

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

**CIVIL REVISION NO. 01 OF 2012  
(Arising from Civil suit No. 032 of 2010)**

**KYAWO DAVID.....APPLICANT**

**VERSUS**

**KAMANYIRE HERBERT.....RESPONDENT**

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

**RULING**

This Application is brought under the provisions of sections 83 and 98 CPA and Order 52 rules 1 and 2 of the Civil Procedure Rules.

It seeks Orders that the Judgment and Orders of the Magistrate Grade I in Kamuli Civil suit 32/2010 be revised and set aside and costs of the application be provided for.

The matter before the Magistrate's Court was a land dispute, where the Plaintiff claimed vacant possession of a piece of land, plus damages against the Defendant.

The Defendant denied the Plaintiff's claim averring that he lawfully bought the suit land from one Byona who had also bought the same land from the Plaintiff.

The dispute was heard and the Court even visited the locus in quo and subsequently delivered its Judgment on 22/12/2011 in favour of the Defendant and dismissed the Plaintiff's claim.

No reason is given why the Plaintiff did not appeal against the said Judgment within the prescribed time. Instead he filed this application on 7/2/2012 outside the time limit prescribed for filing an Appeal.

5 Four grounds have been raised as the basis for the application.

1. That the evidence on record was too scanty to enable the Magistrate to arrive at the conclusion that the land in dispute belongs to the Respondent.
- 10 2. That the trial Magistrate ought to have summoned a handwriting expert to compare the signature purported to be that of the Applicant on the Respondent's agreement other than relying on his own opinion that the signature was similar to the Applicant's signature on the Plaint and that he therefore acted with material injustice.
- 15 3. That the magistrate ought to have exercised his powers and jurisdiction vested in him by summoning the key witnesses in order to reach the right decision on a balance of probabilities.
4. That in the interests of justice this Court should set aside the Judgment of the lower Court and order a re-trial.

20 The Application was supported by an affidavit which essentially narrates the evidence as it was and what the Applicant thinks it should have been and generally reiterates the grounds in support of the application.

The Respondent/Defendant filed an affidavit in reply therein, he states that the application  
25 does not show any sufficient cause and was made without due diligence.

Further, that it was filed as an afterthought, almost 2 months after the Judgment. He then goes ahead to argue and reply to the argument raised by the Applicant in his affidavit, which as I have said earlier are arguments based on the evidence adduced before the trial  
30 Court.

Counsel for each party opted to file written submissions which I have looked at and which also generally reiterate the arguments in the affidavits filed in support and reply to the application.

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The Applicant's counsel framed issues to support her arguments which in my view are a belated attempt at trying to bring this matter under the ambit of section 83 of the CPA.

The issues according to counsel are:

- 10           1.       Whether the Magistrate's Court failed to exercise a jurisdiction vested in it by law by not summoning key witnesses for both parties.
2.       Whether the Magistrate in the exercise of his jurisdiction acted illegally or with material irregularity or injustice when he did not call a hand writing expert to compare the signature purported to be that of the Applicant on the
- 15                       agreement of sale produced in Court by the Respondent.

She then went ahead to review the evidence on record and cited various authorities which interestingly are authorities which were basically Appeals against the Judgments of lower Courts as opposed to decisions arising out of Revision proceedings.

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I have deemed it fit not to go into the details of these submissions for the simple reason that they are more relevant to proceedings in an Appeal. An appellate Court is mandated to review the evidence before the lower Court, subject it to fresh scrutiny and come up with its own findings, without ignoring the fact that the trial Court had the chance to hear

25       the evidence first hand and observed the witnesses. This is distinctly different from the provisions of law governing Revisional Orders.

Section 83 of the Civil Procedure Act regulates the Revision proceedings which can only be invoked when or if it appears that the lower Court:

- 30           (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.

5 Further, the powers of Revisions **shall** not be exercised:

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

10 In the instant case, the application and supporting affidavit, simply recount what transpired or ought to have transpired during the trial, and raises matters that have nothing to do with the exercise or non-exercise of jurisdiction by the trial Magistrate. It instead argues issues of substantive evidence and perceived wrong decisions which would best be addressed through the appeal process rather than revision.

15 The Appeal process would enable the appellate Court to review the evidence, and subject it to fresh scrutiny and come up with its own findings.

A look at the proceedings of the lower Court reveal that the Magistrate handled a land dispute and decided it which was within his jurisdiction.

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Secondly, being seized with jurisdiction in regard to the land dispute, there is nothing to show that he failed to exercise the said jurisdiction for example by failing to make a Judgment on the case before him.

25 Thirdly, there must be proof that the Magistrate's Court in exercise of its jurisdiction acted illegally or with material irregularity or injustice.

It would for example be illegal or materially irregular if in a criminal case, a Magistrate sentenced some body to death when he has no jurisdiction to do so in a matter before him

falling under his/her jurisdiction e.g. a case of Causing Grievous Bodily Harm c/s 212 of The Penal Code Act.

5 In **Olegum Joseph Vrs. Arono Betty; Civil Revision No. 13/2011.** It was held that section 83 CPA only refers to irregular exercise or non-exercise of jurisdiction. It does not refer to conclusions of law or fact in which a question of jurisdiction is not involved.

10 In the instant case, the trial magistrate heard the matter before him and determined the issues before him in accordance with his appreciation of the facts and understanding of the law applicable.

It is my considered view that a Magistrate deciding against the Applicant/Plaintiff does not necessarily amount to an illegality or irregularity. His decision involved conclusions of law and fact which were within his jurisdiction to do so.

15 Quoting from the authority cited above, ***“A wrong decision or erroneous conclusion of law and fact or misinterpretation of the law but within the jurisdiction of a Judicial Officer cannot be a subject for Revision because such conclusions are neither illegal nor irregular. They are independent conclusions within the Judicial Oath of any***  
20 ***Judicial Officer.....”***

25 In other words, dissatisfaction with a decision of a Court with jurisdiction in favour of the other party, like in the instant case cannot be a matter for Revision. I do not see any reason why the applicant did not invoke the appellate process under Order 43 CPR.

If the Applicant was caught up by the time limit, he would have sought leave to appeal out of time.

30 It is through an appeal that this Court would be able to subject the proceedings and evidence to fresh scrutiny.

Revision is only intended to correct errors which do not go to the merits/substance of the dispute **and not** the determination of the rights of the parties.

- 5 Finally, I must comment on the increasing practice of various counsel evading the appellate process and smuggling appealable matters to the High Court under the guise of application for Revisional Orders. This is a practice that should and must be discouraged.

I am unable to grant the orders for revision sought as the application does not satisfy the  
10 requirements of section 83 CPA. It is dismissed with costs to the Respondent.

**Godfrey Namundi**

15 **Judge**

**09/04/2014**

09/04/2014:

Both counsel in court

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Court: Ruling read.

25 **Godfrey Namundi**

**Judge**

**09/04/2014**