

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT SOROTI**  
**MISCELLANEOUS APPLICATION NO. 077 OF 2020**  
**ARISING FROM MISC. APPN NO. 001 OF 2019**  
**ARISING FROM CIVIL SUIT 0031/2007**

**OCEN KASSIM .....APPELLANTS**

**VERSUS**

- 1. SOROTI DISTRICT LAND BOARD**
- 2. PATRICK SSENNO (T/A Chap General**
- 3. Auctioneers and court Bailiffs.....RESPONDENT**

**RULING**

**BACKGROUND**

The 1<sup>st</sup> respondent in 2007 filed in Soroti High court Civil Suit No.031 of 2007 against the applicant where judgment was delivered in the year 2012 in favor of the 1<sup>st</sup> respondent. Being dissatisfied with the said judgment, the applicant lodged an appeal before Court of appeal of Uganda at Kampala vide civil Appeal No.187 of 2017. That the applicant then filed Miscellaneous Application No.56 of 2017(Arising from Miscellaneous Civil Application No.56 of 2017) (Arising from civil suit No.0031 of 2007), Ocen Kassim Vs Soroti District Land Board seeking orders for the stay of execution and in January 2018, the said application was granted.

That on the 7<sup>th</sup> day of December 2018, despite an order for stay of execution in force, the 1<sup>st</sup> respondent through the 2<sup>nd</sup> respondent defied, violated and or

disobeyed the said court order and irregularly conducted execution by causing eviction of the applicant and his tenants from the suit property.

That being aggrieved, the applicant then filed Miscellaneous Application No.001 of 2019 against the 1<sup>st</sup> and 2<sup>nd</sup> respondents for contempt of court.

That the said Miscellaneous Application No. 001 of 2019 was heard and disposed of by the Assistant Registrar of this Honorable court, who on the 18<sup>th</sup> day of March 2020 dismissed it with costs, hence prompting the applicant to file the present application, challenging the said ruling and or orders.

The applicants framed issues as follows: -

1. Whether the Assistant Registrar of this honorable court had jurisdiction to hear, handle, determine and or dispose of an application for contempt of court of the nature that was filed by the applicant.
2. Whether the registrar having presided over meditation in a matter which failed was right to take any further proceedings relating to such a matter.
3. Whether the judge of this honorable court has jurisdiction to review the decision of a Registrar.
4. Whether the application meets the test for grant of a review.
5. Whether the applicant is entitled to costs of the application.

## **RESOLUTION**

Applications of this nature are governed by section 82 of the Civil procedure act

The grounds for review are clearly provided for and were outlined in **FX Mubwike Vs UEB High Court Misc. Application No.98 of 2005**. These are:

1. That there is a mistake or manifest mistake or error apparent on the face of the record.
2. That there is discovery of new and important evidence which after exercise of due diligence was not within the applicant's knowledge or could not be produced by him or her at the time when the decree was passed or the order made.
3. That any other sufficient reason exists.
4. And under Order 46 of the CPR, no appeal has been preferred.

Before I proceed to resolve the above, the 1<sup>st</sup> applicant raised a preliminary objection stating that the instant application was incompetent and not proper before since the applicant should have filled an application of revision and not review.

Counsel cited section 82 CPA and order 46 CPR arguing that this application was brought under an error apparent on the face of record. That however the applicant challenges no manifest and clear error that requires extraneous matters to show its incorrectness.

In reply, counsel for the applicant submitted that the registrar in hearing and disposing of an application for civil contempt over a matter that he mediated was a clear and manifest error

It is trite law that just like the right of appeal, an order in review is a creature of statute which must be provided for expressly. In considering an application for review, court exercises its discretion judicially as was held in the case of **Abdul Jafar Devji Vs Ali RMS Devji [1958] EA 558**. The law under which review is provided is Section 82 of the Civil Procedure Rules and Order 46 of the Civil Procedure Rules.

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3. That any other sufficient reason exists.

The applicant appears to rely on the 3rd reasons. Regarding whether there is a mistake or error apparent on the face of the record.

An error apparent on the face of the record was defined in **Batuk K. Vyas Vs Surat Municipality AIR (1953) Bom 133** thus:

**“No error can be said to be apparent on the face of the record if it is not manifest or self-evident and requires an examination or argument to establish it.....”**

In this case the applicant seeks to challenge the exercise of jurisdiction in civil contempt by the registrar and the fact that the registrar mediated the matter and went ahead to hear it.

Whereas I agree with the respondent's counsel that matters of exercise of jurisdiction are best handled in revision applications, I wish to state that the applicant did not only rely on jurisdiction only but pleaded other grounds in his application.

The question for court to answer is whether there are errors apparent on the face of record that require no extra evidence to prove them.

From the record, the application no 01 of 2019 was referred to the registrar for hearing. The registrar attempted to mediate the same and it failed. He proceeded to hear the matter against rule 10 of the judiciary mediation Rules.

Ideally these are uncontested facts and there is no need for extraneous evidence to rule out such an error. It's so manifest at the face of record for enable legal personale. This alone is a ground enough to fall under review.

Secondly, as I already stated, I am aware that jurisdiction is best handled under revision, however once the question of jurisdiction is coupled with other errors on the face of the record, I find no reason not to entertain such an application. Besides I don't need evidence or extraneous facts for court to know that the powers of the registrar are expressly stated and contempt of court proceedings is not one of them

This preliminary objection is therefore overruled.

On the second preliminary objection the respondents' counsel submitted that the affidavit in support of application was sworn instead of being affirmed as per the Oaths act, the applicant being Kassim, of Muslim faith.

I agree with the respondent's counsel that Muslims affirm on their affidavits unlike Christians who swear. However apart from the name Kassim there is no evidence on record that the applicant is indeed of Muslims or of Muslim faith. Judging by the name alone would be a speculation by this court.

Further, although it were true that indeed the applicant is of Muslim faith, swearing an affidavit is an error that does not go to the root of the affidavit its self. I find it a curable error that can be cured under article 126 of the 1995 constitution of Uganda. Therefore, this preliminary objection is equally overruled.

I shall now proceed to resolve issues as framed by the parties. However, I wish to resolve the issues framed beginning with issue 3 since it deals with the jurisdiction of the high court to hear applications of this nature.

**Issue 3. Whether the judge of this honorable court has jurisdiction to review the decision of a Registrar.**

On this issue counsel for the applicant cited O.46 CPR arguing that the power of review is vested in the judge and not a registrar. He further cited O.50 of the CPR and decided cases arguing that unlike the high court, which exercises the entire jurisdiction vested in that court, a registrar can only exercise such jurisdiction of that court as is delegated by legislation of which review is not among.

The respondent's counsel did not submit on this issue.

This is an application before this honorable court is seeking to review and set aside and stay of execution.

I have considered the submission of both counsel and 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, it would seem like the decision of the Deputy Registrar are only subject to appeal to the High Court and not review.

Court 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.”*

I agree with the above holding and the import of it is that that a registrar as an officer of the high court acts in a delegated capacity as set out in O.50 and as such cannot review his own orders.

However, that does not mean that the high court cannot review the orders of a Registrar for reasons that the high court has inherent jurisdiction.

Secondly, the registrar’s orders are orders of the high court and order 46 empowers high court to review its own orders.

Supreme court was very clear in the above cited case- **AG v. James Mark Kamoga CA. 8/2004** as to the high court’s powers to review orders of the registrar where court held that; -.

*“I agree with submissions of counsel for the respondents to the effect that the powers of the registrar of the High Court are circumscribed. Unlike a judge of the High Court who exercises the entire jurisdiction find, in respectful disagreement*

*with the Court of Appeal, that by entertaining the application in the instant case the trial judge did not breach any rule. The provision in rule 6 of Order 50 that deems the registrar to be a civil court for purposes of exercising the powers vested under rules 1, 2, 3 and 4, should not be basis, as seems to be implicit in the lead judgment, for the view that the registrar has review powers. Though rules 7 and 8 respectively provide for the registrar referring any matter, and a person aggrieved by a registrar's decision appealing "to the High Court", rule 6 does not create a subordinate court to the High Court. It rather underscores the special status of the registrar as an official of the High Court to whom some limited functions of that court are delegated."*

I therefore find that this court has jurisdiction to entertain an application for review of the orders of the registrar. Issue 3 is answered in the affirmative

I shall now proceed to deal with the remaining 4 issues of this application.

Issue 1 **Whether the Assistant Registrar of this honorable court had jurisdiction to hear, handle, determine and or dispose of an application for contempt of court of the nature that was filed by the applicant.**

On this issue counsel for the applicant submitted that cited a host of authorities arguing that the registrar of court only has jurisdiction to handle contempt of court committed in the face of court. That however contempt of court orders committed out of court is outside the ambit of order 50 CPR, which prescribes the powers of the registrar.

In reply, the respondents counsel agreed with order 50 cited by the applicants counsel and submitted that the registrar has powers to deal with interlocutory matters and the application for contempt was resulted from a miscellaneous



application and not a main suit. That the respondents counsel misinterpreted the law on contempt vis-

vis the powers of the registrar.

The powers of registrars are set out in Order 50 of the CPR and enhanced in Practice Direction No.1 of 2002.

The above powers were articulated in the case of **AG v. James Mark Kamoga CA. 8/2004 where court held that;** - *“The powers of registrars are set out in Order 50 of the CPR and enhanced in Practice Direction No.1 of 2002I need not reproduce the detailed provisions here. 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 steps preliminary to the trial and with interlocutory applications and to make formal orders in execution of decrees; and the latter empowers the registrar to handle matters governed by specified rules and Orders of the CPR.*

I agree with the above holding and wish to state that as earlier found in this application the powers of the registrar are held in a delegated capacity under specified law. Therefore, the registrar has no power powers/jurisdiction to handle any matters beyond Order 50 of the CPR and enhanced in Practice Direction No.1 of 2002.

Ideally contempt is not one of the matters /powers stipulated under Order 50 of the CPR in Practice Direction No.1 of 2002. Orders of the registrar are orders of the high court even if they are given in interlocutory matters and once they are defied, the jurisdiction to deal with such contempt lies with a high court judge and not the registrar.

Therefore, the registrar did not have jurisdiction to entertain an application for contempt. It was wrongly filled before him and all the resultant orders whether on a preliminary objection or merit have no effect. Issue one is answered in the negative.

The finding on this first issue determines the entire application and therefore there is no need to resolve the remaining issues as their outcome will not change the decision of court.

In conclusion this application has merit and the same is here by granted with the following orders.

1. The decision of the assistant registrar, dated 18<sup>th</sup> march 2020 is here by set aside.
2. Application no. 01/2019 is here by reinstated to be heard by a Judge of the high court.
3. Costs of this application shall be in the cause.

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TADEO ASIIMWE

JUDGE

25/11/2021.