

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
HOLDEN AT MBALE**

**HCT-04-CV-MA-0112-2017  
(ARISING FROM HCT-04-CV-MA-201-2016)  
(ARISING FROM MISC. APPLICATION NO. 0099/2016)  
(ARISING FROM DIVORCE CAUSE NO. 0001/2016)**

**OSCAR ANDREAS CARDENAS ESPINOSA.....APPLICANT  
VERSUS  
NAKIMULI MARIAM CARDENAS.....RESPONDENT**

**BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA  
RULING**

This application was seeking orders to set aside and review orders of the Deputy Registrar Misc. 0201 of 2016. The grounds were outlined in the Notice of Motion and accompanying affidavit of the applicant; which are all noted by this court.

The gist of this application is that the Deputy Registrar gave an order granting interim custody of the minor to the applicant herein on 29<sup>th</sup> May 2016. However on 14<sup>th</sup> March 2017 on application by the Respondent herein, the Deputy Registrar reviewed her own order and reversed the custody of the minor from applicant to the Respondent. It is against the said variation/review that this application seeks to set aside on grounds that the orders of the Deputy Registrar varying her own orders were a nullity because a Registrar has no jurisdiction to vary or review her own decision.

Counsel for the applicant therefore argued that Powers of Registrars are provided for under O.50 of the Civil Procedure Rules; and expounded under S.I 1/2002 (Powers of Registrars) Rules and do not include power to exercise review.

Counsel referred to the case of *AG. V. James Mark Kamoga CA.8/2004* (unreported); where the Supreme Court held that:

*“a Registrar has no power to review his/her own decision.”*

Counsel further argued that any decision made without jurisdiction is a nullity and must be set aside.

I have carefully considered the above arguments. I note from the pleadings that though served the Respondent and her counsel did not attend the hearing.

A perusal of the record indicates that this matter is arising out of Divorce Cause No. 001 of 2016 which is still pending. The custody of the minor is in contention yet the law clearly stipulates the test to be employed in such contests, it is the test of; “the best interest of the child.”

The contention here is the Deputy Registrar’s order of 24<sup>th</sup> March 2017 varying her earlier order of 24<sup>th</sup> May 2016.

I have considered the provisions of O.50 of the Civil Procedure Rules which enumerates the Powers of Registrars.

O. 50 r.3 of the Civil Procedure Rules provides that:

*“All formal steps preliminary to the trial and all interlocutory applications may be made and taken before the Registrar.”*

Also O.50 r. 8 of the Civil Procedure Rules, provides that:

*“Any person aggrieved by any order of a Registrar may appeal from the order to the High Court....”*

From the provisions above the decision of the Deputy Registrar are subjected to appeal to the High Court, but are not provided for under the order of review.

This provision is properly articulated in the case of **AG v. James Mark Kamoga CA. 8/2004** where the Court stated that:

*“The Powers of Registrars are set out in O. 50 of the Civil Procedure Rules and enhanced in Practice Direction No.1 of 2002. It suffices to say that the former confers on the Registrar powers to enter judgment in uncontested cases and consent judgments, to deal with formal orders in executions of decrees and the later empowers the Registrar to handle*

*matters governed by specific rules and orders of the Civil Procedure Rules; which do not include any rule of O.46. clearly the Power to review Judgments or orders of the high Court, (including those entered by the Registrar) is not among the powers delegated to the Registrar. In the circumstances, the prohibition under rule 4 was not applicable since the Registrar who passed the decree was not empowered to review it.”*

The above case law clearly puts this matter to rest. The Registrar had no power to review her own earlier order. The applicant has proved this application.

The order of review was given in error. It is a nullity and cannot be allowed to stand. This court hereby sets aside the order of review and reinstates the order of 24. May 2016. I so order.  
Costs in the cause.

**Henry I. Kawesa**

**JUDGE**

**2.5.2017**