

He argued that the matter should have been brought by way of revision under section 83 of the Civil Procedure Act, not review.

With due respect to counsel arguments raised here regarding applicant's failure to proceed by revision rather than review are misconceived.

The application when studied as a whole, from the filed Notice of Motion and filed supporting affidavit by **Oluk Andera**, all show that the matter is an application for revision. See paragraph 15 of affidavit of **Oluk Andera** of 10th Feb 2014. The same prayer is repeated in paragraph 33 of the applicant's supplementary affidavit. The Notice of Motion is brought under section 83 of the Civil Procedure Act.

When the above pleadings are read and internalized, the issues raised are all in revision not review. The reference to the word review by a litigant who is not a lawyer instead of using the word 'revision' is excusable. I do not therefore find credence in all arguments raised by Counsel on the preliminary objection, and its disregarded.

Indeed counsel himself who faults applicant for using the wrong sections of the law in his application, also repeats the same mistake in his submission at page 2 by referring to section 82 of the Civil Procedure Act, as the section providing for revision, instead of referring to section 83 of the Civil Procedure Act.

According to the applicant in paragraph 6, 7 and 9 of the applicant's submissions, the trial Magistrate is faulted for acting without jurisdiction and for trying a matter which was already in issue in the High Court; under CS. 37/2013.

In paragraph 11 and paragraph 12, the applicant shows that the Chief Magistrate violated section 6 of the Civil Procedure Act.

Counsel in response insisted that the Chief Magistrate had jurisdiction, since the subject matter was rent put at shs. 2,000,000 millions. This to the respondent's counsel was far below the jurisdiction of the Chief Magistrate which is 50 million.

Counsel argued that court never exercised jurisdiction not vested in it by law and therefore the applicant's prayer were void and of no merit.

I have perused the lower court record. I am in agreement with the applicant that the Chief Magistrate offended the provisions of section 6 of the Civil Procedure Act, acted without jurisdiction, and acted in abuse of the process of court for the following reasons;

1. The applicant had already filed HCT-04-CV-CS-0037/2013, seeking revocation of sale of land by **Mahoka**, long before the purported Misc. App. 008/2014 filed by **Muniru Rwaka**, against applicant in Busia Court.
2. The suit filed by applicant in Mbale HCT No. 37/2013, was intended to resolve the dispute over the land and houses in Busia. Instead the defendant ran to Busia Court and filed Misc. App.008/2014 as a "distress for rent" motion. The applicant filed an affidavit in reply to that application and in paragraph 2, 3, 4, 5, 6, and 7 explained the position of his interests in the land and how the matter was in Mbale High Court.
3. In his Ruling the Chief Magistrate made reference to the applicant's affidavit and chose to ignore the same. He circumvented the issue by holding "He filed a suit in Mbale High Court. In my considered opinion the application before me is not for the ownership of the property in question. The applicant has proved that he is

owner of the property in issue as of now his title to the property has not yet been impeached (sic!)

“The issue of consent to the property and claim of ownership by respondent should be the domain of the suit in Mbale High Court.”

The above chronology of events point to a deliberate misuse of authority and discretion by the Chief Magistrate. His insistence of hearing a matter which had bearing in a main suit in Mbale, High Court, a court of higher jurisdiction than his was to say the least unethical. His failure to see the nexus between the Mbale cases and the matter before him, was irregular. The matter was obviously property worth more than 200 million as put by the applicant. The learned trial Magistrate acted without jurisdiction. He acted with material irregularity in as much as he chose to apportion jurisdiction to the High Court by insisting that one domain of trial was in his court, and the other in the High Court- yet section 6 of the Civil Procedure Act bars him from hearing a matter whose subject matter is already in issue in another court. He acted with injustice. Applicant though unrepresented has shown the chronology of how he struggled to let court stay proceedings to enable him present his case in the High Court but the Chief Magistrate insisted on proceeding with the application and even ordered execution inspite of all pleas to him to abide by the law(see affidavit in support of application paragraphs 3-15) and supplementary affidavit (paragraph 15, 16, 17, 18).

The above actions of the trial Chief Magistrate cannot be allowed to stand. In view of the provisions of section 83 of the Civil Procedure Act, this court hereby invokes its revisionary powers and makes a finding that the orders and judgment of the Chief Magistrate made in Misc. App. 08/2014 be and are hereby set aside. The certificate for

distress for rent is hereby revoked and parties ordered to revert back to the position pertaining before the orders of the Chief Magistrate. Costs of this application are granted to the applicant. I so order.

Henry I. Kawesa

JUDGE

18.12.2014