

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

CIVIL REVISION NO. 0003-2012

(Arising from Sironko Land Civil Suit No. 33 of 2011)

WETAKA MICHAEL.....APPLICANT

VERSUS

ERIABU WABUSU.....RESPONDENT

BEFORE: THE HON. MR. JUSTICE STEPHEN MUSOTA

REVISION ORDER

This matter was referred to me by the Magistrate Grade I Sironko through the Chief Magistrate Mbale for a possible revision order.

The background is that **Wetaka Michael** sued **Eriabu Wabusu** in Sironko Court in Land Civil Suit 33 of 2011 for recovery of 4 pieces of land, recovery of the original Will, General damages for inconvenience and costs of the suit. The facts constituting the cause of action are that the defendant is a cousin he being a son to one of the plaintiff's aunts. The plaintiff's father one **Masiga Wandoba** appointed the plaintiff as heir and caretaker before he died. That there was a will to that effect.

At the time, the plaintiff was allegedly still of tender years and school going. Further that the late **Masiga Wandoba** left behind 10 pieces of land and a semi-permanent house but the defendant handed over 6 pieces of land but has refused to hand over the remaining 4 pieces of land hence the suit in the lower court.

Summons to file a defence were taken out but it appears the defendant did not file any defence upon which the plaintiff applied for “*ex parte* judgment”. Court went ahead to enter judgment for the plaintiff against the defendant with costs. It is not stated under which law all this was being done. Nothing else was done by the trial court. The record however has an application for execution and an untaxed Bill of costs and an unsigned decree.

In civil proceedings filing defences and setting down suits for hearing etc is governed by O.19 of the CPR. If a defendant does not file a defence in the prescribed time an affidavit is supposed to be filed to that effect under O.19 r.5 CPR. The rule goes ahead to prescribe the different modes of entering judgments and how to deal with such judgments in rules 6, 7, 8 and 9 thereof. These modes however concern judgments upon liquidated demand against a defendant or several defendants or assessment of damages in claims for pecuniary damages. Nowhere is a claim for ownership of land mentioned. Court cannot therefore enter a final judgment in claim for *inter alia* land before hearing the case to ascertain ownership.

In such cases, I am of the view the procedure applicable is found in O.9 r. 10 CPR which enacts that:

“In all suits not by the rules of this order otherwise specifically provided for, in case a party does not file a defence on or before the day fixed therein and upon a compliance with rule 5 of this order, the suit may proceed as if that party had filed a defence.”

The claim by the plaintiff therefore ought to have proceeded with as is provided for in O.9 r. 10 CPR. The suit has to be fixed for hearing to be proved on a balance of probabilities.

Consequently I will set aside the exparte judgment entered in this case and order that the suit be proceeded with in accordance with the law.

I so order.

Stephen Musota

JUDGE

17.04.2012