

UGANDA / JUDGMENT

Ojwik v Akello (Miscellaneous Application 42 of 2022) [2025] UGHC 13 (16 January 2025)

[2025] UGHC 13

COURT

High Court of Uganda

BEFORE

Okello, J

CASE / FILE NUMBER

Miscellaneous Application 42 of 2022

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

| | VERSUS |

|---|-----|

| 15 | OJWIK ALFRED..... APPLICANT |

| 10 | (ARISING FROM MISC. APPLICATION
NO. 054 OF 2021
ARISING FROM
LAND CLAIM NO. 325 OF 2012) |

| | MISCELLANEOUS
APPLICATION NO. 042 OF 2022 |

| | IN THE HIGH COURT OF UGANDA
HOLDEN AT LIRA |

| 5 | THE REPUBLIC OF UGANDA |

AKELLO LILLY (Administratrix of the estate of the late Obura Mario).....
RESPONDENT

BEFORE: HON. MR. JUSTICE GEORGE OKELLO

25

RULING

This is an application for revision of two decisions of two Magistrates Grade I of Lira Chief Magistrates Court sitting in Lira. The first is the Judgment 30 given by Her Worship Adelo Susan in land claim No. 325 of 2012 in favour of the respondent (as plaintiff). The second is the ruling and orders given by His Worship Murangira Hillary in Misc. Application No. 054 of 2021 holding the applicant in contempt of the order and decree of HW Adelo Susan. The applicant was imprisoned for five months for contempt and 35 ordered to pay the respondent shs. 3,000,000. It

was said he did not complete the full prison term. It is not clear whether he paid the damages.

- 5 During the hearing of the application, Mr. Okuny Innocent, learned advocate for the applicant informed court that the contempt decision is overtaken by the events and that the applicant is no longer interested in having it revised. He prayed to withdraw the application regarding the orders of His Worship Murangira. This Court allowed the withdrawal. The
- 10 application is, therefore, restricted to the proceedings and determination of HW Adelo Susan.

The genesis of the dispute can be gathered partly from annexure "A" to the affidavit. It is the record of the proceedings of the Local Council II Court 15 before which initial litigation took place. Other annexures to the Motion

add to the factual background.

It started during the life-time of a one Obura Mario who was the husband of the respondent (Akello Lilly). Obura purchased land from Ojwik Alfred 20 (the applicant). It was approximated to be 10 acres. Obura paid the full consideration of shs. 1,300,000 on 11 July, 2004. Their transaction was reduced into writing and was witnessed by the vendor's spouse and a daughter. The vendor's brother who was later to testify for the purchaser before the LCII Court, witnessed the transaction. The land is situated in 25 Apok mit imogo Village, Abaler Parish, Muntu Sub-County, Amolatar District. After sometime, in 2009, the sons of the vendor, namely, Owiny Yubu and Olal Abel sued the purchaser in the LC II Court of Abaler Parish.

- 5 They claimed that their father sold the land without their consent. In his testimony, the father supported the sons. In the course of the hearing, the LCII Court proposed that the purchaser accepts refund of the purchase price, a request he rejected. The purchaser counter-offered for compensation with substantial sum taking into account the accrued 10 interest on the consideration, given the time-value of money. He reasoned
- that the offer to refund him consideration was coming after five years of concluding the sale/purchase transaction.

In its Judgment, the LCII court ruled in favour of the vendor's sons. It 15 ordered the vendor to refund the purchase price only. It noted that the buyer was at liberty to lodge another action against the vendor to recover costs. The LC II court ordered that the land should not be put to use until the case was properly concluded. It noted that the two sons were right to sue the purchaser because the purchaser was using the land.

The purchaser was aggrieved and lodged an appeal in the LC III Court of Muntu Sub-County. The LC III court dismissed the appeal on 22 February, 2010 for non-appearance of the appellant. The Chairperson LCIII subsequently communicated to the Chief Magistrate Lira, by letter dated 25 17 May, 2010, that the purchaser had refused to vacate the land. The learned Chief Magistrate was asked to take appropriate action. The Chief

5 Magistrate advised the successful party to file for confirmation of the LCIII Court decision. It is not clear whether this guidance was taken.

The purchaser lodged the land claim No. 325 of 2012 against the vendor in the Chief Magistrates Court Lira. He unfortunately passed on before

- 10 prosecuting the suit. The present respondent, as a widow, applied and obtained letters of administration vide Administration Cause No. 241 of 2014. In February, 2016, she amended the plaint substituting the deceased.
- 15 The respondent averred in the amended plaint that she was suing to recover the land purchased by the late husband. She asserted that the seller had refused to deliver vacant possession. She sought for a declaration that the land is hers as the rightful purchaser. She also sought for vacant possession, general damages, and costs, plus any other relief as 20 court might deem fit.

The learned Magistrate gave judgment for the respondent. Court issued the decree on 16 December, 2020, granting the declarations and the orders sought, but declining to award general damages. The court also issued a 25 permanent injunction restraining the applicant (as defendant), his agents, servants or anybody deriving interest from him from interfering with the respondent's (plaintiff's) use of the land.

Being aggrieved, the applicant lodged a notice of appeal in the High Court. It was registered as land appeal No. 003 of 2021. There is, however, no memorandum of appeal. It was stated in the notice that the grounds of appeal would be formulated after the perusal of the court file. The notice

- 10 was filed on 12 January, 2021. Six months later, a hand-written letter was written to the trial court by a one Angole Joseph on 29 July, 2021, requesting for copy of the Judgment and the decree. The letter purports that the Judgment was delivered in January, 2021. The Assistant Registrar of Court, His Worship Ssalaamu Godfrey Ngobi, by letter dated
- 15 15 February, 2022, called for the original case file, and certified proceedings and judgment from the trial court. His Worship, with respect, noted that the applicant had "appealed".

Annexed to the Notice of Motion is a protest letter by M/s Loi Advocates 20 on behalf of the applicant (defendant) dated 16 June, 2020. The advocates asked the trial court not to hear the suit, contending that it was barred by res judicata. They also claimed that the trial court lacked

jurisdiction. In their view, the competent court was Amolatar Magistrate Grade I Court. The Advocates asserted that the suit constituted an abuse of the court 25 process. They invited the trial court to hold that the suit was improperly before it. They prayed that the respondent (plaintiff) be condemned in punitive costs. The letter was signed by Obam Andrew. It is, however, not

5 clear whether the trial court was addressed on these matters at the hearing. There being no record of the trial court to support the revision proceedings, it is not known whether or not the concerns were considered in the trial court Judgment. The applicant swore an affidavit to support his Motion.

Opposition

The Application was resisted. The respondent refers to the decree of the trial court. She agrees that the applicant filed a notice of appeal. She asserts that despite the decree, the applicant started to forcefully cultivate

- 15 the land well aware of the order of permanent injunction. The respondent asserts that the applicant is a contemnor. She maintains that the trial court had territorial jurisdiction. She contests the defence of res judicata and prays for dismissal of this revision application with costs.
- 20 At the hearing, Mr. Ronald Opio, learned counsel, appeared for the respondent while, as noted, Mr. Mr. Okuny represented the applicant. The parties attended the hearing. Counsel addressed court orally. They submitted on the issue of whether the trial court had territorial jurisdiction. They did not submit on the issue of res judicata.

On the question of territorial jurisdiction, both counsel agree that the applicable Magisterial Areas Instrument for the purpose of my resolution

- 5 of this matter should be Statutory Instrument No. 45 of 2007 which was in force at the time the suit was lodged in 2012. Mr. Okuny submitted that the trial court lacked territorial jurisdiction and in his view, the land claim should have been lodged in the Magistrate Grade 1 court of Amolatar because the suit land is located in Muntu Sub-County, Amolatar District.
- 10 Learned counsel volunteered that the applicant withdrew his notice of appeal. He invited court to revise the Judgment and decree of the Magistrate court.

Mr. Opio did not agree. He submitted that the trial court had territorial 15 jurisdiction because the land claim was filed in the Chief Magistrates Court of Lira which had territorial jurisdiction in all matters arising from, inter alia, Amolatar District. Learned counsel argued that if the matter was administratively assigned to a Grade I Magistrate of Lira Chief Magistrates Court by the Chief Magistrate, it does not take away the territorial 20 jurisdiction of Lira Chief Magistrates Court in

which the suit was lodged. Counsel contended that the application is afterthought. Mr. Opio argued that the applicant ought to have instead pursued the appeal since he requested for record of the proceedings. Learned counsel prayed for dismissal of the application with costs.

5 Resolution

Having perused the Motion, the affidavit for and against, and having listened to the brief submissions, I am of the view that the application raises two issues, namely; *whether this is a proper case for revision?* And, *what remedies are available to the parties?*

The application is correctly commenced under section 83 of the Civil Procedure Act (CPA) and Order 52 rules 1 and 3 of the CPR. Other laws have been cited as the basis of the motion, which I find irrelevant in revision matters. I will, therefore, ignore them.

According to the Oxford English Dictionary referenced in **J Hoareau Vs. R [1962] 1 E. A 809**, revision is the action of revising or looking over again especially a critical or careful examination or perusal with a view to correcting or improving (something). In **Mabalangaya Vs. Sanga [2005] 1**

- 20 EA 236 (CAT), the Tanzanian Court stated that revision entails examination by the High Court of the record of proceedings of the Magistrates Court for the purposes of the High Court satisfying itself as to the correctness, legality and the regularity thereof.
- 25 The purpose of examination of the record of the subordinate Court is to correct the conclusions of that Court, if necessary. Revision, therefore, is an exercise of discretion which must be done judiciously. Discretion is the

- 5 faculty of deciding or determining in accordance with circumstances and what seems just, fair, right, equitable, and reasonable. It involves latitude of individual choice according to the particular circumstances. See: **Yahaya Kariisa Vs. the Attorney General and another, Civil Appeal No. 7 1994 (SCU) digested in [1997] HCB 29; Jenkins Vs. Bushby (1189)**
- 10 11 Ch. 484; **National Enterprises Corporation Vs. Mukisa Foods Ltd, Civil Appeal No. 42 of 1997.**

In revision proceedings, court must give a hearing to all parties and must also consider any hardship that might be suffered by any person by the 15 exercise of its revisionary power. That is why in **Kabwengere Vs. Charles Kangabi [1977] HCB 89**, it was held that court cannot exercise its revision powers where there was a lapse of time and the exercise of such power would involve serious hardship.

- 20 In civil revision, court may exercise its powers in any of the three circumstances, namely; if it appears that the magistrate's court has exercised a jurisdiction not vested in it in law; if the magistrate's court failed to exercise a jurisdiction so vested; or if it acted in the exercise of its jurisdiction illegally or with material irregularity or injustice. Section 83 of

- 25 the CPA applies to jurisdiction alone. That is, the irregular exercise of; or the non-exercise of; or the illegal assumption of jurisdiction. The statement of the law was re-echoed by Mustafa J. in **Matemba Vs. Yamulinga [1968]**

- 5 EA 643 (HCT) while interpreting section 79 of the Tanzanian Civil Procedure Code Act which was similar to the Ugandan section 83 of the CPA with the exception that theirs expressly barred revision where there is a right of appeal. Mustafa J quoted with approval the Privy Council in **Balakrishna v. Vasudeva (1917)**, 44 I. A. 261 which interpreted s. 115 of
- 10 the Indian Civil Procedure Code which was similar to s.79 of the Tanzanian Code. In the latter case, the Privy Council had this to say:

"It will be observed that the section applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is

15 *not directed against conclusions of law or fact in which the question of jurisdiction is not involved."*

In the present matter, the complaint rests on the alleged lack of territorial jurisdiction. The term "jurisdiction" was defined in **Uganda Revenue**

- 20 **Authority Vs. Rabbo Enterprises and Elgon Hardware Ltd, SCCA No. 12 of 2004**. Lady Justice Prof. Tibatemwa- Ekirikubinza, JSC with whom her brethren were in agreement, adopted the meaning of the term as per **Words and Phrases Legally Defined, Vol. 3, I-N, p.13** :
- 25 *"Jurisdiction is the authority which court has to decide matters that are before it or take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by statute, charter or*

- 5 *commission under which court is constituted and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters which the particular court has cognizance or as to the areas over which the jurisdiction shall extend, or it*
- 10 *may partake both these characteristics. If the jurisdiction of an inferior court or tribunal depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; where the court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amount to nothing."*

As noted, a decision of court without jurisdiction is a nullity. Several authorities support this view. See: **Desai Vs. Warsama (1967) E. A 351**; **Athanasius Kivumbi Lule Vs. Hon. Emmanuel Pinto, Const. Pet. No. 05 of 1997**; **Mubiru & others Vs. Kayiwa (1979) HCB 212**.

A decree that is a nullity on account of lack of territorial jurisdiction may be questioned at any stage and cannot be cured by failure of the party aggrieved to comply with the procedure for raising an objection as to the jurisdiction of court under Order 9 rule 3 (1) of the CPR. See: **Ozuu 25 Brothers Enterprises Vs. Ayikoru Milka, Civil Revision No. 002 of 2016**.

5 Courts have stated that the question of jurisdiction should concern any court before embarking on its task of adjudication. See: **Hon. Justice Said Juma Chitembwe Vs. The Tribunal Appointed to investigate the conduct of the Hon. Hon. Justice Said Juma Chitembwe, Judge of the High Court, Petition No. E001 of 2023 (SCK)**. This is because 10 jurisdiction is material and cannot be ignored. In **Domodar Jinabhai Company Ltd & another Vs. Eustace Sisal Estate Ltd, Civil Appeal No. 51 of 1965 [1967] E. A 158** it was held that the question of jurisdiction is a matter which the court can and should take cognizance of whether or not the same is raised in argument.

I should add that being a point of law, jurisdiction can be raised at any time although it is urged that it be raised at the earliest opportunity. In **Saggu Vs. Roadmaster Cycles (U) Ltd [2002] E. A 258 (CAU)** (Okello, Mpagi-Bahigeine, and Twinomujuni, JJA) although jurisdiction was not at 20 issue, court stated that a point of law may be argued whether raised on the pleading or not and must be taken clearly and explicitly if it requires serious augment and that a court will not allow an allegation wearing a doubtful character. See also **Adero Vs. Ulinzi Sacco Society Ltd [2002] 1 KLR 577 (Ringeria, J)**; **Ndimu Vs. Ndimu & another [2007] LLR 6132 25 HCT digested in [2008] 1 E. A 209 (Kubo J)**.

- 5 If court has jurisdiction then and only then does it proceed to hear the matter but if it determines that it has no jurisdiction it must down its tools. See: **the Owners of The Motor Vessel 'Lillians' Vs. Caltex Oil (Kenya) Ltd [1989] KLR1**.
- 10 That said, in **Habre International Company Ltd Vs. Ebrahim Alarakia Kassam, Civil Appeal No. 04 of 1999** Mulenga JSC of the good memory cautioned courts against the tendency to readily interpret the law in such a manner that would divest a court of its jurisdiction too readily. The erudite Justice of the apex court stated that unless the legal provision in
- 15 question is straightforward and clear it would be better to err on the side of upholding jurisdiction than to turn away a litigant from the seat of justice without being heard. Justice Mulenga concluded that the jurisdiction of courts of law must be guarded jealously and must not be interfered with too lightly because the interests of justice and the rule of 20 law demands so.

In the instant matter, the applicant's Advocates by their letter, contested the trial court's territorial jurisdiction. I do not of course think writing to the trial court was the best way to raise the issue of lack of jurisdiction. In 25 my view, learned counsel ought to have acted more professionally by formally appearing and raising the matter in court whether by way of preliminary objection or otherwise. As noted, I am unable to tell whether

5 the trial court was addressed since there is no record. Having formally moved this court in revision, it was, therefore, incumbent on the applicant to place all the relevant material before court. In **Ojera Christopher Vs.**

Hon. Akol Anthony, Misc. Application No. 62 of 2021, after deferring to authorities such as Wadri Mathias & 4 others Vs. Dranilla Angella,

10 Civil Revision No. 07 of 2019 (Bashaija J), and Jaffer Vs. Gupta [1959]

E. A 406, this court decried the practice of Advocates filing for revision but omitting to supply the relevant record. Court accepted the view that where a party adopts a particular procedure such as notice of motion, the procedure must be fully and correctly complied with. The omission apart,

15 given that the complaint is about lack of territorial jurisdiction, I think court is still able to resolve the question in the absence of the judgment and record of the proceedings. Court at least has the amended plaint and copy of the decree on which it can proceed to interrogate and resolve the question of the alleged lack of territorial jurisdiction.

What then is territorial jurisdiction? The answer is found in Black's Law Dictionary 9th Ed. at p.931. It defines territorial jurisdiction as jurisdiction over cases arising in or involving persons residing within a defined territory. It is a territory over which a government, one of its courts, or one 25 of its subdivisions has jurisdiction. Oxford Dictionary of Law also defines

make a certain order; the territorial limits within which the jurisdiction of territorial jurisdiction as the power of a court to hear and decide a case or

5 a court may be exercised. In **Remo Habib Vs. Juma Saidi, Civil Revision No. 006 of 2015, Mubiru J** stated that the territorial jurisdiction of Magistrates Courts is delimited by way of statutory instruments issued from time to time by the Minister of Justice in consultation with the Chief Justice, in accordance with section 2 of the Magistrates Courts Act.

I have considered all the relevant provisions of the Magistrates Courts Cap 19 (MCA).

Section 2 provides:

"The Minister may, by statutory instrument, after consultation with the Chief Justice, divide Uganda into Magisterial areas for the purposes of this Act."

Section 3 states:

"There shall be established in such places in each magisterial area as the Minister may, by statutory instrument, after consultation with the Chief Justice, designate, magistrates courts to be known as the magistrate's court for the area in respect of which it has jurisdiction."

The appointment and grades of Magistrates are provided under section 4 of the MCA. The grades are Chief Magistrate, Magistrate Grade 1, and

(0__page_14_Picture_11.jpeg)

- 5 Magistrate Grade II. I, however, note that, in this country, grade II Magistrates are currently being phased out with the retiring crop of Magistrates and no new appointments are being made. Within their ranks, however, there are layers of Magistrates Grade 1, for instance, Senior and principal, inter alia, but generally, these ranks are more for administrative
- 10 and not jurisdictional reasons.

Section 4 (3) of the MCA provides that the powers and jurisdiction of a magistrate shall be determined by the grade of his or her appointment and the powers and jurisdiction conferred upon that grade by the Act and by 15 any written law for the time being in force.

Section 5 MCA provides for the constitution of magistrate's courts:

"A magistrate's court shall be deemed to be fully constituted when presided* 20 *over by any one magistrate lawfully empowered to adjudicate in the court."

Under section 6 of the MCA, every magistrate appointed (under the Act) is deemed to have been appointed to, and have jurisdiction in, each and every magisterial area but may be assigned to any other particular magisterial 25 area or to a part of any magisterial area by the Chief Justice.

5 In the persuasive Kenyan case of **Manandu Kitonga Vs. Salim**, Nairobi High Court Civil Case No. 2 of 1976, Miller, J stated that a court is the assembly of a person or persons legally appointed and acting in the hearing and determining of causes. The learned Judge noted that the court house or improved place for lodging is but an inanimate consideration 10 since the actual dispensation of justice therein by those duly authorized

to do so is the essential element constituting a court.

The issue at hand being an alleged lack of territorial jurisdiction, I proceed to review the relevant statutory instrument in light of the scanty material.

Viewed from its registration number, the land claim was filed in the Chief Magistrate's court in 2012. The original plaint is not on record. The amended plaint is of 2016 and correctly retains the original suit number and the filing year. The relevant law in force then was the Magistrates 20 Courts (Magisterial Areas) Instrument, S. I No. 45 of 2007. The instrument was made on 12 September, 2007. It remained in force till its revocation by the Magistrates Courts (Magisterial Areas) Instrument, S. I No. 11 of 2017.

25 The S. I No. 45 of 2007 provided in paragraph 2: *"Magisterial areas. For the purposes of the Magistrates Courts Act, the areas specified in the schedule to this instrument are magisterial areas designated"*

5 **respectively by the name specified in column 1; and comprising the areas defined opposite each of them in column 2 of that schedule.**

Paragraph 3 of the instrument provided:

10 *"There shall be established, in each magisterial area referred to in paragraph 2 (a), a Magistrates Court in the place within the local limits of jurisdiction designated in column 3 of the schedule."*

In the schedule to S. I No. 45 of 2007, column 1 mentions the name of the 15 Magisterial Area. Column 2 states the extent of the Magisterial Area and column 3 mentions the Magistrates court. In 2007, Amolatar was not a magisterial area. There were only 38 Magisterial Areas in the whole of Uganda. Thus in 2007, the extent of Lira Magisterial Area were the five Districts of Lira, Oyam, Amolatar, Dokolo and Apac. The Magistrates 20 courts within Lira magisterial area were; the Chief Magistrates Court at Lira; the Magistrate Grade 1 courts at Lira, Anyeke, Amolatar, Dokolo and Apac. For purposes of comparison, under the current instrument, Amolatar falls under Dokolo Magisterial area. There is also grade I Magistrate in Amolatar.

Section 9 of the MCA provides that the jurisdiction of the Magistrates Court shall, subject to the MCA, and any other written law limiting or

5 otherwise relating to jurisdiction of that court or the presiding magistrate, be exercised in conformity with the law with which the High Court is required to conform in exercising its jurisdiction by the Judicature Act.

Section 207 MCA provides that every magistrate's court, shall, subject to

- 10 the Act, have jurisdiction to try all suits of a civil nature unless barred but suits shall be instituted in the court of the lowest grade competent to try and determine it. See section 5 of the Civil Procedure Act Cap 282 (CPA) which is some-what similar to section 207 of the MCA.

- 15 Under section 211 (1) (a) and (d) of the MCA, it is provided that, subject to the pecuniary or other limitations prescribed by any law, suits for recovery of immoveable property, with or without rent or profits, or for the determination of any other right to or interest in immovable property shall be instituted in the court within the local limits of whose jurisdiction the 20 property is situate.

The above section is word-for-word with section 12 (a) and (d) of the CPA.

Section 11 (1) of the CPA provides that except as is provided in the CPA or 25 the MCA, suits and proceedings of a civil nature shall be instituted in the High Court.

- 5 From the above provisions of the enactments and the statutory instrument, my opinion is that, suits involving recovery of land or for determination of any other right to or interest therein, should be filed in the Magistrates Court that has the requisite jurisdiction. It is of course preferred that filings happen in the magistrate court of the lowest grade
- 10 with jurisdiction. This, among other reasons, help to decongest the Chief Magistrate court of workload in cases where both the Chief Magistrate and the Magistrate Grade I have jurisdiction. This does not, however, mean if a matter is lodged direct in the Chief Magistrates Court and not the Magistrate Grade 1 court, the particular Chief Magistrate with the
- 15 territorial jurisdiction, cannot hear it. It also does not mean that where a matter is lodged direct in the Chief Magistrates Court with the requisite territorial jurisdiction, the Chief Magistrate cannot administratively assign the matter to a grade I Magistrate of the court with subject-matter and pecuniary jurisdiction. Courts should of course discourage litigants from
- 20 filing matters direct in the Chief Magistrates Court when there is a functional and competent Magistrate Grade 1 court in the area where the disputed land is situated.

In the present matter, the suit was instituted not in the Magistrate Grade 25 I court of Amolatar but in the Chief Magistrates Court of Lira. Although the suit should have been instituted in Amolatar Grade 1 court which is the lowest grade, the Chief Magistrates Court of Lira had territorial

- 5 jurisdiction to take cognizance of it. It is not readily clear whether the Grade I Magistrate court in Amolatar was operational at the time and I am unable to take judicial notice of it. Learned counsel for the applicant stated from the Bar that there was a Grade I Magistrate in 2012 but learned counsel was non-committal on giving details. It was also indicated in the
- 10 affidavit that the applicant would furnish proof that there was a Magistrate posted to Amolatar in 2012, but as it turned out, the deposition remained bare. That said, I note that the plaint, as designated, bears the fact of its lodgment in the Chief Magistrates Court Lira. I, therefore, take it that the respondent's husband who filed the suit in 2012 wanted it to be heard by

- 15 the Chief Magistrate of the court and not the Magistrate grade 1. It, however, appears, as is common practice, the Chief Magistrate administratively, and in the exercise of his supervisory powers under section 220 (1) of the MCA, allocated the matter to the Magistrate Grade 1 to adjudicate instead of hearing it personally, given the paltry subject-
- 20 matter value of shs. 1,300,000. In the circumstances, and as well-guided by the wisdom of the supreme court in **Habre International Ltd** (supra), I am unable to agree with the applicant that the matter was filed in a court without territorial jurisdiction. I hold that the court had jurisdiction in the matter.

5 The other complaint, which was not argued, was that the trial court entertained a suit that was res judicata. This claim appears in paragraph 8 of the applicant's affidavit. The paragraph references the protest letter.

Having perused the Motion, I find no single ground on which the claim is

- 10 predicated. Therefore, the omission to plead the ground of res judicata in the Motion leaves the deposition hanging. Second, res judicata being a matter of mixed fact and law ought to have been raised in the trial court and evidence adduced to support it and the trial court addressed on it or if there was no controversy as to facts, it could have been raised as a
- 15 preliminary point of law. See: **Mario Ali Vs. Opoka Santo, Misc. Application No. 14 of 2022** (Okello J). Here, apart from the protest letter, there is nothing to show that learned counsel appeared and addressed court on the point. Third, had res judicata been properly raised in this court, I would have found no basis for the plea. I say so because the 20 decision of the LCII Court was given without jurisdiction as at the time (2009), the members of the court were not competently in office. See: **Nalongo Burashe Vs. Kekitiibwa Mangadalena, Civil Appeal No. 89 of 2011** (Nshimye, Aweri-Opio, and Kakuru, JJA). At any rate, the proceedings were not between the very parties to the land transaction or 25 their privies.
- 5 I am also of the view that the manner in which the instant application was lodged especially after the withdrawal of a purported appeal raises doubt as to the bonafides of the application. I should state that there was in fact no appeal at all within the meaning of O. 43 rules 1 and 8 of the CPR as no Memorandum was lodged and registered in the Register of Appeals.
- 10 Accordingly, the purported notice of appeal could not commence the appeal in this court against the decision of the Magistrate Grade I. It should be recalled that no law provides for commencing civil appeals from the Magistrates Court to the High Court by way of notice of appeal. See: **Board of Governors and Headmaster of Gulu SS Vs. Phinson E. Odong**
- 15 **Civil Appeal No. MG 2 of 1990** (per Galdino. M. Okello, J. (as he then was).

I am of course aware of the school of thought that a person who has a right of appeal is not barred from seeking civil revision. See: **Twine Amos Vs.**

- 20 **Tamusuza James, Civil Revision No. 011 of 2009** There, court cited the decision of Faud J in **Charles Kasirye Vs. M. D Patel [1972] ULR 106** and the court's earlier decision in **Munobwa Mohamed Vs. Uganda Muslim Supreme Council, Civil Revision No. 001 of 2006** in support of the view. There are, with the greatest respect, however, other contrary views. See:
- 25 **Paskali Juma Wasike Vs. Alex Onyango Situbi & 2 others, HCT-04-CV-MA-0004-2010**, to mention but one. With respect, this court hopes the varied positions will one day get settled by a higher court. That said, I am

- 5 of the considered view that the non-pursuit of the so-called appeal after a belated request for the record, in preference for revision, paints a picture of abuse of the court process by the applicant. I also find it strange that the applicant could admit to have sold the suit land as witnessed by his spouse and a daughter, only to turn around to side with his sons and
- 10 purport to avoid the transaction. These sons had no rights whatsoever to challenge their father's land sale because giving their consent to the sale was not a legal requirement. In my view, any consent by children to sale of land by parents may only be for the sake of engendering peace and harmony within the family setting but it is not a requirement of the law.
- 15 Section 39 (1) of the Land Act (Cap 227) was amended in 2004 to remove the then requirement regarding consent by children to sale of family land. Family land is land where the family ordinarily reside and derive sustenance. It is only spousal consent which remains in our statute book under section 40 (1) of the Land Act Cap 236 (revised laws of Uganda 31
- 20 December, 2023). And in the matter at hand, lack of spousal consent was not at issue as the spouse of the vendor did not impugn the sale but even witnessed it which I suppose was her way of signifying her approval in their local setting. See: **Otto Marcello Ludinya & 4 Others Vs. Kinyera Patrick, Civil Appeal No. 26 of 2017 (HCT) (Okello J)**; **Molly Turinawe 25 & 4 others Vs. Eng. Ephraim Turinawe & Dewak Limited, Civil Appeal No. 18 of 2009** (Buteera, JSC, as he then was).

5 Accordingly, even if I had found that the applicant has made out a case for revision, I would have held that serious hardship would result to the respondent if court were to revise the decree. This is because, following the valid sale, the respondent's family have been using the suit land since 2004. More so, the property sold, at law, passed to the purchaser. See:

10 Ismail Jaffer Allibhai & Others Vs. Nandlal Harjivan & Another, SCCA No. 53 of 1995 (Oder, JSC).

Since revisionary powers is discretionary, which of course must be exercised judiciously and not capriciously, and in accordance with proper 15 legal principles, meaning all relevant considerations must be taken into account, and extraneous considerations disregarded (**Halsbury's Laws of England, 4th Ed. Vol. 1, p.70**), I would decline the application.

In closing, I hold that the application lacks merit and fails accordingly. The 20 applicant shall pay costs to the respondent. Therefore, the judgment, the decree, and orders of HW Adelo Susan stands and must be complied with in totality by the applicant and all those claiming under him.

It is so ordered.

5 Delivered, dated and signed in Court this 16 January, 2025.

16/01/2025 09: 55 Am Attendance

15

Mr. Opio Ronald, counsel for the Respondent Mr. Egaru Emmanuel Omiat, counsel for the Applicant Parties in court Mr. Opio Esau, Court Clerk.

25

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/2025/13/eng@2025-01-16>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/ojwik-v-akello-miscellaneous-application-42-of-2022-2025-ughc-13-16-january-2025-unknown-topic-unknown-court-2025>

Prepared on 13 October 2026 · Esheria