THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA A FORT PORTAL

HCT – CV – RO – 018 OF 2016

(Arising from FPT – 21 – CV – CS – 18/2011)

(Arising from – 00 – CV – MC – 107 of 2010)

OYO PETER.....APPLICANT

VERSUS

1. OLIMI IVAN

2. MURUNGI PERSIS.....RESPONDENTS

BEFORE: HIS LORDSHIP HON. MR. WILSON MASALU MUSENE

Ruling

This is an interesting case whereby M/s Bahenzire, Kwikiriza & Co. Advocates wrote a letter to this Court applying for Revision of the judgment and orders in FPT – 21 – CV – CS – 18 of 2011, arising from FPT – 00 – CV – MC – 107/2010. They wrote the letter on behalf of Oyo Peter, the Applicant, as against the Respondents, Olimi Ivan and Murungi Persis, who were represented by M/s Ngamije Law Consultants & Advocates.

I wonder why a firm of Advocates applied for Revision through letter other than filing a formal Application as required under the law. Be that as it may, the brief background of the whole case is as follows;

This land dispute started in the Local Council Court where the Respondents were successful parties. The Applicant brought up a suit FPT – 21 – CV – CS – 18 of 2011 against Olimi Ivan the Administrator of the Estate of late Kairungi Sylvester son of the late Kairungi Sylvester and Murungi Pelusi the daughter of the late Kairungi Sylvester (Respondents) in the Magistrates Court.

The Respondents filed a written statement of defence and a counter claim to the effect that they are the biological children of the late Kairungi Sylvester and that the Applicant is trespassing on the disputed land the estate of their father late Kairungi Sylvester where the Respondents are in occupation, possession having interest therein and that the acts of the Applicant amount to trespass on the suit land.

At the commencement of the suit, Counsel for the Defendants raised a preliminary objection that the Applicant/Plaintiff has no cause of action against the Respondents/Defendants. The preliminary objection was upheld and the Plaint was struck off.

The Applicant/Plaintiff being dissatisfied with the decision of the trial Magistrate appealed to the High Court to wit: HCT – CV – CA – 040 of 2012. The Appeal was heard and disallowed thereby upholding the decision of the trial Magistrate.

The Counter Claim was fixed, heard and judgment delivered in favour of the Respondent. The bills of costs were taxed both in the lower Court and in the High Court. Execution in respect of vacant possession was issued and completed, the execution report filed on Court record. It was after the above developments that the Applicant applied for revision on the following grounds:-

1. The Counter Claimant had no capacity to be sued and to Counter Claim in FPT – 21 – CV – CS – 18 of 2011.
2. The decision and orders in FPT – 21 – CV – CS – 18 of 2011 were not born out of evidence as is required by law.
3. The Counter Claim in FPT – 21 – CV – SC – 18 of 2011 did not give particulars of trespass as is required by law.
4. Judgment in FPT – 21 – CV – CS – 18 of 2011 was delivered without visiting locus to verify the alleged trespass and the testimonies of the Counter Claimant and her witnesses.

Counsel in their letter prayed that it is in the interest of justice that judgment and orders in the Counter Claim vide: FPT – 21 – CV – CS – 18 of 2011 be set aside and a retrial of the suit be ordered.

Counsel for the Applicant submitted that the Applicant was never notified about the hearing dates for the Counter-Claim. And that as a result, the Applicant was prevented from appearing in Court when the Counter-Claim was heard.

The second ground advanced by Counsel for the Applicant was that the decision and orders of the trial Magistrate vide FPT – 21 – CV – CS – 18 of 2011 were not borne out of conclusive evidence. Counsel went on to argue about primary evidence as defined under Section 61 of the Evidence Act and prove of documents as stipulated under Section 63 of the same Act.

Further submissions were about material contradictions in evidence and requirements of inter-party proceedings. It was also submitted for the Applicant that the particulars of trespass were not stated in the Counter-claim and that there was no proof that the Counter Defendant trespassed and cause any damage.

Learned Counsel for the Applicant further submitted that locus in quo was not properly conducted and that the Counter-Claimant did not have capacity to sue.

Counsel for the Respondent on the other hand filed an affidavit in reply sworn by Murungi Persis, opposing the Application. In a nutshell, Counsel for the Respondent submitted that the grounds stated in the Application by letter did not disclose grounds for revision as provided under the law, and furthermore that the application was brought with inordinate delay, whereby if revision powers are invoked, then they will involve serious hardships to the Respondent.

Counsel for the Respondent emphasised that since the land dispute in question started way back in 2009 in local council courts, the suit and Counter-Claim was filed in 2011, judgment delivered in 2014 followed by execution on 17/11/2014, then time was of the essence.

Further submissions were that the Applicant appealed to High Court under **HCT – CV – CA – 040 of 2012**, which appeal was resolved in favour of the Respondent in a judgment delivered on 20/8/2012.

Counsel for the Respondent concluded that since the Application for revision was on 4/11/2016, 2 years after the execution process and 2 years after the judgment of High Court on appeal, then this application for revision is prohibited by lapse of time.

I have considered the submissions on both sides. In the first instance, the law regarding revision is clearly stated under Section 83 of the Civil Procedure Act, Cap. 71. The High Court may call 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; but no such power of revision shall be exercised;
    i. Unless the parties shall be given the opportunity of being hard; or
    ii. Where, from lapse of time or other cause, the exercise of that power would involve serious hardship to any person.

I have considered the law and the circumstances of the case. In the first instance, I find no irregularity in the exercise of the Magistrate's powers to warrant a revision.

Secondly, and more fundamentally, I agree with Counsel for the Respondent that this application was brought with inordinate delay and no substantial reason has been given for such a delay. The land dispute has been handled up to appeal to the High Court and about 6 years or so has elapsed. In **Kabwengere versus Charles Kangabi [1977] HCB 89**, it was rightfully held that Court cannot exercise its revisionary powers where there was a lapse of time or other cause, the exercise of such power would involve serious hardship to any person.

In the present case, I find and hold that there was inordinate delay on the part of the Applicant. And even after applying late, he sat back for 6 years since execution of the decree by vacant possession. Any order of a retrial or otherwise through revision now would no doubt involve serious hardships to the Respondent or any other person. That ground alone warrants the dismissal of this application.

Furthermore, and without prejudice, the submission by Counsel for the Applicant's Counsel that the Applicant was never notified about hearing dates for the Counter-Claim is with due respect laughable because it is not a ground for revision. **Under Order 9 Rule 27 of the Civil Procedure Rules**, Counsel for the Applicant should have applied to set aside the ex-parte judgment in the Counter-Claim. The Applicant cannot jump to Revision where **Order 9 Rule 27** of the Civil Procedure Rules provides for a specific procedure and forum.

Counsel for the Applicant also made futile attempts by submitting on primary evidence, material contradictions, particulars of trespass and requirement of locus in quo. All the above which touch on evaluation of evidence **are grounds of appeal and not revision.**

Lastly, on the submission that the Counter-Claimant did not have capacity to sue does not stand as the holding in **Israel Kabula versus Martine Banoba, SCCA No. 52 of 1995** is very clear. It was held that a beneficiary does not need letters of Administration to institute a suit. I therefore agree with Counsel for the Respondent that Murungi Peluci had the right to Counter-Claim on grounds of being a beneficiary of the estate of the late Kairungi who is on possession and occupation of the disputed land.

In conclusion, therefore and in view of what I have outlined, I find no merit in this application for revision. The same is hereby dismissed with costs.

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WILSON MASALU MUSENE

JUDGE

19/9/2019