

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA; AT FORT PORTAL  
CIVIL REVISION No. 0002 OF 2008  
(From Kasese Misc Applica. No. 22 of 2007; arising from Civ. Suit No. 37 of 2007)**

**RUBACE BUILDING & CIVIL }  
ENGINEERING CONTRACTORS } .....  
APPLICANT/OBJECTOR  
COMPANY LIMITED }**

*VERSUS*

**1. M/s BWAKA BUILDING }  
CONSTRUCTION LTD } .....  
DEFENDANT  
2. HIMA CEMENT LIMITED }**

**BEFORE: - THE HON. MR. JUSTICE ALFONSE CHIGAMOY OWINY – DOLLO**

**RULING**

The Applicant had moved Court in Kasese Misc. Application No. 22 of 2007 seeking certain reliefs stated therein. When the matter came for hearing, counsel for the Applicant was not in Court to argue the application though the Managing Director of the Applicant was in Court, and explained that the Applicant’s counsel was engaged in the High Court at Mabara. Counsel for the Respondent then consented to an adjournment, but prayed for costs of the day’s proceedings. Other than oblige the parties’ plea, the trial Magistrate dismissed the application with costs; hence this application for revisionary orders of that decision, which is founded on the grounds that the order of the trial Magistrate was irregular and occasioned a miscarriage of justice to the Applicant.

It is indeed strange that the learned trial Magistrate chose to dismiss the application when the Applicant was present in Court through its principal official; and had clearly given an explanation for its counsel’s absence. It does not require restating that the High Court enjoys

precedence over the Magistrate's Court in all proceedings. Furthermore, there is no evidence that the Applicant was guilty of any dilatory conduct for which the Court would have been justified to order that the principal officer prosecutes the application in the absence of its counsel. It is evident that the decision of the Magistrate was a grave material irregularity which manifestly occasioned an injustice to the Applicant.

This Court is mandated by the provisions of section 83 of the Civil Procedure Act (Cap 71) to intervene in such a situation and revise what is a glaringly unjust decision. I therefore set aside the order of the Magistrate dismissing Kasese Misc. Application No. 22 of 2007; and order that it be proceeded with on the merits. I grant the Respondent the costs of the proceedings for that day. However, the circumstance surrounding this matter requires that the parties bear their respective costs in the application before me. I so order.

**Alfonse Chigamoy Owiny – Dollo**

**JUDGE**

**20 – 06 – 2012**