



He therefore asked court not to entertain the application because it is an appeal under disguise.

The two are therefore agreed on the law of revision as contained in section 83 of the Civil Procedure Act and its application.

The learned Chief Magistrate entertained a preliminary point of law. After listening to both sides he decided that the matter was *res judicata* and dismissed it.

The learned Chief Magistrate had jurisdiction to entertain the case. He exercised that jurisdiction rightly. There was nothing illegal or materially irregular with his decision.

Learned Counsel for the applicant posited that the learned trial magistrate acted with material irregularity and injustice by wrongly applying the principle of *res judicata*.

I agree with learned Counsel for the Respondent that the option available to the Applicant was to appeal against the decision but not to apply for revision.

In my view, whether a case is *res judicata* or not, is a question of law that an appellate court will decide. Whether a trial Magistrate acted with material irregularity or illegality is a question of fact subject to revision.

The decision by my brother judge Rugadya Atwooki in the case of **Kadibu Eric vs. Bernard Bagwire & 2 others HC CR No. 011** of 2004, which was followed by this court in the case of **Kisembo Patrick vs. Kyaligaba Richard HC CV CR. No. 010 of 2010** refers.

Whether the trial Magistrate was right or wrong in declaring a matter *res judicata* belongs to an appellate not a revisional court.

As a consequence, the application is dismissed with costs to the Respondent.

The judgment and orders of the lower court are hereby upheld.

Dated at Fort Portal this 26<sup>th</sup> day of November, 2012

**JUSTICE MIKE J. CHIBITA**

The ruling is to be read and delivered the Assistant Registrar.

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MIKE J. CHIBITA

**JUDGE**