

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
CIVIL DIVISION

CIVIL REVISION CAUSE NO.009 OF 2014

*(Arising from the Chief Magistrate's Court of Nabweru Civil Suit No. 104
of 2014)*

M/S JOHN RICK TRADING CO. &

PROPERTY CONSULTANTS LTD ::::::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

M/S ELECTRICAL CONTROLS SWITCH GEAR LTD ::::::::::: RESPONDENT

BEFORE: HON. JUSTICE STEPHEN MUSOTA

RULING

This is an application for revision of the decision of the Magistrate Grade 1 Nabweru Court brought by way of Notice of Motion under Section 33 of the Judicature Act, Section 83 and 98 of the Civil Procedure Act and Order 52 rule 1,2 & 3 of the Civil Procedure Rules.

The grounds of application are briefly set out in the Notice of Motion as follows:

- a.** The applicant was aggrieved by the decision of the Learned Magistrate Grade 1 made on 1st September 2014 to proceed

with formal proof in **Civil Suit 104 of 2014 M/S Electrical Controls & Switch Gear Limited Vs M/S Johnrick Trading Co. & Property Consultants Limited** when there existed a pending Misc. Application No. 133 of 2014 between the same parties to set aside the default judgment and was fixed for hearing on 30th September 2014.

- b.** That in making the above decision, the learned Magistrate Grade 1 exercised jurisdiction vested in her illegally and/or with material irregularity and/or injustice when she directed the hearing of Civil Suit 104/2014 to proceed for formal proof when there existed a pending application to set aside the default judgment fixed for hearing on 30th September 2014.
- c.** The learned Magistrate Grade 1 exercised jurisdiction vested in her illegally and with material irregularity and/or injustice when she directed the hearing of Civil Suit 104 of 2014 to proceed for formal proof on the day it was not fixed for hearing.
- d.** It is just and equitable that the said order and decision of the learned Magistrate Grade 1 be revised and set aside.

The application is supported by the affidavit of one Mubiru Fred Kiziito, one of the directors of the applicant. The respondent company filed an affidavit in reply through the General Manager Semanda Godfrey supporting the decision of the learned trial magistrate and stating that this application is a delaying tactic merely to buy time.

At the hearing of this application the applicant was represented by Mr. Katumba and the respondent by Mr. Mayanja Twaha. Both learned counsel were allowed to file written submissions.

I have considered the application as a whole and submissions by respective counsel. I also considered the law applicable. According to learned counsel for the respondent, this is not a proper case for revision since it is a deliberate effort to delay process and deprive the respondent company of the fruits of its judgment. That the application is barred in law because there is no case that has been decided by the trial magistrate.

Although both learned counsel did not frame issues in the submissions, I will do it and frame them as follows:

1. Whether this is a proper case for revision.
2. Whether there are sufficient grounds for this court to make a revision order.
3. Whether the applicant is entitled to the orders sought in the application.

I will start with Issue 1. Whether this is a proper case for revision.

According to the decision in **Matemba versus Yamulinga [1968] EA 643**, for a case to be proper for a revision order it must be a case decided by any Magistrates Court and the complaint must relate to the exercise of jurisdiction. The meaning of the phrase case decided for purposes of revision was considered in the case of **Rothblum Vs**

Ebrahim Hajec Ltd [1963] EA 47 to be wider than a suit. It was held that even an order setting aside an *ex parte* decree is a case decided for purposes of revision. Therefore an order made by the lower court to proceed with formal proof was a case decided by that court.

In the instant case, after a default judgment was entered in favor of the respondent, the applicant applied for the same to be set aside and the application was fixed for 30th September 2014 as per annexure "C" to the affidavit in reply. Before the application could be disposed of, the learned trial Magistrate on an earlier date of 1st September 2014 ordered that the main suit proceeds for formal proof. This was materially irregular and it tantamount to a case decided for purposes of revision as regards the manner in which the trial Magistrate exercised her jurisdiction.

Issue 2: Whether there are grounds for revision

According to Section 83 of the Civil Procedure Act, the grounds for revision are:

1. Failure to exercise jurisdiction vested.
2. Exercising jurisdiction not vested in court.
3. Exercising jurisdiction vested but illegally or with material irregularity.

In the instant case, whereas the learned trial magistrate is vested with jurisdiction to entertain a matter for formal proof where an interlocutory judgment had been entered, it was an irregularity on her part to order for formal proof while there was a pending application to

set aside the interlocutory judgment moreover fixed by her. This was an irregularity which calls for an order of revision by this court.

Issue 3: This court will therefore make a revision order in this matter bearing in mind that none of the parties will encounter serious hardships and in the interest of justice.

Consequently I will find that the learned Magistrate exercised jurisdiction vested in her with material irregularity. Her order to proceed with formal proof will be set aside. The application to set aside the default judgment should be heard and disposed of before any other proceedings in the matter. Costs will be in the cause. I so order.

Stephen Musota

J U D G E

23.11.2015