

UGANDA / JUDGMENT

Mbenoha v Kapasika (Miscellaneous Civil Revision 3 of 2923) [2024]

UGHC 884 (16 August 2024)

[2024] UGHC 884

COURT

High Court of Uganda

BEFORE

Byaruhanga Rugyema, J

CASE / FILE NUMBER

Miscellaneous Civil Revision 3 of 2923

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 MISC. REVISION APPLICATION NO. 03 OF 2023

(Arising from Kibaale Matrimonial Cause No.001 of 2020)

MBENOHA JAMES ::::::::::::::::::::::::::::::

VERSUS

KAPASIKA LEONIA ::::::::::::::::::::::::::::::

Before: Hon. Justice Byaruhanga Jesse Rugyema

RULING**Introduction**

- [1] The Applicant brought this application under Ss. 83 and O.52 rr. 1, 2 & 3 CPR for orders that:
- The ruling and orders by the Magistrate Grade 1, Kibaale passed on the ¹³ day of October 2021 in Matrimonial Cause No. 001 of 2020 in which a decree nisi was issued dissolving the marriage between the applicant and the respondent among others be revised and set aside.
- Costs of this application be provided for. $\mathbf{\$}$
- The application is by Notice of Motion and supported by grounds enumerated ^[2] in the affidavit of **Mbenoha James**, the Applicant. Briefly, they are as follows:

- 1. That the trial Magistrate decided the petition against the applicant without formerly hearing the same as required under the law.
- 2. That no evidence was adduced by the Respondent in support of her petition and no evidence was adduced by the Applicant in opposition of the petition.
- 3. That the information relied on by the trial Magistrate to make his ruling was not taken by court under oath and the same does not pass the test of evidence.
- The Application is opposed by the Respondent, Kapasika Leonia, through her [3] affidavit in reply which is to the effect that:
 - a) The Applicant's claims are denied.
 - b) The Application discloses no grounds to warrant revision and setting aside the orders of the trial Magistrate.
 - c) The Application is brought malafide for it has been over taken by events.

Background

The Respondent herein petitioned the lower court vide Matrimonial Cause [4] No.001 of 2020 against the Applicant seeking for dissolution of the marriage between her and the Applicant, custody of the children and equal distribution of the matrimonial property. The Applicant did not file a reply or answer to the petition but appeared in court for hearing. The parties were selfrepresented and since both the Applicant and Respondent were present, court proceeded to hear the matter and a decree Nisi was entered on 13th October, 2021.

Counsel Legal Representation

The Applicant was represented by the firm of M/s Baryabanza & Co [5] Advocates, Hoima while the Respondent was represented by the firm of M/s P. Wettaka Advocates, Kampala. Both counsel filed their respective submissions for consideration of court in the determination of this application.

Preliminary Objection

- [6] In his submissions in reply, counsel for the Respondent raised a preliminary objection to the effect that Misc. Revision Application No. 03 of 2023 was filed without a summary of evidence therefore incurably defective and invited court to strike it out with costs. Counsel contends that **O.6 r. 2 CPR** is couched in mandatory terms and that failure to attach a summary of evidence and list of authorities renders the pleadings invalid.
- On the other hand, the Counsel for the Applicant disagreed with the above [7] submission and contended in his submissions in rejoinder, that failure to have a summary of evidence accompanying the application does not offend **O.6 r.2 CPR**.

- According to the authorities of *N. Shah & Co. Ltd Vs M. K. Financiers Ltd*, [8] Constitutional Appln. No.26 of 2014 [2016] UGCC2 DFCU Leasing Co. Ltd

Vs Nasolo Faridah, HCMA No. 74 of 2007, it was held to the effect that failure to attach a summary of evidence or authorities on the application is not fatal. In my view, when an application is accompanied with an affidavit in support, the evidence the Applicant intends to rely on, is fully embedded in the affidavit in support of the Application. In the instant case however, on perusal of the Application, I find that it was accompanied with the required annexures as required by 0.6 r.2 to wit; summary of evidence and lists of documents, witnesses and authorities. The Application is therefore not in violation of 0.6 r.2 CPR as counsel for the Respondent contended. The preliminary objection is in the premises, accordingly overruled.

Determination of the Application

[9] S.83 CPA vests in the High Court supervisory Jurisdiction to revise decisions 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 [Box] has to see 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.
- [11] The issue for determination herein is whether this is a proper case for revision.
- [12] Counsel for the Applicant submitted that the proceedings upon which the trial Magistrate based his ruling were a brief interaction between the parties and court. That no evidence was adduced as to what type marriage existed

between the Applicant and the Respondent, the grounds of divorce and the properties that were to be shared by the parties. Counsel submitted that court had jurisdiction to hear the Respondent's petition for divorce but no proper hearing or trial was conducted by the trial Magistrate.

- He submitted further that the information relied on by the trial Magistrate to \$[13]\$ make his decision was not given on oath and the parties were not given an opportunity to cross examine each other. Counsel concluded that there was no evidence recorded by the trial Magistrate upon which he made his decision and/or ruling thus the Magistrate exercised his jurisdiction with material irregularities hence the need to revise and set aside the same.
- [14] Counsel for the Respondent submitted on the other hand that the Applicant defaulted in filing an answer or reply to the petition and therefore had no audience before court. That court invoked exparte proceedings pursuant to Section 30 of the Divorce Act and 0.9 rr.10 & 11 CPR. He submitted that under Section 32(1) of the Divorce Act, if a petition is verified, it can be treated as evidence and that what the Respondent stated at page 2 of the **proceedings** was not challenged by the Applicant.
- Having carefully considered the Application, affidavit in support, the record \$[15]\$ of proceedings and arguments of both counsel, I find that the trial Magistrate had jurisdiction to determine the case but he did not follow the law and procedure governing the hearing and admission of evidence in reaching his decision for the determination of the Matrimonial Cause No.001 of 2020.
- [16] It is my view that an application for revision can lie only on the ground of jurisdiction, and the high court in exercise of its revisional jurisdiction is not a court of appeal on questions of law or fact. Section 83 CPA applies to jurisdiction alone, the irregular exercise of or non-exercise of it or the illegal assumption of it, see **Matemba Vs Yamulinga** [1968] EA 643. Revision is only intended to correct errors which do not go to merits or substance of the dispute or the determination to the rights of the parties.
- [17] The Applicant in this case complained about the trial Magistrate deciding the petition against the Applicant without formally hearing from both parties or parties adducing their evidence on oath and accordingly cross examine each other. As per the record, it is clear that the trial Magistrate relied on what I may refer to as the opening remarks to court of both parties which were

neither on oath nor subject of cross examination and made a decision dissolving the marriage of the parties.

[18] Under S.33 of the Divorce Act;

"The witnesses in all proceedings shall be examined orally; except that the parties may verify their respective cases by affidavit. but so that the deponent may be orally cross examined and re-examined either on the application of the other party or by direction of the court."

- [19] In the instant case, the trial Magistrate is found to have heard jurisdiction to hear the Respondent's petition for divorce. However, he ordered for the dissolution of the marriage and equal distribution of the matrimonial property without trial. There was no examination of the parties and or their witnesses and cross examination to ensure that each party was

given an opportunity to test the evidence of the other. As a result, there was no evidence on record to prove the grounds of divorce and guidance on how the matrimonial property would be distributed by the parties.

- [20] I find that by the determination of the divorce cause without trial, the trial Magistrate acted with material irregularity or injustice to the parties and the order for dissolution of the marriage and equal sharing of property without evidence in support or of existence of such was improper and illegal.
- For the above reasons, the judgment/decree and orders passed by the trial \$[21]\$ Magistrate and execution therefor are accordingly revised and set aside on the ground that court exercised its jurisdiction illegally and or with material irregularities or injustice. In the premises, I accordingly order for a fresh trial of the petition before the Chief Magistrate, Hoima. Each party is to bear his or
- [22] Order accordingly.

her costs of this Application.

Dated at Hoima this 16th day of August, 2024.

Byaruhanga Jesse Rugyema IUDGE

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/2024/884/eng@2024-08-16>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/mbenoha-v-kapasika-miscellaneous-civil-revision-3-of-2923-2024-ughc-884-16-august-2024-unknown-topic-unknown-court-2024>

Prepared on 13 October 2026 · Esheria