

**Chopin Joseph Micheal v Fairway Hotel
Limited (Civil Revision No. 13 of 2024)
[2025] UGCommC 84 (12 March 2025)
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Background

The background of this application is contained in the affidavit in support by the Applicant, and is summarized below:

- 1. That the Respondent instituted *Civil Suit No. 1030 of 2023* seeking 10 recovery of UGX 36,616,167/= allegedly being unpaid hotel bills with interest and general damages.
 - 2. That the Respondent knew that the Applicant is an American citizen, coming to Uganda as a tourist and a holder of an American passport No.594326995.
 - 15 3. That with full knowledge that the Applicant had returned to the USA, the Respondent obtained an order for substituted service and advertised the summons to file a defence issued in *Civil Suit No. 1030 of 2023* in the Monitor Newspaper on 21st February, 2024 instead of following the appropriate procedure of service out of the 20 jurisdiction.
 - 4. That *Misc. Application No. 1208 of 2023* was heard and determined in the Applicant's absence and on 20th August, 2024 an order was issued condemning him unheard, to deposit in Court UGX 15,000,000/= and his original passport as security for his 25 appearance.
 - 5. That when the Applicant returned to Uganda on 23rd April, 2024, he was arrested, arraigned in Court and committed to Luzira Prison where he was detained from 20th August, 2024 to 4th September, 2024.
 - 30 6. That as a condition for his release, he was required to deposit in Court UGX 15,000,000/= and his original passport.
- 5 7. That the Chief Magistrate acted illegally with material irregularity and injustice when he proceeded with the case without satisfying himself that there was proper and effective service of summons, issued the impugned order without affording him with an opportunity to be heard and ordering for depositing of his original 10 passport in total disregard of the fact that the Applicant has a lawyer on record and has even deposited UGX 15,000,000/= hence his appearance during trial is already guaranteed and secured.

In reply, the Respondent through, its General Manager **Mr. Samson Ombogo**, opposed the application contending that:

- 15 1. The Applicant visited Uganda using a tourist visa and stayed at the Respondent's premises as a guest in the Hotel from 9th May, 2023. That the Applicant was offered services worth USD 9,703.76 or UGX 36,616,167/= but he escaped from the Respondent's premises without clearing his bill, hence the institution of *Civil Suit No. 1030*
- 20 *of 2023*.

- 2. The Respondent did not know where the Applicant was since he had escaped from the hotel and even switched off his known telephone No. +1323-523-3221 as well as blocked the Respondent from accessing his email address of [mish.gamisu@outlook.com.] (mailto:mish.gamisu@outlook.com)
- 25 3. Since the Respondent was not in contact with the Applicant after his escape, they did not know where he was and therefore opted for substituted service.
- 4. The Applicant had no known property or home in Uganda and there was no guarantee that he will pay UGX 36,616,167/= since he had 30 escaped and therefore, the only rational thing to do was to apply for the Applicant to furnish security for his appearance in Court.
- 5 5. On 17th October, 2024 during the hearing of *Misc. Application No. 854 of 2024*, the Applicant raised the issue of renewing the visa and the Court permitted him as well as the issue of service of the summons in *Civil Suit No. 1030 of 2023* which was handled and resolved and the Applicant even filed his Written Statement of 10 Defence.
- 6. During the hearing of *Misc. Application No. 1207 of 2023* and *Misc. Application No. 1208 of* 2023, before his committal, the Applicant appeared in Court and was represented by Counsel Muzaale and he failed to furnish security hence his committal to civil 15 prison and that he later deposited his passport and UGX 15,000,000/= to ensure his return to defend the main suit.

Representation

The Applicant was represented by **M/s Terrain Advocates** while the Respondent was represented by **M/s Luswata- Kibanda & Co. Advocates**.

20 Issues for Determination

Following **Order 15 rule 5(1) of the Civil Procedure Rules** and the case of *Oriental Insurance Brokers Ltd Vs Transocean (U) Limited SCCA No. 55 of 1995,* this Court framed the following issues:

- 1. Whether this is a proper case for revision?
- 25 2. Whether there are any remedies available to the parties?

The parties were directed to file their written submissions which they did and the same have been considered by the Court.

Before delving into the merits of the application, on 22nd January, 2025, when the application came up for hearing, Learned Counsel for the

- 5 Respondent raised three preliminary objections and added one in the written submissions to the effect that:
 - i. The Applicant's pleadings are inconsistent with the orders sought.

- ii. *Misc. Application No. 1207 of 2023* is *res judicata*.
- iii. The Court lacks jurisdiction to entertain the matter.
- 10 iv. The application is not properly before this Court as it seeks to revise the proceedings in the lower Court that were not available at the time it was filed.

As provided for under **Order 6 rule 28 of the Civil Procedure Rules**, a point of law that is pleaded when so raised is capable of disposing of the

- 15 suit, may by consent of the parties or by order of the Court on the application of either party, be set down for hearing and disposed of at any time before the hearing. It is also trite that where there is a preliminary objection capable of disposing of the matter in issue, it is judicious to first determine the said objection before embarking on the merits of the case.
- 20 Guided by the above, I shall proceed to resolve the preliminary objections so raised.
- i. Whether the Applicant's pleadings are inconsistent with the orders sought?

Respondent's submissions

- 25 Counsel for the Respondent contended that the grounds stated in the Notice of Motion refer to the revision of *Misc. Application No. 1208 of 2023* and yet the prayers refer to *Misc. Application No.1207 of 2023* and *Civil Suit No. 1030 of 2023*, which amounts to a departure from the pleadings. That the Applicant is bound by his pleadings as provided under
- 30 **Order 6 rule 7 of the Civil Procedure Rules.**

5 Applicant's submissions in rejoinder

Learned Counsel for the Applicant relied on the case of *Trust Venture Ltd Vs Power foam (U) Ltd HCCS No. 669 of 2017* and submitted that the reference to *Misc. Application No. 1207 of 2023* instead of *Misc. Application No. 1208 of 2023* is a misnomer which does not go to the root of the matter. That therefore, there is no departure from the pleadings as alleged by the Respondent.

Analysis and Determination

On 22nd January, 2025 when the application was called for hearing, Learned Counsel Henry Kirunda for the Applicant, clarified that the 15 reflection of *Misc. Application No. 1207 of 2023* instead of *Misc. Application No. 1208 of 2023* was a typing error. He added that the facts as reflected in the pleadings including the attachments show that it is *Misc. Application No. 1208 of 2023* that is for revision.

I have carefully observed the pleadings and annexures by both parties. 20 Paragraph 4 of the affidavit in support refers to the facts contained in *Misc. Application No. 1208 of 2023*. This is confirmed by annexure "D" attached to the affidavit in support, which is a copy of the application and Court proceedings in *Misc. Application No. 1208 of 2023* being relied on by the Applicant. Paragraph 2(p and q), of the affidavit in reply also 25 shows that the Respondent knew and understood the application sought to be revised and responded to the averments therein. Also, I have observed that the Respondent did not contend that it was jeopardized by the misnomer.

Article 126(2)(e) of the Constitution of the Republic of Uganda, 1995,

30 enjoins this Court to administer substantive justice and avoid

- 5 technicalities. This was emphasized by the Supreme Court in the case of *Kasaala Growers Cooperative Society Vs Kakooza Jonathan and Another SCCA No. 19 of 2010.* Therefore, in light of the above, and in the interest of justice, for the record, the correct Miscellaneous Application for revision is *Misc. Application No. 1208 of 2023* and not *Misc.*
- 10 *Application No. 1207 of 2023* as clarified by Learned Counsel for the Applicant.

This preliminary objection is overruled.

ii. Whether *Misc. Application No. 1207 of 2023* is *res judicata*?

Learned Counsel for the Respondent raised the above objection under the 15 understanding that the application for revision is *Misc. Application No. 1207 of 2023* which has been clarified above. Therefore, this preliminary objection lacks merit.

iii. Whether this Court lacks jurisdiction to entertain the matter?

In his submissions, Learned Counsel for the Respondent submitted that 20 in light of **Article 139 of the Constitution of the Republic of Uganda, 1995**, they consented that the High Court has jurisdiction to entertain the matter.

Therefore, due to Counsel for the Respondent's admission above, this preliminary objection is also overruled.

25 iv. Whether the application is properly before this Court as it seeks to revise the proceedings in the lower Court that were not available at the time it was filed?

In his submissions, Learned Counsel for Respondent submitted that this application was not properly brought since it seeks to have the proceedings

5 in *Civil Suit No. 1030 of 2023* and *Misc. Application No. 1207 of 2023* revised, yet the proceedings for both matters from the lower Court are not on record.

The above argument was in light of the presumption that this application seeks to revise the proceedings in *Civil Suit No. 1030 of 2023* and *Misc.*

10 *Application No. 1207 of 2023,* which as resolved above, is not the case. Therefore, this preliminary objection is also overruled.

I shall now proceed to resolve the application on its merits.

Issue No.1: Whether this is a proper case for revision?

Applicant's submissions

- 15 Counsel for the Applicant reiterated the position of the law regarding the exercise of revisionary powers by this Court. Counsel then contended that the main issue herein is whether the Learned Chief Magistrate acted illegally or with material irregularity or injustice in exercising his jurisdiction. That as per the record of proceedings, annexure "D", on 5th 20 February, 2024, when *Misc. Application No. 1208 of 2023* came up for hearing, the Court ruled that:

"... this Court has looked at the entire Court record over this matter and it has come to Court's attention that the Applicant did not serve this application unto the Respondent and there is no affidavit of 25 *service to that effect... This Court therefore directs the Applicant to serve this application and the next hearing notice unto the Respondent and an affidavit of service filed to that effect...*"

That on 17th June, 2024 when the application came up for further hearing, without establishing whether the Respondent complied with the directive 30 to serve the Applicant, the Learned Chief Magistrate proceeded and made

5 ex parte orders and thereafter issued a warrant of arrest upon which the Applicant was arrested and imprisoned on 20th August, 2024 against his constitutional right to a fair hearing.

In further submission, Counsel contended that the Learned Chief Magistrate's orders caused an injustice to the Applicant in as far as the 10 Court continues to hold on to the Applicant's passport notwithstanding that the Applicant entered appearance as required by the law, filed his defence and is represented by an Advocate.

Respondent's submissions

Learned Counsel first submitted on the grounds for revision as per **Section 83 of the Civil Procedure Act**. Counsel then argued that on 20th 15 August, 2024 before his arrest, the Applicant was in Court as per the record of proceedings in *Misc. Application No. 1208 of 2023,* annexure "D". That the Applicant was even represented by Counsel Muzaale, during the committal proceedings and thus was given a fair hearing. That 20 therefore, the Learned Chief Magistrate did not exercise his jurisdiction with material irregularity since he considered the fact that the Applicant escaped from the Respondent's hotel with an outstanding bill, went back to America and sneaked back into the Country, before ordering the Applicant to deposit UGX 15,000,000/= and his passport.

25 Analysis and Determination

The **Black's Law Dictionary, 9th Edition**, defines revision as a reexamination or careful review for correction or improvement or an altered version of work.

5 **Section 17(1) of the Judicature Act, Cap. 16** also provides the High Court with supervisory power over the Magistrates Courts. The law on revision, as set out by **Section 83 of the Civil Procedure Act**, is that:

(1) The High Court may call for the record of any case which has been determined under this Act by any Magistrate's Court, and if 10 *that Court appears to have-*

- *(a) exercised a jurisdiction not vested in it in law;*
- *(b) failed to exercise a jurisdiction so vested; or*
- *(c) acted in the exercise of its jurisdiction illegally or with material irregularity or injustice,*

15 *the High Court may revise the case and may make such order in the record as the Court considers fit.*

- *(2) The power of revision referred to in subsection (1) shall not be exercised-*
- *a) unless the parties are first given the opportunity of being heard;* 20 *or*
- *(b) where, from lapse of time or other cause, the exercise of that power would involve serious hardship to any person."*

In the case of *Johnson Katebalirwe Vs Segonga Goldwin T/A Platinum Associates, Revision Cause No.12 of 2017*, the Court cited with 25 approval the case of *Mabalaganya Vs Sanga [2005] EA 152*, wherein it was held that in cases where the High Court exercises its revisionary powers, its duty entails the examination of the record of any proceedings before it to satisfy itself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings

5 before the High Court. Furthermore, in the case of *Friendship Taxi (U) Ltd Vs Adrana Matovu HC Civil Revision No. 0003 of 2019*, **Hon. Justice Stephen Mubiru** stated that:

(This Court will not in its revisionary jurisdiction consider the merits of the case however erroneous the decision of the Court below is on an 10 *issue of law or of fact but will only interfere only to see that the requirements of law have been properly followed by the Court whose order is the subject of revision."*

In the instant case, the Applicant asserts that on 17th June, 2024 the Learned Chief Magistrate, vide *Misc. Application No. 1208 of 2023*, 15 issued a warrant of arrest without, according to the Applicant a fair

hearing and that the Court further ordered the Applicant to deposit UGX 15,000,000/= and his passport as security for his appearance, thereby acting illegally.

In the case of *Ssejemba Israel Vs Attorney General, Constitutional*

20 *Petition No. 37 of 2014*, the Court with approval quoted the case of *Charles Twagira Vs Uganda, Supreme Court Criminal Appeal No .27 of 2003*, which stated that:

"... A fair trial, or a fair hearing under Article 28 means that a party should be afforded an opportunity to, inter alia, hear the witnesses 25 *of the other side testify openly, that he should, if he chooses, challenge those witnesses by way of cross-examination; that he should be given an opportunity to give his own evidence, in his defence, that should if he so wishes, call witnesses to support his case*."

- 5 The record of the lower Court, annexure "D" and the pleadings in the instant case disclose that; in December, 2023, the Respondent instituted *Civil Suit No. 1030 of 2023* at the Chief Magistrate's Court at Mengo, against the Applicant for recovery of UGX 36,616,167/=, being alleged hotel bills accumulated by the Applicant during his stay at the 10 Respondent's premises, general damages, interest and costs of the suit. The claim is premised on the facts that, on 9th May, 2023, the Applicant allegedly stayed at the Respondent's premises from 9th May, 2023 to around 22nd November, 2023, when he sneaked and escaped from the hotel without paying the outstanding bills. That the Applicant was served 15 with the notice of intention to sue through his WhatsApp No.+3235233221 but he later blocked the Respondent from accessing it and his email. The Respondent then filed the suit and vide *Misc. Application No. 1207 of 2023*, sought substituted service which was granted and the service was effected. The Respondent also filed *Misc. Application No. 1208 of 2023* 20 for a warrant of arrest against the Applicant, to bring him before the Court
- to show cause why he should not furnish security for his appearance in *Civil Suit No. 1030 of 2023*.

Misc. Application No. 1208 of 2023 was first heard on 1st February, 2024 and adjourned to 5th February, 2024 for a ruling. On 5th February, 25 2024, **His Worship Kunihira George** in his ruling noted that the Applicant had not been served with the application as there was no affidavit of service. The Court directed the Respondent herein to serve the Applicant and file an affidavit of service. On 17th June, 2024, the application was granted and the order of arrest of the Applicant to appear before the Court 30 to show cause why he should not give security for his appearance was issued.

According to annexure "D" attached to the affidavit in support, on 20th 5 August, 2024, the Learned Chief Magistrate noted that:

> *"The Respondent has been brought to Court upon an arrest warrant for purposes of furnishing security for his appearance until the completion of the case."*

10 The Applicant even stated that:

"First and foremost, I was not aware of this case and for that matter I'm not ready as of now to pay that security."

The above proceedings were not challenged or disputed by the Applicant. Therefore, as per the proceedings of the lower Court, the Applicant was

15 present on 20th August, 2024 when *Misc. Application No. 1208 of 2023* was being heard and was even accorded an opportunity to defend himself.

Regarding the issue of the orders that were issued in *Misc. Application No. 1208 of 2023*; according to annexure "D", the proceedings and ruling in *Misc. Application No. 1208 of 2023*, the Learned Chief Magistrate 20 held that:

"The Defendant/Respondent who was arrested pursuant of the warrant issued by this Court, was given opportunity to show cause why he should not pay for the security of his appearance in Civil Suit No. 1030 of 2023. In response the Defendant intimated to Court how 25 *he was not aware about the case and how he was ready to cooperate with the Plaintiff. However, this Court finds that the reasons advanced by the Respondent/Defendant are not sufficient enough for this Court not to order him to furnish security for his appearance."*

The Court then ordered the Applicant to deposit security of UGX 30 15,000,000/= to BOU A/C No.003010088000012, in the name of the

- 5 Registrar High Court, as well as his original passport with the Cashier of Mengo Chief Magistrate's Court; failure of which, he would be committed to prison until he complies with the orders above and or until the completion of *Civil Suit No. 1030 of 2023* whichever comes first.
- The above record of Court shows that the Learned Chief Magistrate while 10 handling the said application, was mindful of the principles of natural justice and the circumstances of the case. The Applicant was given an option of depositing the money in issue and his passport or be committed to civil prison. The orders requiring the Applicant to deposit in Court UGX 15,000,000/= and his original passport were made in his presence to 15 ensure his appearance in Court during the hearing of *Civil Suit No. 1030 of 2023* and therefore the Applicant's contention that he was condemned unheard is false.

In the circumstances, I find no illegality, material irregularity or injustice caused by the Learned Chief Magistrate in his ruling and orders in *Misc.*

20 *Application No. 1208 of 2023* arising out of *Civil Suit No. 1030 of 2023* that warrants revision.

Issues No. 2: Whether there are any remedies available to the parties?

In light of the above, I find no merit in the application. Accordingly, this application is dismissed. The costs of this application shall be in the cause.

25 I so order.

Dated, signed and delivered electronically via ECCMIS this 12th day of

March, 2025.

Patience T. E. Rubagumya

30 JUDGE

12/03/2025

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