

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

**REVISION CAUSE NO. 006 OF 2011
(ARISING FROM MAYUGE CIVIL SUIT NO. 003 OF 2011)**

MUFUMBA FREADRICK.....APPLICANT

VERSUS

WAAKO LASTONE.....RESPONDENT

BEFORE: THE HON. JUSTICE GODFREY NAMUNDI

RULING

This Application is brought under the provisions of sections 83 and 98 of the Civil Procedure Act, section 33 of the Judicature Act and Order 52 Civil Procedure Rules.

The Applicant seeks this court to make orders revising the exparte Judgment and Decree of the Magistrate Grade I Mayuge in Civil suit 03/2011 and that the Applicant should be granted unconditional leave to appear and defend the suit.

It also seeks to have the exparte taxation of the Bill of costs and the subsequent execution of the Judgment be set aside.

The Applicant claims that when he was served with summons with the summary plaint, he engaged a firm of Advocates to file his defences.

However, he saw his property being advertised for sale in the Newspapers in execution of a Decree issued against him. That is only when he went to contact his lawyers about the matter and he learnt that his lawyer had since died.

He claims the Magistrate exercised jurisdiction vested in him illegally and with material irregularity when he awarded special damages in a summary suit when the same had not been proved as required by law.

- 5 Further that the execution proceedings did not conform with the Law on taxation and therefore are a nullity and should be revised.

The Respondent filed an affidavit in reply wherein he deposes that the applicant was not vigilant in filing his defence.

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Further that the procedure to follow in the instant matter would have been for the Applicant to apply to the trial court to set aside the *ex parte* Judgment and taxation.

- 15 He also deposes that the matters raised in the affidavit in support of the application do not form part of the record of the lower court and cannot be entertained by this court at this juncture.

Both counsel opted to file written submissions.

The Applicant's submissions are that the Magistrate awarded:

- 20 (1) Special damages without requiring the same to be proved in accordance with Order 9 r.8 CPR.
(2) That an award of Shs.3,990,000/- as interest on the bill of costs is not supported by the Advocates Remunerations and Taxation Rules.

- 25 These acts according to him were illegalities and irregularities. Reference was made to **Makula International Vrs. Cardinal Emmanuel Nsubuga (1982) HCB 11** which has it that once an illegality is brought to the attention of Court, it overrides all questions of pleading and Court is enjoined to address it to meet the ends of justice.

- 30 That the illegalities fall within the provisions of section 83 CPA.

The Respondent's reply is that the applicant should have followed the provisions of Order 36 rule 11 CPR which provides for setting aside of the Judgment for none service or for any other good cause.

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That section 83 CPR provides for Revision on specific grounds.

That in the case of **Matemba Vrs. Yamulonga (1968)1 EA 643**, the Court held that Revision applies to jurisdiction alone, the irregular or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of Law or fact in which the question of jurisdiction is not involved.

It was further submitted that the Applicant can only be heard on revision if what he seeks to revise was part of the lower record proceedings and the lower Court decided upon the arguments/grounds raised in the application for Revision: **EliazaliBameka Vrs. DodovikoNviri (1973) ULR 134**.

Finally, that under section 83 CPR, due to the lapse of time, it is not just to exercise the power of Revision as the same would cause hardship to other people not party to the suit e.g. The purchaser in execution. That execution in the instant case was completed.

The Rejoinder by the Applicant mainly reiterated the earlier arguments but also stated that Order 36 r.11 CPR is only relevant when there are no grounds to bring the case under section 83 CPA which in any case is a provision in the Parent Act under which Order 36 r.11 CPR falls.

I have considered the arguments by both counsel.

First, I must comment on the fact that when the Applicant failed to file for leave to defend, he locked himself out of the proceedings, so that much as he remained a party to the suit,

he could only be *seen* but not *heard* as the proceedings were handled in his absence. Ref: **Order 36 r.3 CPR.**

5 To bring himself on board in respect of these proceedings, the Applicant had to file an application to set aside the Judgment and orders of the trial Court.

So even if this Court were to find merits in the instant application, the only orders this court would give would be to set aside the Judgment and orders of the trial Magistrate.

10 The Applicant's only option therefore would be to go back and file an application for leave to defend which would be heard by the lower court on its merits. In the alternative, this court could order that the Applicant goes back and files an application to set aside the Judgment and Orders of the said lower court in order to be *heard* and to be *seen*.

15 In short, his failure to apply for leave to appear and defend, or to have the Judgment set aside within the provisions of Order 36 CPR is not the subject of the instant application.

If any, his role in the instant application is that of any person who wishes to bring to the attention of the High Court illegalities committed by the lower Court within the meaning
20 of the holding in **Makula International Vrs. Cardinal Nsubuga**, that an illegality brought to the attention of Court *by whatever means* must be addressed.

The application is brought under section 83 CPR which provides that it can only be invoked if it appears that the lower court:

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- (a) Exercised a jurisdiction not vested in it in law.
 - (b) Failed to exercise a jurisdiction so vested in it.
 - (c) Acted in the exercise of its jurisdiction illegally or with material irregularity or injustice.

Under paragraph (e) thereof, the power of Revision shall not be exercised where from the lapse of time or other cause, the exercise of that power would involve serious hardships to any person.

- 5 The instant application challenges the orders made by the magistrate, awarding special damages as well as interest on the taxed bill of costs.

These are issues that have nothing to do with or non-exercise of jurisdiction by the trial magistrate. What the application raises are issues of findings of fact and law in the
10 exercise of jurisdiction by the Magistrate.

If the applicant had complied with the provisions of Order 36 CPR, he would have been able to argue these same issues and upon being dissatisfied, would have then applied the appellate process. This court would then be able to intervene at that level to review and re-
15 evaluate the proceedings, evidence etc. and subject the same to fresh scrutiny.

The record shows that the trial magistrate handled a claim under Order 36 CPR and decided it which was within his jurisdiction to do so.

- 20 Secondly, being seized with jurisdiction in the summary suit, there is nothing to show that he failed to exercise the said jurisdiction for example failing to deliver Judgment therein.

Thirdly, there is nothing to show that the exercise of his jurisdiction wa with material irregularity or illegality for example awarding a Judgment/amount above his jurisdiction.
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His orders were within the jurisdiction of a Grade 1 Magistrate's court.

What the Applicant complains of are not matters of jurisdiction within the meaning of section 83 CPA, but erroneous conclusions of fact and law which were an outcome of his
30 appreciation of the law and of the facts of the case.

In **Olegum Joseph Vrs. Arono Betty; Civil Revision 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 the question of jurisdiction is not involved.

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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 of Revision. These were independent conclusions within the Judicial Oath of any Judicial Officer.

10 Also within the provisions of section 83 (e) CPA, due to the lapse of time, a Revision at this juncture, raised by one who is not even properly before Court as a party against other parties would be a cause of injustice.

This application cannot stand, it is dismissed with costs.

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The Applicant can only apply to set aside the Judgment by the trial Court, section 83 CPA not being relevant to the application.

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Godfrey Namundi

Judge

14/04/2014

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14/04/2014:

Parties in court

Aguma for Respondent

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Court: Ruling delivered.

5 Godfrey Namundi
Judge
14/04/2014

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