

# The Republic of Uganda

In The High Court of Uganda Holden at Soroti

Miscellaneous Application No. 0065 of 2022

(Arising from Civil Suit No. 003 of 2021)

10 Imodot Paphras ..... Applicant

## Versus

Oyot Simon Charles :::::::::::::::::::: Defendant

Before: Hon. Justice Dr Henry Peter Adonyo

Ruling.

### 1. The Application:

This is an application brought by way of Notice of Motion under section 83 of the Civil Procedure Act and Order 52 rules 1 & 3 of the Civil Procedure Rules for orders that the ruling of the Grade One Magistrate in Civil Suit No.003 of 2021 be revised and costs of the application be provided for.

The grounds of this application as set out in the application and supporting affidavit sworn by the Applicant are that the applicant filed civil suit no.003/2021 against the respondent for various reliefs and when  
25 the matter came up for hearing on the 10th of February 2022 counsel for the respondent raised a preliminary objection premised on the *Lis Pendens* rule.

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5 That the learned Magistrate erroneously ruled that Civil Suit No. 22 Of 2001 was not disposed and thus still pending yet the same had been disposed of.

In reply, the respondent admitted that a preliminary objection was raised by his lawyers in Civil Suit No. 003 of 2021 which led to the dismissal of  
10 the same. He added that the applicant appealed against the ruling on Miscellaneous Application No. 008 of 2005 vide CA No. 006 of 2007 which was dismissed with orders that the Magistrate Court rehears Civil Suit No 022 of 2001 with the respondent added as an interested party, however, the applicant never fixed Civil Suit No. 022 of 2001 for hearing  
15 and the same still remains unresolved.

In rejoinder, the applicant stated that the orders in CA No. 6 of 2007 that the Magistrate Court rehears Civil Suit No. 22 of 2001 did not automatically reinstate the case and the respondent was supposed to file pleadings in court to that effect which he did not do. That the respondent  
20 had the onus to take the necessary steps to have Civil Suit No. 0022 of 2001 reinstated and have himself added as a party by filing pleadings which step he chose not to take.

The main issue for determination in this matter is whether Civil Suit No. 0022 of 2001 is still pending determination and thus barring filing of Civil  
25 Suit No 003 of 2021.

It is agreed by both parties that the Civil Suit No. 0022 of 2001 was filed in the Chief Magistrates Court of Soroti vide **Saidi Musana v Imodot Paphras** and judgement was delivered in favour of the Imodot the applicant herein.

30 The respondent filed for review of this judgment vide MA No. 0008 of 2005 and the result was an order for a retrial and that the applicant (the

5 respondent herein), filed a fresh suit against the second respondent (the applicant herein).

The applicant then filed an appeal vide CA No. 0006 of 2007 against the ruling in MA 0008 of 2005 which resulted in an order for a retrial of Civil Suit No. 0022 Of 2001 and in addition fresh pleadings by Oyoit Simon as  
10 an interested party be filed in court.

The point of contention appears to be whether the orders in MA 0008 of 2005 and CA 0006 of 2007 for a retrial reinstated the Civil Suit No. 0022 of 2001.

The applicant claims these orders did not reinstate the suit and the  
15 respondent was to file a fresh suit which he has not done to date and he also never took any necessary steps to have the civil suit reinstated yet he bore the onus to do so.

The respondent on the other hand claims that the applicant is the one who never fixed Civil Suit No. 22 of 2001 for rehearing and thus it remains  
20 unresolved to date; that instead of fixing Civil Suit No. 22 of 2001 for hearing as directed by the High Court, the applicant filed Civil Suit No. 003 of 2021.

The parties' submissions reflect the above positions with Counsel for the respondent adding that the findings of the trial Magistrate on the  
25 preliminary point of law did not amount to exercising her jurisdiction irregularly as stated by the applicant but rather it was her conclusion of the law which would not constitute a matter for revision rather than an appeal with counsel relying on the holding in **Wadri Mathias & 4 Ors vs Dranilla Angella Civil Revision No. 0007 of 2019** to support  
30 this submissions.



5 Counsel for the applicant submitted that Civil Suit No. 0003 of 2021 and Civil Suit No. 22 of 2001 are different because the parties and cause of action are different and dismissing the former on the basis of the *Lis Pendens* rule was an irregularity which calls for revision.

Counsel further submitted that it was the respondent duty to fix Civil Suit  
10 No. 22 of 2001 for hearing as he was directed by court to institute a fresh suit to establish his rights to the suit property.

Counsel further contended that CS No. 22 of 2001 was disposed of when judgment was entered in favour of the applicant.

## 2. Decision of Court:

15 To determine this application, it is necessary to look at the proceedings and various rulings and judgments relied on by the parties. Unfortunately, none of the parties attached the record of proceedings for any of the matters referred to.

The applicant however, attached the decisions attached to his application  
20 and that is what will be used by this court.

The judgment in **CS No. 0022 of 2001 Saidi Musana v Imodot Paphras** indicates that one Saidi sued Imodot for breach of contract, he was claiming general damages for breach as well as an order evicting Imodot from the land. Imodot denied this claim and averred that he was  
25 the owner of the suit land having been allocated the same by Soroti Municipal Council. He counterclaimed for a declaration that the land rightly belongs to him and that the Saidi and his agent Oyoit Simon are trespassers on the land.

The learned trial Magistrate entered judgment in favour of the applicant  
30 declaring him the rightful owner of the suit land.

5 The ruling in **MA 0008/2005 Oyoit Simon Charles v Saidi Musana and Imodot Paphras** indicates that Oyoit sought review of the judgment in CS No. 0022 of 2001. In that suit the Magistrate found that the judgment in CS No. 0022 of 2001 substantially affected the legal ownership of the plot by the applicant and yet he was not a party to the  
10 suit. Court then ordered for a fresh retrial with the applicant therein to file a suit against the second respondent to determine ownership of the plot in issue.

The judgment in **CA 0006/2007 Imodot Paphras v Oyoit Simon Charles**, the appellate judge found that there was new evidence relating  
15 to the ownership of Plot 2 which justified review. He further noted that the trial magistrate should have reheard the suit or ordered that it be reheard as retrials are normally a consequence of an appeal.

The learned appellate judge then dismissed the appeal with an order that the Magistrate Grade 1 rehear the said civil suit with the applicant added  
20 as an interested party. He further added that Oyoit should be accorded all the rights as to pleadings as enacted under civil procedure.

The judgment in CA 0006 of 2007 clearly upheld the review and only changed the terminology used by the trial magistrate from retrial to rehearing.

25 It is clear that the order of review granted by both courts effectively dismissed the judgment delivered in CS 0022 of 2001. The matter was to be reheard with the respondent herein added as a party, however, this has never happened.

As seen from above, each party seems to fault the other for having failed  
30 to set down the suit for rehearing.



5 I also find that the order in CA 0006 of 2007 reinstated CS 0022 of 2001 with clear directions that it be reheard with Oyoit as a party.

However, despite this order, there is no proof by the parties that the suit was ever reheard, for it would appear that the respondent herein never filed any pleadings in this regard.

10 A rehearing with the respondent as a party would not be possible if neither party took any step to start the process of rehearing the matter with Oyoit as a party.

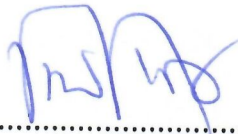
This means that CS No. 0022 of 2001 was never reheard on its merits and never concluded, it is no wonder that the trial Magistrate in her ruling in  
15 CS 003 of 2021 found that there was no cogent evidence by way of a dismissal order or certified record of proceedings that indeed CS 0022 of 2001 was ever dismissed.

I therefore would agree with the findings of the trial Magistrate that the above judgments and rulings when read together prove that CS No. 0022  
20 of 2001 is still pending hearing and the subject matter which is Plot 2 Takan Road as well as the parties are the same as those in CS 003 of 2021. The trial Magistrate was therefore right to find that that CS 003 of 2021 offends the *Lis Pendens* rule provided for under section 6 of the Civil Procedure Act.

25 Arising from the above findings and conclusions, this application for review would accordingly be dismissed with the decision of the learned trial Magistrate upheld that CS 003 of 2021 offends the *Lis Pendens* rule given the fact that that CS No. 0022 of 2001 is still pending hearing and the subject matter is Plot 2 Takan Road.

30 Given the peculiarity of this application, I would order each party is ordered to bear their own costs.

5 I so order.

A handwritten signature in blue ink, appearing to be 'H.P.A.', is written above a dotted line.

Hon. Justice Dr Henry Peter Adonyo

Judge

18<sup>th</sup> January, 2023