

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

**HCT-04-CV-CR-005-2015
(FROM SIRONKO LAND CLAIM NO. 11/2009)**

KIBERE BONIFACE.....APPLICANT

VERSUS

ZEPHANIA WAKHATA.....RESPONDENT

BEFORE: THE HON. MR. JUSTICE HENRY I. KAWESA

RULING IN REVISION

This matter was placed before me by the Registrar for Revision, on grounds that though it proceeded *ex parte*, to the level of execution leading to imprisoning of the defendant in execution, it violated the provisions of O.9 r. 20 Civil Procedure Rules.

I have perused the record. I also listened to the plaintiff and defendant on this revision.

There is nothing on record to show that the defendant was ever served with a hearing notice and he defaulted to attend. The record shows that on several dates the court adjourned the matter to enable court issue a hearing notice to the plaintiff so that defendant is summoned to attend the hearing. The record further shows that in spite of the orders of court, no step was taken to issue the notice. There is also affidavit of service on record.

According to O.9 r. 20 Civil Procedure Rules, it is provided that:

“When only plaintiff appears, Court must be satisfied that the summons or notice of hearing was duly served.”

The record shows that on 10.11.2010 the court noted thus:

“Ex parte judgment is entered against defendant under O.9 r. 11 (2) of the Civil Procedure Rules following his failure to file a defence pursuant to O.9 r. 1 of the Civil Procedure Rules.”

However the above notwithstanding I have seen on record an endorsed written statement of defence dated 06/01/2010.

There is therefore gross irregularity in the procedures followed by the trial court to enter ex parte judgment against the defendant. He was not served with a hearing notice as there is no affidavit of service as required under O.9 r. 20 of the Civil Procedure Rules. The defendant was also wrongly faulted for failing to file a written statement of defence as per O.9 r. 1 of the Civil Procedure Rules, and was wrongly condemned under O.9 r. 11 (1) of the Civil Procedure Rules.

The above proceedings were irregular and illegal and are accordingly set aside. This court follows the case of *Mukula International v. Cardinal Nsubuga Wamala (1982) HCB 11*.

Once an illegality is brought to the attention of court, it cannot be allowed to stand. The judgment of the lower court is accordingly set aside. The order for execution by imprisonment in civil prison is also set aside.

The Parties should revert back to the position they were at before hearing. The matter is to be sent back to the lower court for retrial interparties before another competent Magistrate assigned by the Chief Magistrate-Mbale. Each party to bear their own costs both here and below. I so order.

Henry I. Kawesa
JUDGE
14.08.2015