

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT ARUA
CIVIL REVISION No. 0002 OF 2017
(Arising from Arua Chief Magistrate’s Court Civil Suit No. 0021 of 2009)

TIMONIA ERIAKU DRASIKU APPLICANT

VERSUS

JIMMY ROY JURUA RESPONDENTS

Before: Hon Justice Stephen Mubiru.

RULING

This revision was initiated by a letter of complaint dated 30th May 2017 made on behalf of the applicant by a non-governmental organisation; "Action for Human Rights and Education Initiative - Uganda." In that letter, it was indicated that there are two judgments delivered by two different Chief Magistrates, in the same suit between the same parties over the same subject matter. The first judgment was delivered by His Worship Muhammad Kasakya on 4th June 2013 in favour of the applicant who is the plaintiff in that suit and the second one by His Worship Byaruhanga Jesse Rugyema, on 11th September 2015 in favour of the respondent, who is the defendant in the suit. The two judgments were delivered over two years apart, by two different Chief Magistrates, in respect of the same suit, between the same parties and based on the same facts. It so happens that it is the second judgment by His Worship Byaruhanga Jesse Rugyema, of 11th September 2015 that went to execution. The applicant was arrested in execution and committed to civil prison as a civil debtor, liable to pay shs. 20,425,000/= in costs.

Upon receipt of the letter of complaint, this court called for and perused the court record in order to ascertain the facts and indeed found those judgments on the file without any record in the proceedings capable of explaining their concurrent existence. It is on that basis that before proceeding to make an order of revision, the court directed hearing notices to be taken out and served on both parties to enable them address court on the apparent anomaly.

The applicant appeared in person while the respondent was represented by Ojambo Richard. In his submissions, counsel for the respondent stated that Sometime during the year 2013, the matter was adjourned to 16th January, 2013, on which date the respondent and his counsel were not present in court. The applicant was allowed to proceed ex-parte resulting in an ex-parte judgment delivered in his favour by the then Chief Magistrate, His Worship Muhammad Kasakya on 4th June 2013.

Counsel for the respondent later established that the respondent had purportedly been served on radio. Counsel applied to set aside that ex-parte judgment. The application was filed on 11th July, 2013 as No. 0024 of 2013. It was served on the applicant's lawyer, Manzi and Co. advocates on 15th July, 2013. He filed a reply dated 31st July, 2013. The application was fixed for hearing in the presence of the applicant and the ex-parte judgment was set aside. All proceedings that had taken place ex-parte were set aside including witnesses who had given evidence in the absence of the respondent. The additional two witnesses were cross-examined in the presence of the applicant and his lawyer and their case was closed after which the defendant brought one witness. That witness testified in the presence of the applicant and his lawyer. The witness was cross-examined by his lawyer. After that both parties filed their written submissions. The lawyer for the supplicant filed his submission on 20th June 2013 and served them on counsel for the respondent. The respondent also filed their submissions on 24th July, 2015. The applicant's lawyer rejoined on 27th July, 2015. Judgment was then delivered. By that time the previous Chief Magistrate was on transfer and the new magistrate, His Worship Byaruhanga Jesse Ruggyema delivered the judgment in Nebbi in the presence of the applicant, Hence the two apparently contradictory judgments. In reply, the applicant submitted that he was not aware that once a judgment is set side it is no longer a judgment. All he knows is that he has a judgment in his favour.

Section 83 of the *Civil Procedure Act, Cap 71* empowers this court to revise decisions of magistrates' courts where the magistrate's 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. It entails a re-examination or careful review, for correction or improvement, of a decision of a magistrate's court, after

satisfying oneself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings of a magistrate's court. It is a wide power exercisable in any proceedings in which it appears that an error material to the merits of the case or involving a miscarriage of justice occurred, but after the parties have first been given the opportunity of being heard and only if from lapse of time or other cause, the exercise of that power would not involve serious hardship to any person.

The complaint arises partly from the fact that the applicant did not fully appreciate the consequences of setting aside an ex-parte judgment and partly from the fact that the proceedings leading to that judgement being set aside, are not contained in the file comprising the record of proceedings in the main suit. Having called for and examined the official register from the court below and the court file in respect of Arua Chief Magistrate's Court Miscellaneous Civil Application No. 0024 of 2013, I was able to verify counsel for the respondent's submissions that indeed by an order of that court dated 31st October, 2013 the ex-parte judgment that had been delivered by His Worship Muhammad Kasakya on 4th June, 2013 in favour of the applicant, who is the plaintiff in that suit, was set aside. That decision ceased to be a judgment of the court and was thus superseded by the one delivered inter-parties in favour of the respondent by His Worship Byaruhanga Jesse Ruyema, on 11th September, 2015 which went to execution. The apparent anomaly having been clarified satisfactorily, I do not find any reason to intervene in the ongoing proceedings in the court below.

Accordingly the application by way of complaint is dismissed. The court files and register of the court below that were submitted to this court for purposes of this revision should therefore be returned to that court to facilitate conclusion of the ongoing execution proceedings. This revision not having been prompted by direct complaint or application of the applicant, each party is to bear their costs of this application.

Dated at Arua this 9nd day of January, 2018.

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Stephen Mubiru
Judge
9th January, 2017.