of dismissal was captured in the judgment of the trial court at page 1;
- (k) That the Respondent's lawyers served the Applicant with a request for payment of the decretal sum and costs following the trial court's judgment on 19<sup>th</sup> December, 2020;
- (l) That the Respondent's lawyers later received the omnibus Notice of Motion in Miscellaneous Application No. 23 of 2021 filed by the Applicant seeking multiple reliefs fixed for hearing on the 22<sup>nd</sup> April, 2021 at 11:00 a.m.;

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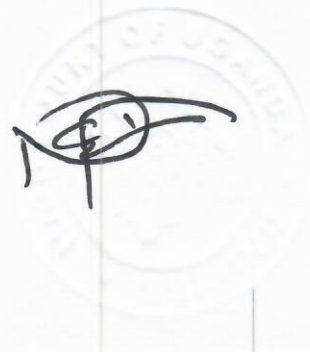
- (m) That the Respondent's lawyers prepared and filed an affidavit in reply to the application to set aside the judgment which they served on the Applicant's counsel on 31<sup>st</sup> March, 2021;
- (n) That the Deponent along with counsel in conduct of this matter were present at court when the file was called for hearing on 22<sup>nd</sup> April, 2021;
- (o) That on the said date of hearing there was no representative/officer of the Applicant in court and neither was his counsel present in court;
- (p) That counsel in conduct of the matter for the Respondent introduced himself and presented his practicing certificate for the record before Her Worship Kagoya;
- (q) That a gentleman who introduced himself as one Michael Mugaju unknown to the Respondent's lawyers at the time was present in court when the file was called for hearing;
- (r) That while in court, Her Worship Kagoya requested him to present his Advocates' practicing certificate at which point he communicated that he never had a practicing certificate;
- (s) That the said Michael Mugaju informed court that he was a process server/clerk attached to M/s Nazaami & Co. Advocates and he had brought a letter seeking an adjournment of the matter;



- (t) That Her Worship Kagoya informed him that he did not have audience before her as a judicial officer and requesting him to exit the Chambers;
- (u) That it was at this point that Her Worship Kagoya informed Michael that she hadn't seen the said letter requesting for the adjournment on the record;
- (v) That the Respondent's lawyers informed court that they were never served with the Applicant's letter allegedly filed in court seeking for an adjournment prior to the scheduled hearing date;
- (w) That in the absence of a representative from the Applicant or its advocates in court, counsel in conduct of the Respondent's case requested to proceed ex-parte;
- (x) That the Respondent's counsel submitted on the legal prerequisites for a valid adjournment in scheduled proceedings before Her Worship Kagoya;
- (y) That the letter notwithstanding, the Applicant's counsel had not satisfied the legally stipulated procedures for seeking an adjournment;
- (z) That following his other submissions pertaining to the merits of the application, the Respondent's counsel in conduct prayed for Miscellaneous Application No. 23 of 2021 to be dismissed with costs;

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- (aa) That Her Worship stood over the matter to write her ruling pertaining to the application;
- (bb) That as the Respondent's lawyers waited for the ruling, Michael Mugaju was present in open court with them as the ruling was being written;
- (cc) That the Respondent's counsel was called back into the Chambers and the ruling delivered dismissing Miscellaneous Application No. 23 of 2021 with costs to the Respondent;
- (dd) That the Respondent's lawyers later served M/s Nazaami & Co. Advocates with their bill of costs for the application as dismissed and letter requesting for a pre-taxation meeting;
- (ee) That the said pre-taxation meeting hasn't happened to date;
- (ff) That M/s Nazaami & Co. Advocates did not follow the legally stipulated procedure for seeking adjournment for scheduled matters;
- (gg) That the Notice of Motion and affidavit in support does not disclose any grounds for revision;
- (hh) That Her Worship was fully clothed with jurisdiction to hear and prosecute Miscellaneous Application No. 23 of 2021;



- (ii) That there is nothing in the Notice of Motion or affidavit in support showing that Her Worship Kagoya failed to exercise the said jurisdiction;
- (jj) That Her Worship was justified in dismissing the application in the absence of any representative from the Applicant or its counsel;
- (kk) That the Applicant is not complaining about matters of jurisdiction in this application for revision;
- (ll) That the Applicant is seeking to re-open the conclusions Her Worship arrived at on the law and facts of the prosecution of the application;
- (mm) that there was a manifest lack of seriousness to prosecute the originally filed Miscellaneous Application No. 077 of 2018 and Miscellaneous Application No. 23 of 2021 which have been dismissed for want of prosecution;
- (nn) That it is trite that adjournment of a scheduled matter cannot be sought by written letter;
- (oo) That the very Applicant and its lawyers who failed to appear for or pursue the previous Miscellaneous Application No. 077 of 2018 and Miscellaneous Application No. 23 of 2021 are simply abusing court process by filing this application; and
- (pp) That the entire application lacks merit or grounds for revision.

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6. Both parties in this application filed their submissions as directed by court. The Applicant was represented by Counsel Nazaami Robert from M/s Nazaami & Co. Advocates while the Respondent was represented by Counsel Elijah Enyimu from M/s E. Elijah & Co. Advocates

### **Issues**

- (1) Whether this is a proper case for revision.**  
**(2) Whether there are remedies available to the parties.**

**7. Issue 1: Whether this is a proper case for revision.**

The Applicant's counsel submitted that the High Court is obligated to exercise its powers for revision under Section 83 of Civil Procedure Act, Cap. 71 under three circumstances; firstly, if the Magistrate exercised jurisdiction not vested in her by law, secondly, where the Magistrate failed to exercise jurisdiction vested in her or thirdly, where the Magistrate acted in the exercise of her jurisdiction illegally or with material irregularity or injustice. That the application herein moves court under the third element wherein the Applicant contends that Her Worship Kagoya Jackline (Magistrate Grade 1) acted in the exercise of her jurisdiction illegally or with material irregularity or injustice. That the illegality, irregularity and injustice are expounded in the application and the supporting affidavit sworn by Mugaju Michael.

8. Counsel stated that the case of **Nakato Margaret v. Housing Finance Bank Limited and Mande Constant, Civil Appeal No. 687 of 2021**



defines discretion as “.... the faculty of determining in accordance with the circumstances what seems just, fair, right, equitable and reasonable. Further holding that, ‘Discretion’ cases involve either the management of the trial and pre-trial process, or where the principle of the law governing the case makes many factors relevant, and requires the decision maker to weigh and balance them.”

9. Counsel cited the case of **Famous Cycle Agencies Limited & 4 others v. Mansulkal Ramji Kania & Others, SCCA No. 16 of 1994**, where court espoused on the above rule relaying that the discretion is not subject to any definite rules, but should be exercised in a judicial and reasonable manner and upon proper material. That it should be exercised after considering a party’s conduct in the case and the opportunity he had of getting ready and the truth and sufficiency of the reason alleged by him for not being ready.

10. Learned counsel further emphasized the averments contained in the supporting affidavit of the application which have already been considered above and which I find not necessary to reproduce. The Applicant’s counsel added that the learned trial Magistrate unjustly and with a lot of injustice locked the Applicant out of proceedings despite having a good defence and that she exercised her judicial power in an unreasonable way to the prejudice and injury of the Applicant. Counsel invited the court to find so.

11. In opposition, the Respondent’s counsel submitted that this application does not disclose a single ground for revision. That Section

83 of the Civil Procedure Act only allows for revision if it appears that the Magistrate; a) exercised a jurisdiction not vested in it in law, b) failed to exercise a jurisdiction so vested or c) acted in the exercise of its jurisdiction illegally or with material irregularity or injustice. Reechoing paragraph 35 of the affidavit in reply, counsel submitted that none of the listed legal scenarios arose as a ground to warrant a revision order.

12. Counsel averred that it is now settled that the revisional jurisdiction of the High Court is confined to cases of illegal or irregular exercise or non-exercise or illegal assumption of jurisdiction by the subordinate courts. That if a subordinate court is found to possess the jurisdiction to decide a matter, it cannot be said to exercise it illegally or with material irregularity even if it decides the matter wrongly. That it is not open to the High Court in exercising its revisionary jurisdiction to correct errors of fact however gross or even errors of law unless the errors have relation to the jurisdiction of the court to try the dispute itself.

13. That Miscellaneous Application No. 23 of 2021 as filed by the Applicant herein was seeking to set aside and revise off a default judgment passed by the trial Magistrate. That the learned trial Magistrate was properly vested with the jurisdiction in law to entertain an application brought under Order 9 rule 27 of the Civil Procedure Rules SI 71-1 as the court by which the decree was passed and that she was vested with jurisdiction to entertain, hear and determine it.



14. It was further submitted that the trial magistrate properly exercised her jurisdiction in light of Directions 5 and 6 of the Constitution (Adjournment for Courts of Judicature) (Practice) Directions, 2019 which stipulate that adjournment shall be sought orally by any of the parties to the suit with stated reasons. That the Applicant or his counsel were not present in court to seek an adjournment on the day of the hearing and that the Magistrate was correct in the exercise of her jurisdiction. In addition, that the impugned letter supposedly seeking an adjournment was never served on the Respondent's counsel and that the trial court also clarified that she did not have a copy of the said letter in the court file.

15. Counsel contended that revision only applies to jurisdiction alone, the irregular or non-exercise of it or the illegal assumption of it. That the section is directed against conclusions of law in which the question of jurisdiction is not involved. That the Applicant herein is seeking to reopen the merits of the decision arrived at by the Magistrate disguised as a revision. That the question to adjudicate here would be whether the trial Magistrate had the jurisdiction to hear Misc. Applic. No. 23 of 2021 which according to counsel the answer would be yes.

16. Besides, counsel submitted that far from a wrong decision, the trial Magistrate made a correct decision in dismissing Misc. Application No. 23 of 2021 when the Applicant never entered appearance to prosecute its own matter which was a judicious conclusion of law and fact well within her jurisdiction to decide upon. That a ruling against the

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Applicant for non-appearance in dismissing the application cannot therefore amount to an illegality or irregularity. That the authorities cited by the Applicant's counsel as distinguishable in law as the same apply to 'discretion' and do not address exercise of jurisdiction by the trial Magistrate. That the Applicant is instead raising issues of findings of law, the merits of the main suit and the facts in the exercise of jurisdiction by the Magistrate.

17. The Respondent's counsel continued that the Civil Procedure Rules are self-contained and provide that mechanism and forum of setting aside an order of a Magistrate in the event that the Plaintiff or the Applicant did not appear for hearing. That the trial Magistrate proceeded under Order 9 rule 22 to dismiss Miscellaneous Application No. 23 of 2021 when the Applicant did not appear for hearing. That the said application is meant to be filed before the very court that dismissed the matter and not through an omnibus application to the High Court for revision and setting aside of the impugned order. Counsel prayed that this court be pleased to find that the Applicant originated this application before the wrong court and stands to suffer the same fate of being dismissed with costs.

***Court's consideration of the 1<sup>st</sup> issue***

18. **Black's Law Dictionary (9th Edition)**, defines revision as; "*a re-examination or careful review for correction or improvement or an altered version of work.*" The High Court's power for revision are stated in Section 83 of the Civil Procedure Act, Cap. 71 which 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; or*

*(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; but no such power of revision shall be exercised –*

*(d) unless the parties shall first be given an opportunity to be heard; or*

*(e) where, from lapse of time or other cause, the exercise of that power would involve serious hardship to any person.”*

19. While exercising its revisionary powers, this court is duty bound to examine 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 it. In other words, the conferment of revisionary jurisdiction is generally for the purpose of keeping the subordinate courts within the bounds of their authorities to make them act according to the law and well defined principles of justice.

20. Therefore, revision is not an appeal by an aggrieved party whether in a civil or criminal case. 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.

21. Having critically examined the record of proceedings in Miscellaneous Application No. 23 of 2021, the trial magistrate noted at page 2 of the record in her ruling thus:

***“As for the letter requesting for adjournment, the same has just been put on record today by the same firm Clerk Albert it is dated 9/4/2022 and allegedly received by this court on 12/April 2022. This file was brought from the registry this morning which same registry ought to have received and placed the letter on the file before presenting it to me but they didn’t.”***

22. On the other hand, the Respondent’s counsel submitted at page 3 of the Respondent’s written submissions that the impugned letter supposedly seeking an adjournment was never served on the Respondent’s counsel and that the trial Magistrate also clarified that she did not have a copy of the said letter in the court file. The Applicant in the supporting affidavit sworn by Mr. Mugaju Michael stated that on the 9<sup>th</sup> April, 2021, the Applicant’s advocates prepared a letter and filed in court on the 12<sup>th</sup> April, 2021 informing court about the predicament and requesting court to re-fix Application No. 23 of 2021. That the said advocates equally prepared new hearing notices and filed them on court record to enable court sign early and be in position to serve opposite counsel in time.



23. Further, that the file movement book in the Registry of Mukono Chief Magistrate's Court in the custody of Okullu Keren (Court Clerk), clearly shows that file No. 23 of 2021 moved from the registry to court on the 14<sup>th</sup> April, 2021 to Her Worship Kagoya Jackline's Chambers with all documents including affidavit in rejoinder, adjournment letter for re-fixing and signing on hearing notices and it never returned to the Registry up to 22<sup>nd</sup> April, 2021. That ever since the Applicant's lawyers filed these documents, the deponent went several times to the Registry of court to check whether their application had been re-fixed and hearing notices signed but he would always be informed by Keren in the Registry that the file has never returned to the Registry and on asking Her Worship's Clerk, a one Prossy, she would inform him that the file was on her Worship's desk and not yet re-fixed and signed on and when the Deponent requested to enter her Chambers, the same clerk would say that the Magistrate is busy and cannot see people.

24. Perusing the lower court record of proceedings, this court finds the said letter requesting for re-fixing of Miscellaneous Application No. 23 of 2021 with attachment of Miscellaneous Application No. 005 of 2021 was received by the Mukono Chief Magistrate's Court on 12<sup>th</sup> April, 2021 and placed in the court file. To that extent, having carefully read all the averments by both parties, I find the Applicant's evidence more believable.

25. In my considered view, if the trial Magistrate had prior to the hearing date of Miscellaneous Application No. 23 of 2021, considered the request for re-fixing and had indeed re-fixed the case (and the file

was on her desk), the question of the adjournment by a letter would not have arisen on the 22<sup>nd</sup> April, 2021 and the Respondent's counsel could have been served the newly signed hearing notice with the new date in time. Since the letter requesting for an adjournment was on court record on 12<sup>th</sup> April, 2021, the trial Magistrate could have adjourned the case under paragraph 6 (2) (e) of The Constitution (Adjournments for Courts of Judicature) (Practice) Directions, 2019 because of exceptional circumstances which prevented counsel from appearing in court.

26. Besides, if the trial Magistrate is to be believed that the file was taken to her chambers the very morning of 22<sup>nd</sup> April, 2022 and the said request letter was not brought to her attention by the Registry Clerk, such failure or reluctance by the Registry Clerk cannot be faulted on the Applicant and any decision made against it in that regard, as the trial court did, is considered a material irregularity or injustice to the Applicant well knowing that the Applicant's counsel acted expeditiously to have the said application re-fixed.

27. It should be noted that revision is intended to correct errors which do not go to the merits or substance of the dispute or to the determination of the parties' rights.

In **Matembo v. Yamulinga [1968] E.A. 643** the applicant was granted an ex-parte judgment on October 6, 1966, by the senior resident magistrate's court and on January 5, 1967, the ex-parte judgment was set aside by the same magistrate on the application of the respondent dated December 22, 1966. The applicant applied by way of revision for



the setting aside of the senior resident magistrate's order setting aside the ex-parte judgment on the grounds that: (1) the magistrate acted illegally or with material irregularity in allowing the application without sufficient reason recognized by law, and (2) the magistrate acted without jurisdiction in that he allowed an application made after thirty days of the passing of the judgment or decree. While considering section 79 of the Civil Procedure Code of Tanzania which is similar to section 83 of the Ugandan Civil Procedure Act, Cap 71, in his judgment at page 645 of the report, Mustafa, J. said:

*"The High Court has only to see whether the requirements of the law have been duly and properly obeyed by the court whose order is the subject of revision. As was observed by their Lordships of the Privy Council in Balakrishna v. Vasudeva (1917) I.A. 261:*

*"It will be observed that the section applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of the law or fact in which the question of jurisdiction is not involved."..... As regards alleged illegality or material irregularity urged by the applicant, according to the case of Amir Hassan Khan v. Sheo Baksh Singh (1885) 11 CA 16, 237 - a the Privy Council 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 an erroneous decision on the question of fact or even of law."*



28. The above cited case is however distinguishable from the instant case as this application arises from the trial Magistrate exercising her jurisdiction with material irregularity or injustice in dismissing Miscellaneous Application No. 23 of 2022. In my judgment, this application is properly brought before this court for revision of the order of the said trial Magistrate.

**Issue 2: Whether there are remedies are available to the parties.**

29. It was asserted for the Applicant that by the lower court allowing the Respondent's counsel to proceed ex-parte yet the Applicant's counsel had provided all material for an earlier re-fixing of Miscellaneous Application No. 23 of 2021, it acted erroneously and unjustly. That the trial Magistrate abused her discretion injudiciously with no regard whatever to the predicament counsel found himself in and that a predicament that was not due to anything for which the party applying for re-fixing was responsible, or in fact where there was no negligence on counsel's part. Counsel concluded by submitting that the framers of Section 83 of the Civil Procedure Act intended the High Court to curb this abuse of discretion. He prayed that this honourable court should grant the application.

30. On the other hand, the Respondent's counsel relied on the case of **Brown v. Dean [1910] AC 373** where it was emphasized that in the interest of society as a whole, litigation must come to an end, and "when a litigant has obtained judgment in a court of justice... he is by law entitled not to be deprived of that judgment without very solid grounds." That the maxim *interest reipublicae ut finis litium* is strictly



followed and that courts should not be mired by endless litigation which would occur if litigants were allowed to file all manner of applications during and after trial without any restrictions.

31. That the Respondent herein obtained judgment in his favor in the main suit granting him compensation for his amputated foot. That the Applicant filed Miscellaneous Application No. 77 of 2018 which was dismissed by the trial Magistrate for non-prosecution and that the Applicant then filed Miscellaneous Application No. 23 of 2021 seeking the same prayer which was equally dismissed for non-appearance again. That finally, the Applicant has now filed for revision before this honourable court which has prolonged the possibility of the Respondent ever enjoying the fruits of his judgment. Counsel concluded that the application does not disclose any grounds for revision and that the application for setting aside the dismissal order has been filed before the wrong court both of which should be dismissed with costs to the Respondent.
32. Having found that this is a proper case for revision before this court, this court is empowered under Section 33 of the Judicature Act, Cap. 13 and Sections 83 and 98 of the Civil Procedure Act, Cap. 71 to make such orders or grant such remedies as it deems fit. Accordingly, I find merits in this application and allow it with the following orders:
- (a) The order of Her Worship Kagoya Jackline, Magistrate Grade 1 delivered on 22<sup>nd</sup> April, 2021 dismissing Miscellaneous Application No. 23 of 2021 with costs is hereby revised and set aside;



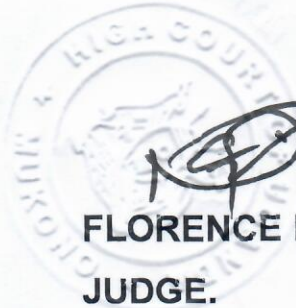



(b)The trial court is hereby ordered to re-hear Miscellaneous Application No. 23 of 2021 inter parties on its merits;

(c)Each party shall bear their own costs of this application as each party has been inconvenienced by the prolonged proceedings.

I so order.

This ruling is delivered this 24<sup>th</sup> day of OCTOBER, 2022 by



  
**FLORENCE NAKACHWA**  
**JUDGE.**

*In the presence of:*

- (1) Counsel Elijah Enyimu from M/s E. Elijah & Co. Advocates for the Respondent;*
- (2) Ms. Pauline Nakavuma, the Court Clerk.*