

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA  
(LAND DIVISION)**

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**CIVIL REVISION No. 04 OF 2013**

**(ARISING FROM WAKISO MAGISTRATE'S COURT NO. 09 OF 2012)**

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**IBULAIMU KIRONDE**

**KABANDA.....APPLICANT**

**VS**

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**DARLINGTON KAMPAMA**

**SENKUMBA.....RESPONDENT**

20 **Before: Hon. Lady Justice Olive Kazaarwe Mukwaya**

**RULING**

25 The Applicant, Ibulaimu Kironde Kabanda, brought this motion seeking revision of the orders of the learned Senior Magistrate Grade 1, Wakiso, in Civil Suit No. 0009 of 2012; Darlington Kampaama Senkumba Vs Ibulaimu Kabanda Kironde & Registrar of

Titles. The suit was heard ex parte and judgment delivered in favour of the Respondent on the 19<sup>th</sup> November 2012.

Grounds for the application

5 These are contained in the affidavit in support of the motion sworn by Shepherd Sentamu, the donee of powers of attorney from the Applicant and are that;

1. The Wakiso Magistrate's court as presided over by Her worship Agnes Nabafu, Magistrate Grade I exercised jurisdiction not vested in it in entertaining and delivering judgment in Civil Suit No. 009 of 2012, the subject matter, being land  
10 comprised in Busiro Block 486 Plot 9 land at Mazzi, Wakiso District measuring approximately 300,000,000/= (three hundred million shillings only) which is beyond the court's jurisdiction.
2. The land is at Mazzi, Busiro, Wakiso District and falls under Entebbe Chief Magisterial area but not under Mpigi Chief Magisterial area.
- 15 3. The claim is barred by limitation as the action complained of, being the transfer of the suit land was done in 1974.
4. No effective service of summons was done to the Applicant and subsequent hearing notices were never served on him as claimed in the affidavits of service of the process server, Kawamara A. Robert of M/S Kayondo, Omony & Co.  
20 Advocates.
5. If the proceedings, judgment and execution in the suit are not quashed, it will occasion injustice and loss to the Applicant.
6. It is in the interest of justice that this application is allowed.

25 Reply by Respondent

Mr. Darlington Kampaama made a detailed reply to this application in his affidavit. Briefly he stated that;

1. The power of attorney relied on by Shepherd Sentamu in support of the application is a forgery, non-existent as he has no *locus standi* to depone it.
2. What was in issue at the trial was recovery of land which was transferred by fraud but not its monetary value.
- 5 3. The Respondent's claim was not barred by limitation, since the fraud complained of was discovered in 2007 and a caveat was lodged on the suit land after that.
4. There was effective service of court process on the Applicant at his home at Plot 22 Charles Drive Kololo.
5. No injustice will be occasioned to the Applicant if the application fails since the
- 10 Applicant has never been in possession of the suit land.
6. The Respondent has always possessed, cultivated and developed the suit land.
7. The application should be dismissed with costs.

Submissions were filed on behalf of both parties and I have duly considered them.

### Issues

1. Whether the affidavit sworn by Shepherd Sentamu in support of this application was incompetent?
- 20 2. Whether the learned Senior Magistrate Grade 1 had jurisdiction to entertain Wakiso Magistrate's Court No. 009 of 2012?

### RESOLUTION

#### Issue 1

**Whether the affidavit sworn by Shepherd Sentamu in support of this application was incompetent?**

Order 52 of the Civil Procedure Rules provides for the procedure to be adopted when filing motions and other applications. Order 52 rule 3 states;

*‘Every notice of motion shall state in general terms, the grounds of the application and where any motion is grounded on evidence by affidavit, a copy of **any affidavit intended to be used** shall be served with the notice of motion.’ (emphasis mine).*

5 Counsel for the Respondent argued that because Mr. Shepherd Sentamu was not the Applicant and the source of information in his affidavit was not specified, his affidavit in support of this motion was ‘a forgery’. He relied on the case of Nadiope & 8 Ors v Maluku Development Association Ltd (HCT-04-CV-MA-0073-2010) [2012] UGHC 103 (13 June 2012); where Musota J, held that;

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‘a person cannot swear an affidavit on behalf of another person unless he/she has powers of Attorney to do so as a recognized agent. Therefore, since the applicants 1, 2, 3, 4, 5, 7, 8 and did not file affidavits in support of the application, they are not entitled to any order for revision at all.’

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Counsel for the Respondent invited this court to dismiss this instant application on grounds of the defective affidavit in support.

In reply, Counsel for the Applicant submitted that Mr. Shepherd Sentamu was a holder  
 20 of powers of attorney and the Applicant’s recognized agent and it was on that authority that he swore the affidavit. I agree with Counsel for the Applicant. In the *Nadiope* case, supra, the named applicants did not file any affidavits in support of the application, only the 6<sup>th</sup> applicant did. And since there were no powers of attorney to indicate that the 6<sup>th</sup> applicant had brought the motion on behalf of the other 7 applicants, the learned Judge  
 25 found that the absent applicants were not entitled to the order for revision sought under the motion.

A reading of Mr. Sentamu's affidavit, in paragraph 2 states that he came to learn of the judgment in Civil Suit No.009 of 2012. In the other paragraphs in his affidavit, Mr. Shepherd Sentamu states the source of his information, as advice from his lawyers and his personal knowledge. By the time Civil Suit No. 009 of 2012, the basis of these revision proceedings, was filed, Mr. Shepherd Sentamu had been holding the powers of attorney, dated 15<sup>th</sup> September 2010, for almost two years. I find no evidence on court record to suggest that Mr. Shepherd Sentamu had no personal knowledge of the facts at hand, as submitted by Counsel for the Respondent. Neither could I find any restriction contained in the powers of attorney granted to Mr. Shepherd Sentamu by the Applicant, that would curtail him from swearing an affidavit to present the evidence upon which this application is premised on behalf of the Applicant. In fact, paragraph 4 outlines one of the five powers granted to Mr. Sentamu as follows;

*'To institute any Civil Suit or case with an intention of safe guarding my proprietary interest in the said land.'*

I am satisfied that Mr. Shepherd Sentamu had the authority to swear the affidavit on behalf of the Applicant and that the sources of information contained therein were well elaborated and explained. His affidavit was competent and rightly before this court. Preliminary objection is therefore overruled.

## **Issue 2**

### **Whether the Applicant is entitled to an order of revision of the judgment and decree of the learned Senior Magistrate Grade 1 Wakiso in Civil Suit No. 009 of 2012?**

Under the section 83 of the Civil Procedure Act, the High Court may or may be moved to call for the record of any case which has been determined by a Magistrate's Court or subordinate court and revise it if it appears that there has been;

1. Wrongful exercise of jurisdiction; or
2. Failure to exercise jurisdiction so vested in the court; or
3. The court has acted in exercise of its jurisdiction illegally or with material irregularity or injustice.

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For a matter to qualify for revision, it must be apparent or shown that it involves a non-exercise or irregular exercise of jurisdiction. Revision does not concern itself with conclusions of law or fact in which the question of jurisdiction is not involved. Dissatisfaction with a decision by a court with jurisdiction in favour of the other party cannot be a matter for revision. See Nadiope & 8 Ors v Maluku Development Association Ltd (HCT-04-CV-MA-0073-2010) [2012] UGHC 103 (13 June 2012). It follows that the arguments on limitation or failure to effect service could not be a subject of these revision proceedings. For this reason, I shall not handle them as they are improperly before this court.

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Turning to the question of jurisdiction, the law gives a Magistrate Grade 1 court power to entertain matters whose value of subject matter does not exceed twenty million shillings. See section 207(1)(b) of the Magistrates Courts Act Cap.16. The claim in the plaint before the learned Senior Magistrate Grade 1 was for recovery of registered land measuring 4.05 hectares (approximately 10 acres) in Wakiso district. This was in 2012.

It is true that no value was assigned to the land in the pleadings to guide the learned Senior Magistrate Grade 1 on the monetary value of the subject matter to make a determination on whether she had pecuniary jurisdiction to hear the matter. The Applicant made reference to a valuation report that put the value of the subject matter at UGX 300,000,000/= and undertook to produce it at the hearing of the application.

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Since this motion was filed in 2013, there have been a number of events that have prevented its disposal until today, 7 years later. In all this time, no copy of the valuation

report of the suit land has been availed to the court. It is trite that a party who alleges must prove. The absence of the valuation report leaves this court with no basis to agree with the Applicant that the suit land was valued beyond UGX 20,000,000/= at the time the Civil Suit No. 009 of 2012 was handled and disposed of.

5 On the issue of geographical jurisdiction, the Applicant asserted that the subject matter fell under Entebbe Chief Magisterial Area and not under the Mpigi Magisterial area. The description of the land under paragraph 4 of the Plaint is; 'land comprised in Busiro Block 486 Plot 9 land at Mazi, measuring 4.05 Hectares'. There is no district indicated. Attached to the Plaint however is a copy of the certificate of title to the land on which  
10 the Defendant, Mr. Ibulaimu Kironde Kabanda is named as registered proprietor. His address is 'P. O. 13 Entebbe'.

Suits should conveniently be instituted in courts within the local limits of where the cause of action arose or where the defendant resides. See sections 12, 13 and 14 of the Civil Procedure Act, Cap 11 and sections 212 and 215 of the Magistrates Courts Act  
15 Cap 16. In the instant case, the location of the suit land was not clear as to whether it fell under the jurisdiction of the Wakiso Magistrates Court or not. What was apparent was the address of the Defendant, Entebbe, which was also known to the Plaintiff/Respondent. I am therefore persuaded by the arguments of the Applicant that the learned Senior Magistrate Grade 1 Wakiso court had no geographical jurisdiction to  
20 handle Civil Suit No. 009 of 2012.

Exercise of revisionary powers only extend to an examination of what is apparent on the record of the subordinate court in issue. As far as this court can ascertain, the learned Senior Magistrate Grade 1 was not constrained by pecuniary jurisdiction, since no monetary value of the land was provided. But she lacked the geographical jurisdiction  
25 to act in the matter. The proceedings were therefore a nullity. See Desai V Warsama(1967) EA 351.

I am persuaded that it is in the interests of justice that the revision of the judgment orders in the lower court ought to be allowed to enable the parties to have the dispute between them fully determined by a court of competent jurisdiction.

**In conclusion, I allow the application and order as follows;**

- 5        **1. The Senior Magistrate Grade I, Wakiso Court lacked the geographical jurisdiction to entertain Civil Suit 009 of 2012.**
- 2. The Judgment and orders of the Senior Magistrate Grade I, Wakiso Court in Civil Suit No. 009 of 2012 are a nullity and are hereby set aside.**
- 3. The parties may file a fresh suit in a court of competent jurisdiction.**
- 10       **4. Costs are awarded to the Applicant.**

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**Olive Kazaarwe Mukwaya**

15       **JUDGE**

**4<sup>th</sup> February 2021**

Delivered by email to Counsel to the parties.



