THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

REVISION CAUSE No. 13 OF 2011

(Arising from the Chief Magistrate's Court of Mengo Misc. Applic. No. 377 of 2009)

CHARLES SSEMWOGERERE :::::::::::::: APPLICANT

VERSUS

1. **RICHARD BANJA**
2. **JUSTINE BANJA :::::::::::::: RESPONDENTS**

RULING OF HON.MR. JUSTICE MURANGIRA JOSEPH

The Applicant through his lawyers M/S Lukwago and co. Advocates brought this Application by Notice of Motion supported with the Applicant's affidavit under Sections 83 and 98 Civil Procedure Act Cap 71 and Order 52, Rules 1 & 3 Civil Procedure Rules SI 71-1. This Application is seeking for orders, that:

a) **The order of the Chief Magistrate's Court of Mengo dated 13th July 2009 allowing the respondent's to compensate the Applicant for his kibanja interest on land comprised in Block 11 Plot 457 Kibuga situate at Kabowa be revised and set aside.**

b) **Costs of this application be provided for.**

Further this application is based on the grounds which are well set out in the affidavit of Charles Ssemwogerere which for the purpose of this case is reproduced here below;

1. **…..**

"

2. **That I was the respondent in Misc. application No. 430 of 2007 filed by the respondents against me in Mengo Chief Magistrates Court.**

3. **That subsequently the trial magistrate ruled that the applicant should compensate me for my interest in the kibanja on the land belonging to the applicant comprised in Kyadondo Block 11 Plot 457 at Kabowa which I use for my residence having purchased the same from the Late Labani Kayita.**

4. **That I then instructed my then lawyers, Mr. Augustine Semakula to appeal against the said ruling but he filed an appeal vide civil appeal No. 26 of 2009 without extracting a decree as I was later to learn from my new lawyer to wit; Mr Medard Lubega and subsequently Justice Murangira of the Land Division of the High Court that the same was not an appeal in law.**

5. **That the said appeal was subsequently dismissed for want of prosecution.**

6. **That the trial magistrate did not afford me an opportunity to compensate the respondents but only ordered me to accept compensation against my will although I am unable and willing to compensate the landlord or to pay ground rent as required by law.**

7. **That the learned magistrate did not consider the option of sub dividing the land which had also been considered by the LC 1 Court.**

8. **That I have at all material times been able to pay rent to the landlord as required by law but I have not been afforded the said opportunity.**

9. **…..**

10. **That I have been advised by my lawyers to wit; M/S Lukwago & Co. Advocates that the learned trial magistrate exercised jurisdiction with material irregularity thereby occasioning injustice to me and this can only be corrected by this Honorable Court revising the said order.**

11. **…….**

12. **That I know that the learned chief magistrate acted illegally and with material irregularity when he ignored my right to compensate the respondents but instead that I should be compelled to accept compensation despite my objection.**

13. **…….**

14. **…….**

15. …….

16. That it is in the best interest of justice that the said order of the Chief Magistrate be renewed (sic) and set aside…….

17. …….

18. ……

19. ……"

In reply the 1st respondent filed an affidavit in reply. The said affidavit evidence is reproduced here below:-

"

1. ……..

2. …….

3. That I deny paragraph 3 of the affidavit in support as it is not true that the applicant has a kibanja on the land situate at Kyadondo Block 11 Plot 457 land at Kabowa, nor is it true that he has his residence thereon.

4. That the truth of the matter is that the said matter was a subject of dispute between my late father and the land owner the late Paul Banja and the applicant herein where upon the LC 1 Court of Kabowa pronounced itself on the said matter in no unclear terms as early as 2002.

5. That the late Paul Banja died immediately after the LC 1 Court decision and I and my mother who is the 2nd respondent hereto applied for and obtained letters of administration to his estate.

6. That by the time of his death my late father was the registered owner of the said land.

7. That the back ground of the matter is that the land used to belong to our grandfather, Yoweri Mugubi as early as the 1950's.

8. That sometime around 21st April 1950, our grandfather leased the land to his brother Yafesi Bamujje who was in turn the father of a one Laban Kayita, the purported seller of the kibanja which the applicant claims.

9. **That under the said lease/ tenancy agreement, our grandfather allowed the said Yafesi Bamujje to build a temporary house to enable his accommodation as he works in town, but that the lease or tenancy would last for 49 years, upon which the land would revert back to our grandfather as his children would need to utilize the premises.**

10. **That whereas the said lease/ tenancy agreement would expire in 1999, Yafesi Bamujje's son Laban Kayita sold the same to the applicant in 1992 without authority or consent of the landlord, who was then our father Paul Banja the heir of the late Yoweri Mugubi.**

11. **That hence, the said Laban Kayita had no interest to transfer for even if he were to transfer his interest, it was subject to the tenancy which was to expire in 1999.**

12. **That the matter was referred to Kabowa LC1 Court to resolve the dispute between our father Paul Banja and the applicant, sometime around 2002.**

13. **That the LC1 Court of Kabowa after establishing that Laban Kayita wrongfully sold to that applicant decided that our father, Paul Banja is the rightful owner of the land and that if he wishes to retain his land, he should opt to pay Mr. Charles Ssemwogerere shs 5,000,000/=.**

14. **That the applicant never had any problem with the said judgment because he never appealed against the same.**

15. **That in 2003 a letter written by the applicant's lawyers to the area LC1 Chairman confirmed that the applicant was ready to receive compensation as per the LC1 Court judgment.**

16. **That it is around this time that the late Paul Banja passed away, hence we had to go through the process of applying for letters of administration, a process that we concluded in 2005.**

17. **That around March 2005, through our lawyers Niwagaba & Mwebesa Advocates, we forwarded a cheque of shs 5,000,000/= to the applicant's lawyers in fulfillment of LC1 Court judgment, which the applicant's lawyers unreasonably, rejected claiming an exorbitant amount of shs 25,000,000/=.**

18. That because the applicant had refused to receive compensation, we filed a civil suit in Aug 2008 vide civil suit No. 430 of 2007 in Mengo court seeking to recover our land.

19. That the chief magistrate Phillip Odoki dismissed the suit, upon the applicant's counsel raising an objection that the suit is res judicata given that the LC1 Court had already made a decision on it and that the same had not been appealed against.

20. That I was advised by my lawyers O.N Osinde & co. Advocates that since there was an LC1 Court judgment which had not been challenged by way of an appeal, it was better to have the judgment executed by way of filing an application for execution before the chief magistrate.

21. That consequently my said lawyers filed an application which was opposed by the applicant's lawyer's and consequently the chief magistrate ruled that in view of the LC Court judgment, we should pay shs 5,000,000= to the applicant and if he failed to receive it, that we should deposit the money with the court.

22. That upon the applicant refusing to receive the shs 5,000,000/=, we deposited the money in Court and a receipt to that effect was given to us.

23. …….

24. That it is not true that the applicant has built residential houses nor does he stay in the said premises, what is true is that the semi permanent house that is there was built by my grandfather in 1950's and the applicant has been taking advantage of the ongoing court process to grade the disputed land and use it as parking space.

25. That in the process of grading the land, the applicant has destroyed graves where we buried our grandfather, father and other relatives.

26. That the land measures 0.60 decimals/ acres but the applicant has occupied all the land and yet the LC Court judgment states that he should be compensated for 0.20 acres.

27. ……

28. **That therefore the decision of the chief magistrate's Court of Mengo is proper, within the law and that there is nothing that warrants this honorable court to revise this decision…….”**

The 2nd respondent also filed an affidavit in reply stating the same grounds that were stated by the 1st respondent.

When the matter came up for hearing on 22nd February 2012, Mr. Katumba Chrisestom counsel for the applicant sought for an adjournment on the ground that Mr. Medard Lubega who had personal conduct with the matter was out of the country for Parliament business. However Mr Himbaza Godfrey counsel for the respondent advised the applicant to withdraw the application and they discuss the issue of costs since the same issues they have discussed will be the same issues to discuss on the day Mr. Medard Lubega appears. Since the applicant's counsel wanted the application to be heard, the parties were directed to file written submissions together with the authorities that they intended to rely on. Counsel for the applicant to do so by 29/2/2012, counsel for the respondent to file his reply by the 6/3/2012, counsel for the applicant to file his final submission by 12/3/2012 and a ruling to be delivered on 19/3/2012.

It should be noted that counsel for the respondents filed his written submissions on 6/3/2012 as was directed by this Court. The applicant failed to follow the directive on filing their submissions on 29/2/2012 and 12/3/2012. On 16/3/2012 three days to the delivery of the ruling by this Court counsel for the applicant wrote a letter praying that delivery of the ruling scheduled for Monday the 19th day of March 2012 be postponed to give the applicant a chance to file written submissions which was consented to by the respondents. However to this date the applicant has not filed written submissions and no sufficient cause has been shown by counsel for the applicant for failure to do so.

The applicant's lawyer never bothered to prosecution his client's case for reasons which were never communicated to Court. In the premises, this Revision Cause No. 13 of 2011

is dismissed for want of prosecution under Section 98 of the Civil Procedure Act, Cap. 71, with costs.

Further, for purposes of clarity on the dispute between parties as set out in this application, I have evaluated the affidavits evidence that was filed on Court record, then considered the submissions by Counsel for the respondents, Mr. O.N. Osinde of O.N. Osinde & Co. Advocates and I agree with him that the applicant had no grounds which this Court could base on to revise the decision of the Chief Magistrate arising from Miscellaneous Application no. 377 of 2009 between the parties.

Counsel for the respondents submitted that in the present case the applicant is claiming a kibanja interest over the registered land owned by the respondents. The Court of Appeal has held before that disputes of a mailo owner against a kibanja claimant are disputes which fall under the **3rd schedule to the Local Council Courts Act** and hence can be tried by LC Courts. Counsel cited the case of **Sembatya vs. Nandaula Harriet & ors Civil Appeal No. 98 of 2003.**

It was counsel's contention that the LC1 Court of Kabowa rightly entertained the case as its jurisdiction fell within the **3rd schedule of the Local Council Courts Act**. The equivalent of the 3rd schedule of the Local Council Courts Act under which the LC1 Court of Kabowa exercised its jurisdiction, was the **Executive Committees (Judicial Powers) Act, 3rd schedule** which was repealed by the Local Council Courts Act 2006, under which the Chief Magistrate of Mengo based himself to issue the order that the applicant is dissatisfied with. See: **Section 10(3) Local Council Courts Act**.

In conclusion Counsel contended that the applicant is not a kibanja holder as he alleges since he does not fall within the ambit of **Section 29(2) (a) of the Land Act 1998** having bought wrongfully from Laban Kayita in 1993. In the LC1 judgment the applicant was to be compensated for 0.20 acres which he was occupying but he now occupies the whole 0.60 acres without the consent of the landlord (respondents).

Revision is governed by **Section 83 of the Civil Procedure Act Cap 71**. Under this Section, the High Court may call for the record of any case which has been determined by any subordinate Court and may revise the case if it appears there has been:-

a) Wrongful exercise of jurisdiction.

b) Failure to exercise a jurisdiction vested in that Court, or

c) Action which was illegally as to jurisdiction or with material irregularity or injustice

In this instant case the applicant's application is based on **paragraph (c) of Section 83** cited above. The applicant alleges that the trial magistrate exercised jurisdiction with material irregularities and injustice. In these circumstances though the trial magistrate had jurisdiction, he exercised it wrongly through some procedural deficiency. The deficiencies that are referred to by the applicant include the trial magistrate ignoring the applicant's right to compensate the respondents but instead that he should be compelled to accept compensation despite his objection. In the case of **Matemba vs. Yamulinga (1968) EA 643, Mustafa J** held that;

> **"It will be observed that the Section applies to jurisdiction alone, the irregular exercise or non exercise of it, or the illegal assumption of it. The section is not directed against conclusion of the law or fact in which the question of jurisdiction is not involved….as regards alleged illegality or material irregularity urged by the applicant, according to the case of Amir Khan vs Sheo Baksh Singh (1885) 11 Cal. 6; 11 1. A 237 a Privy Counsel case it is settled that where a court has jurisdiction to determined 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 erroneous decision on a question of fact or even of law."**

In the application before this Court, the trial Chief magistrate acted within jurisdiction in determining Misc. Application No. 377 of 2009. In the magistrates ruling at pages 3 and 4 he held that:

> **"The power of the chief magistrate is limited to reducing the award if he or she finds it excessive but does not have the power to increase if he or she finds that the award is too low…Paul Banja and Laban Kayita were given either to transfer the 0.20 acres to the respondent in this case or pay him 5m/= as compensation. It is also very clear from the same judgment that no time limitation was given when Paul Banja was to exercise that choice… judgment was passed in the year 2002 and shortly after Paul Banja fell sick, was hospitalized of cancer and eventually died in 2003 and therefore did not exercise the option given to him under the judgment for reasons beyond his control. This evidence that Paul Banja fell sick and subsequently died was not challenged….the decision of the respondent to refuse the compensation was wrong…the 5m/= being paid was the award of the LC Court and the respondent did not go to the court to revise the figure of the 5m/= if indeed he felt that 5m/= was too low as per the year 2005…This court cannot at this stage of execution increase the amount to a higher amount based on reasons cited earlier. And since the applicants have since the year 2005 made it clear that they chose the option to pay compensation, I will make an order that execution issues by the applicants paying the respondent 5m/=…."**

From the above it clearly shows that the trial magistrate had jurisdiction to determine the matter as provided for under **Section 10(3) of the LC Courts Act No13 of 2006** which stipulates that;

> **"In any suit relating to causes and matters specified in the second schedule and in the third schedule, where the court awards compensation exceeding twenty five currency points, the court shall refer the case to the chief magistrate of the area for the purpose of execution of the order and the chief magistrate may, if he or she finds that the judgment award is grossly excessive, reduce the amount of the award taking into account awards in similar cases."**

The suit land falls under the 3rd schedule of the LC Courts Act. The LC Court awarded compensation of 5,000,000/= which exceeded 25 currency points. It was the duty of the

trial chief magistrate to ensure that the order of the LC Court is executed which he diligently did by ordering the respondents herein to compensate the applicant with 5,000,000/= as was ordered by the LC Court. The trial chief magistrate had no right to increase the amount from 5,000,000/= or compel the applicant to compensate the applicant. That was no reason at all for this court to revise his order under **Section 83 of the Civil Procedure Act** and the authority of **Matemba vs Yamulinga (supra)**.

In the result and for the reasons given hereinabove in this ruling, this Revision Cause No. 13 of 2011 is dismissed with costs to the respondents.

In view of the above dismissal order, the respondents are entitled to immediate possession of the suit land from the applicant. In any event the handover of this suit land by the applicant to the respondents shall be within 30 (thirty) days from the date of this ruling.

The applicant is advised to pick his cheque worth Shs 5,000,000/= that was deposited at the Chief Magistrate Court as evidenced in the affidavit in rejoinder sworn by the 1st respondent. The respondents shall enjoy their judgment in respect of the suit land in the lower Court.

Dated at Kampala this 7th day of June, 2013

sgd
MURANGIRA JOSEPH
JUDGE