

UGANDA / JUDGMENT

Nyakana v Kajumba (Miscellaneous Application No. 92 of 2017) [2023] UGHCCD 51 (6 March 2023)

[2023] UGHCCD 51

COURT

HC: Civil Division (Uganda)

BEFORE

Wagona, J

CASE / FILE NUMBER

Miscellaneous Application No. 92 of 2017

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT FORT PORTAL****MISC. APPLICATION NO. 0092 OF 2017****(ARISING FROM M. A NO. 3 OF 2017 AND LD 231 OF 2015)****5 CHRISTOPHER NYAKANA ::::::::::::::::::::::::::::::::::: APPLICANT****VERSUS****OLIVA KAJUMBA ::::::::::::::::::::::::::::::::::: RESPONDENT****BEFORE: HON JUSTICE VINCENT WAGONA****RULING**

- 10 The applicant brought this application under section 83, 19 and 98 of the Civil Procedure Act for orders that:
 - 1. An order setting aside the order dismissing the Applicant's Application.
 - 2. An order setting aside the Consent judgment dated 23rd August 2016.
 - 3. An order providing for costs of the Application.
- 15 The application was supported by the Applicant's affidavit in which he averred as follows:

- 1. That he did not get a fair hearing before court in M. A NO. 3 of 2017 and the decision made therein was illegal and arrived at with material irregularity and caused injustice to him. That among the orders made by 20 the magistrate was that the applicant pays a penalty of Ugx 100,000/= and in default be detained until the same was paid.

- 2. That further the consent judgment of 23rd August 2016 was not read and explained to him in a language that he understood before he signed it. That it is in the interest of substantive justice that the consent judgment dated 23 5 rd August 2016 which was fraudulently procured against him be set aside for being incorrect and unjust and perpetuated a position based on gross distortion of facts.

The Respondent was served with the motion on the 8 th of June 2018 through her lawyers per the affidavit of service on record deponed by Leonard December, a clerk attached to M/s Kayondo & Atuhaire Advocates received by court on 26th 10 September 2018. The matter subsequently came up for mention on 20th September 2018 and 6 th December 2018 and Mr. Musinguzi Benard is on record appearing for the Respondent. The matter came up for last mention on 23rd November 2022 and in the presence of both parties court gave a schedule to file and serve the submissions and 15 pleadings where the Applicant was to file and serve his submissions by 12 December 2022 and the Respondent by 9th January 2023 and a rejoinder if any by 18th January

2023.

The Applicant filed his submissions and served upon the Respondent's Counsel on 15th February 2023 per the affidavit of service deponed by Dembe Ronald, a process 20 server attached to the High at Fort Portal. The Respondent did not file submissions. No explanation was advanced by the Respondent as regards his default to file the Reply per the schedule given by court.

Representation and Hearing:

The Applicant was represented by M/s Atuhaire & Co. Advocates at the time of filing the Application but at submissions he decided to represent himself. He filed his submissions on 15th February 2023 and a copy is on court record. I have considered the Applicant's submissions.

5 Issues:

I will frame the following issues for determination.

(1)Whether this application is proper before court.

- **(2)Whether the Applicant's application for review should be granted.**

- **(3)Remedies.**

10 DECISION:

Issue One: Whether this application is proper before court.

Section 83 of the Civil Procedure Act provides thus:

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 15 *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,*

20 *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.

The power of the High Court in an application for revision is limited to where the magistrate's court exercised jurisdiction not vested in it or failed to exercise 5 jurisdiction vested in it or exercised such jurisdiction with material illegality or irregularity.

In an application for review the High Court does not examine the correctness of a decision of court made with jurisdiction and without any illegality or irregularity. If a party disputes the correctness of the decision of court or is aggrieved with a finding

10 of court, then the appropriate action is an appeal not revision. (See *Sentamu Jamilu& 2 others Vs. Sekatawa Haruna, Civil Revision No. 21 of 2018 and Susan Byenkya Vs. Byaruhanga Efurazia, Revision. Application No. 05 of 2021).*

In this application, the Applicant sought to set aside an order in Misc. Application No. 3 of 2017 and the consent judgment in LD No. 231 of 2015 on ground that he

15 was not accorded a right to be heard and that the consent judgment was fraudulently procured.

I have perused the proceedings in Misc. Application No. 3 of 2017. It was an application for review of the consent judgment dated 23rd August 2016 and for an order to remove paragraph 4 from the consent judgment in LD No. 231 of 2015. The

absence of the Applicant. If he desired to be heard, he would have filed an application to set aside the dismissal order and not an application for revision.

The same applies to the consent in LD No. 231 of 2015. The consent was duly signed by the Applicant and the Respondent and endorsed by court on 23rd August 2016 in

- 5 the presence of both parties. Court further conducted a locus visit to confirm the extent of the land in paragraph 4 of the consent on 7th September 2016 in the presence of the Applicant and he confirmed the same. Therefore, if the Applicant believed that the consent in LD No. 231 was arrived at through fraud and misrepresentation, he would have filed an application to set aside the consent judgment in the trial court.
- 10 The trial magistrate endorsed a consent which parties had signed over a subject matter to which he had jurisdiction. The Applicant has not demonstrated how the said jurisdiction was exercised with material illegality of irregularity.

It is therefore my finding that this Application and the claims by the Applicant therein do not fall within the ambits for revision. The application therefore fails. I

15 decline to award costs since the Respondent did not file an affidavit in reply despite the several times the matter was adjourned and the case thus proceeded ex-parte. The Application is therefore dismissed with no orders as to costs. It is so ordered.

Vincent Wagona.

20 High Court JudgePORTAL 6.3.2023

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Prepared on 11 October 2026 · Esheria