

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT HOIMA

REVISION APPLICATION NO. 002 OF 2022

(Arising From Chief Magistrate's Court of Hoima at Hoima
Small Claim Case No.37 of 2022)

KAMBAHO ERINEST :: APPLICANT

VERSUS

DONALD OVOYA :: RESPONDENT

[Revision of record of proceedings, judgment and order of Ag. Magistrate Grade One H/W Iradukunda Elija, in small claim case No.37 of 2022]

Before: Hon. Justice Byaruhanga Jesse Ruyyema

RULING

- [1] The Applicant brought this application by Notice of Motion under **Ss.83 & 98 CPA** for orders that;
- a) The record of proceedings, orders and judgment of H/W Ag. Magistrate Grade One Iradukunda Elijah in **Small Claim No.37 of 2022** delivered on the 5th of October 2022 be called for and examined by this Honourable court for purposes of satisfying itself as to the correctness, legality, propriety justice and regularity of the same and to be revised and set aside.
 - b) The findings and order to pay a total sum of **Ugx 3,750,000/=** as compensation for damaged crops, order to pay court filing fees in the sum of **Ugx 79,000/=** and the transport costs in the sum of **Ugx 200,000/=** issued by H/W Ag. Magistrate Grade One **Iradukunda Elija** in

Small Claim Case No. 37 of 37 of 2022 be revised, quashed and/or and or set aside.

c) The Respondent meets the costs of this application.

- [2] The Application is supported by the affidavit of **Kambaho Ernest**, the Applicant and opposed by the affidavit in reply filed by **Donald Ovoya**, the Respondent.

Background

- [3] The Respondent herein instituted a **Small Claims Case No.37 of 2022** against the Applicant in the Chief Magistrate's Court of Hoima at Hoima claiming that at Kamwokya village in Kyangwali sub county, Kikuube district, the Applicant released his cattle which trespassed into the Respondent's garden and destroyed his crops to wit; beans, maize and cassava. The Respondent impounded and seized the said cattle that trespassed and destroyed the garden. He reported the matter to the L.C1 chairperson of Kamwokya village. The Respondent's complaint was entertained by the L.C 1Chariperson Kamwokya village, the L.C III chairperson Kyangwali and the area police with the view to amicably settle the parties.
- [4] The agricultural Officer of Kyangwali sub county was invited to assess the damage. However, as per the court record placed before this court for revision, it lacked the court proceedings and the defence filed by the Applicant. This could have been as a result of the fact that this is one of the files that survived fire that gutted the High court Registry on the morning of 21/10/2023 and therefore some of the record got lost during recovery. What is before this court is a mere duplicate file that was constructed upon loss of parts of the record as a result of the fire.

- [5] Nevertheless, as per the findings of the trial Magistrate as reflected in his judgment dated 5th/10/2022, the Agricultural Officer who visited the garden that was allegedly trespassed upon by the Applicant's cattle assessed the damage at **Ugx 3,750,000/=**. The trial Magistrate further found that the Applicant/Defendant on his part denied the Respondent's allegations and claimed that he sold his 3 cows to a businessman who was taking them to the market and was intercepted by the Respondent and his sons who alleged that the cows had eaten the crops whereas not.
- [6] In his judgment, the trial Magistrate found and ruled as follows;
*"I have looked at the **pleadings**, listened to the parties in court and noted their demeanor and credibility. I have also perused the documents presented by the claimant to wit; a document for release of cows CEXHI that was executed by the chairman L.C1 Kamwokya where the defendant (Applicant) acknowledged that his cows ate the crops for the claimant.... I have also seen a letter written by the OC Kyangwali police post marked as CEXH11 confirming that the defendant's cows destroyed the claimant's crops... I have also seen the **crop damage assessment report by Mulindwa Sulaiman the agricultural officer -Kyangwali** admitted and marked as CEXH111... The defendant (Applicant) presented a blanket denial but never produced evidence to support his case. **His claim that the claim was malicing him because he stopped him from poaching from his land is very unbelievable since it lacks evidence.***
Based on the evidence presented before me and my assessment of the demeanor of the parties as they appeared before me, I enter judgment in favour of the claimant and make the following orders;
*a) **The defendant (Applicant) pays the claimant a total sum of Ugx 3,750,000/= as compensation for the crops that were damaged by the defendant's cows.***

b) The defendant pays the court filing fees amounting to Ugx 79,000/=.

c) The claimant is awarded transport expenses amounting to Ugx 200,000/=.”

[7] The Applicant was aggrieved by the above decision and orders and filed the present application for revision of the proceedings, judgment and the orders therefrom.

Counsel legal representation

[8] The Applicant was represented by **Mr. Busingye Steven** while the Respondent was represented by **Ms. Namuganza Monica**. Both counsel filed their respective submissions for consideration in the determination of this application.

Grounds of the Application

[9] Counsel for Applicant in his submissions presented the following grounds for court to consider and revise the record of proceedings, orders and judgment of the trial Magistrate;

- 1) The **Small Claim Case No.37 of 2022**, was instituted in a wrong court contrary to **Rule 9 of the Judicature (Small Claims procedure) Rules, 2011, S.I 25 of 2011**.
- 2) That from the record, the nature of the dispute was complex and therefore did not fall under the small claims procedure, contrary to **Rule 26(1)** of the Rules.
- 3) The Applicant was never afforded an opportunity to be heard or defend himself contrary to **Rule 25 (a) and (b) of the Rules**.
- 4) The trial court did not state the basis of its findings contrary to **Rule 27 and schedule 7 of the Rules**.
- 5) The trial court did not inquire into the Applicant's financial position after judgment was delivered **contrary to Rule 28 of the Rules**.

- 6) The Applicant was condemned to costs contrary to **Rule 29 of the Rules.**

Determination by court

[10] The High court derives its power to revise the proceedings of the Magistrate's courts under **S.83 CPA**. This power is similar to the supervisory powers of the High court over Magistrate's courts provided for under **S.17(1) of the Judicature Act** which provides that;

“The High court shall exercise general powers of supervision over magistrate's courts.”

[11] As per **Rule 4(4) of the Judicature (Small Claims procedure) Rules (supra)**, this power includes power to revise the decisions of the small claims court. As was held in **Munobwa Muhammed Vs UMSC, H.C Civil Revision No.01 of 2006**, where the High court exercises its revision jurisdiction, its duty entails examination of any proceedings before it for the purposes of satisfying itself as to the correctness, legality or propriety of any findings, order or any other decision and the regularity of the proceedings before it.

[12] An application for revision can lie only on the ground of jurisdiction, and the High court in exercise of its revisional jurisdiction is not a court of appeal on a question of law or fact. This provision applies to jurisdiction alone, the irregular exercise of or non-exercise of it or the illegal assumption of it (See **Matembe Vs Yamulinga (1968) EA 643**). A court is said to exercise jurisdiction illegally when it assumes a jurisdiction that is not vested in it by law, and is said to exercise jurisdiction but does so wrongly through some procedural or evidential defect.

[13] In this case, as I have already observed, this case file for revision has no record of court proceedings and Response of the defendant. They are missing. I however also find that it contains certain other records which are alien to it. For example;

a) Crop damage Assessment Reports

There are 2 crop damage Assessment Reports; the first one dated 31/3/2021 which computed the value of the damaged crops belonging to a one **Mr. Kaahwa** at **Ugx 632,000/=** and the second one dated 4/4/2022 which computed the value of damaged crops belonging to a one **Donald Ovoya** (the Respondent) at **Ugx 3,750,000/=**. Both reports were authored by **Mulindwa Sulaiman**, the Agricultural Officer, Kyangwali sub county.

b) Discrepancy of the sum claimed

Whereas the Demand notice cum Notice of Intention to sue dated 20/10/2021 attached to the application reflect damaged crops as estimated at a value of **Ugx 632,000/=**, as per the Assessment report attached to the Respondent's small claim procedure claim dated 14/7/2022 and yet the claim itself reflect recovery of **Ugx 3,750,000/=** as the value of the damaged crops.

c) Lack of the particulars of the parties and claim details.

The Respondent's small claim procedure claim lacks the particulars of the claimant and those of the Defendant and then details of the claim as required by **schedule 2 of the Rules**.

[14] It is the particulars of the parties and the details of the claim that disclose whether the suit is instituted in a court within the local limits of whose jurisdiction the cause of action arose, and whether the nature of the transaction and the amount claimed fall under small claims procedure. Since the details of the claim

require the claimant to attach copies of the documents to be relied on, if the applicant had complied accordingly, this court would have been guided as to whether the seemingly alien documents on record were actual documents filed and relied on or not.

[15] In the absence of the record of court proceedings and the Response of the defendant, this court is not in these circumstances able to re-evaluate the record and resolve the Applicant's complaints regarding the jurisdictional court where the suit was instituted since in certain circumstances parties may concede to the court (for example, if the local court has been gazetted but not yet launched as per **Rule 4(3) of the Rules**). As long as the court has general jurisdiction, whether the dispute was complex or not or whether the Applicant was afforded an opportunity to be heard or not. These issues can in the circumstances of this case be only determined on perusal and examination of the judgment, since it is the only available material.

[16] As per the judgment on record, I do agree that upon delivery of the judgment as per **Rule 28 of the Rules**, court is required to inquire into the Applicant/judgment debtor's financial position for the purposes provided under **Rule 28(2) of the Rules**. In this case, such an inquiry was not made by court. Lastly, in this case, I find that the trial court ordered for the Applicant/judgment debtor to pay the Respondent **Ugx 200,000/=** as transport expenses. This is contrary to **Rule 29 of the Rules** which provide that;

"A party to a claim under these Rules shall bear his or her own expenses."

[17] The above as found from the trial Magistrate's judgment on record are grave procedural errors thus were material

irregularities which occasioned gross miscarriage of justice to the Applicant and for these reasons, I allow this application with the following orders:

1. The proceedings, judgment and orders of the trial Magistrate in small claims case No.37 of 2022 are revised and set aside.
2. The Respondent may consider to institute a fresh action in a court which has appropriate jurisdiction.
3. Each party shall bear his own costs bearing in mind the fact that it was court with the mandate to properly manage the small scale procedure proceedings. The parties cannot be condemned to costs on account of procedural errors committed by the trial Magistrate.

Order accordingly.

Dated this 14th day of June, 2024.

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Byaruhanga Jesse Ruyema
JUDGE