

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**REVISION CAUSE NO. 016 OF 2012**  
(Arising from Mengo Chief Magistrate's Court  
**CIVIL SUIT NO. 1964 OF 2010**

**MARGARET WASSWA :::APPLICANT/DEFENDANT**

**VERSUS**

**MATOVU HUSSEIN :::RESPONDENT/PLAINTIFF**

**BEFORE:    HON. LADY JUSTICE ELIZABETH MUSOKE**

**JUDGMENT**

The respondent sued the applicant in civil suit No 1964 of 2010 under summary procedure for recovery of Ug. Shs. 16, 500, 000/=, interest and costs of the suit. The defendant/applicant never applied for leave to appear and defend and thus a default judgment was entered against her on the 14<sup>th</sup> day of September 2010. The applicant being dissatisfied with the judgment filed Miscellaneous Application No1180 of 2010 seeking an order to set aside the judgment; which was also dismissed. The applicant/defendant then filed this application seeking for an order of revision of the said judgment on grounds that she was never served with the summons.

The application was brought under Section 83 and Section 98 of the Civil Procedure Act Cap 71 and Order 52 Rule 1,2, and 3 of the Civil Procedure Rules SI 71-1 for orders that;

- a) The ruling passed against the defendant/applicant dated 14<sup>th</sup> September 2010 in Civil Suit No 1964 at Mengo Chief Magistrates Court be revised and set aside.

b) Costs of this application be provided for.

The application is supported by the affidavit of Mrs. Margaret Wasswa, the applicant and is based on the following grounds:-

- i. The defendant /applicant was never served with the summons on the summary suit or any other court documents in respect of the matter.
- ii. The defendant/ applicant has a counter claim against the respondent plaintiff.
- iii. It would be in the interests of justice if this honourable court revised the decision of the trial Magistrate at Mengo and set aside the ruling passed against the applicant/ defendant.
- iv. The delay of the applicant/defendant to file an appeal to the High court was caused by the trial Chief Magistrate who misplaced the suit file from the registry and archives.

The parties were directed to appear before court, but only the applicant did. The respondent did not appear despite the fact that they acknowledged service of the hearing notice. The court directed that the parties file their written submissions and the applicant was directed to inform the respondent. The applicant filed her written submissions and she served her written submissions on the respondent who refused service. (See affidavit of service by the applicant filed in court on 17/12/2012). The documents were left at the respondent's verandah in the presence of the L C1 Chairman. Since the respondent/plaintiff refused service of the court documents, court decided to proceed with the ruling in his absence.

The applicant at first raised the grounds appeal from which she raised issues for court to resolve. However this being an application for revision I will only consider the issues derived from the grounds set out in the notice of motion.

The applicant submitted that she was not served with court summons in the head suit as falsely sworn in the affidavit of service of Senoga Hakim deponed on 1/9/2010. The applicant contended that she was out of the country in Juba, Southern Sudan on the date of the alleged service. She attached her passport to the pleadings to prove that she was out of the country at the time of the alleged service.

She urged court to declare Senoga's affidavit false as it misguided the trial Magistrate in the summary suit.

Section.83 of the Civil Procedure Act Cap 71 provides;

***“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; ...”***

In **HITILA Vs UGANDA [1969] 1 E.A. 219**, the Court of Appeal of Uganda held ***that in exercising its power of revision the High Court could use its wide powers in any proceedings in which it appeared that an error material to the merits of the case or involving a miscarriage of justice had occurred. It was further held that the Court could do so in any proceedings where it appeared from any record that had been called for by the Court, or which had been reported for orders, or in any proceedings which had otherwise been brought to its notice.***

The applicant's main contention is that she was not served with summons in summary suit to enable her apply for leave to appear and defend. She did attach her passport to prove that she was in Southern Sudan at the time of the alleged service of summons. Upon scrutinizing the applicant's passport I observed the following;

- 1. On 09/August/ 2010 she exited Uganda via Atiak border.**
- 2. On page 22 of her passport there is a stamp showing that she came back on 02/September/ 2010.**

The affidavit of service on the record reads;

- "1) That I received summons in summary suit on plaint on the 25<sup>th</sup> day of August 2010 issued by this honourable court.***
- 2) That on the same date the plaintiff called the defendant and they met at Arua Park to discuss the debt in issue, I proceeded to the same place where I found the defendant.***
- 3) I introduced myself to her and told her I had summons to serve upon her.***
- 4) That I served her with the summons in summary suit on plaint under Order 5 Rule 10.***
- 5) That she accepted service but however refused to endorse my copies."***

On perusal of the record, I find that the applicant had filed Miscellaneous Application No. 1180 of 2010 in the Chief Magistrate's Court to set aside the default judgment and stay execution. The applicant's ground in the application was that her vehicle was impounded in mysterious circumstances.

In her affidavit in support of the Miscellaneous Application No. 1180 of 2010 she stated;

- "1. That a friendly source later told me that a case had been filed in Mengo court.***
- 2. That on making inquiries in the registry it was discovered that a fraudulent suit had been filed in this court and the following misrepresentations had been made;***

- a) *It has been alleged that I was served whereas not.*
- b) *It was alleged there was default in payment whereas not.”*

In dismissing the Miscellaneous Application the trial Magistrate held;

*“..... in fact she knew of this suit that is why I believe she in paragraph 6 of her affidavit did not disclose the friendly source that told her that a case had been filed in Mengo Court”*

Decisions are revised whenever the trial Magistrate fails to exercise his/her jurisdiction or where he/she acts illegally or with material irregularity or injustice. I have noted that in the present application, the main ground to support the application is that the applicant could not have been served as alleged by the respondent because on the alleged date of service she was out of the country. She even attached copies of the relevant entry and exit stamps in her passport. However, in her earlier application to set aside the default judgment she never mentioned the fact on the relevant date, she was in Southern Sudan. This, if true, could have been a very strong weapon in her hands but she chose not to use it at the appropriate time. The above being the case I am inclined to find as I do, that the applicant's claim of having travelled to Southern Sudan in the present application before this court is an afterthought.

I have also looked at her passport and the entry and exit stamps. Although there is an entry stamp to Southern Sudan dated 09 August 2009, there is no corresponding exit stamp. What she has drawn court's attention to is another entry stamp to Orada-Uganda dated 2<sup>nd</sup> September 2009. Without the exit stamp from Southern Sudan, the court cannot tell when she left Sudan after entering on the 9<sup>th</sup> August. This casts doubts on her allegation that on 24<sup>th</sup> August she was in Sudan. However, the main point at this is that she should have presented this evidence at the point when she was seeking to set

aside the judgment. My hands are now tied. I cannot take on new evidence at this stage.

In conclusion, the applicant has failed to satisfy this honourable court that the trial Magistrate exercised her jurisdiction with material irregularity and injustice. She acted on the basis of the evidence before her. I find that based on what was before her, the trial Magistrate reached the correct decision and cannot be faulted. She rightly entered the default judgment as there was proof of service in accordance with Order 5 of the Civil Procedure Rules SI 71-1 on the court record.

Consequently, this application is disallowed. The judgment and decree issued against the applicant in the lower court are, therefore, hereby upheld. All the subsequent execution to satisfy the decree arising there from is also hereby upheld.

No orders to costs.

It is so ordered.

**Elizabeth Musoke**

**JUDGE**

**15/02/2013**