

5. The revision of the judgment will not cause any hardship to respondents.
6. Applicant will be greatly prejudiced if rights to the suit land are lost without the applicant being heard.

I have gone through the affidavit in support of the application sworn by **Rev. Gideon Mutegule Nabulika**, alluding to the above. I have also read the submissions by the applicant, and defendants and affidavits sworn in support and rejoinder accompanying their respective pleadings.

The power of this court under revision is derived from section 83 of the Civil Procedure Act which provides that the High Court can call for the lower court record of a court presided by any Magistrate's Court and if the court appears to have violated any of the provisions laid under sections 83 (a) (b) and (c) the court may revise.

Having gone through the above pleadings and the law, am guided by the provisions of the law under section 17 (1) (2) of the Judicature Act which provides that with regard to its own procedures the High Court shall exercise its inherent powers to "prevent abuse of the process of the court by curtailing delays, including the power to limit and stay delayed prosecutions as may be necessary for achieving the ends of justice.

Section 87 of the Land Act had placed appeals from land tribunals to the High Court. This therefore placed their supervision under the High Court.

Section 98 of the Civil Procedure Act, provides that:

“Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of court.”

Using the above powers. I will move to interfere with the findings of the Land Tribunal in order to ensure that justice is done to the parties and to prevent abuse of the process of court. I do so for the following reasons.

The record indicates that when the land tribunal began hearing the case on 20.10.2004 the record shows that the tribunal recorded evidence of CW.1 **Stephen Kinyerweko** chairman of parish church giving evidence for the plaintiff. Tribunal adjourned the matter for hearing at locus on 18.11.2004.

The locus visit was done on 27.06.2006. No proceedings took place at locus save a prayer to have the cause dismissed for non attendance of claimants. The tribunal then dismissed the suit and decreed 28 acres to the respondents. The attached judgment, of the lower court (a single paragraph) reiterates the above scenario.

Given the applicant’s affidavit, and the record of pleadings, the above procedure was grossly irregular.

Justice must not only be done. It must always be seen to be done. If court convenes at locus, the procedures at locus must be documented. Evidence at locus is not used to fill in gaps. It is used to check on what court has already heard. The tribunal already had heard from a witness for plaintiffs. That evidence was to be

checked by the locus evidence. Failure by plaintiff to attend locus did not mean that what he had testified in court be dismissed. This is an abuse of court process and inspite of all arguments raised by respondents regarding issues on pleadings and parties, this irregularity goes to the root and cannot be allowed to stand.

I am basing my above holding on the following authorities.

In Hebel (East Africa) Ltd v. E.F. Tuwama 1986 HCB 4 (Manyindo V.P., Lubogo J.A.), it was held that:

“The purpose of a trial is to enable the parties to put their case properly and broadly so that the court may, hopefully come up with a fair decision on the crucial issues in the case.”

In this revision the Land Tribunal never considered any evidence before making its decision. This was improper and irregular. Moreover at the locus, court has a duty to record what transpired thereon and record it down, as held in J.W. Onange v. Okallang 1986 HCB 62 where **J. Karokora** held that;

“Observations made at the locus must not appear in the judgment from nowhere, but must be recorded and must form part of the record. The omission by a trial court to follow the accepted procedure, yet the judgment is seen to largely hinge on the trial at the locus in quo is fatal to the whole trial.”

The procedure adopted rendered the trial illegal and irregular, since the court denied the plaintiffs a chance to prove their case, and adopted a procedure unknown, by dismissing the claim at the locus without hearing the defence case,

but again decreeing the land to the plaintiff. Illegality was discussed in Makula International v. Cardinal Nsubuga (1982) HCB 11 where it was held that;

“Once an illegality is brought to the attention of court it cannot be allowed to stand. Illegality overrides all questions of pleading including admissions thereon.”

As I have observed, there are questions of *locus standi*, raised by respondents on appeal. I however hold that on account of the above findings regarding the illegal decision from which the current appeal comes from, it cannot be allowed to stand.

By virtue of the supervisory role of this court, I hereby find that the decision of the land tribunal was reached in error and was not correct. The said tribunal acted in illegality. The court hereby grants the application for revision and does order as follows.

The judgment and orders of the land tribunal is hereby set aside. It is ordered that the status quo pertaining before the tribunal orders be reinstated. A retrial be conducted before another competent court with jurisdiction.

Henry I. Kawesa

JUDGE

13.11.2014