THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA SITTING AT GULU

MISCELLANEOUS CIVIL APPLICATION No. 0105 OF 2017

(Arising from Gulu Chief Magistrate's Court Misc. Civil Application No. 002 of 2012)

KWEYA ALFRED ….…… APPLICANT

VERSUS

OCANA ALFRED ….…… RESPONDENT

Before: Hon Justice Stephen Mubiru.

RULING

This is an application for revision under the provisions of sections 83 and 98 of *The Civil Procedure Act*, and Order 52 rules 1and 2 of *The Civil Procedure Rules*. The applicant seeks an order setting aside orders of a Chief Magistrate in execution of a judgment of the L.II Court of Palwong Parish, stay of execution, and awarding costs.

The basis of the application is that the court below committed an error material to the merits of the case, when it directed execution of the L.II Court of Palwong Parish. The contention is that when the L.C.II Court entered judgment in favour of the respondent on 26th May, 2005, it was in respect of an area of land measuring 80 x 60 metres. When in the year 2012 the respondent sought execution of that judgment by application to the Chief Magistrate, the Chief Magistrate's Court sought clarification from the L.C.II Court as to the size of land decreed. The court by then being defunct, one of the members of that court who had presided wrote to the Chief Magistrate's Court clarifying that the size was 90 x 80 metres instead of the 80 x 60 metres that had been decreed. On basis of that, the Chief magistrate ordered vacant possession of an area larger than what the L.C.II Court had decreed, such that when execution commenced on 6th May, 2017, the

applicant now claims more than five acres of the applicant's land as a result of that error. The applicant stands to lose land he was partly using for the sustenance of his family.

In his affidavit in reply, the respondent refutes the applicant's allegations and contends that there was no error or disparity in the dimensions of the land in issue as decreed by the L.II Court of Palwong Parish and as enforced by the Chief Magistrate. The verification of the size was done in open court in the presence of the applicant. Execution of the decree has since been completed and the respondent placed in possession of the land.

Submitting in support of the application, counsel for the applicant Mr. Henry Kilama Komakech argued that the procedure adopted by the Chief magistrate was wrong. The Judgment should have been referred back to the trial court for the clarification to be made by the court. It was wrong to call a member of the court to explain a decision. The witness was no longer a member of the court. Although it was a defunct court, the trial court should have ascertained the dimension of the land. As regards the timing of the application for revision, the judgment was delivered in 2012 but the warrant for execution of the decree was issued in. A judgment is enforceable within 12 years and therefore can be challenged at any time within that period. There is no evidence of hardship. No injustice will be occasioned by the application. The warrant was issued within time and so was the application to seek revision. Even if the application may have been made belatedly, the illegality cannot be overlooked. He prayed that the application be allowed with costs.

In reply, counsel for the respondent Mr. Akena Kenneth Fred argued that the judgment was made by the L.C.II and was brought for execution to the Chief Magistrate, since the L.C.II did not have jurisdiction to enforce their decision. Although it was proper that the file should have been sent back, but in 2012 the L.C.II did not have jurisdiction any longer. The Chief magistrate exercised his jurisdiction properly by ascertaining the size. Regarding the timing of the revision, order sought to be revised was issued on 9th May, 2012. There was a delay of five years before the execution and execution should have been done earlier. The first warrant of execution was issued in 2016 and was renewed on 25th May, 2017. In any event, the applicant has already been

evicted from the land, and the respondent is in possession. The applicant left soon after the decision and he returned to occupy part of the land, hence the second application for execution. The application for revision is misconceived since a challenge of execution should be under section 34 of *The Civil Procedure Act*, and not by way of revision.

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. "Material irregularity" within the context of this section is used in the restricted sense of "method of conducting a case." The expression means some material irregularity in procedure which may possibly have produced error or defect in the decision of the case upon the merits. The material irregularity or injustice envisaged by this provision does not cover either errors of facts or law in the decision arrived at itself, but rather the manner in which it was reached. 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*).

The material irregularity in procedure which may possibly have produced error or defect in the decision of the case upon the merits cited in the instant application, is the manner in which the Chief Magistrate sought to verify a decision that was to be enforced. It is claimed that when an application was made to the Chief Magistrate for the enforcement of the judgment of the L.II Court of Palwong Parish, for some reason the Chief Magistrate sought to "verify the area" of land decreed to the respondent. Unfortunately, the applicant did not attach the L.II Court of Palwong Parish decision of 26th May, 2005 in respect of which the Chief Magistrate sought to "verify the area." Verification ordinarily means validation, confirmation or authentication of information already available and it would imply that the information was contained in the judgment, yet in his affidavit the applicant suggests that in this case it meant and resulted in supplying new information that was not contained in the judgment. His contention is that in the

process of verification, the Chairman L.C.II Palwong Parish increased the dimension of the land decreed from 80 x 60 metres to 90 x 80 metres.

When any court other than the one which tried the case at first instance and delivered the judgment or order sets out to interpret it, the trial Court's intension is to be ascertained primarily from the language of the judgment or order as construed according to the usual well-known rules of statutory and contractual interpretation. As in the case of such documents, the judgment or order and the trial Court's reasoning for giving it must be read as a whole in order to ascertain its intention. If on such reading, the meaning of the judgment or order is clear and unambiguous, no extrinsic fact or evidence is admissible to contradict, vary, qualify, or supplement it. But if any uncertainty in meaning does emerge, the extrinsic circumstances surrounding or leading to the Court's granting the judgment or order may be investigated and regarded in order to clarify it. For the applicant to succeed in his contention therefore, he had to prove that the L.II Court of Palwong Parish judgment of 26th May, 2005 was clear and unambiguous, such that resort to extrinsic facts or evidence supplied by the Chairman L.C.II Palwong Parish was inadmissible to contradict, vary, qualify, or supplement it.

Taken from the perspective of the applicant's contention, if indeed the judgment of the L.II Court of Palwong Parish of 26th May, 2005 did not stipulate the dimensions of land decreed to the respondent, then resort to extrinsic facts or evidence supplied by the Chairman L.C.II Palwong Parish was admissible to supplement it. The only error in that regard then would be proof of the fact that the extrinsic evidence so gathered, rather than supplement, validate, confirm or authenticate the dimensions of the land decreed to the respondent, instead distorted or misrepresented the dimensions. I have read annexure "B" to the applicant's affidavit and therein it is explicitly stated that;

> Mr. Ocana won the case in conflict over 90 x 80 m and the court ordered Mr. Kweya Alfred to withdraw from that land from that time on but up to now Mr. Kweya Alfred has not withdrawn from the land and proceeded forcefully by construction a settlement home in the land that belongs to Mr. Ocama William, leaving only 80 x 60 m on the Eastern side of the land under wrangles.

On the face of it, this extrinsic evidence appears to have been sought for purposes of confirming whether or not it was still necessary to enforce the decision, considering that enforcement was being sought seven years after the judgment, rather than for filling gaps in the judgment. There is nothing to show that the information so gathered, in addition to clarifying that execution proceedings were still necessary, did more than validate, confirm or authenticate the dimensions of the land decreed to the respondent. In absence of the actual judgment of 26th May, 2005 there is no basis, apart from conjecture, upon which this court can find that the extrinsic evidence instead distorted or misrepresented the dimensions, as contended by the applicant. In absence of the actual judgment, I am unable to confirm the alleged disparity.

On the other hand, the decision sought to be revised was made on 9th May, 2012 by which the respondent was granted leave to execute the judgment of the L.II Court of Palwong Parish entered judgment in favour of the respondent on 26th May, 2005. Ascertainment of the size of land was made on 8th May, 2012 and not challenged until five years later when execution commenced on 6th May, 2017 and execution was complete by time of filing application on 7th June, 2017. Applications for revision must be brought without undue delay. The circumstances provided ample opportunity for the applicant to challenge the representation had it been inaccurate. The applicant's dilatory conduct is inconsistent with the averment of misrepresentation of the dimensions of the land decreed by the L.C.II Court.

If indeed there was any error by the Chief Magistrate in seeking extrinsic evidence to confirm the contents of the judgment he was about to enforce, and the viability of enforcement seven years after it was delivered, I find that according to section 70 of *The Civil Procedure Act*, no decree may be reversed or modified for error, defect or irregularity in the proceedings, not affecting of the case or the jurisdiction of the court. Before this court can set aside the judgment on that account, it must therefore be demonstrated that the irregularity occasioned a miscarriage of justice. None has been proved.

Moreover, Courts tend to be stringent in allowing applications whose effect would be to re-open a case, which has already been completed. On the other hand, courts must administer justice and in exceptional circumstances, applications of this nature should be allowed. The appellate or

other court exercising powers of revision should weigh these two interests when determining whether an application made so long after a decision should be allowed. It is trite that litigation must come to an end. In *Brown v. Dean [1910] AC 373, [1909] 2 KB 573* it was emphasised that in the interest of society as a whole, litigation must come to an end, and "When a litigant has obtained judgment in a Court of justice.....he is by law entitled not to be deprived of that judgment without very solid grounds." The maxim *interest reipublicae ut finis litium* is strictly followed. 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. For all the foregoing reasons, I do not find any merit in the application and it is hereby dismissed with costs to the respondent.

Dated at Gulu this 25th day of October, 2018.

Stephen Mubiru

Judge