

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**

**MISCELLANEOUS CAUSE NO.0020 OF 2018**

**(ALL ARISING FROM THE CONSENT JUDGMENT OF BWERA  
COURT IN DIVORCE CAUSE NO. 002 OF 2017)**

**MASEREKA K. N. ELIA ::::::::::::::::::::::::::::::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

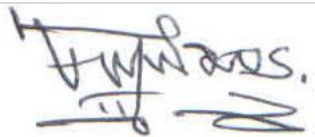
**MUHINDO A. BINYINYI ::::::::::::::::::::::::::::::::::::::::::::::::::::::: RESPONDENT**

**BEFORE HON. JUSTICE VINCENT WAGONA**

**RULING**

The Applicant brought this Application under section 82 and 98 of the Civil Procedure Act and Order 46 and 52 of the Civil Procedure Rules for orders that:

- 1. That the eviction orders issued against the Applicant be set aside and the Applicant be reinstated in land at Bukangara Village, Kasese District as was agreed in the consent judgment signed by the parties and endorsed by His Worship Hilary Mulangira.*
- 2. That the Applicant be paid costs of the Application.*

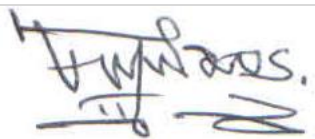


The application is supported by the affidavit of the applicant in which he averred thus:

1. That in 2017, he signed a Consent Judgment with the Respondent at Bwera Magistrate's Court Kasese where the two agreed to dissolve their marriage. That pursuant to the Consent, the two agreed that they should share their properties acquired during the subsistence of their marriage. That the Respondent was to take land at Bukangara Village and the Respondent was to take the lock-up shop at Kikumbi.
2. That on the 24<sup>th</sup> day of September 2017, the trial magistrate at Bwera issued a warrant of vacant possession and he was evicted from the land at Bukangara Village and yet he was given the same under the Consent.
3. That there is an error on the record to execute orders of court on property which was decreed to the Applicant and that the subsequent execution was illegal.
4. That there was total violation of the terms of the Consent Judgment when he was evicted contrary to the terms of the Consent. That the Applicant was illegally denied his share of the property to which he was entitled to by virtue of the Consent Judgment. That this application has been brought without unreasonable delay.
5. That it is in the interests of justice that this Application is allowed and court grants the orders sought herein.

**Representation and Hearing:**

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M/s Guma & Co. Advocates represented the Applicant. The Application was fixed for hearing on 22<sup>nd</sup> May 2018. The Respondent did not file a response within the time prescribed under the Civil Procedure Rules. I will thus proceed to determine this Application ex-parte.

5 **Issues:**

1. Whether this Application is proper before this Court.
2. Whether the Applicant's Application should be granted.
3. Remedies available to the parties.

10 **Consideration of the Application:**

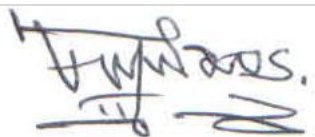
This Application was brought under Section 82 of the Civil Procedure Act and Order 46 of the Civil Procedure Rules. Thus in substance it's an application that seeks to review the execution orders of the Magistrate Grade One of Bwera in Divorce Cause No. 002 of 2017 and to have the same set  
15 aside.

Section 82 of the Civil Procedure Act provides thus:

*“Any person considering himself or herself aggrieved—*

*(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or*

20 *(b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the*



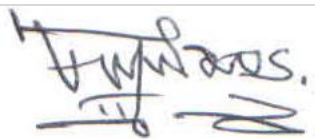
*decree or made the order, and the court may make such order on the decree or order as it thinks fit”[Emphasis added]*

Order 46 rule 1 of the Civil Procedure Rules provides further thus:

5        *Any person considering himself or herself aggrieved—*  
      *(a) by a decree or order from which an appeal is allowed, but*  
      *from which no appeal has been preferred; or*  
      *(b) by a decree or order from which no appeal is hereby allowed, and*  
      *who from the discovery of new and important matter of evidence which,*  
10        *after the exercise of due diligence, was not within his or her knowledge*  
      *or could not be produced by him or her at the time when the decree was*  
      *passed or the order made, or on account of some mistake or error*  
      *apparent on the face of the record, or for any other sufficient reason,*  
      *desires to obtain a review of the decree passed or order made against*  
15        *him or her, may apply for a review of judgment to the court which*  
      *passed the decree or made the order. (Emphasis added).*

20        Section 82(b) of the Civil Procedure Act and Order 46 rule 1(b) of the Civil Procedure Rules, limit applications for review to the court that passed the decree or made the order. They do not extend such jurisdictions to the appellate courts.

This Position was elucidated in **Pancras T. Swai v Kenya Breweries Limited [2014] eKLR** where the Court of Appeal of Kenya held thus:

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*“Order 44 rule 1 (now Order 45 rule 1 in the 2010 Civil Procedure Rules) gave the trial Court discretionary power to allow review on the three limbs therein stated or “for any sufficient reason.”*

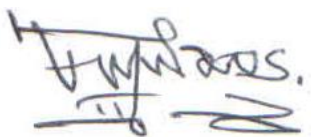
Further in **Sarder Mohamed v. Charan Singh Nand Sing and Another**  
5 **(1959) EA 793** the High Court held that:

*“Section 80 of the Civil Procedure Act conferred an unfettered discretion in the Court to make such order as it thinks fit on review...”*

In the application before me, the Applicant sought to review the orders of the  
10 Magistrate Grade One at Bwera in the High Court. This renders the  
Application incompetent. Where the law provides for jurisdiction for specific  
matters then the same must be exploited. I thus find this Application  
incompetent it is hereby dismissed with no orders as to costs since the same  
was no opposed by the Respondent.

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It is so ordered.



Vincent Wagona

**High Court Judge**

20 **FORT-PORTAL**

**17.02.2023**

