

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT JINJA**

**REVISION CAUSE NO. 011 OF 2013  
(Arising from Misc. Cause No. 022 of 2013)**

**NSUBUGA RICHARD.....APPLICANT**

**VERSUS**

**PRABHDAS DAMODAR KOTECHA.....RESPONDENT**

**BEFORE: THE HON. JUSTICE GODFREY NAMUNDI**

**RULING**

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20 This application is brought under Sections 83 and 98 CPA and order 52 rr. 1 and 3 CPR. It seeks to have the orders of the Magistrate Grade 1 declared a nullity for having exercised her jurisdiction illegally and with material irregularity and injustice.

25 The background to this application is that the Respondent filed an application to levy Distress for rent against the Applicant under Misc. Cause No. 22/2003 which was heard ex-parte and granted on 4/6/2013 for rent arrears and electricity bills totaling to Shs.9,339,000/- plus costs.

30 The Applicant then filed Misc. Application No. 52/2013 seeking to set aside the orders for distress and have the matter heard inter-party. The application was heard and dismissed with costs.

The instant application seeks to challenge the above position of the Magistrate Grade 1 and raises the following grounds:

1. That the trial magistrate did not address the merits of the application.

2. That the trial magistrate acted in exercise of her jurisdiction illegally and with material irregularity and injustice in relying on documents that were not exhibited nor annexed to the affidavit in reply.
3. That it is in the interests of justice and equity that the orders of the magistrate be  
5 declared a nullity and set aside.
4. That the Respondent's original application is illegal.
5. The trial magistrate illegally exercised her jurisdiction when she denied the Applicant a right to be heard.

10 The application is supported by an affidavit deponed by Nsubuga Richard. Therein he depones that the application was Miscellaneous Application instead of Cause. Further that the application was defective.

It is also deponed that the trial magistrate acted with material irregularity and injustice  
15 in relying on documents not exhibited.

The Applicant further avers that the magistrate did not address the merits of the application and also that the application was defective for having no supporting affidavit.

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An affidavit in reply has been filed by Hussein Mulongo Kato. Therein he depones that the magistrate addressed the merits of the application and that the said application was properly before the Court.

25 It is also averred that the trial magistrate acted properly in the exercise of her jurisdiction and that she also exhausted all the merits of the application and came to the correct decision. Section 83 of the Civil Procedure Act provides for Revision of decisions of a Magistrate's Court if that Court appears to have;

- (a) Exercised a jurisdiction not vested in it by law.
- 30 (b) Failed to exercise jurisdiction so vested; or

(c) Acted in 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, ....

5 I have looked at the application and the submissions in support for both Applicant and Respondent.

I have also looked at the ruling of the trial magistrate in Misc. Application No. 52/2013. Suffice it to say that the Applicant applied to the Magistrate in Application No. 52/2013  
10 to have the ex parte proceedings in Misc. Application/Cause No. 22/2013 set aside and that he be heard.

The said application was heard inter-parties, all issues therein were raised, argued, and the magistrate in my view addressed all the issues as raised before her.

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The grounds as set out in the instant application and the arguments therein are in effect:

- (a) Asking this Court to make pronouncements in respect of Application No. 22/2013 which have been adjudicated upon and resolved by the trial court in Misc. Application No. 52/2013.
- 20 (b) Asking this court to review the case and evidence as adduced before the trial Court and make its own findings as if this were an appeal.

The purpose of Revision is to deal with those issues pointed out in section 83 CPA.

25 Nothing in the application or submissions alludes to the fact that the Magistrate exercised jurisdiction not vested in her. This was a matter filed before the Magistrate under the Distress for Rent (Bailiffs) Act Cap.79.

The jurisdiction therein is ordinarily exercised by Magistrate's Courts. This was done  
30 by the Magistrate in Application No. 22/2013.

Under subsection (b) of section 83 of CPA, it must be shown that the Magistrate failed to exercise jurisdiction vested in him/her. Again, the proceedings do not indicate that the magistrate did not exercise his/her jurisdiction especially as vested by Cap. 79.

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What the Applicant may be relying on is section 83 (c) CPA which provides that the magistrate must have acted with material irregularity in exercise of her jurisdiction.

In support of the above, the Applicant has argued that the Magistrate relied on documents not formally exhibited nor annexed to the affidavit.

As I have stated before, the Application No. 52/2013 was filed to address the shortcomings perceived by the Applicant to have been occasioned by the orders arising from Application No. 22/2013. The Magistrate heard that application and addressed all issues therein.

At the hearing, the record shows that both counsel were allowed to raise issues that were not even the core of the Application. Documents were introduced **with leave of Court** and were not challenged at that point.

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I must say that if the Applicant was aggrieved then the remedy was to challenge the introduction of the documents at the time. The other remedy would have been to apply before the same Court for a Review under Section 82 CPA if he thought this was an irregularity on the face of the record.

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Ground 2 of this application cannot therefore stand. The same applies to Ground No.3 which stands unsupported.

In respect of Grounds 1 and 5, the record is very clear. The magistrate addressed all issues in respect of;

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- Landlord tenant relationship between the parties,
- The procedure for applying for distress for rent.
- The principal/agent relationship between the landlord and the bailiff who was granted the Special Certificate to Levy Distress.

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In that respect the Magistrate did address the merits of the application and granted the Applicant ample opportunity to be heard.

In respect of Ground No. 3, I have failed to see any illegality in the original application  
10 which was filed in accordance with Cap. 79 of the Laws of Uganda which provides the procedure for distress for Rent.

This application for all intents and purposes is wrongly before this court.

15 If the Applicant was not satisfied with the decision of the trial Court, the magistrate having pronounced herself on all issues before her, the procedure for the aggrieved party would have been to file an appeal.

This application fails first on grounds of procedure and secondly, I am satisfied that the  
20 Magistrate addressed all the issues before her, and came to the correct decision. The application is dismissed. The findings of the magistrate and the orders therefrom are upheld. Costs to the Respondent.

25 **Godfrey Namundi**  
**Judge**  
**11/03/2014**

30 11/03/2013:  
Semugenyi Fred for Respondent

Robert Esarait for Applicant  
Parties present

Court: Ruling read in Court.

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**Godfrey Namundi**  
**Judge**  
**11/03/2014**