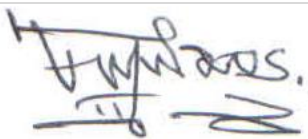


1. That he was the defendant to Civil Suit No. FPT – 08 – CV – LD – 15/2018 where the plaintiff was seeking for orders that she is the lawful owner of the suit land and that he had trespassed on the same. That he was served with the
3 plaint and he filed a written statement of defense to that effect.
2. That before the matter was heard Court directed for boundary opening of the
6 Applicant's land by the Kyegegwa District Surveyor which was done. That on the 28th August 2022, the surveyor's report was presented in court and he objected to it on account that it was done in his absence.
- 9 3. That the trial Magistrate ordered for a fresh survey by another surveyor who was never appointed by court. That on 1/3/2023, another survey report was tendered in court and the surveyor testified to that effect in his absence.
- 12 4. That the trial Magistrate based on the testimony of the surveyor and the survey report made a ruling against him in his absence. That the Applicant was not given an opportunity to be heard and the trial magistrate solely premised her
15 decision on the report by the surveyor appointed by the plaintiff and court did not visit locus to verify the report and the testimony of the surveyor thus arriving at a wrong decision.
- 18 5. That it is equitable and in the interests of justice that the application is allowed.

The application was opposed by the Respondent who deposed as follows:

1. That the application was wrongly before court on account that if the Applicant
21 was aggrieved he ought to have appealed and not filing the application at hand.
2. That the surveyor was appointed by court in the presence of the Applicant who did not object. That it is not a requirement for the surveyor to make the
24 report in the presence of the Applicant. That the boundary opening was done

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twice and it confirmed that the suit land does not fall within the titled land of the Applicant as son of the registered proprietor, the late Gregori Kato.

3 3. That the learned trial magistrate rightly based her findings on the findings of the surveyor since there were two similar reports. That based on such findings, the learned trial magistrate rightly concluded that the suit land belonged to the Respondent.

6 4. That visiting locus is discretionary and if any, such issue ought to have been raised in an appeal. That this application has no merit and ought to be dismissed with costs.

Representation and Hearing:

The Applicant was self-represented while Ms Wanjala Mercy of M/s Legal Aid Project of Uganda Law Society appeared for the Respondent. Both the Applicant and learned counsel for the Respondent addressed me on the merits of the application by way of written submissions which I have duly considered herein.

Issues:

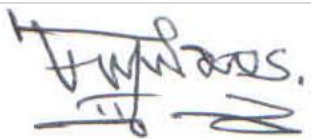
1. Whether there are grounds warranting a revision of the decision of the trial court in Kjj – 00 – LD – CS – 14 of 2017.

2. What remedies are available to the parties?

Consideration by Court:

1. Whether there are grounds warranting a revision of the decision of the trial court in Kjj – 00 – LD – CS – 14 of 2017.

Section 83 of the Civil Procedure Act provides that:



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;

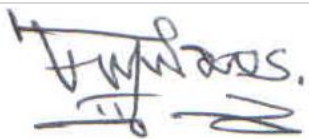
(b) failed to exercise a jurisdiction so vested; or

(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 the opportunity of being heard; or

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

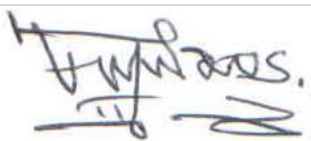
In **KibalamaMugwanya Vs. Butebi Investment Enterprises Ltd**, Court of Appeal Civil Appeal No. 190 of 2013, it was observed at page 7 in relation to revision powers of the High Court thus: *Section 83 of the Civil Procedure Act gives the High Court power to revise the case which has been called for Revision on ground that the court appears to have exercised jurisdiction not in it in law, or failed to exercise jurisdiction so vested; or acted in the exercise of its jurisdiction illegally or with material irregularity or injustice. Upon such revision having taken place, the High court has discretion to make such order as it thinks fit however no such power of Revision shall be exercised unless the parties are given opportunity of being heard unless where from the lapse of time or some other cause the exercise of that power would involve serious hardship to any person.*



Revision therefore accrues from the supervisory powers of the High Court to keep the lower courts in check and to ensure that decisions made by those courts are in line with the proper exercise of jurisdiction vested in them by law. (See: ***Maweje and 3 Others (T/a as members of Bundibugyo Drivers and guide group) v Yiga (Review Cause 16 of 2023) [2023] UGHCCD 322 (11 October 2023)***). The power of revision therefore falls under these broad categorizations - that is lack of jurisdiction or failure to exercise it and exercise of jurisdiction with material irregularity or illegality or injustice by the lower courts.

In ***Kibalama Mugwanya Vs. Butebi Investment Enterprises Ltd, Civil Appeal No. 190 of 2013***, Mubiru, J observed at page 7 thus: *Section 83 of the Civil Procedure Act gives the High Court power to revise the case which has been called for Revision on ground that the court appears to have exercised jurisdiction not in it in law, or failed to exercise jurisdiction so vested; or acted in the exercise of its jurisdiction illegally or with material irregularity or injustice. Upon such revision having taken place, the High court has discretion to make such order as it thinks fit however no such power of Revision shall be exercised unless the parties are given opportunity of being heard unless where from the lapse of time or some other cause the exercise of that power would involve serious hardship to any person.*

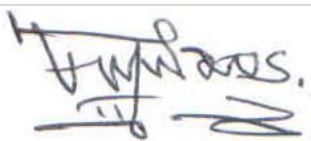
In ***Susan Byenkya v Byaruhanga Efurazia, HC Revision Application No. 005 of 2021***, I previously observed in relation to revision thus: ***“The Courts in the above cases sanctioned the wide power of the High Court in Revision to address issues of want of jurisdiction and failure to exercise the jurisdiction as well as whether the jurisdiction was exercised illegally or with material irregularity or injustice. It is further confirmed that after the High Court examining the entire record of the Magistrate Court in Revision, it has the discretion to make such orders as it thinks***

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fit. It is therefore my understanding that even where the Magistrate's Court had jurisdiction, where such jurisdiction is found to have been exercised with material irregularity or illegality or injustice, the High Court has the power in Revision to examine the legality, correctness and propriety of the decision made and where it is found that the jurisdiction was exercised illegally or with material irregularity or injustice which cannot be left to stand in the interests of justice, the High Court can revise the case and make orders that it deems fit."

In the present application, the complaint by the Applicant is that the trial magistrate exercised the jurisdiction vested with material illegality or irregularity and caused injustice to him. The Applicant contended that the learned trial magistrate illegally relied on the report by the surveyor who was not duly appointed in the presence of both parties and went ahead to make orders without hearing from him or visiting locus as required by law. It was contended that if the trial magistrate had visited locus, she could have come to a different conclusion. That the manner in which the proceedings of court were handled were improper, illegal and thus asked court to have the orders issued by the trial magistrate revised and set aside and have the case heard afresh interparty.

In response, learned counsel for the Respondent contended that the grounds raised by the Applicant do not raise lack of jurisdiction or the exercise of it with material illegality or irregularity that caused injustice to the Applicant. That section 26 (1) and (2) of the Judicature Act allows court to appoint an official or special referee for an inquiry and report and court may adopt the report wholly or partly and if so adopted, it may be enforced as a judgment or order of court. That the learned trial

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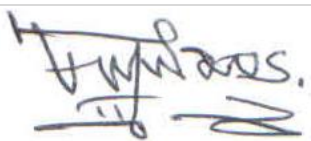
magistrate exercised her jurisdiction by appointing a surveyor being a technical expert and adopted his finding in her judgment to come to the conclusion that the Respondent is the owner of the suit land since it didn't fall within the titled land for the plaintiff.

He further contended that visiting locus is discretionary. That if court was satisfied that the evidence on record was enough and circumstances did not necessitate a locus visit, then court could dispense with the same. (See: *Kwebiha Emmanuel v Rwanga Furujensio & 2 others, Civil Appeal No. 002 of 2011*). That the failure to visit locus did not prejudice the Applicant since the decision was based on a report by an expert. Learned counsel asked court to find not merit in this application and be pleased to dismiss the same.

DECISION:

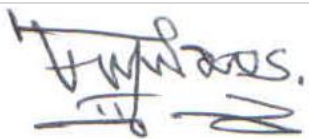
I have examined the submissions of the Applicant and learned counsel for the Respondent, their pleadings and the record of proceedings of the lower court. The Respondent filed Civil Suit No. 15 of 2018 seeking a declaration that she is the owner of the suit land located at Bulingo L.C.I, Bulingo Parish, Kyegegwa Sub County, Kyegegwa District, an order of vacant possession, a permanent injunction, general damages and costs of the suit.

The plaintiff contended that she and her other three sisters, Merida Kunihira, Rose Tusiime and Florence Mbabazi acquired the suit land as a gift inter-vivos from their father, Irumba Joseph and an agreement was made to that effect. That they took



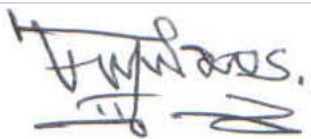
possession of the same and in 2021, the defendant unlawfully entered onto the same and started using the suit land. That she reported the case to the L.C.III Chairman who invited the parties to settle the matter amicably and the defendant refused. The Applicant (defendant) denied the allegations by the plaintiff (Respondent) and averred that he got the suit land from his father in 2002 and it has clear boundary marks, which is survey stones with a land title. It was pointed out that the case was heard by L.C.1, L.C.II and lastly L.C.III. He thus asked court to dismiss the suit with costs.

It appears from the record of the lower court that the matter came up for mention on 20th September 2018 and was sent for mediation. An issue as to whether the land in issue fell within the titled land arose and parties opted to have a surveyor appointed to do a boundary opening. On 30th May 2019, the District Surveyor, Kyegegwa District was appointed by court to do the boundary opening and was to be facilitated by both parties and the case was adjourned to 22/8/2019, following which the case was adjourned several times. On 28/9/2022 both parties were present and the defendant objected to the survey report which was presented on account that the boundary opening exercise was done in his absence. The trial Magistrate directed that a fresh survey be done in the presence of both parties who were to sign the attendance list. The surveyor was to be appointed by court at a later date and the survey report was to be furnished to court before 1/12/2022. On 1/12/2022, both parties were in court and court noted that a surveyor had not been appointed and the matter was adjourned to 23/2/2023 pending appointment of a surveyor. On the 23/2/2023, the defendant was absent and court noted that it could not proceed in his absence and adjourned the matter to 1/3/2023.

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On the 1/3/2023, the plaintiff was present and the defendant was absent. The plaintiff
3 informed court that a survey had been done and the defendant was absent. Court
directed that; *'let us proceed with the testimony of the surveyor concerning his
findings'*. The surveyor Mr. Tumusiime Monious testified and tendered in the
6 survey report/boundary opening report which was exhibited as PEX1. The trial
Magistrate basing on the testimony of the surveyor and the survey report, decreed
the suit land to the Respondent. The Applicant being aggrieved lodged the current
9 application for revision.

I have examined the said proceedings and it appears that the learned trial magistrate
12 did not schedule the matter as required under Order 12 of the Civil Procedure Rules.
It is thus uncertain, as to the issues that court was called upon to adjudicate. Further,
it is not ascertainable from the record as to how the surveyor was appointed. Court
15 had indicated that a surveyor was to be appointed and there is no record whatsoever
appointing one Tumusiime Monious as the surveyor to do the boundary opening
as intimated by court. It also appears from the record, the surveyor's report was
18 handled exparte against the defendant without the trial Magistrate making an order
allowing the plaintiff to proceed as such as provided for under Order 9 rule 11 of the
Civil Procedure Rules. Lastly, since the case between the parties concerned the
21 boundaries of the defendant's registered land and that of the defendant, which was a
proper case where court ought to have visited locus to ascertain the extent of the suit
land and the developments thereon.



I find based on the above observations that whereas the learned trial Magistrate had the Jurisdiction to try the matter, she did so with material procedural irregularities or illegalities that occasioned an injustice to the Applicant which cannot be left to stand. I therefore agree with the Applicant that this is a proper case for revision.

2. Remedies:

Since the Applicant has proved his application, the same succeeds with the following orders:

- 1. The ruling of the trial Court in Kyegegwa FPT – 008 – CV - LD – 15 of 2018 is hereby set aside and all the orders therein.**
- 2. Kyegegwa Land Civil Suit No. FPT – 008 – CV – LD – 12 of 2018 shall be heard afresh interparty.**
- 3. I decline to award costs to the Applicant since he constantly absconded from court and it was the reason the case was heard in his absence. Therefore each party shall bear their own costs.**

I so order.



Vincent Wagana
High Court Judge, Fort-Portal

Date: 08/04/2024

