

UGANDA / JUDGMENT

Akakikunda v Mugabo Kabiriti (Revision Application 7 of 2024) [2024] UGHC 1154 (20 December 2024) [2024] UGHC 1154

COURT

High Court of Uganda

BEFORE

Byaruhanga Rugyema, J

CASE / FILE NUMBER

Revision Application 7 of 2024

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT HOIMA REVISION APPLICATION NO. 007 OF 2024 (Formerly MSD Revision Application No.1 of 2019)

(Arising from Hoima Chief Magistrate's Court, Misc. Applicn. No.025 of \$2018)\$

AKAKIKUNDA ANITA ::::::::::::::::::::::::::::::::::::::

VERSUS

MUGABO JOHN KABIRITI ::::::::::::::::::::::::::::::::::::::

Before: Hon. Justice Byaruhanga Jesse Rugyema

RULING

Introduction

- The Applicant brought this application under **S. 39 of the Judicature Act**, **S. \$[1]\$ 83 CPA** and **0.52 rr. 1 & 3 CPR** for orders that;
- The decision of the learned Chief Magistrate in Misc. Application \$\overline{a}\$ No.025 of 2018 dated 16th October, 2018 be revised, set aside and stay execution of costs.
- Costs of this application be provided for. \$\mathbf{b}\$)
- The application is by Notice of Motion and supported by grounds enumerated in the affidavit of **Akakikunda Anita**, the Applicant. Briefly, they are as follows:

- 1. That the learned Chief Magistrate acted illegally and with material irregularity when he made orders revising the decision of the Magistrate Grade One of Kagadi in an application which was seeking to enforce the court's order.
- 2. That the only issue the learned Chief Magistrate had to determine in Misc. Application No. 025 of 2018 was whether or not the Respondent had disobeyed the court order but not to revise and determine the propriety of the decision made by the Grade One Magistrate of Kagadi.

\$1\$ | Page

- 3. The learned Chief Magistrate acted with material irregularity and injustice when he awarded costs of \$Ugx 9,11,8,000/\$ = to the Respondent and allowed execution of the order to proceed *exparte* without serving the same on the Applicant.
- 4. That it is in the interest of Justice that this court revises, stays and sets aside the ruling and order of the learned Chief Magistrate.
- The Application is opposed by the Respondent, Mugabo John Kabiriti, \$[3]\$ through his affidavit in reply which is to the effect that:
 - a) The Chief Magistrate legally determined Misc. Application No.025 of 2018 which sought for orders inter alia, that the Respondent be found in contempt of court and dismissed it with costs.
 - b) The Applicant was duly served with the Respondent's bill of costs in Misc. Application No.025 of 2018 and failed to attend court on the date scheduled for taxation.
 - c) There is nothing for this court to revise in this Application and the same should be dismissed with costs.

Background

\$[4]\$ On the 27th October, 2013, the Respondent bought a house/suit property from the vendor, a one **Samuel Tukamuhabwa**, who at the time was cohabiting with the Applicant. In 2014, the Respondent found the Applicant living in the house/suit property and sought help from police by reporting and registering the offence of Forcible detainer vide criminal case No.199/2017 against the Applicant. The Applicant was prosecuted and the Grade One Court of Kagadi found her not guilty of the offence. The court in its judgment dated \$11/7/2018\$ advised the complainant/Respondent to pursue a civil action against Samuel Tukamuhabwa for recovery of his money/purchase price because there was evidence that the accused/Applicant had physically contributed to the house/suit property which had been sold off to the Respondent without the Applicant's approval and or consent. Later, the Respondent sought to evict the Applicant from the property and the Applicant filed Misc. Application No.025 of 2018 against the Respondent for contempt of court orders. The application was dismissed with costs to the Respondent by the then **Chief Magistrate Kagoda S. M Ntende**. It is from that decision/ruling of

the Chief Magistrate that the Applicant in this Application seek court to revise, set aside the orders and stay execution.

Counsel Legal Representation

- [5] The Applicant was represented by the firm of M/s Byamugisha, Lubega, Ochieng & Co Advocates, Kampala while the Respondent was represented by the firm of M/s Kaahwa, Kafuuzi, Bwiruka & Co. Advocates, Forth Portal. Both counsel filed their respective submissions for consideration of court in the determination of this application.
- [6] The issue for determination Whether this is a proper case for revision.

Determination of the Application

S.83 CPA vests in the High Court supervisory Jurisdiction to revise decisions [7] of Magistrates Courts. In *Munobwa Mohamed Vs Uganda Muslim Supreme Council* H. C Civil Revision No. 01 of 2006, court observed that in cases where it exercises its revision jurisdiction, the High Court's duty entails examination of any proceedings before it for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings before it. The court observed further that:

> "In Uganda, the powers of the High Court in Revision of the proceedings of the Magistrates' courts are not limited.... Decisions are revised whenever the trial Magistrate fails to exercise his/her jurisdiction or where he/she acts illegally or with material irregularity or injustice.

- It is now trite law that, in the exercise of its revisional power, the High Court [8] has to ascertain whether the requirements of the law have been duly and properly complied with by the Court whose order is the subject of revision, and whether the irregularity as to failure or exercise of jurisdiction is such as to justify interference with the order.
- Counsel for the Applicant submitted that the learned Chief Magistrate [9] exceeded his powers in making orders while revising the orders of a Magistrate Grade One and yet such power is a preserve of the High Court. That the Chief Magistrate faulted the Magistrate Grade One for availing the Applicant with a defence of claim of right and stopped/stayed the execution

[3] | Page

of the Magistrate Grade One's order. Relying on the authority of **Remmo Habib Vs Juma Saidi** Civil Revision No.0006 o 2015, counsel concluded that the Chief Magistrate did not have jurisdiction to revise the decision made by the Grade One Magistrate and it was therefore illegal for him to exercise a jurisdiction not vested in him.

- [10] Secondly, Counsel submitted that the Respondent filed his bill of costs which was taxed *exparte* and allowed at Ugx 9,118,000/=. He stated that the decision to award the said costs was illegal because the Applicant had not been served with the taxation hearing notice.

- On the other hand, Counsel for the Respondent submitted that Chief \$[11]\$ Magistrate did not revise any order in the judgment of Criminal Case No.199/2017 but only pointed out errors that were made by the trial Magistrate.
- 2ndly, that the taxation of the Respondent's bill of costs was made after \$[12]\$ effective service on the Applicant evidenced by the affidavit of service attached to the affidavit in reply.
- [13] Section 83 CPA applies to jurisdiction alone, the irregular exercise of or nonexercise of it or the illegal assumption of it, see *Matemba Vs Yamulinga* [1968] EA 643. In the instant case, it is apparent that the Applicant filed Misc. Application No.025 of 2018 seeking orders against the Respondent for inter alia, contempt of court, arrest and detention of the Respondent for contempt of court. In determining the said Application, the Chief Magistrate then, HW **Kagoda S. M Ntende** ruled in part as follows:

"..... It therefore follows that if the applicant is aggrieved with the Respondent's possession of the suit property then, she can go ahead and sue her boyfriend to prove her rights. But, not to use the Criminal Case where she was acquitted to enforce her rights against the Respondent. And therefore, the applicant cannot use a criminal Court to enforce Civil remedies. And consequently, I will hereby dismiss this application with costs."

In my view, I do not find the above ruling by the Chief Magistrate to constitute revision of the orders of the trial Court in the Criminal Case No.199/2017. The trial court acquitted the Applicant of the criminal charges against her. The ruling of the Chief Magistrate in Misc. Application No.025 of 2018 only

4 | Page

served to explain and show the Applicant that the contempt of court order she was seeking, had no basis because the trial court only acquitted her of the criminal charges. The Applicant therefore couldn't and cannot in any way use the order acquitting her to hold the Respondent liable for contempt of court as there was no order of the court which the Respondent had disobeyed.

- On the issue of the Respondent's *ex parte* taxed bill of costs, it is trite that \$[14]\$ costs follow the event; S.27 CPA. Misc. Application No.025 of 2018 was dismissed with costs to the Respondent. On record, there is evidence showing that the Applicant was duly served with the taxation hearing notice as per the affidavit of service deposed by a process server, a one Mulindwa Asiimwe **Joseph**. attached to the Respondent's Affidavit in Reply; See **annexture "G"**. I find that the Applicant for reasons known only to her, opted to not attend court on the due date for the taxation hearing and court proceeded to tax the Respondent's bill of costs **ex parte**. Therefore, the available remedy for the Applicant who is in this case is aggrieved by the taxation award, is to appeal to the High Court.

- [15] From the foregoing, I find that the Chief Magistrate acted legally within his jurisdiction to hear and determine **Application No.025 of 2028**. I have no reason to fault him for dismissing the Application with costs and the subsequent taxation of the Respondent's bill of costs which was allowed at Ugx \$9.118,000/\$ =. There is therefore nothing for this court to revise.
- [16] In the premises, this Application for revision fails and it is accordingly dismissed with costs.

Dated at Hoima this 20th day of December, 2024.

Byaruhanga Jesse Rugyema JUDGE

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughc/2024/1154/eng@2024-12-20>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/akakikunda-v-mugabo-kabiriti-revision-application-7-of-2024-2024-ughc-1154-20-december-2024-unknown-topic-unknown-court-2024>

Prepared on 12 October 2026 · Esheria