

UGANDA / JUDGMENT

Karusiba v Kamatenesi (Revision Application No. 01 of 2023) [2025] UGHC 201 (21 April 2025)

[2025] UGHC 201

COURT

High Court of Uganda

BEFORE

Tweyanze, J

CASE / FILE NUMBER

Revision Application No. 01 of 2023

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MASAKA
REVISION APPLICATION NO. 01 OF 2023 (ARISING THE CHIEF MAGISTRATE'S
COURT OF SEMBABULE AT SEMBABULE, MISC. APP NO. 01 OF 2022, ARISING FROM
LS. NO. 44/2014)

KARUSIBA JOVIA:.....
APPLICANT VERSUS KAMATENESI
FLORA:..... RESPONDENT

Before: HON JUSTICE LAWRENCE TWEYANZE

RULING

Background:

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- 1. The background as obtained from the documents is that in 2014, the Applicant sued the Respondent (Kamatenesi Flora and Ntaro Godfrey) in the Chief Magistrate's of Masaka at Sembabule for a declaration that she is the rightful owner of the suit land at Lugusulu, a declaration that the Defendants are trespassers on the suit land, an eviction order, a permanent injunction, general damages and costs. The Defendant denied the Plaintiff's allegations. The Trial Court entered judgment on the 19th day of April 2016 in favour of the Plaintiff.

- 2. On the 26th day of May 2016, only the 1st Defendant (Ntaro Godfrey) filed an appeal in the High Court vide Civil Appeal No. 44 of 2016 challenging the decision of the Trial Court. As the appeal was pending, on the 22nd day of September 2016, Karusiba Jovia, Ntaro Godfrey and Kamatenesi Flora as the 2nd Judgment debtor entered a Consent settlement. On the 6th day of April 2020, the High Court dismissed the appeal on grounds that Civil Suit No. 44 of 2014 had been withdrawn with consent and it was finally settled by the parties.
 - 3. On the 23rd day of February 2021, the parties thus, Karusiba Jovia (Judgment Creditor), Ntaro Godfrey and Kamatenesi Flora (Judgment debtors) entered a Consent/Compromise in the Magistrate's Court which was endorsed by the same Court with the following terms:
 - *1. That the Second Judgment debtor pays the Judgment creditor part of the decretal sum amounting to UGX 5,230,000/= covering her obligation towards settling the suit as follows:*
- *(a). At the signing of this consent agreement, the Judgment debtor has paid UGX 3,000,000/= as part payment for getting her obligation towards the case.*

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- *(b). The balance of UGX 2,230,000/= shall be paid to the Judgment creditor within a period of one month from signing of this consent and in any case not later than the 22nd day of March 2021.*
- *2. The Bailiff costs have been agreed upon and fully settled by the party at the signing of this agreement.*
 - *3. That SINGIZA SETH guarantees payment of the balance of the decretal amount who shall be liable for payment in the event of any default by the Judgment debtor.*
 - *4. That the 2nd Judgment debtor is allowed to stay on land covering one Acre for three months before she can find another place of her own.*
 - *5. That the Judgment debtor has to today been guaranteed by a one SINGIZA SETH and in case of breach of this consent execution shall doth issue against both the Judgment debtor and her guarantor. "**
- 4. In 2022, the Respondent herein (Kamatenesi Flora) filed an Application in Misc. App No. 01 of 2022 arising from Land Suit No. 044 of 2014 in the Chief Magistrates Court of Sembabule at Sembabule seeking for orders that notice of eviction/demolition dated 4th February 2021 was overtaken by events, an order stopping the Judgment Creditor from executing the decree dated 24th day of May 2016, an order restituting the said seized property and demolished house, an order restraining the Judgment creditor (now Applicant) from entering the said land. That the Respondent had found two letters dated 22/10/2014 from Sembabule Local Government and another dated 12/03/2021 from Sembabule District Land Board cancelling and recalling the Applicant's lease offer. The Trial Magistrate ruled on the 7th day of March 2022 in favour of Kamatenesi Flora.

The Application.

- 5. This Revision Application No. 1 of 2023 is brought under Section 17(1), (2), 33 of the Judicature Act as amended, Section 83 of the Civil Procedure Act, and Order 52 rule (1), (2) & (3) of Civil Procedure Rules, seeking for orders that the decision and orders of H/W Oburu Moris Ezra delivered on 7th/03/2022 at the Chief Magistrates' Court of Ssembabule at Ssembabule vide Misc. Application No. 01/2022 arising from Land Suit No. 44/2014 against the Applicant be revised and set aside, the Applicant further prayed for costs.
- 6. The Application is supported by the affidavit of Karusiba Jovia, the Applicant herein where it is stated that; the trial Court exercised jurisdiction not vested in it and with material irregularity when it ruled that execution ordered by the lower Court and confirmed by the High Court against the Respondent was illegal; That the Trial Court exercised jurisdiction not vested in it and with material irregularity when it ruled that the notice of eviction, demolition dated 4/02/2021 done in execution of a Court order were overtaken by events; That the Trial Court exercised jurisdiction not vested in it in law; or acted in the exercise of its jurisdiction illegally or with material irregularity or injustice when it sat as an appellate Court, re-heard and determined its own decision in Civil Suit No. 044 of 2016.

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- 7. That the Trial Court exercised jurisdiction not vested in it in law; or acted in the exercise of its jurisdiction illegally or with material irregularity or injustice when it issued an order stopping the Applicant the then Respondent from executing the decree that was already executed and a report by the Court bailiff filed on Court's record; That the trial Court exercised jurisdiction not vested in it in law; or acted in the exercise of its jurisdiction illegally or with material irregularity or injustice when it ordered the Respondents to pay 5,000,000/= for restituting the seized house property and the demolished house belonging to the Applicant.
- 8. That the trial Court exercised jurisdiction not vested in it in law; or acted in the exercise of its jurisdiction illegally or with material irregularity or injustice when it issued a restraining order against the Applicant from entering her land. That on 24th December 2022, the Court Bailiff executed the decree and granted her vacant possession to the said land and subsequently filed a report. That the Magistrate Grade One had no powers to overturn the decision of the lower Court confirmed by the High Court; That the lower Court cannot overturn the decision of a Higher Court.

The Affidavit in Reply.

- 9. In reply, the Respondent, Kamatenesi Flora, swore an affidavit and deponed that she has never been a party to High Court Civil Appeal No. 3 of 2016 as annexed by the Applicant. That Land Suit No.044 of 2014 was decided in the Applicant's favour on 19th April, 2016, and the decree subsequently signed on 24/5/2016, Notice of eviction and demolition was issued

on 4/02/2021. That the Respondent was arrested in execution of the said decree, and a consent judgment was reached on 23/02/2021 wherein she was given 3 months to vacate the suit land. That before the 3 months could elapse, she learnt that the Applicant's lease had been cancelled for being part of River Katonga reserve.

- 10. That she applied for freehold of the 8 acres that she occupied, which NEMA confirmed were out of the reserve. That the Applicant subsequently filed Misc. Application No. 53 of 2021 seeking to hold her in contempt of the consent judgment, and the Applicant in this matter lost the same on ground that the Application was overtaken by events since the consent was entered to protect the lease which was already cancelled and she had a valid freehold. That after the Applicant lost the Application, she instructed the said Bailiffs to execute the decree which was passed before the consent dated 23/02/2021; That since the Bailiffs only seized her household properties and demolished her house but left her not evicted, it was necessary to file an Application seeking orders that the Respondent, now the Applicant in this matter is stopped from evicting her which was granted by the Learned Trial Magistrate.
- 11. That part-execution carried out on 24/12/2022 when Courts were in Christmas vacation was illegal, hence the Trial Magistrate granted her a declaratory order that

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part-execution was illegal; That the Bailiffs partly executed a decree against her, by demolishing and ceasing her household properties but left her on the suit land not evicted and informed her that they would come back and evict her with her cows and family. That the Bailiffs executed a decree dated 24/51/2016, yet there was a subsequent consent judgment dated 23/2/2021, and that there should have been a new decree from a consent judgment and therefore illegal; That the Trial Magistrate was never functus officio in respect of Misc. Application No.001 of 2022, since it was a fresh Application seeking different remedies altogether.

12. That the Respondent was never a party to the said appeal in the High Court at Masaka, and that the Trial Magistrate did not overturn any decision, but only held that the execution was overtaken by events since the Applicant's lease was no longer in existence; That the Trial Magistrate had jurisdiction to try the said Application since it was arising from Land Suit No.044/2014.

Representation.

13. The Applicant was represented by M/s Kaliba Associated Advocates while the Respondent was represented by M/s Mushabe Advocates.

Submissions.

14. The parties were directed to file written submissions, and each complied. I have considered all the submissions on record which I will not restate here since they repeat the averments in the affidavits.

Decision of Court.

15. Revision is the process under which the High Court exercises its powers of supervision over Magistrates' Courts. Section 83 of the Civil Procedure Act Cap 282 (Revised Edition) provides as follows:

"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 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, the High Court may revise the case and may make such order in it as it thinks fit; but no such power of revision shall be exercised—
- (d) unless the parties shall first be given the opportunity of being heard; or (e) where, from lapse of time or other cause, the exercise of that power would involve serious hardship to any person".

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- 16. In the instant case, the allegation by the Applicant is that the trial Magistrate exercised jurisdiction that was not vested in him; The Application is therefore within the ambit of Section 83 of the CPA and was properly brought before the High Court.
- 17. The first complaint by the Applicant is that the Trial Court exercised jurisdiction not vested in it in law; or acted in the exercise of its jurisdiction illegally or with material irregularity or injustice when it issued an order stopping the Applicant the then Respondent from executing the decree that was already executed and a report by the Court Bailiff filed on Court's record; That the Trial Court exercised jurisdiction not vested in it in law; or acted in the exercise of its jurisdiction illegally or with material irregularity or injustice when it ordered the Respondents to pay 5'000,000/= for restituting the seized household property and the demolished house belonging to the Respondent herein.
- 18. Secondly that the Trial Court exercised jurisdiction not vested in it in law; or acted in the exercise of its jurisdiction illegally or with material irregularity or injustice when it issued a restraining order against the Applicant from entering her land. That on 24th December 2022, the Court Bailiff executed the decree and granted the Applicant herein vacant possession to the said land and subsequently filed a report. That the Magistrate Grade One

had no powers to overturn the decision of the lower Court confirmed by the High Court;
That the lower Court cannot overturn the decision of the Higher Court.

- 19. The Magistrate's Court ruled on the 7th day of March 2022 in favour of Kamatenesi Flora with the following declarations I quote:

"*It's clear on Court record that the Respondent admits that her lease was cancelled by the District Land Board as to whether the cancellation was irregular or not is a matter that is subject to determination by a competent Court and since no Court has pronounced itself on the same.*

I hereby declare that:-

- *The notice of eviction demolition dated 4/2/2021 is overtaken by events*
- *I also hold that part-execution of 24/12/2021 as against the Applicant was illegal.*
- *Issue an order stopping the Respondent from executing the decree dated 24/5/2016 as against the Applicant.*
- *An order for payment of Uganda Shillings Five Million (Ugx 5,000,000/=) for restituting the seized household property and demolished house of the Applicant*
- *An order restraining the Respondent and his agent, successors from entering Applicant's land*
- *Costs of the suit is equally awarded to the Applicant.*"
- 20. In my view, there were material irregularities in the above decision on the face of it. The Trial Magistrate had no powers to issue the above orders, since he was *functus officio*, and had no further jurisdiction apart from determining contempt that was before Court. The Application before the Trial Court was for contempt of court, and

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not any other thing. I find that the Magistrate acted without jurisdiction, and the said orders are marred with material illegalities and irregularities amounting to an injustice.

- 21. On the above ground, this Application succeeds with no orders as to costs and I hereby make the following orders:
- a) The ruling by the Learned Magistrate Grade One dated 7/3/2022 is set aside.
- b) Each party bears its own costs of this Application and the lower Court.

Ruling signed and delivered electronically at Masaka this 21st day of April, 2025

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LAWRENCE TWEYANZE JUDGE. 21st April, 2025.

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