

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**LAND DIVISION**

**MISC. APPLICATION NO: 1234 OF 2019**

**(ARISING FROM NAMAYUMBA TOWN COUNCIL COURT CIVIL  
LAND MATTER CASE NO: 19 OF 2019)**

**KAZOYA DICKSON:.....APPLICANT**

**VERSUS**

**BASEKA EDWARD:.....RESPONDENT**

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

**RULING:**

This application was by Notice of Motion dated February 18, 2020, seeking for;

- i) Orders of Namayumba Town Council Court delivered in **Family Matter Case 19 of 2019** be revised and be set aside.
- ii) That the Respondent be restrained from executing the illegal orders of the Namayumba Town Council Court and the Applicant be allowed to continue being in possession of the land.
- iii) They prayed for costs.

Applicant Kazoya Dickson swore an affidavit in support of the application.

The Respondent opposed the application vide an application in reply sworn by Baseka Edward. The Applicant rejoined by the affidavit of Kazoya Dickson.

There were preliminary points of law raised by both parties which I will determine first. Whereas the Notice of Motion was replied to, the Applicant in this affidavit in rejoinder states that the affidavit in reply offends O.6 r8, 10 & 30, and should be struck off for being filed out of time.

The Applicant's Lawyer did not address this point in submissions. In the submissions of the Respondents however, Counsel referred Court to the fact that the Notice of Motion itself was served out of time and ought to be struck out. Since the Notice of Motion is the basis of the reply being contested, it is prudent for this Court to first determine if the Notice of Motion is competent and worth a reply there to.

Counsel for the Respondents argues that the Notice of Motion was served 5 months after the date of issue. The Applicant, according to the Respondent, was obliged to serve the Respondents with the Notice of Motion and supporting Affidavit within 21 days stipulated under O.5 r1 of the Civil Procedure Rules. He argues that O.5 r1(2), and 1 (3) (a) that the case of **Centenary Enterprises Ltd v Greenland**

**Bank (in liquidation) HCM NO: 0917 of 2004**; it was held to the effect that;

*“Notices and documents shall be served in the manner provided for the service of summons; in accordance with O.5 of the Civil Procedure Rules which governs the issue and service of summons”.*

He prayed that this should be followed and under O.5 r1 (3) (c) of the Civil Procedure Rules by dismissing the suit without notice.

I have gone through the record, the Notice of Motion was filed on August 13, 2019. There is no indication by way of affidavit service when service was effected. The only document is the affidavit of service of hearing Notices dated August 06, 2020. The Respondent’s averments were not denied by the Applicant who in Para 5 and 6 of his affidavit in rejoinder, referred to information purportedly given to him by his former Lawyers of M/S Anguria & Co Advocates that the Respondent declined to receive the Court documents.

The law governing affidavit evidence requires that such source of information must be declared. The affidavit in this case avers information based on hearsay leaving the Respondent’s averments that he was not served personally with the application valid.

The averments by Respondent in Para 4, 5, 6, 8, 9 are accordingly not controverted. The leaves the Court with no evidence to the contrary. The service of the Notice of Motion was out of time and was in violation of the requirement under O.5 r1(2) that service of summons

issued under O.5 r(1)(2) shall be effected within 21 days from of issue.

There was no application for extension of time and hence the application is incompletely before Court. In reading this conclusion refer to the holding in **Centenary Enterprises Ltd v Greenland Bank** (in liquidation) *supra* which observed that;-

*“An application by Notice of Motion takes the form of summons and is to be regulated by the provisions O.5 of the Civil Procedure Rules. Under O.5 Rule 1 (3) such a failure leads to the dismissal of the suit without notice”.*

The casual way by which the Applicant handled this Notice of Motion is further reflected as its failure even to show the law on which it was based. The failure to reflect the law makes it difficult to know where the Applicant bases this application.

The Respondent raised this point as the second issue of objection. The fact raised by Respondent's Counsel, the power of revision is provided in Section 83 of the Civil Procedure Act, which provided that 'The High Court may call for the record of any case which has been determined under this Act by any Magistrates' Court and that Court appears to have';

a) Exercised jurisdiction not vested in in law.....

The above law specifically is to the effect that High Court only revises matters arising from Magistrates Court. This Court therefore has no jurisdiction to revise the matters before this Court.

For the findings above, this application is incompetent.

It is dismissed with costs to the Respondents.

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Henry I. Kawesa  
**JUDGE**  
28/01/2021

28/01/2021:  
Mutumba Jolly for the respondent.  
Respondent present.  
Applicant present.  
Counsel for the applicant absent.

Court:  
Ruling communicated in the presence of the parties herein above.

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Henry I. Kawesa  
**JUDGE**  
28/01/2021