

respondent and her late husband then compensated the Esther Oroma. In her ruling, Her Worship Achayo Rophine dismissed the Civil Suit No. NEB - 02 – CV - CS – 0018 - 2018 on the ground that it was res judicata. It is therefore on such basis that the applicant herein brings this application on the following grounds as summarized hereunder;

- a) That the suit land was bought by his late father on the 9th January 1986 from a one Santo Onencan in the sum of 175,000/= and the respondent was merely a witness to the transaction. A copy of the agreement and its translation thereof are marked “D” & “D1” respectively.
- b) That the applicant’s late father Ojok Emmanuel subsequently gave the said piece of land to him and his late sister Pikwo Ketty Ajok who was the daughter to the respondent. A copy of the transfer form is marked “E”.
- c) That the applicant and the late Pikwo Ketty Ajok commenced the process obtaining a freehold certificate of title over land and the same was measured and found to be approximately 35m by 48m without any objection. Copies of the general receipt, application form, public notice and demarcation form are marked “F”, “G”, “H”, & “I” respectively.
- d) That the land does not belong to the respondent and the applicant did not claim for the same under Esther Oroma and that the decision in the case between the respondent and Esther Oroma had no bearing with the suit between the applicant and the respondent.
- e) That when the suit came up for hearing on the 27th September 2018, the learned trial magistrate without giving the applicant any fair hearing prematurely decided to close the case and fixed the same for judgment.
- f) That the applicant immediately lodged a complaint to the Chief Magistrate Nebbi requesting him either to relocate the file to himself or to any other magistrate but was instead advised to wait for the final decision after which a decision on the way forward would be made and indeed judgment was delivered on 3rd October 2018. A copy of the letter is marked “J”.
- g) That the learned magistrate acted in exercise of her jurisdiction with material irregularity causing the applicant injustice when she decided the matter without giving him a fair hearing.
- h) That the respondent is now holding herself as the owner of the suit land estimated at 45,000,000/= and is determined to sell the same in order to unjustly enrich herself at the applicant’s expense yet she does not own the same.




- i) That unless the order of the learned trial magistrate is revised and set aside, the respondent will proceed to sell the land and cause grave injustice and irreparable damage to the applicant.

In her response, the respondent filed an affidavit in reply to the grounds raised by the applicant as summarized hereunder;

- a) That based on the advice of her advocates, which the respondent verily believes to be true, this application is merely an abuse of court process and is aimed at defeating the interests of justice to which she shall move this court to strike out the same with costs.
- b) That the orders of the trial court in dismissing the suit were made after giving both the respondent and the applicant herein opportunity to be heard as evidenced by the record of proceedings on the 27th September 2018. A copy of the proceedings is marked "A".
- c) That after the ruling of court and orders were delivered, the applicant took no steps either to appeal the decision of the trial court or to challenge the same at all within the prescribed time. A copy of the order is marked "B1".
- d) That exactly 60 days from the date of decision of the trial court, the respondent wrote to the applicant on the 3rd day of December 2018 instructing him to remove the building materials he had brought onto the suit land. A copy of the correspondence is marked "B2".
- e) That based on the advice of the respondent's advocates that in determining the main suit, the trial court exercised its jurisdiction judiciously and as such cannot be faulted.
- f) That upon the orders of court, and since the applicant did not take any immediate steps to challenge the decision of court, the respondent disposed of the suit land to Chandia Charles, Chandia Lillian and Chandia Dan on the 18th November 2018, to whom serious hardship shall be occasioned if the lower court decision is revised and or set aside by this honorable court.
- g) That this application is only reactionary and triggered by the notice to vacate given to the applicant.

The respondent further filed a supplementary affidavit in reply to the notice of motion indicating the sale of the suit land located at Alengukuma village, Paidha Town Council as per the agreements attached and marked A1, A2, respectively together with the English translation attached and marked "B1", & "B2".



Representation

Counsel Micheal Pirwoth of M/s Donge & Co. Advocates represented the applicant whereas counsel Daisy Patience Bandaru of M/s Bandaru & Co. Advocates represented the respondent.

Hearing

- 5 This application was partly entertained by Justice Oyuko Anthony Ojok on 1st March 2019 and according to the record of proceedings on file, parties to this application seem to have been directed to visit the land for purposes of subdividing it into two portions with an aim of settling the matter. However, this does not seem to have gone as planned and court had warned to proceed and determine the matter on its merit if the parties had taken no course.
- 10 Further, when the current judge entertained the application on 16th March 2020, in the presence of both parties and in absence of the applicant's counsel, parties were directed to file written submissions as well as their necessary rejoinders by 9th September 2020. However, to date, it has been noted that it is only the applicant who filed his written submissions despite the sufficient time that was granted to both counsel. Therefore, in determination of this application, I will deal with the
- 15 submissions and evidence in form of affidavits before this court with exclusion of the respondent's written submissions.

Applicant's submissions

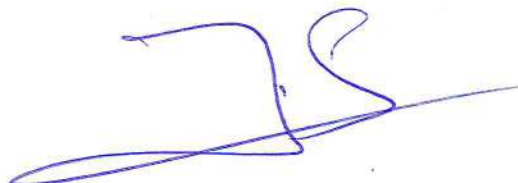
Counsel for the applicant premised his arguments on five issues namely;

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1. Whether the suit between the applicant and the respondent was res judicata
 2. Whether the application discloses reasonable grounds for revision
 3. Whether the learned trial magistrate failed to exercise the jurisdiction vested in her
 4. Whether the learned trial magistrate acted in the exercise of her jurisdiction with material irregularity or injustice to the applicant
 5. What remedies are available in the circumstances?

Counsel's arguments.

1. Whether the suit between the applicant and the respondent was res judicata

Counsel stated that Section 7 of the Civil Procedure Act sets out the doctrine of res judicata and reiterated by the supreme court in the case of **Karia & Anor vs AG & Others [2005] 1 EA** that, no



court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in the former suit between the same parties under whom they or any of them claiming litigating under the same title, in a court competent to try the subsequent suit in which the issue has been raised, and has been heard and finally decided. Counsel added that res
5 judicata is first established by an earlier decision on the issue, secondly a final judgment on the merits and thirdly the involvement of the same parties in privity with the original parties.

Counsel submitted that the said conditions for res judicata were not fulfilled in the instant suit as there was no judgment made on the merits of the issues raised as noted on annexure "A" to the respondent's affidavit in reply; which clearly indicated that the file in the former suit was concluded
10 after the defendant (Esther Oroma) therein was compensated and asked to vacate the land by her husband Ojok Emmanuel and the case was not heard on its merits. Counsel added that the applicant was not a party to the former suit since Land Case No., 020 /2010 which was between the respondent and her co-wife Esther Oroma. The applicant went on to rely on the case of **Kizza Besigye & others vs AG [2009] 1 EA 235** where the constitutional court held that "*clearly, in*
15 *Uganda law society vs AG and in AG vs Uganda law society, the present petitioners were not a party to the case..... the doctrine of res judicata cannot be invoked in this matter*".

Counsel also added that the issues between the parties were fundamentally different indicating to this court that; in the Land Case No. 020/2010, the respondent claimed that she acquired the land from Onencan Santo in 1986 at a total sum of 175,000/= plus six goats yet in the subsequent land
20 case the respondent claimed amongst others that she is the administrator of the estate of her late daughter Pikwo Ketty Ajok to whom she had handed over the suit land.

In further submission, counsel stated that the respondent again claimed that the applicant also had a small piece of land annexed to the suit land but sold it to a one Alworonga as per annexure "C" to the subsequent plaint. In conclusion, counsel submitted that what the respondent was required to
25 prove in the former suit was that she bought the suit land in 1986 while in the subsequent suit, she was required to prove that she bought the suit land with the help of her late husband Ojok Emmanuel, that she handed over the suit land to her late daughter Pikwo Ketty Ajok, that she is the estate administrator of Pikwo Ketty Ajok and that the applicant had his land annexed to the suit land but sold it to Alworonga.

30 **2. Whether the application discloses reasonable grounds for revision**



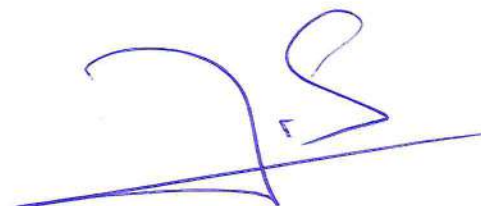
Counsel submitted that Section 83 of the Civil Procedure Act lays down the grounds upon which revisionary jurisdiction may be invoked to include exercise of a jurisdiction 'not vested in it, failure to exercise a jurisdiction vested and acting in the exercise of the jurisdiction so vested illegally, with material irregularity or injustice. (See: **Ali Dudu Vs Luka Minduni & Others; HC Civil Revision No. 001/ 2017**). Counsel further stated that the applicant under paragraphs 4 & 5 of the notice of motion, as well as paragraphs 9 & 14 of his affidavit in support of the application stated that by dismissing the suit on ground of res judicata, the learned magistrate failed to exercise the jurisdiction vested in her and that she acted in the exercise of her jurisdiction with material irregularity or injustice when she decided the matter without giving him a fair hearing hence the application discloses reasonable grounds for revision and prayed that the issue be resolved in the affirmative.

3. Whether the learned trial magistrate failed to exercise the jurisdiction vested in her.

Counsel submitted that according to the record of proceedings attached as annexure "A" to the respondent's affidavit in reply, the trial magistrate, after failing to trace the minutes of the final orders, instead resorted to the register and recorded that, *"..... court perused the court record of Land Case No. 020/2010 and the magistrate's minutes but the minutes for the final orders of the court are missing, court then looked at the register and found that the said land case No. 020/2010 was handled by his worship G1 and further that the orders prayed for i.e. a permanent injunction, eviction and costs was completed and court understood this to mean that since the plaintiff is still on the suit land to date, her prayers were granted..."*

Counsel submitted that from the above extract of the record of proceedings, the learned trial magistrate on hearing that the matter had already been handled under land case no. 020/2010 proceeded to deliver her decision on the 3rd October 2018 without determining whether a final judgment on the merits had been pronounced in the suit, whether the parties were the same, whether the applicant was litigating under the said Esther Oroma and whether the issues between the parties were directly and substantially in issue in the former suit. (See: **Semakula vs Magala [1979] HCB 90, Dudu Fataki Vs Mwalimu Juma Suleiman Oba; High Court Civil Revision No. 0003/2016**).

4. Whether the learned trial magistrate acted in the exercise of her jurisdiction with material irregularity or injustice to the applicant.



Whilst relying on paragraphs 4, 5, 6, 10, 11, 13, & 14 of the applicant's affidavit in support of the motion, and on the authority in the case of **East Mengo Growers Coöperative Union Vs the Registrar of Titles [2009] HCB 24**, counsel submitted that the right to fair hearing is constitutionally guaranteed under Article 28(1) and is non-derogable under Article 44 (c) of the Constitution as it enjoins court to accord both parties the opportunity of being heard. (See also: **Zachary Olum & anor Vs A.G Const. Petition No. 06/1999**).

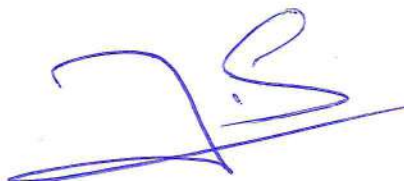
Counsel added that the learned trial Magistrate should have tried the issue of res judicata by allowing the parties to adduce evidence in support of their respective claims as per the case of **Kaira & Another Vs A.G & others [2005]1 EA** where it was held that, *"in my opinion, the proper practice is that where res judicata is pleaded as a defence, a trial court should, where the issue is contested, try the issue and receive some evidence to establish that the subject matter of the dispute between the parties has been litigated upon between the same parties or parties through whom they claim"*.

Furthermore, counsel argued that the record of proceedings clearly shows that the learned trial magistrate acted illegally, in exercising her jurisdiction, with material irregularity and injustice. Counsel added that the learned trial magistrate failed to accord the parties a fair hearing, she descended into the witness box to conclude on scanty, inadequate and inconclusive information hence conducting the court proceedings in a wanton manner occasioned by harassment, intimidation and unjustified exclusion of the public from the court in total disregard of Article 28(1) of the Constitution of the Republic of Uganda. See: **Senyonga Vs Kakooza [1992-1993] HCB and Byanyima Winnie Vs Ngoma Ngime; HC Civil Revision No. 009/2001**. In conclusion, counsel prayed that this honorable court be pleased to find that the learned trial magistrate acted in the exercise of her jurisdiction with material irregularity and injustice to the applicant.

5. What remedies are available in the circumstances

Counsel stated that the High court may grant such remedies to ensure the ends of justice are met as per Sections 33 of the Judicature Act and Section 98 of the Civil Procedure Act. Counsel submitted that the applicant brought this application seeking for orders that the decision of the trial court be revised and set aside, the execution be stayed and set aside and that the suit be heard and determined on merit.

Determination of the court



I have carefully perused the submissions of the applicant in tandem with the parties' respective affidavits to the motion and the records of the lower court, and I would like to emphasize on one issue before delving into its determination. The application is for revisionary orders only which means that this court shall not delve into the subject matter in contention in regards to its true ownership but instead shall restrict itself to an inquisition into whether the grounds for granting revisionary orders arise in this application. The rationale for this is that upon perusal of the submissions of counsel for the applicant, it seems that he was arguing an appeal instead of restricting himself on the grounds under which revisionary orders may be granted by this honorable court.

Secondly, the issues raised and discussed by counsel for the applicant show duplicity hence I shall rephrase them into the following namely;

1. Whether the Land Case No. 0018 of 2018 was res judicata.
2. Whether there are sufficient grounds for revisionary orders.
3. Whether the applicant is entitled to the orders sought in the application.

With that in mind, I will proceed and determine this matter premised on the rephrased issues as per the law and the facts as presented by the parties.

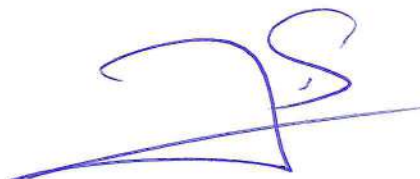
Whether the Land Case No. 0018 of 2018 was res judicata.

The principle of res judicata is provided for under section 7 of the Civil Procedure Act Cap71 as;

"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court".

In the case of General Industries (U) limited Vs Non-Performing Assets Discovery and Others; Civil Appeal No.051 of 2007, it was stated that "That common law doctrine of res judicata thus bars re-litigation of cases between the same parties over the same issues already determined by a competent court. The rationale is to prevent multiplicity of suits and bring a finality to litigation."

Hon justice Olive Kazaarwe Mukwaya in the case of *Yahaya Walusimbi Vs Justine Nakalanzi and 3 Others (HC Civil Miscellaneous Application No.1942 of 2020)* [2020] UGHCLD77 listed down five principles which must be proven for a claim of res judicata to succeed;

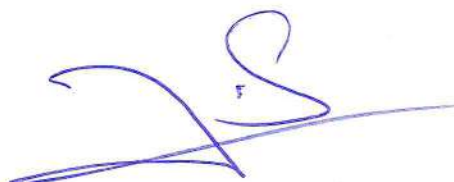


- I. *The same parties litigating in the former suit should be the same parties litigating in the latter suit or parties under whom they or any of them claim*
- II. *A final decision on the merits has been given in the former suit by a competent court.*
- III. *The suit or its subject matter must have been directly or substantially in issue in the former suit.*
- 5 IV. *The parties should be litigating under the same title.*
- V. *The earlier suit must have been decided by a competent court and that court fully resolved the matter.*

Hence regarding the matter before this court, the respondent under the name of Margret Ocidi, originally instituted a land case **No. NEB- 02- LD-20 of 2010 (hereinafter referred to as the former suit)** against Esther Oroma her co-wife in the Chief Magistrates court of Nebbi at Paidha
10 for orders that the plaintiff is the rightful owner of the land, a permanent injunction and costs of the suit. The suit was in relation to the suit land located at Alengukuma village in Paidha town council. According to the records on the file, the last minute on file by the trial magistrate then dated 10th November 2010, indicates that the case was adjourned to 25th November 2010 due to the defendant's absence from court proceedings then.

15 In addition, the file also constitutes both the Alur version and the English translated version of the statement made by Ojok Fred Emmanuel the husband to both women above indicating that due to the fight between his wives, he bought land for Esther Oroma in Anyong village and the respondent was left on the land, which ensued the fight. It also constitutes an acknowledgement of receipt dated 3rd February 2011 of a sum of Ushs 567,349/= as compensation for properties on land located at
20 Alengukuma village (the land in dispute in case No. NEB-02-LD-020/2010) and that Esther Oroma should give vacant possession of the land by 21st march 2011. Esther Oroma and another person whose name is not indicated signed the same.

Furthermore, the respondent instituted a second suit in the same court **Land Case No. CS/0018/2018 (hereinafter referred to as the latter suit)** against the applicant for; a declaration
25 that she is the rightful and lawful owner of the suit land, general damages, permanent injunction and costs of the suit. During its hearing on 27th September 2018, before Her Worship Achayo Rophine, the respondent/ plaintiff then raised a preliminary point of law that the case involving the same suit land situate at Alengukuma village, Paidha Town council, Zombo district, had been heard and determined in her favour.



The question therefore before this court is whether the former suit was heard and finalized on its merits by the trial magistrate then.

Section 25 of the Civil Procedure Act is to the effect that upon conclusion of hearing a case, court shall pronounce judgment from which a decree shall ensue. Such judgment could be in form of a default judgment, consent judgment among others. According to the ruling delivered by Her Worship Achayo Rophine while determining whether the latter land case was res judicata or not on the issue of whether the former matter was decided in court stated that,

“Court saw that some of the magistrate’s minutes are missing but on perusing the court record book, found that court completed the file by granting the prayers that the plaintiff prayed for and it is for this reason that the current plaintiff in civil suit 0018/2018 is still in occupation of the suit land and further that the defendant in suit No. 020/2010 accepted compensation and actually left the suit land”.

Having personally perused the file, I have found that the last minute on the file from His Worship Kwizera noted, *“case adjourned to 25/11/2010 at 10:00am”*. Despite the fact that upon her worship perusing the record book found that the former file had been completed with a note, *“completed, Kwizera via G1 Paidha, orders granted 08/12/2010”*, there is no minute on file or any copy of any form of judgment found on file reflecting the above result indicated in the record book, neither is there any copy of the decree extracted to that effect.

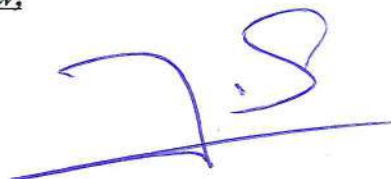
Henceforth, I have noted that the subject matter in both cases is the same, instituted by the same plaintiff in both matters with different defendants. However, the determination of Land Case No. 020/2010 was not substantially done thus Land Case No. 0018/2018 cannot be deemed to be res judicata.

Whether there are sufficient grounds for revisionary orders

The general principle governing revision is provided for under Section 83 of the Civil Procedure Act Cap 71 to wit;

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 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, 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—

5 (d) unless the parties shall first be given the opportunity of being heard; or

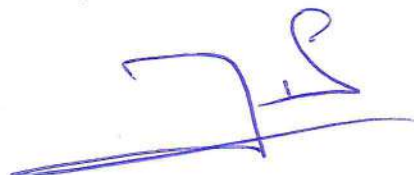
(e) where, from lapse of time or other cause, the exercise of that power would involve serious hardship to any person.

The court in *Johnson Katebalirwe Vs Senoga Godwin T/A Platinum Associates; Revision Cause No, 012 of 2017* cited with approval the case of *Mabalaganya Vs Sanga (2005) E.A 152*
10 where the court of Appeal of Tanzania held that;

“in cases of where it exercises its revisional jurisdiction under Section 4 of the Appellate Jurisdiction Act, its duty entails examination by the court of record of any proceedings before the High court for the purpose of satisfying itself as to the correctness, illegality or propriety of any findings, order or any other decision and the regularity of any proceedings before the High court.”

15 The applicant before this court faults the learned trial magistrate for exercising her jurisdiction with such material irregularity and causing injustice having not granted him an opportunity in the latter case to be heard. The applicant’s argument stemmed from the fact that the learned trial magistrate tried the issue of res judicata by not allowing the parties to adduce evidence in support of their respective claims citing *Karia & Anor vs A.G & Ors (Supra)* where it was held that, “in my opinion,
20 the proper practice is that where res judicata is pleaded as a defence, a trial court should where the issue is contested, try the issue and receive some evidence to establish that the subject matter of the dispute between the parties has been litigated upon between the same parties, or parties through whom they claim”.

In relation to the facts before this court, the learned magistrate tried the issue of res judicata and received evidence to establish the same. It is without doubt that the same plaintiff instituted both
25 lower court cases and that the subject matter is the same, however the defendants differ. Furthermore, in the former land case, it is doubtful as to whether the defendant was privy in any way to any of the parties above, instead he seems to fight for a personal beneficiary right which I believe should have been dealt with by the learned trial Magistrate if all circumstances of the doctrine of res judicata were carefully considered.



For such relying on a court register did not mean that the matter in the former suit had been substantially determined on its merits without any form of judgment or order extracted therefrom. It instead depicted negligence on the part of the judicial officer for failure to properly undertake his or her fiduciary duty to the parties that were before him or her. Such negligent mistakes shall not be tolerated and I would as such place emphasis upon the lower court judicial officers to ensure that procedure is followed in all matters otherwise the duplicity of civil suits will be in contravention of the Article 126 of the Republic of Uganda as far as administration of justice is concerned.

The only question is; whether this court is empowered with the capacity to revise this matter before it. As already noted above, Section 83 also lays out circumstances under which this court shall not be permitted to exercise powers of revision including but not limited to the fact that, "...where, from lapse of time or other cause, the exercise of that power would involve serious hardship to any person". Paragraph 5, and 11 of the respondent's affidavit in reply to the notice of motion and paragraph 3, 4, 5, 6, in tandem with annexures A1 & A2 translated into annexure B1 & B2 dated 18/11/2018 and 24/11/2018, indicate that the said suit land in dispute, having delivered the ruling on the 3rd October 2018, the respondent sold the land 43 days later as per the aforementioned dates.

In the case of **Kabwegere vs Charles Kangabi (1977)HCB 83**, it was held that court cannot exercise its revision powers where there was lapse of time or other cause, exercise of which would involve serious hardships to any person.

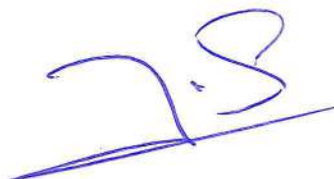
Secondly, this application was brought to this court on the 18/12/2018, which is about 60 days or more from the time of delivery of the lower court ruling. Such time lag undertaken by the applicant depicts a dilatory conduct on his part and as such granting the revisionary orders as prayed for by the applicant shall cause hardship to the current owners of the land. It is such an absurd circumstance but equity will not aid the indolent.

Henceforth, I will not proceed to determine the last issue because it is already overtaken by events.

This application is dismissed and each party shall bear its own costs.

I so order.

Dated and Delivered this 31st Day of March 2023.



A handwritten signature in blue ink, appearing to be 'Isah Serunkuma', written over a horizontal line. There are some small marks below the line, possibly initials or a date.

.....
Isah Serunkuma
JUDGE