

UGANDA / JUDGMENT

Mugisa v Kyahurwenda

(Miscellaneous Application 88 of 2023)

[2024] UGHC 514 (15 March 2024)

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COURT

High Court of Uganda

BEFORE

David S.L. Makumbi, J

CASE / FILE NUMBER

Miscellaneous Application 88 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

MISCELLANEOUS APPLICATION NO 88 OF 2023

(ARISING FROM FORT PORTAL HCCA NO. 0029 OF 2012)

(ALL ARISING FROM KAS-02-CV-CS-LD NO. 010 OF 2011)

MUGISA KAHANGI=====APPLICANT

VERSUS

KYAHURWENDA MILENIYA=====RESPONDENT

BEFORE HON. JUSTICE DAVID S. L. MAKUMBI

Parties Unrepresented.

RULING

BACKGROUND:

This matter was brought by way of Notice of Motion under Order 52 Rule 1, 2 and 3 of the Civil Procedure Rules and Section 98.

The Applicant sought to move court for orders that:

1. The taxation hearing notices of the Plaintiff be set aside which is dated 3rd March 2023, 13th April 2023 and 5th July 2023 on the same matter.

2. The costs of the Application be provided for.

The Application was supported by the affidavit of the Applicant Mugisa Kahangi and was in brief premised on the grounds that:

1. The taxation hearing notices were arrived at without the Defendant's notice.
2. It is to the Applicant's notice that the three taxation hearing notices bear different amounts yet on the same matter.
3. It is just and fair and reasonable that this application be allowed since the Applicant is about to lose the access road as approved by the Physical Planner of the Mpondwe Lhubiriha Town Council.

ANALYSIS OF THE APPLICATION:

This application appears misconceived and is probably due to the fact that the Applicant is unrepresented and obviously lacks knowledge of court process. However, as much as I am alive to the Constitutional standard of ensuring that substantive justice is done without undue regard to technicalities, it is my opinion that the application is grossly misconceived and cannot be relied upon to secure any remedy from court.

To begin with Hearing Notices are not decisions of Court and to that extent cannot be set aside. The proper thing to do would be for the Applicant to appear on the date(s) specified in the Notice(s) and raise whatever concerns he may have before Court and if dissatisfied with the decision of the Court with regard to the same, to formally appeal against the decision of the Taxing Officer.

Furthermore, according to the Applicant's submissions he appears to seek revision of the appellate decision of this Court on which the Taxation Notice(s) are based. Section 83 of the Civil Procedure Act restricts this Court's powers of revision to subordinate courts and therefore cannot sit in revision of its own decision.

It is also worth noting that the Applicant did not serve the Notice of Motion on the Respondent contrary to Order 52 Rule 2 of the Civil Procedure Act. Service of the Notice on an affected party is a mandatory requirement in the Civil Procedure Rules and no remedy can arise from a Notice of Motion which has not been served on the Respondent(s).

RESOLUTION:

I accordingly find that this application fails for failure to serve the Respondent contrary to Order 52 of Rule 2 of the Civil Procedure Act and furthermore for seeking remedies outside of the power of this Court to grant.

ORDER:

This application is dismissed under Order 52 Rule 4 of the Civil Procedure Rules for want of notice and for lack of merit.

David S. L. Makumbi

JUDGE

15/03/24

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