THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT-01-CV-MA-0064 OF 2014

BWAMBALE BYASAKI ::APPLICANT

VERSUS

SHAKA AUGUSTINE ::RESPONDENT

BEFORE HIS LORDSHIP HON. MR. JUSTICE BATEMA N.D.A
JUDGE.

RULING.

This is an application for leave to appeal against this court's decision that dismissed the application for revision in C.R 09/14. Counsel filed C.R 09/2014 seeking for revision orders to overturn the decision of the Chief Magistrate sitting at Kasese that struck out a written statement of defence.
The Chief Magistrate found that the written statement of defence on record had not been sealed and signed by the court. She ruled that this omission violated the requirement of the law under Order 9 Rule 17 the Civil Procedure Rules. She accordingly struck out the written statement of defence and ordered the matter to be set down for formal proof.

When the Civil Revision was placed before me I ruled that the matter was prematurely brought for revision since it had not been concluded before the Chief Magistrate.
Hence the instant application for leave to appeal to the Court of Appeal.

Counsel Goloba Mohamed for the applicant argued that the decision of the Chief Magistrate to strike out the written statement of defence disposed of the suit and denied his client justice. That his client desired to be heard on merit and therefore the refusal by High Court to revise the Chief Magistrate's orders at this stage sealed his fate.

The second ground of the application is that the court (in obiter dicta) misdirected itself to say that a Revision should have been commenced by itself through the inspectorate of court yet it is the practice that it can be commenced by counsel filing a Notice of Motion.

In reply Counsel Ngaruye Ruhindi submitted that the application for leave to appeal was misconceived. An appeal would automatically lie where the law allows it. He submitted that under S.10 of the Judicature Act there is an automatic right of Appeal from the decisions of this court. He saw no reason why this application was brought by the Applicant. That no leave is necessary under Section 66 of the Civil Procedure Act too.
That the decision to dismiss the revision order gave raise to a decree which was appealable as of right. The revision order having been conclusively determined meant that it could be appealed against unlike the suit that was pending in Kasese.
As regards the merits of the application counsel argued that to say that striking out the written statement of defence sealed the fate of the defendant was to miss the point. When a written statement of defence is struck out the suit is set down for formal proof and the plaintiff can fail to establish his/her claim. It is not automatic that the plaintiff has won at that stage.

As regards the obiter dictum on the initiation of the revision cause counsel for the respondent refused to comment.

In my opinion the application for leave to appeal against dismissal of an application for revision orders was properly before court and necessary by law. I declined to hear the revision cause saying it is pre-mature. In other words my declining to hear a misconceived matter amounted to striking out the motion. The same motion can be entertained by this court at another stage after being determined by the Chief Magistrate sitting at Kasese.
This court did not determine the application on merit and therefore the matter can always be filed again for our revision.
There are no orders that were revised by this court. I would believe that leave to appeal was necessary under the rules.
The applicant seeking for orders of revision had to first convince this court that the dismissal order in these circumstances was appealable to the Court of Appeal.

As regards the merits of this application the court is of the view that the counsel for Applicant is repeating the act of wanting a matter revised or appealed against on preliminary orders. My contention and considered opinion is that Revisions can only be filed against final orders in a matter conclusively determined. My ruling did not seal the fate of his client. There is room for him to apply for the necessary remedies before the Chief Magistrate before court proceeds with formal proof. Even if he sits back to wait for final judgment he will have the remedy still available to him. When the Chief Magistrate finally determines the suit, the law will allow him to file an application for revision orders.

Section 83 of the Civil Procedure Act (cap 71) states:

"***The High court <u>may call</u> for the record of <u>any case which has been determined</u> 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, <u>the High Court may revise the case and may make such orders in it as it thinks fit</u>"***

[Emphasis mine.]

In interpreting the above section I am guided by the words "any case which has been determined". A case which is pending formal proof in court is not envisaged as fit for revision orders under this law. It is not yet determined.

Indeed the law sought to correct judicial officers who have exercised jurisdictions not vested in their courts or those who have failed to exercise their jurisdiction. In subsection (c) above the law sought to put right the record where a court exercised its jurisdiction illegally or with material irregularity or injustice. The law uses past tenses. i.e "acted". The High Court is not empowered to call for the record where the magistrate is "acting" in the exercise of his/ her jurisdiction. It is not trite law that courts are NOT expected to make any procedural errors or irregularities during trial. Judicial officers are not angels.

The law lets some errors pass and catches only those that are <u>material</u> and have affected the determination of the case causing injustice.

The outcome is questioned if court acted with material irregularity and it resulted into injustice.

So, no reasonable court would entertain an application for revision orders against every procedural error or step wrongly or irregularly taken by a trial court before the matter is finally determined by the magistrate's court. If it were to be so no trial would come to a conclusion before a lower court. Counsel would be rushing to the High Court all the time alleging material irregularity or illegality or injustice instead of waiting to file an appeal.

The instant applicant has so many other options open to him before the chief magistrate's court. He can apply to file the written statement of defence out of time, he can apply to set aside the exparte judgment (if any), he can apply to the Chief Magistrate to use her/his inherent powers to set aside her/his own ruling, of course, with good reasons; and can also decide to wait to see if the plaintiff will prove his allegations and establish his claim.

On the second ground of initiating the Revision my considered opinion is that the applicant has nothing to appeal against too.
Section 83 of the CPA as quoted above is within the discretion of court to determine that the lower court worked outside the law or within the law with material irregularity. As rightly put by Justice Elizabeth Musoke in the case of ***BWIRE WAFULA & ANOTHER –VS- JOHN NDYOMUGYENYI , Civil* Revision No. 016 of 2011,** the High Court of Uganda has very wide powers in as far as Revision of proceedings of magistrate's courts are concerned. Section 83 CPA provides expressly for the procedure of how to initiate the matters for revision. It reads in part.

"83. The High Court may call for the record of any case which has been determined under this Act by any magistrate's court ..."

How are records called for? The Registrar or relevant court officer writes to the magistrate in charge of the record to be brought then it is placed before the judge (the High Court) for perusal. How the matter is brought to the attention of the High Court is informal. It is not formal and is therefore not formalized under the Civil Procedure Rules. The framers of the Civil Procedure Rules were so careful and expressly clear not to provide for filing of chamber summons yet it is a matter initiated by the Judge's Chambers. I do not see how counsel claims he has a right to file a Notice of Motion (formally) and shove it is the face of court. He can only

file pleadings or write his opinion or be heard on being invited by court. In fact, the law merely provides for the right of the parties to be heard but does not provide for the filing of formal court proceedings by way of Notice of Motion as of right by a party who thinks the court committed an error on record. Part (c) reads in part:
"*.....the High Court may revise the case and may make such orders in it as it thinks fit; but no such powers of revision shall be exercised-*
(d) Unless the parties shall first be given the opportunity of being heard;....."

In **FATEHALI –VS- REPUBLIC [1972] I E.A** 158 it was held that the High Court has power on its own motion, to call for and revise any proceedings in the magistrate's court. This is the right procedure even if filing a Notice of Motion is not fatal.

For avoidance of doubt, there are very many instances where the law clearly gives a right to parties or counsel or any other person aggrieved by the decision of court to file a suit. For example under Section 82 of the CPA. Review is open to any person to initiate action. It reads:
"82: *Any person considering himself or herself aggrieved*

a) *by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred ; or*
b) *by a decree or order from which no appeal is allowed by this Act,*
may apply for review of judgment to the court which passed the decree or made the order, and the court may make such orders on the decree or order as it thinks fit."

And such applications are expressly provided for under Order XLVI. Rule 8 CPR to come by Notice of Motion.

This court is of the firm view that Revisions are a protected reserve of the court exercising its discretion, judicially, to correct errors on the face of the record. It is not a procedure open to any party to apply for. The discretion is exercised by the High Court which invites the parties to address it on the irregularity brought to its attention. If the practice is different, that does not make the Notices of Motion the most rightful manner of bringing the matter to the attention of the High Court. If the legislature had intended that, the wording of the law of Revision would be similar to that of Reviews.

I am sure the legislature and the Rules committee did not want to clog the court system with “Premature appeals” before the matter has been determined by the trial court. So be it.

For all the above reasons, I decline to grant leave to appeal in this matter. The suit should be determined by the Chief Magistrate first before we can hear appeals or applications for Revision or Review.
Counsel will bear the costs of the applications.

It is so ordered in the interest of justice.

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Batema N.D.A
Judge
15/05/15