

UGANDA / JUDGMENT

Ntibabaza v Mujambere
(Miscellaneous Application 5 of
2024) [2025] UGHC 259 (6 May 2025)
[2025] UGHC 259

COURT

High Court of Uganda

BEFORE

Karoli Lwanga Ssemogerere, J

CASE / FILE NUMBER

Miscellaneous Application 5 of 2024

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KABALE
MISCELLANEOUS APPLICATION NO.0005 OF 2024 ARISING OUT OF
MISCELLANEOUS APPLICATIONS NO. 045 AND 019 \$10\$ OF 2024

ARISING FROM CIVIL SUIT NO.042 OF 2012

JOSEPH NTIBABAZA:::::::::::::::::::::::::::::::::APPLICANT

$\$$

VERSUS

MUJAMBERE RONALD:::::::::::::::::::::::::::::::::

RULING OF HON. JUSTICE KAROLI LWANGA SSEMOGERERE

Brief Facts. 20

This an application for revision of proceedings in the Chief Magistrate's Court by Joseph Ntibaza, the son of the late Mbonigaba Garasciano (the "deceased"), the judgment debtor, in Civil Suit No. 42 of 2012, and the respondent in Miscellaneous Application No. 19 of 2024. Miscellaneous Application No. 19 of 2024 was an action to name him the legal 25 representative of his late father, the deceased. Miscellaneous Application No. 45 of 2024, an application by the respondent for execution by way of eviction, attachment, sale or sale without attachment of any property, arrest and detention in prison. Both applications were heard and determined by Her

Worship Pamela Karamagi in the Chief Magistrate's Court at Kisoro, where 30 the suit land was located

The notice of motion alleges the following:

1. That the proceedings in Miscellaneous Application No. 19 of 2024 were arrived at with material irregularity.

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2. The decree was in the above application was irregularly issued.
- 3. The suit land in Civil Suit 42 of 2012 after final judgment of court was no longer part of the estate of his deceased father, the first defendant.
- 4. The applicant was denied a right a fair hearing.

He prayed for orders to the effect:

- 1. That proceedings in Miscellaneous Application No. 45 of 2024 be struck off the record.
- 2. The decree in Miscellaneous Application No. 45 of 2024 be set aside.
- 3. The applicant be released from civil prison
- 4. Costs of the application be provided for.

***Representation.* 15**

In the instant application, the Applicant was represented by M/S Semengo & Co Advocates, while the Respondent was represented by M/S Luswata, Kibanda & Co. Advocates. Both parties proceeded by way of written submissions. At the hearing on April 30, 2025, attended by the applicant and

the respondent, Counsel adopted their submissions already filed with this 20 honourable court. Applicant was in court, so the third prayer is overtaken by events. I have considered these submissions in disposing of this application.

Discussion and Analysis.

This application for revision is concerned with the form proceedings took to 25 determine liability for the judgment debt arising out of Civil Suit No. 42 of 2012.

Miscellaneous Application No. 19 of 2024 was filed in the Chief Magistrate's Court at Kisoro with prayers for the following order:

1. That the respondent (applicant for revision) be made a party to the suit 30 for the purposes of execution of the judgment decree in Land Claim No. 42 of 2012.

The other prayers in the ruling did not ask court for any specific reliefs.

Four issues were framed for determination by this court. These are:

1. Whether there are sufficient grounds for revision of the orders of the 35 learned Trial Magistrate;

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- 2. Whether the learned Trial Magistrate failed to exercise the jurisdiction vested in her:
- 3. Whether the learned Trial Magistrate exercised her jurisdiction with material irregularities or injustice to the applicant
- 4. What remedies are available to the Applicant.

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Resolution:

I will resolve the first and second issues together.

The powers of the High Court on revision as a post-trial remedy are limited. Section 83(1) of the Civil Procedure Act, Cap 282 (the "Act"), provides for the following grounds of revision. These are that the court;

- (a) Has 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.

Section 83(2) of the Act states that the power of revision in sub-section (1) shall not be exercised-

- (a) Unless the parties are first given the opportunity to be heard; or
- (b) Where from the lapse of time or other cause, the exercise of that power would involve serious hardship to any person.

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In *Byarugaba v Kagweri*, Revision Cause No. 21 of 2023, Mugabo J., cited the definition of revision as follows:

"The term revision is also defined in Black's Law Dictionary, 8th edition, page 1346 as "a re-examination or careful review for correction or improvement."

He then added:

"From the wording of section 83 of the Civil Procedure Act, it is apparent that revision applies to jurisdiction alone, the irregular exercise or non-exercise of it, or illegal assumption of it. The section is not directed against the conclusions of law or fact in which the question of jurisdiction is not involved."

- I agree entirely with this statement of the law. I only wish to add, that revision S and review are related. They point to errors by court that affect administering of substantive justice. Revision especially points to procedure, while review points to clearly discernible errors which may be of fact or of law. The powers of court are very limited, to rectify and take corrective actions only.
- In *Kizito Okwong v Margaret Ocidirwoth* Civil Revision Case No. 2 of 2018, 10 Serunkuma J., cited *Johnson Katebalirwe v Senoga Godwin T/A Platinum Associates*; Revision Cause No. 012 of 2017 which cited with approval the Tanzanian decision in *Mbalaganya v Sanga* 2005 EA 152, where the Court of Appeal of Tanzania stated:
- "In cases where court (sic) exercises its revisional jurisdiction under 15 Section 4 of the Appellate Jurisdiction Act, its duty entails examination of the record of any proceedings before the High Court for the purpose of satisfying itself as to the correctness, illegality, or propriety of any findings, order or any other decision and the regularity of any proceedings before the High Court." 20

This decision is persuasive; it states what the scope of revision would be, and it is adaptable from case to case.

In the instant case, in a nutshell the applicant challenges the mode and manner of execution against him. For purposes of disposing of this application, I will limit myself to the contents of the application, and the law $\$25\$$ applicable thereto. First, the application in Miscellaneous Application No. 19 of 2024 was made under Section 37(1) and Order 24 Rules 4 and 12 of the Civil Procedure Rules S. I. 71-1 (the "Civil Procedure Rules"). I will reproduce the provisions below in toto.

"The powers of the High Court to enforce execution under the Act 30 extend to the legal representative of the of the deceased person. Section 37(1) of the Act allows the holder of the decree to apply to court to execute it against the legal representative of the deceased or the person who has intermeddled with the estate of the deceased. (emphasis mine)." 35

> "Where a judgment debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the court which passed it to execute the decree against the legal representative of the deceased, or against the person who has intermeddled with the estate of the deceased."

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Order 24 Rule 4 of the Civil Procedure Rules states the procedure in case of $\text{\textit{S}}$ death of the sole defendant. It provides as follows:

> "... where a sole defendant dies...the court on application made for that purpose, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit."

Order 24 Rule 12 of the Civil Procedure Rules, provides for the procedure $\text{\textit{S}}$ for such applications to be by notice of motion.

In the instant case, the two provisions are in apparent conflict with each other, and their cumulative citation as the basis for the decision created an error on the face of the record.

Whereas, Section 37 of the Act is concerned with execution against a deceased person, Order 24 Rule 4 of the Civil Procedure Rules prevents abatement of suits due to the death of a party by providing for substitution of a dead party to a suit. In the instant case, Section 37 of the Act was sufficient to resolve the matter, without invoking Order 24 at all. Civil Suit Land Claim

No. 042 of 2012 had long been resolved in favor of the respondent. $\text{\textit{S}}$ Paragraph 9 of the respondent's affidavit in Miscellaneous Application restates this fact. There were no triable issues in that matter. The respondent averred as follows:

> "The judgment debtor ("the deceased") in Land Suit No. 042 of 2012 appealed to the High Court vide Civil Appeal No. 014 of 2017 but the appeal was dismissed for want of prosecution."

I also find that the language in Section $\text{\textit{S}}$ of the Act only required a finding by court that the applicant was the legal representative of the deceased.

At the hearing on April 30, 2025, the applicant's advocate admitted that his client was in possession of the land. The applicant is correct in stating that he did not intermeddle in the estate of the deceased. Court had adjudged ownership of the land in Land Claim No. 042 of 2012, and its findings had not been appealed against. The land at the time of the application and at the time of adjudication of this application belongs to the respondent, not the deceased. A letter by Counsel for the Applicant to Court dated December 6th. 35 2024 challenged the statement in the impugned application that he had intermeddled with the estate of the deceased.

I answer the first issue in the affirmative.

- I also find that the learned Trial Magistrate by wading into issues of the estate $\text{\textit{S}}$ of the deceased, and the finding that there was intermeddling the father of the applicant was unnecessary as there was no Administration Cause before her, she therefore acted without jurisdiction. I find the trial Magistrate acted in excess of the jurisdiction vested in her. This resolves the second issue.

- The proper action by court would be to entertain a fresh complaint by the 10 respondent to bring an action against trespass by the applicant who admits to still being in possession of the suit land, rather than execution. Paragraph 7 of the applicant's affidavit in support of the impugned application which wasn't challenged states the same.
- Contempt proceedings similarly could not issue against a non-party to Land 15 Suit No. 042 of 2012 without a notice to show cause. It goes without saying the applicant isn't entirely absolved of blame. In the record of proceedings (at page 1) before the Chief Magistrate's Court, he did not respond to the application. Second, applicant by his own admission at the April 30, 2025
- hearing is in possession of the suit land. This is after final disposal of the Civil 20 Suit No. 042 of 2012. Pendente lite was of no purpose after Civil Suit No. 042 of 2012 had been concluded.

Counsel for the respondent misled court by citing Order 24, rule 4 of the Civil Procedure Rules, that protects abatement. Court's short ruling delivered exparte introduced a third error by appointing the applicant, an administrator \$25\$ pendente lite limited to suit No. 42 of 2012.

I have already stated in my ruling that the above suit was concluded. I now add that Section 214 of the Succession Act, Cap 268 states the limited circumstance in which an administrator pendente lite may be appointed. It states as follows:

"The court may, pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, appoint an administrator of the estate of the deceased person, who shall have all rights and powers of a general administrator, other than the right of distributing the estate, and every administrator, shall be subject to the immediate control of the court, and shall be under its direction."

By combining an administration of estates matter in an execution matter, the only conclusion caused a miscarriage of justice. The inquiry under Section 37 of the Civil Procedure Act should have been limited to whether the

applicant (formerly respondent) was the legal representative of the $\$S$ deceased. I answer the third issue in the affirmative.

I find all orders made by the learned Trial Magistrate, irregular. By failing to answer the sole question of whether the applicant was the legal representative of the estate of the judgment debtor, applying other sections of the law extraneous to the questions before court was a circumstance necessitating revision. This answers the fourth and final issue.

Comment.

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The purpose of revision is to correct the record, and take appropriate action. Its purpose is very limited. Rights of parties are determined on appeal, and where necessary on review if an obvious error on the face of the record 15 creates an absurdity. That's the decision of this court in

Nyanzira Evangelista v Rukera James & Another, Civil Appeal No. 31 of 2022, reported at 2025 UGHC 229. It is good practice to segregate administration causes from ordinary civil suits as they call for greater scrutiny and care to protect the assets belonging to the deceased in respect of whom causes of 20 action are limited by recent changes in the law governing succession.

Findings and Conclusion.

Whereas court had the right to appoint the applicant a legal representative for purposes of execution under Section 37 of the Civil Procedure Act, it misdirected itself by adopting the wrong procedure to prevent abatement of 25 a completed suit and turning an enforcement matter into an estate issue by appointing the applicant an administrator pendente lite. These material irregularities cannot be upheld.

Accordingly, this application succeeds. All proceedings in the Miscellaneous Applications No. 19 and 45 of 2024 including taxation are hereby quashed.

Respondent is directed to file a proper application for execution in the Chief Magistrate's Court to be heard and determined by a different Magistrate.

Each party will bear its own costs in this court and the courts below.

I SO ORDER, \$\\mathsf{S}\$

> \$6^m\$ \$\\int_{\\text{...day of May 2025}}\$ DATED AT KABALE this ..

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SSEMOGERERE, KAROLI LWANGA JUDGE.

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