

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MBALE
REVISION CAUSE NO. 04 OF 2020
(ARISING FROM BUKWO CIVIL SUIT NO. 0064/2016)

CHELIMO YAIRO ::: APPLICANT
VERSUS
SIWA CHRISTOPHER CHEMAYI ::: RESPONDENT

BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA

RULING

- [1] This is an application for a Revisional order in Bukwo **C.S No.064 of 2015**, Mbale under **S.83 CPA** and **O.5 r.1, 2&3 CPR**.
- [2] The application is premised on the grounds contained in the affidavit in support of the application deponed by the applicant and briefly, they are;
- i. That in September 2015, the Applicant filed C.S. No.064 of 2015 in the Magistrate’s court of Bukwo claiming vacant possession of over 80 acres of land, permanent injunction, general damages, trespass and costs of the suit.
 - ii. That the trial Magistrate acted unprofessionally by assuming duties of a surveyor during locus visit of the land in dispute by locally determining the acreage of the same using a **GPS** instead of employing the services of a qualified surveyor there by reaching a wrong decision as to the acreage of the suit land.
 - iii. That it is just and equitable that this court revises the orders of the Magistrate’s court.
- [3] In his affidavit in reply, the Respondent deponed that during the execution of the trial Magistrate’s judgment and orders, he raised

complaints regarding the handover of land to the Applicant which was in excess in measurements than that ordered in the decree.

- [4] Upon the complaint, it was agreed that the plaintiff involved in the exercise was to secure a surveyor agreed upon by both parties to demarcate **73.2 acres** of land that were decreed to the Applicant. This was accordingly done and **Dynamics Law Projects**, a surveying company and property valuers curved out the decreed acres of land and handed them over to the Applicant as per the surveying report on record.

Counsel Legal Representation

- [5] The Applicant was represented by **Counsel Nyote of Nyote & Co Advocates, Mbale** while the Respondent was represented **Counsel Nabende of Nabende Advocates, Mbale**. Both counsel filed their respective submissions as permitted by this court.

Background of the application

- [6] In September 2015, the Applicant/plaintiff filed **C.S.No.064 of 2015** in the Magistrate's Grade 1 court of Bukwo, Mbale Chief Magistrate's court claiming inter alia, vacant possession of over **80 acres of land** situate at **Rorok village, Riwo Sub county, Bukwo District**.
- [7] At scheduling of the suit, the following issues were agreed upon for determination of the suit:
1. Who is the lawful owner of the suit land?
 2. Whether or not the defendant is guilty of trespass.
 3. Whether or not the plaintiff is entitled to the sought remedies.

- [8] At the conclusion of the hearing of the suit, court visited the locus in quo, and the trial Magistrate first recorded down the aims of the locus in quo;
- a) To know the size of the disputed land.
 - b) To know the boundary of the land/Neighbours.
 - c) Who is occupying the land?
 - d) Where is the valley that divides the leonita etc.
- [9] The trial Magistrate then proceeded to record his observations and drew a **sketch map** of the land in dispute. Below the sketch map, he recorded **“73.2 acres.”**
- [10] In his judgment, the trial Magistrate concluded with a finding that the suit land comprised of **73.2 acres as per the G.P.S** is for the plaintiff and that the defendant is a trespasser thereon. **73.2 acres** of land were therefore accordingly decreed to the plaintiff.
- [11] During execution of the decree, a **warrant** dated 4/12/2017 was issued by court to **Arapsonje Alex T/a Elgon court bailiffs & Auctioneers** to give vacant possession of land to the judgment creditor, the plaintiff. The **schedule** of the warrant states thus:
- “By giving vacant possession of land measuring approximately 73.2 acres situate at Rorok...”**
- [12] The **Elgon court bailiffs and Auctioneers** executed the decree by handing over the entire suit land in disregard of the judgment that decreed **73.2 acres** which were ascertained during locus, to the Applicant/plaintiff. The bailiffs having handed over the entire land to the plaintiff/Applicant in excess of what was decreed to the plaintiff/Applicant, the defendant/Respondent raised a complaint dated 5/4/2018 to the Chief Registrar against the bailiffs complaining that during execution, **Arapsonje Alex of M/s Elgon court bailiffs and**

Auctioneers handed over the plaintiff excess land than was indicated in the judgment dated 23/12/2015.

- [13] The complaint was resolved by a directive to the plaintiff to engage services of a surveyor to demarcate the **73.2 acres** out of the suit land, which was accordingly done by a one **Chesang Leonard of Dynamic Land Projects Ltd** that curved out the **73.2 acres** and a report to that effect dated 17/12/2018 was filed on court record.

Merits of the application

- [14] In paragraph 9 of the Applicant's affidavit, the Applicant deponed that **Dynamic Land Projects Ltd** who are professional surveyors and property valuers who carried out the surveying exercise of the suit land, curved out of **105.7 acres** of land as opposed to **73.2 acres** indicated in the decree for the bailiff to hand over to the Applicant/plaintiff/judgment creditor as per the surveyor's report, **Annexure "F"** to the Affidavit in support of the application. It is his contention that the trial Magistrate erred by not inviting a professional surveyor to ascertain the true acreage of the suit land during locus in quo visit and instead relied on his local and unprofessional findings thus **73.2 acres**, as opposed to the actual findings of the professional surveyors of **105.7 acres**. He thus invites this court to cause a revision in the orders of the lower court in term of acreage of the aforesaid suit land.

- [15] **Section 83 C.P.A** provides thus:

"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 agrees to have;
a) exercised a jurisdiction not vested in it in law;
b) failure to exercise a jurisdiction so vested; or

c) acted in the exercise of its jurisdiction illegally or with material irregularity of or injustice, the High Court may revise the case and make such an order in it as it thinks fit;”

- [16] It is the submission of counsel for the Applicant that the learned trial Magistrate had jurisdiction to entertain the case but did so unprofessionally by assuming the duties of a surveyor during the locus visit of the land in dispute, by locally determining the acreage of the land using a **G.P.S** instead of employing a **surveyor** who is qualified and he relied on the said evidence to determine the suit land.
- [17] G.P.S stands “**Global Positioning System**”. It uses signals from satellites to pin point a location on the earth’s surface. It is now one of the modern instruments used for land surveying as it can provide accurate latitudinal and longitudinal location information without the need for measuring angles and distances between points, and when used properly, G.P.S for land surveying offers the highest level of accuracy and much faster than conventional surveying techniques. Calculations are made very quickly and with a high degree of accuracy; <https://www.baselineequipment.com>, See also *The impact of Global Positioning Systems (GPS) in land surveying and the related competences needed by land surveying Graduates in the state of Winsconsin*, A research paper by Thomas P. Carlson.
- [18] According to **Samuel Mugisha** and **Joseph Matere**; *Large scale mapping of land utilization types using GPS in Tororo District, Uganda*; FITCA EMMC Report No.M8 under INTERNATIONAL LIVESTOCK RESEARCH INSTITUTE, use of **GPS** for ground mapping is a relatively straight forward exercise for those with experience in using the instrument. For those who have not used a GPS previously, one or two

days of training is enough to get going in the use of the instrument. GPS is helpful in identifying boundaries of field (plot) through **GPS** tracking, capturing land utilization types, linear features including movable tracks and foot paths and then home steads.

[19] In this case, the trial Magistrate made use of a **GPS** at locus to ascertain the acreage of the suit land as pointed to him by parties and relying on any other evidence that was available to him. I think and it is my view that at locus, the trial Magistrate was entitled to use a **GPS** as one of the means that were available at his disposal to ascertain the acreage of the suit land as observed in quo. Being a judicial officer, it is presumed that he would not resort to a **GPS** unless he had skills in use of the instrument. In the circumstances where it has not been shown by evidence that the trial Magistrate lacked the competences and skills to use a **GPS**, his ascertainment of the acreage by use of a **GPS** is acceptable. A **GPS** is nowadays no longer an exclusive tool of surveyors. Ordinary citizens can make use of **GPS** instruments in construction sites, mappings, ascertainment of boundaries etc.

[20] The grievance therefore by the Applicant/plaintiff that the trial Magistrate observed and ascertained the acreage of the suit land as **73.2 acres** at locus using a **GPS** cannot be regarded as an error merely because the Applicant's unilateral ascertained new acreage did not either match with what the plaintiff pleaded (80 acres) or the acreage ascertained by **Dynamic Land Projects Ltd** in their official report (attached to the Applicant's affidavit in support of the application).

[21] It is apparent that in this case, **Dynamic Land Projects Ltd Surveyor's** report on the lower court record dated 17/12/2018 is the official report to be relied on by this court. It was commissioned by court to demarcate **73.2 acres** of the entire land that the bailiff had erroneously handed

over to the Applicant/plaintiff during execution of the decree. The second report of the same firm of surveyors is unofficial for it was neither commissioned by court nor is it part of the lower record. It appears to have been availed to the Applicant/plaintiff for his own consumption but he opted to use it to bolster up his application.

[22] Since the official **Dynamic Land Projects Ltd** Survey report implemented the court judgment/order that decreed **73.2 acres** of land to the Applicant/plaintiff, the remedy of the plaintiff/Applicant does not lie in a **Revision** but in an **Appeal**, in the premises that he was not satisfied with the decision of the court. **Section 83 CPA** that gives the High Court power of revision applies strictly in specific respect to the exercise of, or the wrongful exercise of and/or failure to properly exercise the jurisdiction so vested, by a subordinate court; **TAYEBWA Vs BANGONZYA & ANOR [1992-1993] HCB 143**. It thus appears that any injustice or irregularity other than in the exercise of jurisdiction by a subordinate court must be remedied by an appeal rather than revision.

[23] In the premises, I find that this application therefore has no merit. It is accordingly dismissed with costs to the Respondent.

Byaruhanga Jesse Ruyyema

JUDGE.

12/10/2021.