

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

**REVISION CAUSE NO. 44 OF 2017  
[ARISING FROM CIVIL APPEAL NO. 27 OF 2004]**

**NANDHUBU KATAWO ERIZAFAN:::::::::::::::::::::::::::::::::APPLICANT**

**VERSUS**

**ISABIRYE WILLIAM :::::::::::::::::::::::::::::::::::RESPONDENT**

**RULING**

**BEFORE: HON. LADY JUSTICE EVA K. LUSWATA**

**Back ground and brief facts**

Nandhubu Katawo Erizafan the applicant, proceeded by motion under Sections 34 and 98 CPA and O 52 rr1 and 3 CPR to seek an order directing the respondent to vacate and hand over land in excess of 80 meters by 105 meters that was the subject matter in Civil Suit No. 6/2003 (hereinafter referred to as the suit land), and for costs of the application.

The main ground of the application is that Isabirye William the respondent, took over the land in excess over and beyond that which was decreed to him by Court, thereby enriching himself, which is an abuse of Court process.

Isabirye failed to respond to the application and on 9/5/18, having proved that there was effective service of the application, I allowed Nandhubu’s counsel to proceed *ex parte*. Thus, the matter proceed on the affidavit in support of the application deposed by Nandhubu, and brief oral submissions of counsel Musigire, representing him

**The Law and issues arising**

Under Section 34 CPA, the High Court has powers to investigate all questions arising between parties to a suit in which a decree was passed relating to the execution, discharge, or satisfaction of that decree.

Nandhubu deposed in his affidavit that the respondent filed the suit in the Bugiri District Land Tribunal claiming land measuring 80\*105 meters (hereinafter referred to as the “suit land”). Judgment was entered in his favour, and an appeal by the applicant to the High Court against that decree, was unsuccessful. That after disposal of the appeal, Isabirye obtained an order for vacant possession of land in excess of the portion granted to him by the decree of the suit. He thereby unjustly used Court to enrich himself, which is abuse of Court process.

The issue for determination would therefore be whether the respondent obtained through execution, land beyond what he was entitled to by Court Order?

### **My Decision**

The pleadings in the suit were not made part of this application in order for this Court to determine Isabirye’s actual claim at the inception of the dispute. However, in their judgment, the members of the Land Tribunal (in the 3<sup>rd</sup> paragraph) referred to Isabirye’s (then plaintiff) testimony that Nandhubu (then defendant) started encroaching on part of Isabirye’s land measuring 80\*105 meters by inviting surveyors to measure off that portion. In their decision, it is not clear whether that is the same portion of land on which Nandhubu was found to be in trespass.

The above notwithstanding, the matter went on appeal in High Court Civil Appeal No. 27/2004. Again, the decree on appeal was not attached, but Nandhubu did concede that he lost the appeal. In the order for execution of the decree dated 11/7/2006, the suit land was mentioned and the designated bailiff was authorized to evict Nandhubu (as the unsuccessful party) from the suit land and hand over vacant possession of the same to Isabirye (as the successful party).

My understanding of the facts is that Nandhubu has raised a complaint against excessive execution with respect to land that he occupied at the time the suit was filed. He concedes that Isabirye was by decree on appeal given 80\*105 meters, but took over land in excess of that portion.

Unfortunately, it is not clear from the pleadings and evidence what amount of land, Isabirye took over and in excess of what he was entitled to. Annexure “B” to Nandubu’s affidavit is merely an order for vacant possession which empowers the bailiff to commence the execution. I do note that in the second paragraph, the bailiff is commanded to “...evict *Katawo Erizefani Nandhubu.....from the suit land he is occupying and hand over vacant possession of the same to William Isabirye*”. This would imply that the order permits the bailiff to evict Nandhubu from his land entirely. However, this is only an order and it is not shown that indeed Nandhubu was actually evicted from a larger portion than what the Court allowed. That information would be available in a return of execution that a bailiff is required to file with Court under Order 22 rr 22(1) CPR, whenever an execution is completed.

Where the above is missing, I would have expected Nandhubu to have shown and attached to his application, further and better particulars of the size of the land he owned (in relation to the 80\*105 meters in issue) and from which he was wrongfully evicted in execution. Without that information and a return of execution, the Court cannot begin to speculate that indeed there was excessive execution and if so, the extent of that excessive execution. There would be no basis for the Court to make an order directing Isabirye to vacate land for which no specifics were given. In my estimation, this application is an example of poor drafting by counsel, which is regrettable considering that the applicant appears to be a semi illiterate peasant.

For the above reasons, I am unable to grant the prayer for an eviction order and this application fails.

The applicant proceeded *ex parte* and thus, I dismiss the application with no order as to costs.

I so Order

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**EVA K. LUSWATA**  
**JUDGE**  
**DATED: 25/10/18**

