

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

CIVIL REVISION NO.18 OF 2020

(Arising from Miscellaneous Application No.314 of 2018)

(All arising out of Luwero Chief Magistrate's Court, Civil Suit No.170 of 2017)

MESHACH PETER SEKALEKA

(Suing through his Lawful Attorney

SSERUFUSA EDWARD MULEMA

MUKASA):.....APPLICANT

VERSUS

KIBIRANGO MOSSY SALONGO & 15 OTHERS):..... RESPONDENTS

Before: Lady Justice Alexandra Nkonge Rugadya.

Ruling.

The applicant brought this application under **Sections 83 & 98 of the Civil Procedure Act Cap. 71 and Order 52 rules 1 & 3 of the Civil Procedure Rules SI 71-1** seeking a revision of the ruling of the Chief Magistrates Court in **Miscellaneous Application No. 314 of 2018** dated 24th August, 2020; and setting aside of the dismissal order; stay of the orders therein as well as costs of this application.

The gist of this application as can be deduced from the affidavit in support by Mr. Sserufusa Edward Mulema Mukasa is that the applicant through his lawful attorneys filed **Civil Suit No.170 of 2017** in the Chief Magistrate's Court of Luwero and later amended the plaint upon realizing that some parties implicated in the fraudulent sale and subsequent transfer of the suit land had not been included in the plaint.

That the donee of power of attorney had expressly instructed the applicant's counsel, Ms. Aisha Aliwara not to withdraw the suit under any circumstances but on 11th December 2018, the suit was withdrawn with costs and that the said withdrawal was as a result of mistake of counsel from whom the applicant and the donees immediately withdrew instructions.

The applicant then filed **Miscellaneous Application No.314 of 2018** seeking an order setting aside the order of withdrawal and reinstatement of **Civil Suit No.170 of 2017** but the same was dismissed by *His Worship Samuel Munobe*, the Chief Magistrate at Luwero, who according to the donee of power of attorney failed to scrutinize the evidence of mistake of counsel.

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That because of the said ruling, the applicant will suffer substantial loss if the said ruling is not revised by this court.

I failed to locate an affidavit of service to the respondents but it appears from the rejoinder and submissions by counsel for the applicant that the 7th, 8th, 9th, 10th, 11th, 12th & 18th respondents filed an affidavit in reply which was not availed to court.

The question for determination by this court is whether or not this is a proper and fit case for revision of the orders of the Chief Magistrate's Court in respect of **Miscellaneous Application No. 314 of 2018**.

Section 83 of the Civil Procedure Act, Cap 71 empowers this court to revise decisions of magistrates' courts where the magistrate's court appears to have; (a) *exercised a jurisdiction not vested in it in law*; (b) *failed to exercise a jurisdiction so vested*; or (c) *acted in the exercise of its jurisdiction illegally or with material irregularity or injustice*.

It entails a re-examination or careful review, for correction or improvement of a decision of a magistrate's court, after satisfying oneself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings of a magistrate's court.

In the instant case, the applicant filed this application based on the fact that the trial Magistrate erred when he failed to scrutinize the evidence and found that there was no mistake of counsel in withdrawing the main suit.

Errors of facts or law in the decision arrived at itself are matters for an appeal, where the appellate court has the liberty to take an entirely different view of the material that was presented to the trial court.

It is settled that where a court has jurisdiction to determine a question and it determines that question, it cannot be said that it has acted illegally or with material irregularity because it has come to an erroneous decision on question of fact or even of law. Consequently, a revision is not a substitute for an appeal (*see Matemba v. Yamulinga [1968] 1 EA 643*).

In the instant case, the applicant did not adduce any evidence of any illegality of material irregularity but rather raised issues of appeal based on his belief that the trial Magistrate not only erred when he failed grant the initial application but also that he did not consider the evidence pointing to the mistake of counsel.

I have also had occasion to peruse the record of the lower court and I find no evidence of any illegality or irregularity on the record from the record to merit a revision. The applicant ought to have filed an appeal to this court since he was dissatisfied by the decision of the trial magistrate.



As it turns out, this appears to be a veiled appeal against the decision of the lower court, which this court has no jurisdiction to deal with if brought under **section 83 of the CPA**. Courts should not be mired by endless litigation which would occur if litigants were allowed to file all manner of application during and after trial without any restrictions.

- 5 For all the foregoing reasons, I do not find any merit in the application and it is hereby dismissed with costs to the respondents.


.....
Alexandra Nkonge Rugadya

10 **Judge**

26th April, 2022.

Delivered by email

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26/4/2022.