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The Republic of Uganda
In The High Court of Uganda at Soroti
Civil Revision No. 0003 of 2023

(Arising from Miscellaneous Application No. 0008 of 2022)
(Arising from Civil Suit No. 0001 of 2022)

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1. Juma Musafiri	}	:..... Applicants
2. Okello Moses		
3. Apia Christine		
4. Alimo Joyce Mary		
15 5. Ebulu Wilberido		

Versus

1. Ikulume Victoria Phoebe	}	:..... Respondents
20 2. Ikalas Constance		
3. Okello Charles Stephenson		
4. Apedo Justus		

Before: Hon. Justice Dr Henry Peter Adonyo

25

Ruling

1. Background:

The applicants brought this application under sections 83 & 98 Civil Procedure Act and Order 52 Rules 1,2 & 3 of the Civil Procedure Rules for orders that;

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a. The orders of His Worship Nakoko Isaac the Magistrate Grade 1 of the Chief Magistrates Court of Katakwi at Amuria dated 13th

- 5 October 2022, dismissing Misc. Application No. 008 of 2022 and ordering for Civil Suit No. 001 of 2022 to be fixed and set down for hearing be revised and set aside.
- b. Proceedings in Civil Suit No. 0001 of 2022 be stayed.
- c. Costs of this application be provided for.
- 10 The grounds of this application as set out in the application and further expounded in the supporting affidavit sworn by Juma Musafiri the 1st applicant are that;
- a. Civil suit No. 0001 of 2022 filed by the Respondents against the applicants in the Chief Magistrates Court of Katakwi at Amuria is not
- 15 a competent suit envisaged under the laws of Uganda.
- b. In dismissing Misc. Application No. 0008 of 2022 which was an application seeking for dismissal and or striking out Civil Suit No.0001 of 2022, the Magistrate Grade 1 acted in exercise of its jurisdiction illegally or with material irregularity and or injustice.
- 20 c. In ordering for fixing and setting down Civil Suit No. 001 of 2022 for hearing, the Magistrate Grade 1 exercised a jurisdiction not vested in it in law.
- d. The Magistrate's Court has no jurisdiction to entertain Civil Suit No. 0001 of 2022 which is statute barred.
- 25 e. This application for revision is necessary for the ends of justice to meet.
- f. It is just and equitable that this court grants these orders.

The respondents in their affidavit in reply sworn by Ikulume Victoria Phoebe the 1st Respondent stated that this application for revision is

30 incompetent and is an abuse of court process.

5 That the Civil Suit no. 003 of 2020 was poorly drafted by her former lawyer's M/s Ewatu and Co. Advocates but the dispute is not barred by limitation. That where a suit is dismissed on a preliminary objection it does not bar bringing of a fresh suit and the respondents had every right to file CS No. 0001 of 2022. That CS no. 0003 of 2020 was not determined on its
10 merits and the current suit is not barred by limitation and should be determined on merit by court. That the trial Magistrate exercised his jurisdiction properly when he dismissed MA No. 0008 of 2022 and he rightfully directed that the suit proceeds to hearing when the appellants did not prefer an appeal against the dismissal of MA 0008 of 2022.

15 2. Representation:

The applicants were represented by M/S Legal Aid Project of the Uganda Law Society while the respondents were represented by M/S Natala and Co. Advocates.

This matter proceeded by way of written submissions which I have
20 considered in the determination of this application.

3. Issues:

Counsel for the applicants raised two issues in her submissions that is;

- a. Whether the applicants have expressed sufficient grounds for the orders dismissing Misc. Application No. 0008 of 2022 and the order
25 for civil suit no. 0001 of 2022 to be fixed and set down for hearing be revised and set aside?
- b. What remedies are available to the parties?

4. Determination:

The power of this court to revise decisions of magistrates' courts which is
30 conferred by section 83 of the Civil Procedure Act, Cap 71 is invoked where the magistrate's court appears to have;

- 5 (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 provided that no such power of revision can be
exercised unless the parties have first been given the opportunity of being
10 heard; or where, from lapse of time or other cause, the exercise of that
power would involve serious hardship to any person.

It entails a re-examination 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
15 of any proceedings of a magistrate's court.

In this instance counsel for the applicants submitted that the trial
Magistrate exercised his jurisdiction illegally or with material irregularity or
injustice in dismissing MA 0008 of 2022 which was an application seeking
for dismissal and striking out of Civil suit no. 0001 of 2022 which is time
20 barred.

The essence of the applicants' claim is that the 1st respondent filed cs no.
003 of 2020 against the applicants save for the 5th applicant for trespass
on customary land located at Moru village, Abia parish, Kuju Sub county in
Amuria District, a declaration that she is the lawful owner of the suit land,
25 general damages, eviction orders, a permanent injunction which was
dismissed on merit for being barred by limitation. The 1st respondent then
filed MA 0005 of 2021 seeking review of the decision in CS no. 0003 of
2020 but the same was dismissed. The 1st respondent co-opted the 2nd to
4th respondents as parties and filed CS no. 0001 of 2022 based on the same
30 facts against the applicants yet they all claim under her and are litigating
under the same prayers in CS no. 0003 of 2020.

5 The applicants filed MA 0008/2022 seeking dismissal of this suit for being barred by limitation however the trial Magistrate dismissed their application and directed that the suit be scheduled for hearing.

Counsel submitted that under Order 7 rule 11(d) of the Civil Procedure Rules, a plaint shall be rejected where the suit appears from the statement
10 in the plaint to be barred by any law.

Further that section 5 of the Limitation Act limits actions for recovery of land from being brought after 12 years, and in the instant case the plaint indicates that the suit is for recovery of land. Counsel submitted on the law of limitation relying on various cases, to wit, *Departed Asian Property*
15 *Custodian Board vs Dr. J.M Masambis CACA No. 04 of 2004, Ababiri Muhamood and 4 Ors vs Mukomba Anastansia and Anor CS No. 22 of 2015, Odyek Alex and Anor vs Gena Yokonani and 4 Ors CA No. 9 of 2017, F.X. Miramago vs A.G [1979] HCB 24 and Iga vs Makerere University [1972] EA 65.*

20 A brief summary of her submissions in this regard is that limitation is a creature of statute and with actions for recovery of land there is a fixed limitation period which begins to run as against a plaintiff from the time the cause of action accrued until the suit is actually filed. That a litigant puts herself within the limitation period by showing grounds upon which
25 she could claim exception, which disability must be pleaded as required by Order 18 rule 13 of the Civil Procedure Rules.

Counsel further submitted that the respondent in their pleadings claim that the 5th applicant entered the suit land in 1996 claiming he had purchased the same from Ewatu Mikilosi, the 3rd and 4th applicants
30 purchased theirs in 2000 and 2001 which is beyond the time limitation. That the order dismissing MA 0008/2022 and further directions that the

5 CS 0001/2022 be fixed for hearing were due to illegal exercise of jurisdiction by the trial Magistrate and this court should revise and set aside the same.

Counsel for the respondents in reply first raised a preliminary objection, he submitted that the trial Magistrate properly exercised the jurisdiction
10 vested in him when he determined and dismissed MA 0008 of 2022 and the applicants have not demonstrated any illegal or irregular exercise of jurisdiction.

Counsel submitted that the trial magistrate determined the application properly without any illegality and made his findings on law and fact and
15 the applicants cannot claim that because he dismissed the application he acted with material irregularity. He added that where a court has jurisdiction to determine a question and determines that question it cannot be said that it acted illegally or with material irregularity merely because it has come to an erroneous decision on a question of fact or even
20 law. It would appear that injustice or irregularity other than in exercise of jurisdiction must be remedied by appeal rather than by revision. Counsel relied on *Maguzi Grace Patrick vs Ntungamo Local Government Mbarara HCT-05-CV-CR-0032-2011, Nadiope and 8 Ors vs Maluku Development Association Ltd HCT-04-CV-MA-073-2010*.

25 Counsel submitted that the applicants are trying to raise a ground of appeal in an application for revision and the submissions of Counsel for the applicants lay emphasis more on the merits of MA 0008/2022 rather than the question of jurisdiction. He added that given that the applicants were out of time by 4 months to file an appeal they opted to file an application
30 for revision and in this regard this application is incompetent.



5 Without prejudice to the above counsel submitted that the applicants by
claiming CS no. 0001/2022 is barred by limitation under section 5 of the
Limitation Act are in essence raising a preliminary objection that the suit is
time barred. He submitted that preliminary objections are resolved by
looking at the pleadings alone and cannot be raised if any fact has to be
10 ascertained by evidence (*Mukisa Biscuit Manufacturing Co. Ltd vs West End
Distributors Ltd [1969] EA 696.*)

Counsel agreed that section 5 bars bringing actions after expiration of 12
years from the date on which the cause of action accrued, however, it was
his contention that CS no. 0001/2022 is not barred by limitation because
15 the dispute therein has been subject of litigation from the time the
applicants trespassed or entered the land to date. That the respondents
challenged the applicants stay on the suit land by instituting court action
before the expiry of the 12 years from the date they entered the land.

He submitted that the respondents lodged a suit before the LCII Court of
20 Abia Parish through the late Dr. Okalany Joel who was appointed by the
family to help recover the land of the late Yoweri Okalany that the
applicants trespassed on.

He further stated that the applicants do not dispute that the said Okalany
sued them before the LC II court save that they contend that he was acting
25 on his own and not for the estate, which is not true because Dr. Okalany
Joel sued under the estate of the late Yoweri Okalany who was the rightful
owner of the suit land. Counsel added that by 2006 when Okalany sued the
applicants had been on the suit land for only about 9 years having entered
thereupon in 1996 which is still within the limitation period. He further
30 added that the limitation period began running in 1996 when the suit land,
it ran for 9 years up to 2006 when it got interrupted by court action before

5 the LC II and from there litigation dragged up to 2016 when the chief
Magistrate quashed the decision of the LC III Court of Kuju sub-county and
with no decision on the merit of the dispute. That thereafter the limitation
period began to ran afresh till 2022 which is a period of only 6 years and as
such the limitation period had not been met and the applicants cannot
10 claim the respondents have been sitting on their rights.

Counsel further submitted that CS NO. 003/2020 was dismissed because
of poor drafting of pleadings which did not elaborate the circumstances
under which the suit was re-filed in court. That unlike the current suit, cs
no. 0003/2020 did not bring to court's attention that the dispute between
15 the parties has been dragging in court right from 2006 to 2016.

He further submitted that the dismissal of CS no. 0003/2020 was not on
merits and filing of the current CS no. 0001/2022 is not an abuse of court
process, the 1st respondent had the right to put her pleadings proper and
file a fresh suit.

20 5. Findings of Court:

I will first address the preliminary objection raised by counsel for the
respondents.

In *Nadiope & 8 Ors v Maluku Development Association Ltd (HCT-04-CV-MA-
0073-2010) [2012] UGHC 103*, Justice Stephen Musota found that

25 *"For a matter to qualify for revision, it must be apparent or shown that
it involves a non-exercise or irregular exercise of jurisdiction. Revision
does not concern itself with conclusions of law or fact in which the
question of jurisdiction is not involved. Dissatisfaction with a decision
by a court with jurisdiction in favour of the other party cannot be a
30 matter for revision."*

5 In *Maguzi Grace Patrick Vs Ntungamo Local Government Mbarara High Court HCT-05-CV-CR-0032 of 2011*, as cited in *Mayimba v Nakato (Miscellaneous Application No. 111 of 2020) [2021] UGHCCD 199*, Hon. Justice Bashaija K. Andrew held at page 7 of the Judgment that;

10 *"a court is said to exercise jurisdiction illegally or with material irregularity when such a court is seized with jurisdiction but acts wrongly through some procedural or evidential defect" Revisionary powers are limited to exercise of jurisdiction and not the decision of the court as that would be a ground for appeal"*

15 In this instance the applicants filed MA 008/2022 before the Chief Magistrates Court of Katakwi holden at Amuria seeking orders that Civil Suit No. 0001/2022 be dismissed with costs because it is barred by limitation.

The trial Magistrate had the jurisdiction to hear this matter and accorded both parties a fair hearing of the same as they both filed submissions which he considered during the determination of the matter.

20 In his ruling the trial magistrate considered the pleadings of the parties, their submissions and the law on res judicata as well as limitation, he then made his finding that the suit was neither time barred nor res judicata and ordered that the suit be fixed for hearing.

25 I find that there was no irregular or illegal exercise of jurisdiction by the trial magistrate and as such the applicants disagreement with his decision ought to have been appealed against.

This notwithstanding, in order to avoid multiplicity of suits over the competency of CS No. 0001/2022 I will determine this application on its merits.

5 The applicants herein contend that since CS No. 0003/2020 which bears the same facts and subject matter as the current CS No. 0001/2022 was dismissed for being time barred, the current suit is also incompetent. Annexure 'B' to the application is a ruling by H/W Owino Paul Abdonson, wherein he found that CS No. 003/2020 was barred by limitation and
10 dismissed the same. In his findings he stated that the suit joined various causes of action that is trespass, a declaration of ownership, eviction of land, permanent injunction, general damages and costs of the suit, he construed this suit as a claim for recovery of land because for the plaintiff to sue in trespass she needed to be in actual possession of the land which
15 was not the case.

The trial Magistrate above actually misapplied the principles on trespass and causes of action for recovery of land founded on trespass but given that this ruling is not the subject of this application I will not delve into the same.

20 The 1st respondent applied for review of the order dismissing CS No. 003/2020 but the trial magistrate dismissed the same.

The 1st respondent then filed a fresh suit CS No. 0001/2022 before the same court adding the 2nd to 4th respondents as plaintiffs and the also adding the 5th applicant as a defendant.

25 In this suit, the respondents in their plaint sue the applicants jointly and severally for recovery of land, a declaration of ownership of the suit property located at Moru village, Akular Parish, Abia sub-county in Amuria District, a declaration that the applicants trespassed on the suit land, a permanent injunction, eviction orders, general damages, interest and costs
30 of the suit.

5 In their claim the respondents indicate they inherited the suit land from the late Yoweri Okalany in 1980 however due to the insurgency they left the suit land. In 1996 they found one Ewatu Mikilosi and Ebulu Wilbrod had trespassed on the suit land, the 1st respondent immediately reported the matter to the genera clan leader who heard it but no fruits were
10 realised, she later filed the matter before the LC1 court of Moru village in 1997 but due to the continuing insurgencies the court was not able to hear the case but in 2000 a ruling was given in favour of Ewatu, something that all the applicants admitted to in their joint WSD in CS 0003/2020.

However, before the family of the late Yoweri Okalany could appeal the
15 Kony insurgency broke out and it is about this time when in 2000 and 2001 the 3rd and 4th applicants purchased some of the respondents' land.

In 2006 when the security situation stabilised the respondents acting through one of their family members Dr. Okalany Joel Francis who was appointed by the family, lodged a matter before the LC II Court of Abia
20 Parish where the land was situate, this court heard the matter and entered judgement in favour of the applicants.

This led to an appeal to the LC III Court of Kuju sub county which heard the matter and gave judgement in favour of Dr. Okalany on behalf of the family of the late Yoweri Okalany in 2011.

25 The appellants dissatisfied with the judgement of the LC III court appealed to the Chief Magistrates Court of Soroti vide CA No. 56 of 2011 where the proceedings in the LC III court were set aside because it lacked jurisdiction and parties advised to file a fresh suit hence CS No.0003/2020.

The respondents in their plaint attached copies of the above proceedings
30 and judgements.

5 The applicants in their joint written statement of defence admit the existence of these litigations except they contend that Dr. Okalany was acting on his own and not for the respondents.

I find that the suit land which is subject of CS 0001/2022 has been subject to dispute and litigation starting from 1996 when the first of the applicants
10 entered the suit land, this litigation as seen in the plaint stretched over till 2016 when the Chief Magistrate directed that the parties file a fresh suit, which was done in 2020.

The suit is therefore well within the 12 years prescribed by the Limitation Act and not time barred.

15 The dismissal of CS No. 0003/2020 was on a preliminary objection and as such it was not determined on merits so as to make CS 0001/2022 an abuse of court process by way of being *res judicata*.

The minimum requirements under that provision were stated by the Supreme Court in *Karia and Another v Attorney General and others* [2005]

20 **1 EA 83** to be that;

(a) there has to be a former suit or issue decided by a competent court.

(b) the matter in dispute in the former suit between the parties must also be directly or substantially in dispute between the parties in the suit where the doctrine is pleaded as a bar and;

25 (c) the parties in the former suit should be the same parties or parties under whom they or any of them claim, litigating under the same title.

In this instance, CS. No. 003/2020 was not determined on its merits, it was not even heard before being dismissed on a preliminary objection, consequently the question of *res judicata* does not arise.

5 Furthermore, dismissal of a suit on a preliminary objection does not bar the respondents from filing a fresh suit.

In *Isaac Bob Busulwa Vs Ibrahim Kakinda [1979] HCB 179* where the earlier suit had been dismissed on a preliminary point, such a dismissal was found not to be a bar to a subsequent suit between the same parties on the same
10 subject matter.

In *Kerchand v Jan Mohamed (1919–21) EAPLR 64*, as cited in *Onzia v Shaban Fadul (Civil Appeal No. 19 of 2013) [2017] UGHCLD 82* it was found that where a suit is dismissed on a preliminary point of law and the plaintiff did not have opportunity to be heard on merits, a new suit on the same matter
15 cannot be *res judicata*.

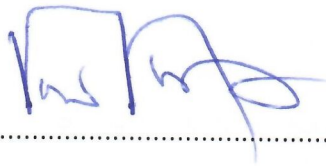
Consequently, and in concurrence with the above court holdings, I would find that the trial magistrate was right when he dismissed MA 0008/2022 and directed that CS No. 0001/2022 be fixed for hearing.

The quintessence of the suit has not been finally heard and the parties
20 instead of wasting time on multiple applications should fix the suit for hearing so that it is finally determined on its merits.

6. Order:

This application is accordingly dismissed and parties directed to have CS No. 0001/2022 fixed for hearing and determination on its own merits with
25 costs of this application to abide the outcome in the lower court.

I so order.



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Hon. Justice Dr Henry Peter Adonyo

3rd October 2023