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The Republic of Uganda
In the High Court of Uganda Holden at Soroti
Civil Revision No. 02 of 2023

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*(Arising from Miscellaneous Application No. 55 of 2022 of the Chief Magistrate's Court
of Soroti at Soroti)*

*(All arising from Civil Suit No. 007 of 2014 of the Chief Magistrate's Court of Soroti at
Soroti)*

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Omar Abule Applicant

Versus

Rtd Col William Omaria Respondent

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Before: Hon. Justice Dr Henry Peter Adonyo

Ruling

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1. Introduction:

This application was brought by Notice of Motion under Sections 83 and 98 of
the Civil Procedure Act, Cap 71, for orders that;

a) The orders of the trial magistrate in Miscellaneous Application No. 55 of
2022 be revised and set aside.

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b) The costs of this application be provided for.

5 2. Grounds of the application:

The grounds anchoring the application are set out therein and expounded in the supporting affidavit deposed by the applicant, and they briefly are that;

- 10 a) The trial magistrate ordered the applicant to deposit UGX 18,000,000 (eighteen million Uganda shillings) in court as security for due performance within 14 days which the applicant cannot afford. (**Ruling annexed as "A"**)
- b) The applicant had already deposited security for costs with the court of appeal before his Appeal vide Civil Appeal No.214 of 2022 pending before the court of appeal was registered. (**Bank draft annexed as "B"**)
- 15 c) The trial magistrate acted with material irregularity to order the applicant to deposit UGX 18,000,000 in court within 14 days, failure of which the applicant to be evicted from the land.
- d) The applicant shall be prejudiced if his appeal pending before the court of appeal succeeds.
- 20 e) The applicant has no capacity to deposit Ugx. 18,000,000 with the court and shall suffer irreparable damages if he is evicted from the land, which is the only source of livelihood and survival of the applicant and his family.
- f) It is in the interest of justice that the trial magistrate's order is revised and set aside.

3. Grounds in opposition to the application:

25 The application was opposed by Retired Col. William Omaria, who swore an affidavit in reply setting out the grounds of opposition, which are briefly that;

- a) The application lacks merit and is an outright abuse of the court process and is only intended to delay the course of justice.
- 30 b) The applicant's intention is to delay execution while hiding under unnecessary applications to the respondent's detriment by depriving him of the fruits of his judgment.

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- 5 c) An application for revision concerns only jurisdiction and in this case, the trial Magistrate had jurisdiction to hear the application for stay of execution and make the orders he made.
- d) The record is clear that the applicant was dissatisfied with the orders of the trial Magistrate and applied for leave to appeal, which was granted,
10 and the applicant has failed to appeal but hiding under this application.
- e) The respondent has already had his taxed bills of costs at Ug shs. 18,000,000/= from the lower court and Ug Shs. 9,000,000/= from this Court, and the applicant claims to have deposited Ug. shs. 200,000/= (Two hundred thousand only), which cannot be proportionate with the
15 respondent's bills of costs.
- f) The applicant was ordered to pay for security for due performance of the decree and not security for costs for an appeal.
- g) The rules governing appeals in the Court of Appeal do not apply to the rules governing the stay of execution in the Magistrate's Court and High Court.
- 20 h) The payment of security for due performance of a decree is a requirement of the law which the applicant cannot be exempted.
- i) The dispute over the respondent's land has stretched since 1994 and the respondent has been in litigation with the applicant for a long time, which has put a strain on his health and wellbeing due to the applicant's refusal
25 to vacate my land despite the respondent's victory in both the Trial Court and High Court.
- j) The applicant has not demonstrated to this Court that he is unable to deposit the money ordered by the Court. Further, the applicant has engaged JS. Mayanja-Nkangi & Co Advocates from Kampala indicates that
30 he has the financial muscle to pay for security for the due performance of the decree.

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5 k) It is in the interest of justice that the application is dismissed.

4. Rejoinder:

The applicant swore an affidavit rejoining the affidavit in reply, and he stated that;

- a) This application for revision does not and is not intended to challenge the jurisdiction of the trial Magistrate but the unfair orders made.
- 10 b) The applicant cannot afford to pay the Ugx. 18,000,000/= imposed on him by the trial Magistrate because he is a substance farmer, with cultivation as his only source of income, which can only sustain the survival of his family.
- c) If the applicant succeeds in his appeal in the court of appeal, the orders of
15 the trial magistrate shall prejudice his appeal.
- d) The applicant does not personally pay legal fees to his lawyers, facilitated by his relatives as sympathizers.
- e) The applicant only does subsistence farming, which can only provide for his daily survival. Thus, the trial magistrate's orders to pay 18,000,000/= to
20 the respondent are far beyond his capacity and only intended to frustrate his rights.
- f) The applicant has lived on the suit land for the whole of his life, from which his family has derived livelihood without any alternative in case we are evicted.
- 25 g) This application for revision does not prejudice the respondent but only is intended to revise the unfair orders that cause irreparable damages to the applicant if his appeal is pending before the court of appeal succeeds.
- h) It is in the interest of justice that the order of the trial magistrate that the applicant deposits Ugx. 18,000,000/= in court is set aside, and all
30 proceedings stayed until the determination of the appeal pending before the Court of appeal.

5 5. Representation:

JS. Mayanja-Nkangi & Co. Advocates represented the applicant, while M/s Natala & Co. Advocates represented the respondent. The parties filed written submissions, which have been considered accordingly. While thankful for the submissions, I will refer to them as and when necessary.

10 6. Issues

The issues below suffice to determine the instant application, thus.

- a) Whether this is a proper case for revision of the orders of the trial magistrate in Miscellaneous Application No. 55 of 2022, be revised and set aside.
- 15 b) Whether there are any remedies available to the applicant in the circumstances?

7. Resolution:

This application was brought under Section 83 (c) of the Civil Procedure Act, Cap 71, which provides that the High Court may call for the record of any case which
20 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
25 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—

- a) Unless the parties shall first be given the opportunity of being heard; or

- 5 b) Where, from lapse of time or other cause, the exercise of that
power would involve serious hardship to any person.

The application was also brought under Section 98 of the Civil Procedure Act, Cap 71 (CPA), which inherently empowers this court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

- 10 It is trite that the duty and burden of proof lies on the applicant because he is the one who seeks to get a decision of this court in her favour. (See Sections 101 and 102 of the Evidence Act, Cap 6).

- 15 a) Whether this is a proper case for revision of the orders of the trial magistrate in Miscellaneous Application No. 55 of 2022, be revised and set aside.

In his application and supporting affidavit thereof, the applicant avers that he has a pending appeal before the Court of Appeal vide Civil Appeal No. 214 of 2022, which shall be rendered nugatory, and that the applicant shall be prejudiced if his appeal succeeds, yet he paid security for due performance in the lower court.

- 20 The applicant also avers that he shall suffer irreparable damages if he and his extended family are evicted from the suit land. The applicant avers that the application for stay of execution was granted by the trial Magistrate on condition that the applicant deposits 18,000,000/= (eighteen million Uganda shillings) within 14 days, failure of which execution to be issued against him. The applicant
25 asserts that he cannot meet the requirement to deposit Ugx. 18,000,000/= within 14 days and the order of the trial Magistrate is unreasonable, irregular, unjust, and improper, which is why he wants this court to revise those orders in this application.

- Conversely, the respondent contends that this application is because, upon
30 failure by the applicant to furnish security for costs as ordered by the trial

5 magistrate, the respondent went ahead with the execution, which was duly done through obtaining vacant possession of the suit land.

The thrust of this application, gleaned from the pleadings of the applicant, is that he wants this court to exercise its powers under Section 83 of the Civil Procedure Act to revise and set aside the orders of the trial magistrate in Miscellaneous
10 Application No. 55 of 2022, to wit, that the applicant is required to deposit in court a sum of UGX 18,000,000 as security for due performance within fourteen days as a condition precedent for execution in Civil Suit No. 07 of 2014 to be stayed.

Section 83 of the Civil Procedure Act Cap 71 provides the parameters for the High
15 Court to properly apply in its revisional jurisdiction. The said powers can be invoked when a magistrate's court has either

- (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
20 injustice.

According to the case of *Eliazali Bameka vs Dodovico Nviiri [1973] 1 ULR 134*; the High Court can call for a record of any case of a lower Court if it appears that;

- i. A lower court failed to exercise jurisdiction so vested in it; o
- ii. It exercised jurisdiction not vested in it; or
- 25 iii. It acted irregularly or illegally

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.**

Therefore, the applicant wants this court to investigate the lower court's correctness of its orders and whether it was able to fully exercise its jurisdiction
30 in the terms cited.

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5 In the case of *Mabalaganya v. Sanga* [2005] E.A 152, it was held that in cases where the High Court exercises its revisional powers, its duty entails the examination of 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 the High court.

10 The grounds upon which this application is anchored are that it was erroneous for the trial Magistrate to order the applicant to pay Ugx. 18,000,000/= within 14 days when the applicant has already paid the deposited security for costs with the Court of Appeal.

The applicant is a mere peasant surviving on subsistence farming and is very poor and cannot afford to pay Ugx. 18,000,000/= within 14 days and such an order by
15 the trial magistrate is unjustly intended to defeat the applicant.

That the trial magistrate ought to have considered the applicant's financial status before making orders intended to defeat and frustrate the applicant's appeal pending before the court of appeal. That the trial Magistrate was very aware that
20 the applicant's appeal would be prejudiced by his orders but went ahead with unjust, unreasonable and harsh orders against the applicant.

The excerpt of the orders of His Worship Okiror Edmond Okwii vide Miscellaneous Application No. 55 of 2022 of the Chief Magistrate's Court of Soroti at Soroti, following an application for a stay of execution of the applicant,
25 the trial magistrate ordered that;

Having proved the conditions for grant of this application, the application is hereby allowed with the following orders;

1. ***Execution in Civil Suit No. 07 of 2014 is hereby stayed on condition that the applicant deposits in Court a sum of Shs. 18,000,000 as security for due performance within 14 days of this order.***

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2. *Upon failure of the applicant to meet the condition within the set timelines, execution shall issue.*

3. *Costs abide by the results of the appeal.*

The application through which the above orders were made was, in my view, premised on Order 22 Rule 26 of the Civil Procedure Rules, which stipulates that
10 *where a suit is pending in any court against the holder of a decree of the court in the name of the person against whom the decree was passed, the court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.*

The courts have gone ahead and elaborated on the requirements to be
15 considered for applications for a stay of execution, and among these are the cases of *Lawrence Musiitwa Kyazze vs. Eunice Busingye Supreme Court Civil Application No. 18 of 1990*, where in the court held that the grounds are;

- a. That substantial loss may result to the applicant unless the order is made.
- b. That the application has been made without unreasonable delay.
- 20 c. That security has been given by the applicant for due performance of the decree.

And also, the Court of Appeal has, in the case of *Kyambogo University Vs Prof Isaiah Omolo Ndiege CACA No. 341 of 2013*, extended the list of the grounds to include;

- 25 a) There is a serious or imminent threat of execution of the decree or order, and if the application is not granted, the appeal would be rendered nugatory.
- b) That the application is not frivolous and is likely to succeed.
- c) That the refusal to grant the stay would inflict more hardship than it would
30 avoid
- d) The Applicant must show that he lodged a notice of appeal.

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5 Upon my perusal of the applicant's contentious order of payment of UGX 18,000,000 as a condition precedent to the grant, aligning it with the above decisions and requirements or enumerated grounds upon which applications of stay are anchored, I consider that in ordering the applicant to furnish security for costs as a condition for stay of execution, the learned trial magistrate was well
10 within his powers. He exercised jurisdiction that was vested in him.

It is thus my view that the applicant's contention that he is a subsistence farmer unable to pay the money that he was ordered to pay as a condition precedent is a subject of another application and not revision under Section 83 of the CPA because Section 83 of the CPA is strictly limited to questions of exercise of
15 jurisdiction. In my view, the applicant's inability to pay has no bearing on parameters under Section 83 of the CPA.

It is also my considered view that it is trite that security for the due performance of the decree under applications of stay of execution, such as in Miscellaneous Application No. 55 of 22 of the Chief Magistrate's Court of Soroti at Soroti is
20 invariably different from security for costs when the applicant as appellant appealed in the Court of Appeal as it is evident that the rules governing the same and the objects are different.

Therefore, it cannot be said that because UGX 200,000/= as security for costs was deposited in the Court of Appeal, then the trial magistrate should not have
25 exercised his powers to order security for the due performance of the decree in his court. I find that argument false and inconsequential.

The applicant should, in the event of his realisation of his inability to pay UGX 18,000,000, have addressed that predicament to the trial court for consideration, but failed to do so.

5 By making this application under the laws cited, the applicant evidently is bringing to this court something which is not within the ambit or the parameters of revision through which this court is enjoined to exercise revisionary powers.

Consequently, for the reasons given above that this instant application is misplaced, then it would fail as the applicant is invoking the revisionary powers
10 of this court on the basis that he is unable to pay the amount decreed by the trial court yet such disability should have been addressed to the trial court for its reconsideration by using the proper application to it rather than by invoking the revisionary powers of this court for yet Section 83 of the CPA because Section 83 of the CPA is strictly limited to questions of exercise of jurisdiction .

15 The above being so, this application is found to lack merits and is dismissed with its costs to be paid by the applicant.

I so order



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Hon. Justice Dr Henry Peter Adonyo

Judge

08th May 2024