

UGANDA / JUDGMENT

Muruhura v Kyarimpa and 2 Others (HCT-05-CV-CR 11 of 2023)

[2024] UGHC 395 (31 May 2024)

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COURT

High Court of Uganda

BEFORE

Allan Nshimye, J

CASE / FILE NUMBER

HCT-05-CV-CR 11 of 2023

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-CV-CR-0011-2023

5 (ARISING FROM NDEIJA MAGISTRATES COURT FAMILY CAUSE NO.010 OF 2022)

MURUHURA SAM ----- APPLICANT

VERSUS

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- **1. KYARIMPA WINNIE**
- **2. NABASA VICENT**
- **3. MUSHABE SAJJA ----- RESPONDENTS**
- **15 BEFORE: Hon. Justice Nshimye Allan Paul M.**

RULING

REPRESENTATION

20 The Applicant was represented by Advocate Kabagambe Peter from M/s Kwizera & Co Advocates, while the Respondents were unrepresented.

PREAMBLE

The Respondents were served with due process as evidenced in an affidavit of service filed on 17 25 th March 2023, they nether filed any pleadings nor send a legal representative or enter appearance. This Court on 4 th May, 2023 granted the Applicant leave to proceed exparte.

BACKGROUND

- 30 The application was brought under Sections 83 and 98 of the Civil Procedure Act and Order 52 Rules 1 and 2 of the Civil Procedure Rules seeking orders that;

- 1) The decision of the Magistrate Grade II delivered on 20th December, 2022 and a copy thereof availed to the Applicant on 19th January, 2023 was a

nullity for the trial Magistrate exercised his jurisdiction illegally and with material irregularity and injustice.

- 2) The said decision of the trial Magistrate Grade II ordering the Parish Chief to refix the demarcations be set aside.

- 5 3) The costs of this application be provided for.

The application is supported by the affidavit of the Applicant.

FOUNDATIONS

The grounds of the application as set out in the notice of motion are;

10 1. That the trial Magistrate Grade II acted in exercise of his jurisdiction illegally and with material irregularity and injustice in failing to find that the dispute between the parties was a land dispute and not domestic violence matter.

- 2. That the trial Magistrate Grade II acted in exercise of his jurisdiction illegally and with material irregularity and injustice in failing to accord the Applicant 15 a fair hearing when he declined to permit the Applicant to call witnesses in

- his defence.

- 3. That the trial Magistrate Grade II illegally exercised jurisdiction so vested in him when he illegally sentenced the applicant to a fine of 25 currency points without trial and or conviction as required by law thereof condemning the 20 applicant unheard.

- 4. That the trial Magistrate Grade II acted illegally in exercise of his jurisdiction and with material irregularity and injustice in ordering for compensation and relying on a document dated 24th October, 2020 without properly evaluating the evidence on record.

- 25 5. That it is in the interest of justice and equity that the orders of the trial Magistrate be declared a nullity and set aside.

- 6. That it is in the interest of justice that this application be granted with costs.

SUBMISSIONS

30 Applicant's submissions

The Applicant's submissions were filed on 11th May, 2023, wherein it was submitted that in the respondents application for a protection order against the Applicant before the trial magistrate's Court, they claimed that the Applicant had denied them access to their ancestral land. Counsel contended that the evidence and pleadings

35 adduced before the trial Court did not conform to the definition of domestic violence under **Section 2 of the Domestic Violence Act** and thereby the matter was

a land case, not one of domestic violence. It was further submitted for the Applicant that he was denied a fair hearing when Court denied him an opportunity to adduce his sale of land agreement and to produce witnesses.

5 Counsel argued that the fine of 25 currency points for disobeying Court orders against the Applicant was unjust since the Applicant had not yet been convicted, neither had he failed to comply with terms and conditions of any order. Counsel prayed for this application to be allowed and the decision of the trial Court set aside.

10 DETERMINATION

I have read the application and its supporting affidavit, and I have further considered the submissions made by the Applicant as well as the record of proceedings in the lower court. I note that His Worship Muhanguzi Copan, Magistrate Grade II, made a ruling as a Magistrate Grade II after a matter had been 15 referred to his court from the Local Council Courts, and subsequently the respondents herein filed an application for a protection order in the Magistrate's court, that resulted into his Ruling delivered on 20th December 2022. It is that ruling that is now the subject of the application for revision before the High Court.

- 20 It is the law that a High Court can exercise powers of revision where it appears that a Magistrate's courts in its decision (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 as is provided in section 83 of the Civil Procedure Act.

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The High court exercises its revisionary power by satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision of the Magistrate's Court as was stated in **MABALAGANYA V. SANGA (2005) E. A 152.**

30 Where a case for revision has been made out, the High Court in exercise its unlimited powers in section 98 of the Civil Procedure Act may make such orders as it thinks fit.

It is trite that Revision by the High Court under section 83 of the Civil Procedure Act 35 (CPA) applies to decisions of the Magistrates court but not the decision of the Local Council Court decisions because the operative section 83 of the CPA states that.

"The High Court may call for the record of any case which has been determined under this Act by **any magistrate's court.....**" (bold emphasis mine)

I shall now resolve the matter herein following the grounds in the motion and as argued by the Applicant's counsel.

GROUND ONE

10 That the trial Magistrate Grade II acted in exercise of his jurisdiction illegally and with material irregularity and injustice in failing to find that the dispute between the parties was a land dispute and not domestic violence matter.

It is the law that an application for a protection order may be made to a magistrate's 15 court as is stated in section 10 (1) of the DOMESTIC VIOLENCE ACT 2010 which provides that;

"10. Application for a protection order

***(1) A victim or the representative of a victim may apply to a magistrates* 20 *court for a protection order."**

The law in section 12 of the Domestic Violence Act 2010, states that court may issue a protection order where the court is satisfied that an act of domestic violence has been committed, is threatened or is being committed by the perpetrator. This 25 imposes a duty on the court to ensure that an act of domestic violence has been committed, is threatened or is being committed by the perpetrator.

The evidence on court record for the applicant in paragraph 3 of the affidavit in support is to the effect that he is seeking a revision order against the decision of the 30 Magistrate Grade II. The applicant contended in paragraph 13 and 14 of the affidavit in support that he is the owner of the land which he also claims was the subject of a judgment, that declared him to be the owner (*See annexure H & I to the affidavit in support)*. The applicant also states in paragraph 4 of the affidavit in support that he was denied an opportunity to present his agreement.

I note that the crux of the applicants evidence above just brings out the fact that the contention between the parties is in respect to land , which the applicant is claiming to be his by virtue of agreements.

- 5 I have perused the ruling of His Worship Muhanguzi Copan, Magistrate Grade II that is the subject of this revision application and I find that His Worship states that the parties are in dispute over a piece of land that belonged to the late Kinimba Yowana (*See page 1 of the Ruling)*. The trial magistrate stated that the parties shared the land, but the respondent insisted on grabbing it. I note that on the face of it, the

- 10 ruling confirms that there is a dispute over land, which is what possibly led to the trial magistrate making an order re-fixing land boundary. I also note that none of the parties obtained letters of administration of the estate of the late Kanimba, that is alleged to have been distributed.
- 15 In my analysis, I find that the Trial Magistrate does not state in his ruling the act of domestic violence committed by the applicant herein, he only states in general terms at page 3 of the ruling that he is satisfied that "the respondent has committed, is committing, or threatening to commit an act of domestic violence". In my view the general manner in which the trial magistrate states it without pointing out the act 20 of domestic violence is irregular and fundamentally breaches the spirit of section 12 of the Domestic Violence Act 2010.

I am of the considered opinion that it is important for the parties in this case that are clearly contesting over land to first seek court redress in order to get a 25 declaration as to who the owner of the land is, prior to seeking a protection order.

In order to seek a protection order under the Domestic Violence Act 2010, based on the use of land, the applicant should have some form of legal ownership or claim to the land. In the case before the trial Magistrate Grade II, the land ownership was 30 contested, and the trial magistrate notes at page 1 of his ruling that the suit land belonged to the late Kanimba, yet a perusal of the record shows that none of the parties had letters of administration to the estate of the late Kanimba. The trial Magistrate's order to refix boundaries of land amounted to resolution of a land issue using a protection order application, which in my opinion is irregular. The land 35 ownership contestations between the parties ought to be resolved in an appropriate manner as provided in the law and once one's rights to the land are

clear, then any threat to his or her right in the land that amounts to economic abuse, can give rise to the right to file an application for a protection order.

I find that, although the trial Magistrate Grade II had jurisdiction to entertain an application for a protection order, He does not highlight or state the act of domestic $\text{\textit{S}}$ violence that the applicant herein committed before a protection order was issued, which is in breach of the spirit in sections 9 to 12 of the Domestic Violence Act 2010, that links the issuance of the protection order to court identifying an act of domestic violence. It is immaterial whether the act has been committed or not, it ought to be identified by court prior to issuance of a protection order. 10

The failure of the trial Magistrate to highlight the exact act of domestic Violence he identified before issuing the protection order was a material irregularity that justifies revision of the trial Magistrates decision under section 83 of the Civil Procedure Act.

I therefore find that it is not necessary to discuss the remaining grounds, after the resolution of ground one, because it conclusively justifies revision and the setting aside of the decision of the Trial Magistrate Grade II at Ndeija in MBR -FCC- \$010/2022.\$

In conclusion, the application for revision succeeds. I order that;

- 1) The ruling and orders of the Trial Magistrate Grade II at Ndejja in MBR -FCC- \$010/2022\$ is set aside.
- 2) The respondents shall refund any compensation that the applicant paid to them.
- 3) The respondents to pay the applicants costs of this application.

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NSHIMYE ALLAN PAUL M. JUDGE 31-05-2024

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