

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF JINJA AT JINJA  
CIVIL REVISION CAUSE NO. 019 OF 2016  
(Arising From Miscellaneous Application No. 03 of 2014)  
(Arising From Iganga Civil Suit No. 200 of 2013)**

**KAWANGA HERMAN** ===== **APPLICANT**

**VERSUS**

**1. WAISWA KAYANGA**

**2. LUBOWA JUMA**

===== **RESPONDENTS**

**BEFORE HON. JUSTICE MICHAEL ELUBU**

**RULING**

This is an application filed under Sections 83 and 98 of **The Civil Procedure Act Cap 71, S.33 of The Judicature Act** and Order 52 rules 1, 2 and 3 of **The Civil Procedure Rules S1. 71-3.**

The Applicant is **KAWANGA HERMAN** while the Respondents are **WAISWA KAYANGA** and **LUBOWA JUMA.**

The orders sought are that:

1. The Iganga Grade I Magistrate's ruling and orders made on the 19/10/16 nullifying and setting aside the Applicants purchase of the suit property under M.A No. 3 of 2014 be revised and set aside.
2. The judicial sale and/or the applicant's purchase of the suit property under execution of Civil Suit No. 200/2013 be reinstated.
3. Costs of the application be provided for.

The grounds of the application are that the trial magistrate exercised his jurisdiction illegally when he allowed the 1<sup>st</sup> respondents objector application No. 3/14, when it was time barred, irregular and overtaken by events; that the orders are therefore illegal and contrary to both the law and established practice; and if not set aside would cause injustice, loss and inconvenience to the applicant.

In an affidavit deposed by **KAWANGA HERMAN**, in support of the application, he swears that he was the 2<sup>nd</sup> Respondent to objector proceedings No. 3/2014 where his purchase of suit property was nullified and set aside in a ruling delivered by H.W. EGESSA WILBERFORCE MASAACA on the 19.10.16; that in allowing the application the Trial Magistrate did exercise his jurisdiction with material irregularity, illegality and injustice as the objector proceedings were delayed, illegal and overtaken by the judicial sale in which the applicant acquired the suit property found in Kasolo Village, Bulamagi Sub-county in Iganga District; that the Trial Magistrate acted with material injustice to nullify the purchase of the suit property and put to waste the huge financial investment the applicant made in the renovation and improvement of the property; that the applicant faces a likelihood of eviction and it is therefore fair and just that the orders are revised and set aside.

The Respondents did not file an affidavit in reply.

On the 19<sup>th</sup> of Sept 2017 when this matter came up for hearing, Counsel for the Respondent Mr. Abed Nasser Mudiobole prayed for leave to file written submissions and then matter be fixed for ruling. Mr. Jacob Osilo for the application did not object. Leave was granted and the submissions were duly filed.

This Court will start with a preliminary point of law raised by the respondents challenging the manner in which this application was filed. The applicant argues that Revision under **Section 83 of CPA** is only open to a party where the Trial Magistrate has excised a jurisdiction not vested in him/her by the law. That in this instant case the Trial Magistrate had the mandate to entertain and hear objector



proceedings and if the applicant was aggrieved his remedy lay in lodging an appeal.

That Section 83 of **The Civil Procedure Act** provides that,

The High Court may call for the record of any case which has been determined 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,

the High Court may revise the case and may make such order in it as it thinks fit

It is submitted that the Courts have held that an examination of the record in these matters is limited to matters of jurisdiction only. Conclusions on matters of law or fact in which jurisdiction is not involved are excluded.

The Respondents objection in the instant case is that the applicant wishes to challenge the Trial Magistrate's conclusions and findings on the facts and law through this application. That the applicant ought to have filed an appeal where the Trial Court would have re-evaluated the evidence and arrived at its own conclusions.

The applicants did not respond to this preliminary point of law.

The Courts in Uganda have decided this issue sometimes citing the Tanzanian case of **Matemba vs Yamulinga [1968] EA 643** where it was held in regard to Revision that,

The High Court has only to see whether the requirements of the law have been duly and properly obeyed by the court whose order is the subject of revision. As was observed by their Lordships of the Privy Council in *Balakrishna v. Vasudeva ((1917), 44 I.A. 261)*:

"It will be observed that the section applies to jurisdiction alone, the irregular exercise 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.”

This refers to s. 115 of the Indian Civil Procedure Code which is the same as s. 79 of our Civil Procedure Code (same as Section 83 of our CPA).

As regards alleged illegality or material irregularity urged by the applicant, according to the case *Amir Hassan Khan v. Sheo Baksh Singh* (1885), 11 Cal. 6; 11 I.A. 237 – a Privy Council case – it is settled that where a court has jurisdiction to determine a question and it determines that question, it cannot be said that it has acted illegally or with material irregularity because it has come to an erroneous decision on a question of fact or even of law.’

In this case, the learned magistrate acted within his jurisdiction in setting aside the ex parte decree, and even if I agree with the advocate for the applicant that he came to a wrong decision on a point of law, that is no reason at all for this Court to revise his order. A High Court will not interfere under this section merely because a lower court allowed an application which was barred by limitation.

I have looked at this holding in relation to the instant case. The applicant argues that the trial magistrate exercised his jurisdiction with material irregularity and illegality when he set aside the applicants purchase of the suit property. He prays this court revise the matter and have it set aside.

While this may be true, it is not the position that the trial magistrate had no jurisdiction to entertain the objector application. He did.

It may well be that it was irregular for the trial magistrate to entertain that application eight months after the judicial sale when all parties were aware that the sale had been made and raised no objection before. But that challenge cannot be properly made under these provisions of the law as Section 83 of **the Civil Procedure Act** does not allow for a determination of questions regarding conclusions of fact or erroneous application of the law in which the exercise of the jurisdiction of the Court is not involved. Therefore the prayer for this court to revise and set aside a ruling made following objector proceedings cannot be granted in the circumstances. That inquiry is in the realm of an appeal.



For that reason this application is incompetent. The preliminary point of law is upheld and the application is dismissed.

As the respondent did not make a reply to the application, no order is made as to costs.

A handwritten signature in black ink, appearing to read "Michael Elubu", written over a horizontal dotted line.

**Michael Elubu**

**Judge**

**15.8.18**