



to institute a suit to compel the Applicant surrender the land title. When the suit came up for hearing, a partial consent settlement was reached upon and the certificate of title was surrendered to the Applicant/defendant. However, it would appear the Applicant/defendant was not agreeable on the issue of payment of costs hence the issue of the costs of the suit was left for determination by court.

[4] Consequently, in his undated ruling but certified on the 27<sup>th</sup> of October, 2020, the Chief Magistrate ruled that the Respondent/plaintiff was entitled to costs and went further to award the Respondent/plaintiff shs. 5,000,000/= as general damages.

[5] Aggrieved by the said ruling of the Chief Magistrate, the Applicant filed the present Revision Application seeking for orders that **C.S No.117/2019** be revised on the following grounds:

1. *That the learned Chief Magistrate was not clothed with jurisdiction when he condemned the Applicant to pay general damages as the learned Magistrate was already **functus officio**.*
2. *That the learned Chief Magistrate condemned the Applicant to pay general damages without hearing any evidence on that issue from the parties.*

### **Counsel legal representation**

[6] The Applicant was represented by counsel **Mauso of S & L Advocates (formerly Sebalu & Lule Advocates, Kampala)** while the Respondent was represented by Counsel **Kaggwa Barisanyuka of M/S Kaggwa & Partners Co. Advocates, Kampala**. Both counsel filed their written submissions as permitted by court

### **Determination of the Application**

- [7] Counsel for the Respondents raised a preliminary objection on a point of law which I proceed to determine before considering the merits of the application. The preliminary objection is to the effect that the applicant's instant Revision application is incurably defective and an abuse of court process as it was served out of time, beyond the mandatory fifteen days from the date of filing, contrary to **O.12 r. 3(2) CPR**. That the application was served eight months from the date of filing.
- [8] Counsel for the Respondent contended that the Applicant having failed to apply for enlargement of time within which to act beyond the mandatory period, it renders the application incurably defective. He submitted that this application ought to be summarily dismissed with costs.
- [9] Counsel for the Applicant in rejoinder submitted that the effect of **O.12 CPR** is in regard to interlocutory applications filed after the completion of the scheduling conference. That the instant application is conceptually not an interlocutory application but rather an application premised on **S.83 CPA** which only arises after a case has been determined. That this objection is therefore misconceived since a revision application is a post judgment application and not an interlocutory application.
- [10] Indeed, I find the present application being an application under **S.83 CPA** which provides as follows;

*“The High Court may call for the record of any case which has been determined under this Act by any Magistrate’s court, and if that court appears to have –*

- a) exercised a jurisdiction not vested in it by law;*
- b) failed to exercise a jurisdiction so vested; or*
- c) acted in exercise of its jurisdiction illegally or with material irregularity or injustice, the High court may revise the case and may make such order in it as it thinks fit; but no such power of revision shall be exercised-*
- d) unless the parties shall first be given the opportunity of being heard.*
- e) Where, from lapse of time or other cause, the exercise of that power would involve serious hardship to any person.”*

The above provisions of **S.83 CPA** under which this application was premised are clear. This application is not an interlocutory application which as defined by **Black’s Law Dictionary 8<sup>th</sup> Edn** is ***“a motion for equitable or legal relief sought before a final decision”*** for which **O.12 r.3 CPR** may apply.

- [11] It has not been shown by the Respondent that due to lapse of time or other cause, the revision of this case would involve only serious hardship to any person. In the premises, I find **O.12 r. 3 CPR** inapplicable to the instant application because these rules are meant to give timelines for all interlocutory applications that are envisaged after the completion of the scheduling conference or alternative dispute resolution; **NAKIRIBA AGNES VS KALEMERA EDWARD & ANOR H.C.M.A.NO. 403/2018 (LAND DIVISION)**.

[12] However, according to **O.49 r.2 CPR**, all orders, notices and documents required to be served upon the opposite party must be served in a manner provided for service of summons. It is now trite that applications, whether by chamber summons or Notice of Motion and/or Hearing Notices, are by law required to be served following after the manner of procedure adopted for service of summons **under O.5 r.1 (2)**; See **JJUNJU & ANOR VS MADHVAN GROUP LTD H.C.M.A No.688 of 2015, AMDAN KHAN VS STANBIC BANK (U) LTD H.C.M.A NO.900 OF 2013** and **KYANYABWERA VS TUMWEBE EA 56 at 95**;

It follows therefore, the service of the instant application had to comply with the procedure of service under **O.5r.1 (2) CPR**.

[13] In the instant case, though the preliminary objection by the Respondent cannot be based on **O.12 r.3 (2) CPR**, this court is entitled to consider whether the application was improperly before this court in view of the requirements of **O.49 r.2 CPR** and **O.5 r.1(2) CPR**.

[14] As per the record, this application was filed on 19<sup>th</sup>/3/2021 and the Registrar sealed the same on 23<sup>rd</sup>/3/2021 but the Respondent was served on 3<sup>rd</sup> /11/2022, **eight months** from the date of filing as per the received stamp of counsel for the Respondent firm. The date upon which the Respondent was served with the Notice of Motion was not contested by the Applicant and his counsel in their submissions in rejoinder.

[15] **O.5 r.(1)2 CPR** requires summons to be served within 21 days from the date of issue; except that the time may be extended on application to the court, made within 15 days after the expiration of the 21 days, showing sufficient reasons for the extension. This is not the case here,

the Notice of Motion was served after 8 months from the date of filing and no application was made to court for extension to do so within 15 days from the date of expiry of the 21 days.

[16] The provision under **O.5 CPR** are of strict application since a penalty accrue upon the default. The penalty for default as per **O.5 r.3 (a), (b) and (c) CPR** is dismissal of the suit or application as the case may be. In this case, the Applicant having defaulted on service of the application upon the Respondent within the required time, and having failed to apply for enlargement of time within which to act beyond the mandatory period, it rendered the application incurably defective. I find that this application ought to be dismissed.

[17] The Applicant could not be allowed to sit with the application and or leave it to lie on record for a whole period of eight months without having it served. To allow such a conduct would surely amount to abuse of court process.

[18] The preliminary objection succeeds and the application is in the premises dismissed with costs to the Respondent.

**Dated at Masindi this 24<sup>th</sup> day of March, 2022.**

**Byaruhanga Jesse Rugyema**  
**JUDGE.**