

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

MISCELLANEOUS APPLICATION NO. 822 OF 2018

**(ARISING OUT OF CIVIL SUIT NO.111 OF 2013 AT THE CHIEF
MAGISTRATES COURT AT MAKINDYE)**

1.Dr. JOSEPH KIBUYAGA THROUGH HIS ATTORNEY G.M KIBIRIGE

2.HOPE DDAMULIRA KIBUUKA

3.MARION NAGGAYI KIBUUKA -----APPLICANTS

V

ERIAB SEBYATIKA----- RESPONDENT

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

RULING

This is an application for setting aside the dismissal of Civil Revision No.002 of 2017 which was dismissed for want of prosecution on the 31st May 2018. It is brought under Order 52 rule 1 of the Civil Procedure Rules and Section 98 of the Civil Procedure Act Cap 71.

Background.

Civil suit No. 111 of 2013 was filed in the Chief Magistrate's Court of Makindye by Eriabu Ssebyatika, the Respondent in this application, against: Dr. Joseph Kibuyaga

through his attorney G.M Kibirige; Hope Ddamulira Kibuuka and Marion Nagayi Kibuuka, the Applicants before this court. The original lower court file was called by the Registrar of this court for purposes of determination of Civil Revision No.002 of 2017.

5 I have perused the typed record of Civil Suit No. 111 of 2013 and I have been unable to locate the basis for Civil Revision No. 002 of 2017. My expectation is that there would be a certified ruling of the court which would be the subject of the application for revision. There is none. I will highlight what I gathered from the lower court record.

10 a. On the 10th September 2014, which appears to be the first date the matter came up for hearing, the Plaintiff, Eriabu Ssebyatika was present and all three Defendants; Dr. Joseph Kibuyaga through his attorney G.M Kibirige, Hope Ddamulira Kibuuka and Marion Nagayi Kibuuka, were absent. Legal representation was recorded as follows; Mr. Kafuuzi for the Plaintiff, Mr. Godfrey Kibirige for the 1st Defendant, Mr. Sserunkuma Bruno for the 2nd
15 Defendant and Mr. Mbogo for the 3rd Defendant.

b. Mr. Kafuuzi asked the court to compel Mr. Kibirige to explain ‘how he is going to represent the 1st Defendant, when he is the 1st Defendant?’

c. In Reply, Mr. Kibirige raised a preliminary objection which I find necessary to reiterate verbatim;
20 ‘I have never instructed to act as the attorney for the 1st Defendant in this suit brought against him. I have powers of attorney in respect of disposing off and selling. Secondly, the subject matter is worth over 50 million. It is cancellation of title and all it’s rectification and also seeking an order to have the name of the plaintiff entered in the register is still beyond this court’s jurisdiction. The prayer
25 for delivery of certificate of title in respect of the suit land to the plaintiff is beyond this court’s jurisdiction because the land is in lower Muyenga known as Kisugu which is prime land. For the above reasons, I pray the suit be struck out

with costs and these are the prayers of 3rd Defendant. Particulars of fraud have not been set out as required by law, paragraph 5(n) that means the plaint is defective and should be struck out with costs.’ Counsel for the 2nd Defendant associated himself with these submissions and prayers.

- 5 d. To which Mr. Kafuuzi replied; ‘I am requesting each one of us to provide a practicing certificate. I pray for an adjournment to reply to Counsel’s objection.’ The court obliged and adjourned the matter to 10th October 2014 at 12pm for reply from Counsel for the plaintiff.
- 10 e. From the 10th October 2014 to the 12th September 2015 the court record indicated that no reply was made to the Preliminary objections raised. Whenever the matter came up during that period, it did not proceed owing to the absence of the trial magistrate, or the advocates. On the 12th September 2015, the trial magistrate in the presence of, ‘both Counsels’, ruled as follows; ‘After a discussion with both counsels, in the presence of the parties; it is agreed that the
15 two files, that is to say Civil Suit No. 111 of 2013 and 54 of 2015 be consolidated...’

It is not clear from the record whether the two files were consolidated. However, on the 12th September 2015, court indicated that; ‘Ruling read in court.’ It is not clear whether this was a detailed ruling on the consolidation of the suits or a ruling relating to another
20 subject matter. The certified court record has no typed ruling. There is an undated ruling in hand written form on the uncertified court record. I suspect that this hand written, uncertified and undated ruling is the basis of Civil Revision No. 0002 of 2017 which the Applicant seeks to reinstate. It did not help matters that the application for revision does not specify which Magistrate delivered the ruling and on what date the ruling was
25 delivered. It is vague and obscure. Apparently, it was the duty of this court to find out.

One of the grounds for setting aside the dismissal of Civil Revision No. 0002 of 2017 as contained in paragraph 6 of Mr. Godfrey Kibirige’s affidavit in support of this

application is that the Revision application has a high probability of success. This is not a position the Applicants can maintain in these circumstances. There is no certified ruling of the lower court upon which this court is expected to act. In **LDC v Edward Mugulu HCMA 63 of 1990** court observed that'

- 5 **'It is sufficient for any aggrieved party or his lawyer to write to the registrar High Court drawing his attention to any irregularity of any subordinate court or magistrates courts in any decision (my emphasis) and requesting that the matter be brought to the attention of the court.'**

Decision of this court

- 10 In my view, in the application before me, the absence of a duly certified decision of the magistrate's court, to bring clarity to the application renders the application for revision incompetent from the onset. It follows that the Applicants' prayer to reinstate this application lacks merit for the reasons stated.

I hereby dismiss this application with costs to the Respondent.

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Olive Kazaarwe Mukwaya

JUDGE

- 20 **31st March 2021**

Delivered by email to Counsel representing the Parties.

