

trespassing, constructing or intermeddling in the affairs of the Respondent's land; (d) an order to pay reparation for the loss and damage occasioned to the Respondent as a result of trespass and occupation of his land; (d) general damages; (e) costs of the suit and (f) any additional relief that court deems fit. The Respondent's claim was that he is the rightful owner/bonafide purchaser of 15 acres of land comprised in Busiro block 251 plot 3 situated at Bulabakulu in Wakiso district which he bought from the Applicant at Ug. Shs 37,000.000/= in October 2005. After full payment of the purchase price, the Applicant signed transfer forms for the Respondent though the transfer had not been effected. At the execution of the sale agreement, the Respondent took possession of the land and was using the same uninterrupted till July 2012 when the Applicant, Mukasa Edward and Sserunjogi Herbert trespassed on the suit land.

4. The Applicant in his written statement of defence at trial filed on 27th March 2018 averred that he was the administrator of the estate of his late father Christopher Nsubuga who died in 1987. The late Nsubuga owned approximately 35 acres of land comprised in block 251 plot 3 at Bulabakulu village, Wakiso district. The land was registered in the late Nsubuga's name and there were many squatters on it including Mukasa Edward and Sserunjogi Herbert. The Applicant needed money to sort out these problems and the Respondent was introduced as a person who could assist in sorting out the above problems. The Respondent advanced money on the security of the land title of the suit property on the understanding that on completion of the process, the parties would sit to see how he would be paid. The Applicant also filed a counterclaim in which he sought; (i) a declaration that the Respondent does not own the suit land; (2) a permanent injunction restraining trespass by the Respondent; (3) an order of eviction and (4) costs.
5. The trial magistrate entered judgment on 6th July 2018 in favour of the Respondent declaring that he is the lawful and beneficial owner of the suit land having fully purchased the same from the Applicant. The magistrate also ordered specific performance by the Applicant signing all necessary documents and hand over to the Respondent all required documents to enable him transfer the land to his name; declared that Mukasa Edward holds a kibanja interest of about four acres of the suit land as a successor in title to the late Serunjogi Edward;

the Applicant was to pay to the Respondent general damages of Ug. Shs. 10,000,000/=; there was no cause of action against Serunjoji Herbert who was deceased at the time he was sued; costs were awarded to the Respondent and Mukasa Edward and interest at court rate of 6% per annum till payment in full. The trial magistrate also noted that having ordered that the Applicant be added as a party to the suit, he filed his defence to the same but became elusive to attend court despite all efforts to secure his attendance through personal service and to his lawyer Mr. Ssenooba. The Applicant personally rejected service and referred to his lawyer whose address as given in the pleadings was none existent.

6. The main ground of this application contained in the notice of motion and the affidavit of the Applicant is that the trial magistrate exercised jurisdiction not vested in him and with material illegality so as to make the entire trial and proceedings a nullity.
7. I have carefully analyzed the record, the affidavits of both parties and submissions of counsel. **Black's Law Dictionary (9th edition)** defines revision as "*a re-examination or careful review for correction or improvement*" or "*an altered version of work*".
8. Section 83 (c) of the CPA 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 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.
9. The duty of the High Court in revision entails examination of the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings before the High Court¹.
10. The High Court may exercise its powers of revision where it appears that an error material to the merits of the case or involving a miscarriage of justice had occurred. **See Hitilav.**

¹**Munoba Mohamed v. Uganda Muslim Supreme Council Civil Revision No. 001 of 2006 (Arising from Kaliro Civil Suit No. 0033 of 2002)**

**Uganda [1969]1 E.A. and Bwire Wafula & Anor v. John Ndyomugenyi, High Court
Revision No. 016 of 2011 (unreported)**

11. I have carefully looked at all the pleadings and the record of the lower court. I find nothing under the law or practice to support the Applicant counsel's position that a grade one magistrate cannot handle cases of trespass. Moreover, the Respondent's suit in the lower court was not based on monetary subject matter value that could be said not to be within the jurisdiction of a magistrate grade one. As demonstrated in paragraph three, the Respondent's action was for specific performance, declarations and injunctions. The detail that the Respondent bought the suit land at Ug. Shs. 37,000,000/= comes out of the context of the interactions between the two. However the Respondent did not sue for recovery of this Ug. Shs. 37,000,000/=. Therefore the Applicant's claim that the grade one trial magistrate erroneously handled this matter when his jurisdiction does not exceed 20,000,000/= does not stand.

12. It is also noteworthy that the Applicant did not raise this issue of monetary subject matter exceeding that of the trial magistrate in his written statement of defence at trial. Moreover after filing the written statement of defence, both the Applicant and his counsel evaded court, despite service on them on occasions. In all events if the Applicant felt that the trial magistrate was handling monetary subject matter outside his jurisdiction, he should have raised this objection same timely before determination of the suit by the trial magistrate. In the circumstances of this case, it looks sinister for the Applicant to raise this issue of monetary subject matter only after the trial magistrate delivered his ruling and execution commenced.

13. The Applicant also takes issue with the trial magistrate's ex parte proceedings saying that he was not served or heard. I have carefully looked back at the record in regard to this claim. As part of this revision I am satisfied as the trial magistrate found at page 6 of his judgment that once he filed his WSD, the Applicant and his counsel became elusive, not appearing in court, counsel not being available on known professional addresses, the Applicant refusing to

accept service from the Respondent, directing the Respondent to serve his counsel and his counsel having no known professional address for the said service.

14. In these circumstances, as part of management of the proceedings before him, I find that the trial magistrate properly exercised his discretion to proceed *ex parte*. The Applicant clearly chose to sit on his right to be heard as if in an attempt to defeat justice for the Respondent. The trial court could not be held to such whims to defeat justice. The trial magistrate therefore properly proceeded *ex parte*.

15. I have also considered the Applicant's defence as presented now as part of this revision and in his WSD. He denies having sold the suit land to the Respondent and says that he received money from the Respondent to sort out issues on the land then they would agree on the purchase price. I have weighed this defence against the Respondent's claim that he paid Ug. Shs 37,000,000/= to the Applicant as purchase price for the suit land totaling 15 acres. He tendered a memorandum of sale and acknowledgement of receipt of payments. In paragraph 6 of the memorandum, the Applicant acknowledges receipt of Ug. Shs. 15,000,000 as part payment for the 15 acres on execution of the same. Under paragraph 7 on receipt of the said Ug. Shs. 15,000,000/=, the Applicant signed transfers in respect of the 15 acres as security for the money deposited. At the end of the memorandum, there is a payment schedule for the balance of Ug. Shs. 22,000,000. For each of these further instalment payments, the Applicant signed acknowledging receipt. The total additional payments are Ug. Shs. 22,300,000/= and they were witnessed by the LC chairman.

16. In the face of clauses 6 and 7 in particular and the memorandum as a whole, in which the contract between the two was reduced in writing, it is difficult to believe the Applicant's denials of receipt of some monies. The memorandum also clearly states that the Applicant was selling 15 acres, the suit land to the Respondent. After re-evaluating the evidence including the Applicant's defence, I find that the trial magistrate properly considered the Applicant's defence as presented in the WSD. There is nothing erroneous in the trial magistrate's judgment to warrant revision by this court.

17. Accordingly this application for revision is dismissed with costs for the Respondent. Since this court granted the Applicant bail pending hearing of the revision application, the same is hereby cancelled. I hereby direct that the Applicant is re arrested and detained in civil prison to complete his civil detention unless he satisfies the trial judgment.

I so order.

Lydia Mugambe
Judge
28th May 2019