

5 **THE REPUBLIC OF UGANDA**

IN THE HIGH COURT OF UGANDA HOLDEN AT GULU

CIVIL REVISION CAUSE NO. 05 OF 2022

10 **(ARISING FROM MISC. APPLICATION NO. 001 OF 2020
ITSELF ARISING FROM JUDGMENT OF LC111 COURT OF PADIBE
EAST SUB-COUNTY, LAMWO DISTRICT)**

15 **OKANA DAVID.....APPLICANT**

VERSUS

20 **OCAYA ROBERT.....RESPONDENT**

BEFORE: HON. MR. JUSTICE GEORGE OKELLO

25 **RULING**

The Applicant has by Motion, sought the exercise of this Court's revisionary powers. He prays that the Court calls for and revises the record of Miscellaneous Application No. 001 of 2020 adjudicated by Her Worship Nambozo Joy, the Chief Magistrate, Kitgum, contending, it is a nullity on account of (alleged) condoning of an illegality (allegedly) committed by LCII Court of Wangit Parish, and LCIII Court of Padibe East Sub County, Lamwo District, from which the present matter has its root. The Application is based on sections 17 and 33 of the Judicature Act Cap 13, sections 83 and 98 of the Civil Procedure Act (CPA) Cap. 71, and Order 52 rule 1 of the Civil Procedure Rules, S.I 71-1.

5 The brief history of the matter is that the Applicant had a land dispute with the Respondent. The Applicant first sued the Respondent in the Local Council II Court of Wangit Parish (or Wangtit as called by the Respondent) in 2008, claiming ownership of some land. The Applicant lost but appealed to the LCIII Court of Padibe East Sub- County, which decided against the
10 Applicant, in a Judgment given on 27th May, 2008. Being aggrieved and dissatisfied, the Applicant lodged Civil Appeal No.036 of 2008 in the Chief Magistrates Court of Gulu holden at Gulu. The Applicant withdrew the Appeal on 24th September, 2009, before His Worship Omodo Nyanga Joseph, the then Chief Magistrate of the Court. After over slightly ten
15 years, on or about 20th January, 2020, the Applicant lodged Misc. Application No. 001 of 2020 in the Chief Magistrates Court of Kitgum holden at Kitgum, for revision of the decision of the LCIII Court which had been appealed but which Appeal was withdrawn.

20 The Revision application in the Chief Magistrate Court sought for an order setting aside the LCIII Court Judgment. That Application came before Her Worship Nambozo Joy, who dismissed it with costs, in a Ruling given on 1st June, 2022. The Applicant then lodged the present Application before the High Court on 22nd August, 2022, seeking revision of the decision of
25 the Learned Chief Magistrate. In the present Application, the Applicant further seeks for a declaration that the impugned Ruling of the Court, as well as the Judgments of the LCII and LCIII Courts, be declared illegal, and

5 be set aside. He also prays that the Respondent and his agents give vacant possession of the suit land. He further seeks for compensation for loss, and injustice occasioned by what he terms illegal proceedings. He finally prayed for costs of the Application.

10 **Affidavits**

The Application is not supported by any affidavit, but is opposed by the Respondent who swore an affidavit. I will address the issue shortly.

Representation

15 Mr. Ocorobiya Lloyds appeared for the Applicant, while the Respondent represented himself. Both parties filed written submissions which Court has considered, and is grateful.

The competence of the Motion

20 The Application raised grounds which are not supported by any affidavit. The Applicants attaches the impugned Ruling of the Chief Magistrate, and Judgment of the LCII and LCIII Courts, respectively, to the Application. He also attached a copy of the Notice of Motion which he had lodged in the
25 Chief Magistrate's Court in 2020, which was disposed of vide the Ruling by Her Worship Nambozo, hence the present matter.

5 The Applicant seeks to justify the absence of the affidavit in support, by
averring in the Motion that, the matters raised are all matters of law, and
therefore, there was no need to lodge an affidavit in support. I have
considered this assertion. Although the Respondent has not objected to
the competence of the Application on this basis, this Court has treated the
10 matter as important, hence the need to decide on it, preliminarily. I am
justified in this course by the wisdom espoused by Scrutton L.J, in Phillips
Vs. Copping [1935] 1 KB 15, at p.21 thus,

“But it is the duty of the Court when asked to give a judgment which is
15 contrary to a statute to take the point although the litigants may not take
it.”

Scrutton L.J was cited with approval by the Court of Appeal of Uganda in
Makula International Ltd Vs. His Eminence Cardinal Nsubuga & Rev.
20 Father Kyeyune, Civil Appeal No. 4 of 1981. This authority is more often
quoted for the principle that a Court of law cannot sanction that which is
illegal and illegality once brought to the attention of Court overrides all
questions of pleading including any admissions made thereon. The dictum
of Doanldson ,J. in Belvoir Finance Co. Ltd Vs. Harold G. Cole Ltd [1969]
25 2 All E.R, 904 at p.908 was quoted with approval by the Ugandan Court
of Appeal. I am bound by the decision.

5 Turning to the Application, I have noted that, procedurally, it cites only
rule 1 of Order 52 CPR. The rule states

“Procedure Under this Order: All applications to the court, except where
otherwise expressly provided for under these Rules, shall be by motion and
10 shall be heard in open court.”

Rule 3 of O.52 which is pertinent (but not adverted to by the Applicant)
provides,

15 “Contents of notice: Every notice of motion shall state in general terms the
grounds of the application, and, where any motion is grounded on evidence
by affidavit, a copy of any affidavit intended to be used shall be served with
the notice of motion.”

20 The Applicant’s averment that since the Application is grounded on
matters of law only and therefore, he could opt to do away with the filing
of an affidavit, in my view, with respect, is based on erroneous
interpretation of the Civil Procedure Rules. In my considered view, rule 1
of O.52 CPR must be read together with rule 3 thereof, for better
25 appreciation of what a Motion must contain.

5 Rule 3 is clear and a literal construction yields the result that, all motions must first of all contain grounds. Second, the grounds must be supported by evidence. Third, the mode of adducing evidence is by affidavit. Fourth, a copy of the affidavit must be attached to the Motion, and of course served with it. This last bit of service may not apply especially if the Motion is
10 exparte.

I do not therefore see any other mode of adducing evidence in support of a Motion, other than by way of affidavit. A motion must be supported with evidence. Even where a deponent is cross examined with leave of Court,
15 under O.19 rule 2 of the CPR, the evidence given during cross examination and re-examination, if any, does not substitute the affidavit evidence, but becomes part and parcel of evidence in the matter. It is therefore instructive to pay deference to case law which has dealt with some-what similar matter.

20 In Kaingana Vs. Dabo Boubou [1986] HCB 59, Karokora, Ag. J (as he then was), struck out an affidavit deposed by a husband of the applicant in a representative capacity, for being incompetent, because the deponent lacked authorization of the applicant. After the strike out order, the Court
25 held that the Notice of Motion can not on its own, be a complete application, without an affidavit. Court concluded, the Notice of Motion

5 alone was not enough. It therefore struck out the Application for being incompetent as it lacked affidavit in support.

In the present matter therefore, I find that the Motion is incurably defective. It is accordingly struck out. However, in case I am wrong, I
10 proceed to consider the merit of the Application, for completeness.

Merit arguments

In his Motion and submission, the Applicant averred, and argued that the LCII Court of Wangit illegally adjudicated the land dispute filed by the
15 Applicant, as it lacked jurisdiction. He contended that, the LCII Court purported to sit as a Court of first instance, yet it could only have sat as a first appellate Court. He reasoned, therefore, the Appeal the Applicant preferred to the LCIII Court, which the LCIII Court entertained, was a nullity. He further contended that, given the Constitutional Court
20 Judgment (in Rubaramira Ruranga Vs. The Electoral Commission and Attorney General, Const.Petition. No. 21 of 2006, delivered on 3rd April, 2017), in which it was (allegedly) held that the Local Council Courts generally lacked jurisdiction, unless they were constituted under Multiparty Political System, the LC II Court that decided the Land dispute,
25 acted illegally, and consequently, the Appeal to the LCIII Court was based on a nullity.

5 The Applicant also averred, and argued that, by its decision refusing to
revise the LCIII Court Judgment, the Learned Chief Magistrate condoned
an illegality which had been brought to its attention. It is also averred, and
argued that, the Chief Magistrate failed to exercise supervisory jurisdiction
vested in it by the Local Council Courts Act 2006, and *ipso facto*, acted
10 illegally and with material irregularity and injustice against the Applicant.

The Applicant concluded that, it is in the interest of justice that the Court
sets aside the impugned Ruling of the Chief Magistrate, and the
Judgments of the Local Council II and Local Council III Courts,
15 respectively, and that the same are declared null and void. The Applicant
also prayed for an order of vacant possession of the suit land (whatever
that meant), and compensation for loss and injustice suffered.

Reply

20 In his reply, the Respondent agreed that the Applicant sued the
Respondent over a land dispute, in the LCII Court of Wangtit Parish but
lost (the Applicant calls it Wangit). That, the Applicant unsuccessfully
appealed to the LCIII Court of Padibe East Sub- County, Lamwo District.
The Respondent deposed, and argued that, the Applicant further appealed
25 to the Chief Magistrate Court, vide Civil Appeal No. 036 of 2008 which
came before his Worship Omodo Nyanga Joseph, when the Applicant
withdrew the Appeal. The Respondent also deposed, and argued that, the

5 Applicant paid costs of the withdrawn Appeal, and gave vacant possession of the suit land. He further argued that, therefore, the instant Application is overtaken by the events, after many years. The Respondent referred to a Copy of the Decree/ Order endorsed by His Worship Omodo Nyanga Joseph, dated 24th September, 2009.

10

The Respondent further deposed, and argued that, the Application is a waste of Court's time, an abuse of Court process, unreasonable, and brought in bad faith, to delay execution of the taxed costs of Misc. Application No. 001 of 2020 (before H/W Nambozo Joy), and ought to be

15 dismissed with costs.

The Applicant did not file an affidavit in rejoinder, especially to the deposition that he appealed the Judgment of the LCIII Court to the Chief Magistrate, but withdrew the appeal, and that he vacated the suit land.

This aspect of the case therefore is not controverted.

20

Determination

From the perusal of the Motion and the affidavit in Reply, two issues arise, namely,

- i) Whether the case is a proper one for revision, and
- 25 ii) Remedies available to the parties.

I will resolve both issues together.

- 5 The revisionary jurisdiction of this Court is not in doubt. Under section 83 of the Civil Procedure Act (CPA), the High Court may call for the record of any case which has been determined under the CPA by any Magistrates Court and may revise it, and may make such order as it thinks fit.
- 10 The High Court may however only exercise its powers if it appears that the Magistrate's Court has exercised a jurisdiction not vested in it in law; failed to exercise a jurisdiction so vested; or acted in the exercise of its jurisdiction illegally or with material irregularity or injustice. In his submission, the Applicant emphasizes that his complaint is based on the
- 15 ground that the Learned Chief Magistrate acted illegally and with material irregularity or injustice, in exercising its jurisdiction, to dismiss the application.

Under the CPA, revisionary power is only exercisable when the parties have

20 been given an opportunity of being heard. This is not in issue here. The High Court may however decline to exercise this power if from the lapse of time or other cause, the exercise of that power would involve serious hardship to any person.

- 25 As understood, Revision is the action of revising or looking over again, especially critical or careful examination or perusal with a view to correcting or improving (something). See Oxford English Dictionary. This

5 meaning was adopted by the then East African Court of Appeal in J Hoareau Vs. R [1962] 1 EA 809.

Revision therefore entails examination by the High Court, of the record of proceedings of the Magistrates Court for the purposes of the High Court
10 satisfying itself as to the correctness, legality and the regularity of proceedings of the Magistrate Court. See: Mabalangaya Vs. Sanga [2005] 1 EA 236 (CAT).

The purpose of examination of the record of the subordinate Court is therefore to correct the conclusions of that Court, if necessary. Revision is
15 therefore an exercise of discretion which must be done judiciously. Discretion here, basically, is the faculty of deciding or determining in accordance with circumstances, and what seems just, fair, right, equitable, and reasonable in those circumstances. It also involves latitude of individual choice according to the particular circumstances. Discretion
20 differs from a case where the decision follows *ex debito justitiae* where facts are known (that is, by reason of an obligation of justice/ where court has no discretion to refuse/or where an applicant has a remedy as of right) See: Yahaya Kariisa Vs. the Attorney General and another, Civil Appeal No. 7 1994 (SCU) digested in [1997] HCB 29; Jenkins Vs. Bushby (1189)
25 11 Ch. 484, Per Kay L.J, the latter case having been cited with approval by the Court of Appeal of Uganda in National Enterprises Corporation Vs. Mukisa Foods Ltd, Civil Appeal No. 42 of 1997.

In the present matter, the Applicant lodged a Motion, which in my view, is one of the accepted modes of seeking revision, had it not been for want of an affidavit in support. On perusal of the Motion, I have further noticed that the Applicant did not attach the record of the proceedings before the
10 Learned Chief Magistrate, Her Worship Nambozo Joy. The only documents (irregularly) annexed to the Motion, are a copy of the Application disposed of by that Court, and the Ruling therein. The affidavit in support of that application, and affidavit in reply, are not on record before me, and the copy of the submissions made before that Court. Having preferred a formal
15 Motion, the Applicant ought to have complied with the requirements of the law. Lack of a complete record is fatal to the Application for revision. This application should fail on this ground. See: Jaffer Vs. Gupta [1959] EA 406; Gulu Municipal Council Vs. Nyeko Gabriel & others, [1997] 1 KALR 9; Wadri Mathias & 4 others Vs. Dranilla Angella, Civil Revision No. 0007
20 of 2019 (Hon. Justice Bashaija K. Andrew).

Be that as it may, and for completeness, proceeding to consider the scanty material before me, I have perused the Ruling sought to be revised. The Learned Chief Magistrate noted that, Court was being asked to revise the
25 Judgment of the LCIII Court, which was first appealed by the Applicant, vide Civil Appeal No. 036 of 2008. Court also noted that, the said appeal had been withdrawn by the Applicant, meaning the Applicant could not

5 turn around and challenge the LCIII Court Judgment, by way of revision.
The Learned Chief Magistrate also noted that the revision Application was
lodged after a long time (over 13 years according to the Court) from the
date of the Appeal withdrawal in 2009. Court was cognizant of the fact that
the Applicant had conceded that he paid costs (of the withdrawn appeal)
10 and had vacated the suit land. Court therefore held that litigation must
come to an end. It also found that the Application lacked merit and
dismissed it with costs.

I am unable to fault the learned Chief Magistrate. Court was alive to the
15 supervisory powers it has over the Local Council Courts, conferred by
section 40 of the Local Council Courts Act, 2006. The supervisory powers
are similar to that conferred by section 17 of the Judicature Act Cap 13,
to the High Court, over the Magistrates Court. Therefore, under section 40
of the Local Council Courts Act, 2006, the Chief Magistrate may exercise
20 supervisory powers over the Local Council Courts, on behalf of the High
Court. This include revisionary powers, as a High Court Judge would do.
Being an exercise of discretionary powers, the Chief Magistrate considers
the circumstances of the matter, and considers what seems just, fair,
right, equitable, and reasonable.

25

In the matter that was placed before the Learned Chief Magistrate, she
considered rightly, in my view, the time lag, noting that the Application

5 was being preferred in the year 2020 when the Judgment of the LCIII Court
was given in 2008, and an appeal against it withdrawn in 2009. In my
view, Court was right to take into account the time span. It accords with
the rule which the High Court considers before deciding whether or not to
make a revision order. See section 83 of the CPA (*supra*). See also Opoka
10 Santo Vs. Ali Marino, Misc. Application No. 0147 of 2014 (Stephen Mubiru,
J.)

In the present matter, the Learned Chief Magistrate was correct to consider
the fact of the withdrawal of the Appeal against the LCIII Court Judgment
15 and decision. This implied, the Applicant was no longer aggrieved and
conceded the decision of the LCIII Court. He could not be seen, in a
roundabout fashion, to purport to challenge the same LCIII Court
Judgment, in a revision application before the very Court from whom he
had withdrawn his appeal. Revision is no substitute for appeal. To my
20 mind, the Applicant's conduct also amounted to approbation and
reprobation of the LCIII Court Judgment. In Ddegeya Trading Stores (U)
Ltd Vs. Uganda Revenue Authority, Civil Appeal No. 44 of 1996, the Court
of Appeal considered this concept. It simply means that a party who has
accepted and acted upon or acquiesced and recognized a Judgment, order,
25 or decree of Court, cannot on the same breadth take an inconsistent
position with reference to it. Such a person waives the right to have the
same reviewed by the appellate Court.

Just as the superior Court noted in the above precedent, I too, observe that, mayhem would be created if a litigant were to be allowed to approbate and reprobate Court Judgment, Order, or Decree. A litigant would tie down his/her adversary in different directions over the same subject matter of litigation. Moreover, public resources would be wasted, in disregard of other equally deserving matters that often compete for Court's attention. A floodgate for abuse of the justice system would have been flanked open to litigants and their legal advisors and/ or suitors. Litigation would never come to an end. Yet it is a principle of great importance in the administration of justice that, in the interest of all persons, there should be an end to litigation. See: Lakhmashi Brothers Ltd Vs. R. Raja & Sons (1966) E.A 313, at p.314 (Per Sir Charles Newbold P., referring to Rainga case (1965) E.A 703.

In the present case therefore, the Applicant's conduct of the matter before the Chief Magistrate Court was in flagrant abuse of Court process. He was engaging the machinery of justice for improper purpose. See: Hon. Gerald Kafureeka Karuhanga Vs. The AG and 2 Others, Misc. Cause No. 060 of 2015 (Stephen Musota, J (as he then was)). It is clear that the Applicant conceded the Judgment and decision of the LCIII Court, and had even paid costs of the withdrawn appeal, and vacated the suit land. His later conduct was and remains inconsistent with the earlier conduct. I therefore hold

5 that the Learned Chief Magistrate properly exercised her discretion in the
circumstances and reached the right conclusions. I have not been
persuaded that a contrary decision should have been reached. The
Application before the Chief Magistrate was clearly an afterthought. I have
therefore neither found any irregularity or illegality in the exercise of that
10 Court's power. Even if I had found one, given the lapse of time, and the
apparent hardship the Respondent would be subjected to, by an Order of
revision, I would still have declined the application.

Before I take leave of this matter, I am a little puzzled that the Applicant,
15 who filed his application before the LCII Court and subsequently, pursued
an appeal to the LCIII court, could be the very person to raise the issue of
jurisdiction now before me, after over 14 years when those decisions were
made. With respect, I think the Applicant and counsel are taking the
principle in Makula International case (*supra*) too far. If accepted, it would
20 mean that a party could resurrect very old and closed court files, for the
purpose of arguing a point which ought to have been raised at the time the
dispute was still live in the judicial system. This is not the intention of the
law. That aside, the High Court in any case, cannot purport to revise
decisions of LC Courts, as the powers to do so are delegated by legislation,
25 to the Chief Magistrate, by section 40 of the Local Council Courts Act,
2006. They do it on behalf of the High Court. Section 83 of the CPA

5 presently limits revisionary powers of the High Court Judge to matters determined by Magistrates Court and not LC Courts.

In this matter, I also understood the Applicant to be inviting this Court to exercise the revisionary and other powers over the impugned LC Court
10 Judgments. The orders further being sought are, compensation, and vacant possession of land. I am afraid these prayers are alien to the scope of the orders available when this court sits in the exercise of its revisionary powers. I am aware that section 83 of the CPA allows this Court to revise the case determined by the Magistrates Court and make *such order in it as*
15 *it thinks fit*. My view is that, "*such order in it as it thinks fit*", would not, in the circumstances of this case, cover extraneous orders such as those being sought herein, which is being sought alongside the order of revision. Such Orders as envisaged within the purview of section 83 of the CPA, could cover aspects such as a fresh trial and adjudication before a
20 competent Court, which may in a given case, require that a fresh suit is lodged, but of course subject to the law of limitation. I however refrain from deciding the category of matters that could rightly come within the purview of section 83 of the CPA. It suffices that the extra Orders sought herein are not covered by section 83 of the CPA, and are therefore extraneous.

25

Hanson

5 In the upshot, aside from being incompetent, the Application is grossly
misconceived. I dismiss it with costs to the Respondent.

I so order.

10 Delivered, dated and signed in open court this 22nd December, 2022.

Handwritten signature 22/12/2022

George Okello

JUDGE HIGH COURT

5 Ruling read in court in the presence of;

Ocorobiya Lloyds, Counsel for the Applicant.

The Applicant is absent

The Respondent is absent.

10

Mr. Ocorobiya Lloyds: We received Ruling Notice late from Court and that could have explained why the Applicant was unable to travel. He lives in Ireland. The Respondent resides in Padibe, Lamwo District. He was, I think, unable to travel as well.

15

Court: Is there any prejudice if the Ruling is given in the absence of your client, and the respondent, given that you are before Court?

20 **Mr. Ocorobiya:** No prejudice will be suffered. I will personally inform both parties about the Court Ruling and decision, so, I am ready to receive the Ruling of Court.

Court: Ruling read in open Court in the presence of Counsel for the
25 Applicant, dated, and signed.

30

Hutoon 22/12/2022
George Okello
JUDGE HIGH COURT
22nd December 2022