

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT MBALE**

**HCT-04-CV-CR-005-2013  
(ARISING FROM CIVIL SUIT NO. 0013 OF 2011)**

**CHELOGOI GEORGE.....APPLICANT  
VERSUS  
SAIK STEPHEN.....RESPONDENT**

**BEFORE : THE HON. MR. JUSTICE HENRY I. KAWESA**

**RULING**

The Application was brought under Section 83 and 98 of the Civil Procedure Act and O.52 r.1 and 2 of the Civil Procedure Rules for revision of the lower court decision of 28.Nov.2011.

The grounds as stated in the Notice of Motion and supporting affidavit were that:

- a. The learned trial Magistrate failed to exercise his jurisdiction by failing to dismiss the Respondent's suit for lack of disclosure of a cause of action.
- b. The learned trial Magistrate acted illegally and with material irregularity and injustice in hearing and deciding a matter in which the Respondent's cause of action was against a third party to the suit.
- c. The judgment and decree was an injustice to the applicant.
- d. It is in the interest of justice that the application is granted.

The Respondent opposed the application and filed an affidavit in reply denying each of the allegations by the applicant.

I have gone through the arguments raised by counsel and I rule as herebelow.

The Counsel for Respondent raised a preliminary objection, on grounds that the application for being improperly before court and ought to be struck out with costs.

The jurisdiction of this court in matters of Revision is provided for in section 83 of the Civil Procedure Act.

The section provides that the High Court may call for the record of a subordinate Court if it appears that;

- It exercised jurisdiction not vested in it.
- Failed to exercise jurisdiction vested in it.
- Exercised its jurisdiction with material irregularity or injustice.

It therefore follows that in matters of Revision, the matter is either called for by the High Court on its own motion or the matter is forwarded by the Registrar or judicial officer for consideration. It is however not uncommon for Counsel to initiate the proceedings and draw the irregularity to the attention of court for rectification. According to the case of *Cardinal Nsubuga v. Makula International (1982) HCB 11* illegalities once pointed out to court supersede all questions of pleadings. Illegalities have been pointed to in this case. It would therefore pose no serious harm to be initiated by Notice of Motion as in the present case; once due diligence is taken to notify opposite counsel. This is in support of the notion that:

*"Non compliance with the rules of procedure of the court which are directory and not mandatory rules would not usually result in the proceedings being vitiated if in fact no injustice has been done to the parties."* Per **Nyamuchoncho J** in *Hajati Nagawa v. Paulo Kajubi and Anor. [1978] HCB 34*.

In the circumstances therefore since both parties have found their way in court to participate in the Revision hearing, I find that the application is not irregular and will proceed.

I will therefore now move on to examine whether the trial Magistrate violated his jurisdiction as per Section 83 of the Civil Procedure Act.

I have gone through the lower court proceedings and all pleadings in this revision cause, alongside arguments of counsel. I find that the grounds raised in this revision do not point at any failure to exercise jurisdiction or use of jurisdiction not vested in the learned trial Magistrate. Neither have I seen any material irregularity or injustice to warrant a revision.

This is so because the assessment of evidence is a matter that cannot be taken on by way of revision. If the court found that there was a cause of action as it did in this case, that decision cannot be challenged under section 83 of the Civil Procedure Act. It is only possible to raise it on appeal as a ground. Revision was never intended to replace appellate jurisdiction. Section 83 of the Civil Procedure Act appears to concern itself with failures by court to properly utilize jurisdiction vested in it.

I do not find such failure in the facts pleaded in this motion as;

*"The learned trial Magistrate proceeding to hear the matter yet the plaint discloses no cause of action"*

As a failure to exercise jurisdiction but rather a question of the learned trial Magistrate's assessment of evidence.

Similarly the arguments raised and authority of Auto Garage v. Motokov 3/1971 E.A. is not helpful in a Revision Cause. This authority refers to what amounts to a cause of action and would be useful if this was an appeal. It is misplaced on this file.

The motion and affidavit in support however show that on 24.4.2013 the learned trial Magistrate ordered for the arrest of the applicant and sentenced him to 8 months imprisonment in the process of execution. Counsel for respondent concedes that the sentence is illegal and could be reduced.

The sentence of 8 months in default of execution in a civil suit is manifestly illegal and contrary to section 42 (1) of the Civil Procedure Act which provides for a maximum of 6 months imprisonment. This order was obviously illegal and void. As pointed out in the case of Makula International (supra) such an illegality cannot be allowed to stand, once it is brought to the attention of court.

Following the case of Muhinga Mukono vs. Ruswa Native Farmers Cooperative Society Ltd (1959) EA.595, that the High Court has the right to revise an interlocutory order of a subordinate court, but the right is discretionary. In the exercise of its discretion it well established that the High Court will not necessarily interfere in every case where the subordinate court has made an irregular order unless its failure to do so would result into substantial injustice.

In this case though the learned trial Magistrate exercised his jurisdiction without irregularity in trying the matter, he acted with material irregularity in passing an illegal sentence/prison term against the appellant in execution.

A sentence of 8 months in prison in execution of a decree (civil) is illegal, null and void. It caused material injustice to the applicant. This is a proper matter for the interference of this court to stop any further perpetuance of the illegality above. This court will therefore find that whereas the learned trial Magistrate's judgment is not irregular or improper, the subsequent orders in execution, sentencing the applicant to 8 months imprisonment is found irregular, null and void and is hereby set aside. the application partially succeeds as above only in respect of the illegal sentence of 8 months in execution.

Costs of this application granted to applicant.

**Henry I. Kawesa**

**JUDGE**

**13.08.2015**