

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA

HOLDEN AT KAMPALA

REVISIONS CAUSE NO 13 OF 202

(Arising Out Of Makindye Criminal Case No 629 Of 2020)

SAWULA BAKER APPLICANT

VERSUS

UGANDA RESPONDENT

BEFORE: HON. MR. JUSTICE J. W. KWESIGA

REVISION ORDER:

This is a Notice of Motion for Revisionary Orders that;

1. This honorable court issues a Revisionary Order in the Judgement delivered by Grade One Magistrate in **Criminal Case No. 629 of 2020.**
2. The Orders of the Grade One Magistrate be set aside
3. The matter be referred into family court as a civil matter not as a criminal case
4. Cost of this application be provided for.

The grounds of the application are that;

- a. That there's important evidence which was not produced to court when it passed the orders in **Criminal Case No. 629 of 2020.**
- b. That the Applicant was married to the complainant Nalweyiso Shania for one year.

- c. That the said Nalweyiso Shania had two children of different fathers by the time she got married to the Applicant.
- d. That the Applicant accepted them to be as a family, but just in three months the one Nalweyiso Shania became wild and started misbehaving and started mistreating the Applicant without justifiable reasons.
- e. That later the one Nalweyiso Shania conceived and delivered a baby girl who is now seven (7) month old, but when the baby was three months, the one Nalweyiso opted out of the marriage and went to her parents in Nsangi division in Wakiso district.
- f. That when she went the Applicant as a responsible father kept on sending child basic needs to the one Nalweyiso Shania rather opted to go to the Police post where they both appeared and consent to the requirements to be provided to the minor.
- g. That the one Nalweyiso Shania referred the matter to the station and the same agreement was confirmed and later the matter was taken to the Probation Officer and the same was Ordered to be maintained by the Applicant.
- h. That the Applicant has been providing all children basic needs to the minor through the Chairman L.C1 Chairperson and has never defaulted any month despite the fact that the minor's mother is no longer a house wife.

- i. That the Applicant applied for divorce in the Chief Magistrate court of Makindye and mediation was conducted on the 11th August 2020 while the criminal case No. 629 of 202 was determined on the 12th August 2020 which issued Orders of the Applicant to provide Ug. shs 100,000/= (One hundred thousand shillings) per month.
- j. That the criminal procedures have no provisions to issues Civil Orders and such cannot be enforceable at all.
- k. That the Applicant is a father of over 10 children and all are children at home and any Orders affecting the house which accommodates them is set to be attached by the one Nalweyiso Shania.
- l. That the acts of the Respondent's witness Nalweyiso Shania was to mislead court to issue Civil Orders under criminal procedures and without establishing the reasons of the family misunderstanding and or inviting witnesses to establish the cause and to enable court adjudicate on the matter which is abuse of court process and bad in law.
- m. That the Applicant will suffer irreparable damage if the Orders passed in criminal case while there's pending civil suit is not set aside and or referred to civil court which shall automatically lead to a consolidation of the divorce petition and maintenance application with this civil court.

n. It is just and equitable that this honorable court issues Revisionary Orders or in the alternatives set the said Judgment and its Orders.

According to Black’s Law dictionary (9th edition), it defines revision as *“a re-examination or careful review for correction or improvement or an altered version of work”*.

The mandate of this court to make a Revisionary Order is enshrined in **Section 50** (1.) In the case of any proceedings in a magistrate’s court the record of which has been called for or which has been reported for Orders, or which otherwise comes to its knowledge, when it appears that in those proceedings an error material to the merits of any case or involving a miscarriage of justice has occurred, the High Court may— in the case of any other Order, other than an order of acquittal, alter or reverse the Order.

Section 4(1) of the Judicature Act (as amended) is to the effect that the High Court exercises general powers of supervision over the magistrates’ courts.

(2.) With regard to its own procedures and those of the Magistrates’ Court, the High Court shall exercise its inherent powers-

(a) to prevent abuse of process of the Court by curtailing delays of judgment including the power to limit and discontinue delayed prosecutions.

(b)

(c) to ensure that substantive justice shall be administered without undue regard to technicalities
(underlined for emphasis)

The Applicant in this case was charged with Neglecting to provide for a child Contrary to Section 157 of the Penal Code Act.

According to the proceedings, the parties reconciled and came to an agreement on 12th /08/20. Court proceeded under Section 160 of the MCA and it was agreed that the Defendant would make a payment of Ug. Shs. 100,000 /= per month and also take care of the hospital bills whenever the child is sick. Both parties duly signed the agreement.

The Applicant has raised so many issues that are that were not raised in the lower court. As a revisionary court, the mandate of this court in this file rotates around the offence of neglecting to provide for the child. In revising, its role is to establish whether there were any irregularities by the lower court while conducting the proceedings. In his arguments concerning the proceedings in the lower court the applicant states that the lower court didn't have jurisdiction to award 100,000/= per month because it is civil in nature. This argument is erroneous and not sustainable.

Under the law the Judicial Officer was possessed with the power of discretion to make a reasonable decision depending on the circumstances of the case. However, this discretion must be exercised in conformity with the provisions of the law. In line with section 160 of the MCA the court is enjoined to promote reconciliation as it is also provided under article 126 of the Constitution of the Republic of Uganda.

Further, Section 160 of the MCA, gives circumstances and offences that are appropriate for reconciliation. This means that reconciliation is not available for all criminal offences. It is only

available for private proceedings, any assaults, any other offence of personal nature not amounting to a felony and not aggravated in nature. According to the penal code act, the offence before court is a misdemeanor and as such falls within the ambit of the provision.

This provision also proceeds to give the ambits of Orders that court can make in the exercise of its discretion. It can make an Order of payment of compensation and any other terms which it must approve. The term “*and other terms approved by the court*”, gives court wide discretion to make an Order that is befitting in the circumstances of the case.

In criminal matters, reconciliation involves putting into consideration many factors including building confidence in the criminal justice system and meeting the needs of the victims as the pivotal role of the judiciary. See:- **Uganda Versus Apiku - Criminal Session Case No. 15/2018**. In the circumstances of this case, the offence before court is neglect of a child, it was only wise to make Orders that meet the needs of the victim.

Pursuant to Section 33 of the Judicature Act, I uphold the Lower Court’s Order and I find no merits whatsoever in this application and I make no Orders Contrary to those of the trial Magistrate. This Application is dismissed for lack of merits.

J. W. Kwesiga

Judge

16/10/2020

To be served on:-

1. Sawula Baker

Of Masajja 'A' Makindye

P. O. Box 8078

Kampala.

2. Chief Magistrate

Makindye Court.