

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
MISC APPLICATION NO. 085 OF 2018

KABUGHO ROBINAH ::: APPLICANT

VERSUS

ASABA PAUL ::: RESPONDENT

BEFORE HON. MR. JUSTICE VINCENT EMMY MUGABO

RULING

This application was brought by way of Notice of Motion for orders that;

- a) The judgment of the lower court in KAS small claim No. 24 of 2017 on the 9/9/2018 by which she was ordered to repay UGX 1,091,600/=2,040,000/= be revised.
- b) Costs of this application be awarded to the Applicant

The Applicant has brought this revision cause on the ground that the lower court acted with illegality, material irregularity or injustice owing to the fact that the applicant was not indebted to the respondent in the amount decreed and that the applicant was not given a fair hearing in the lower court.

In his affidavit in reply, the respondent deposed that the applicant is currently indebted in the sum of UGX 909,600/= having cleared only UGX 100,000/= from the outstanding debt. Further that the present application is brought in bad faith.

The background to this application is that the respondent commenced a small claims suit vide KAS small claim No. 24 of 2017 against the applicant to recover UGX 1,004,300/=. A summons was duly served on the applicant but she did not file her defence as required by the Judicature (Small Claims

Procedure) Rules, 2011. When the matter came up for hearing on 22/08/2018, the applicant was absent and the same was adjourned. It came up again on 9/9/2018 and the applicant was still absent. The trial magistrate entered a default judgment for the sum claimed in accordance with Rule 17 of the Judicature (Small Claims Procedure) Rules, 2011, hence this application.

Representation and hearing.

The applicant is self-represented while the respondent is represented by Mr. Timothy Atuhaire of M/S Atuhaire & Co. Advocates. No submissions were made by either party.

Consideration by court

Rule 4(4) of the Judicature (Small Claims Procedure) Rules, SI No. 25 of 2011 confers supervisory powers on the High Court over the small claims procedures in magistrates' courts. Among the supervisory powers are powers to revise the decisions of the small claims court.

Section 83 of the Civil Procedure Act, Cap 71 provides for revision by the High Court of lower court's judgments and it reads: "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— (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.

The applicant's case is properly expressed in paragraph 2 of her Affidavit that she was never given a fair hearing at the trial in the small claims suit. Further that the applicant was not indebted to the respondent in the

amounts claimed and decreed. As such, she notes that the trial court acted with material irregularity and illegality.

Irregularity according to the **Black's Law Dictionary, 9th Edition** refers to an act or practice that varies from the normal conduct of an action. An act is irregular if it is not in accordance with law, method or usage. An irregular judgment still per the definition in Black's Law Dictionary, 9th Edition is a judgment that may be set aside because of some irregularity in the way it was rendered.

Irregularity could be the result of misapplication or contravention of a provision of the law. However, to qualify the irregularity as material, the effect of the action ought to be looked at and found to have substantially affected the decision of the court. In the present case, the applicant does not specify what parts of the lower court's judgment that should be looked at as irregular. She insists that she was not indebted to the respondent in the amounts claimed owing to the fact that she had paid part of the debt sum, but she provides no evidence whatsoever to assist the court make a decision in that regard.

The applicant also states that she was not afforded a fair hearing. If this were found to be true, it would be a serious concern that would warrant this court to further examine the proceedings of the lower court and possibly revise the same. However, I have looked at the record of the lower court and noted that a summons was duly served on the applicant but she did not file her defence as required by the Judicature (Small Claims Procedure) Rules. She at the same time did not attend the hearing of the suit when it came up. I am unable to substantiate the allegation that she was not accorded a fair hearing.

This application has fallen short of proving any of the grounds for revision and the same is only liable to be dismissed. This application is hereby dismissed. Each party bears its own costs.

It is so ordered

Dated at Fort Portal this 17th day of January 2023



Vincent Emmy Mugabo

Judge.

Court: The Assistant Registrar shall deliver the Ruling to the parties.



Vincent Emmy Mugabo

Judge

17th January 2023.