

UGANDA / JUDGMENT

Okeny v Ajiga & 4 Others (Civil Revision 3 of 2021) [2024] UGHC 967 (3 October 2024)

[2024] UGHC 967

COURT

High Court of Uganda

BEFORE

Acellam, J

CASE / FILE NUMBER

Civil Revision 3 of 2021

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT ARUA

CIVIL REVISION CAUSE NO. 003 OF 2021

(Arising from Civil Suit No. 16 of 2017)

OKENY PETER

\$10\$ (Administrator of the estate of the late Cenjere Doliya).....

VERSUS

- 1. AJIGA PETER 2. LAGU ISALIAH JOSEPH
- 3. AMIGO FRED
- 4. ADJUMANI DISTRICT LAND BOARD 15 5. THE REGISTRAR OF TITLES

BEFORE: HON. JUSTICE COLLINS ACELLAM

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RULING

Introduction and Background

- This is an Application for revision brought by Notice of Motion under Section 83 and Section 25 98 of the Civil Procedure Act, Order 52 Rules 1 & 2 of the Civil Procedure Rules and Section 33 of the Judicature Act for orders that;
- 1. The order by Her Worship Nantaawo Agnes Shelagh dismissing Civil Suit No. 16 of 2019 be revised and set aside.
- 2. The defendants' taxed bill of costs be revised and set aside
- 3. Civil Suit No. 16 of 2019 be reinstated and heard on its merits.
- 4. Costs of this Application be provided for.

The grounds of the Application are set out in the affidavit sworn by Okeny Peter, the Applicant herein but briefly they are;

1. That the Applicant filed a Civil Suit No. 016 of 2019 against the respondents jointly and severally for declaration of ownership of the suit land measuring approximately 50 acres is part of the estate of the late Cenjere Doliya.
- 2. That the Applicant then filed Misc. Application No. 12 of 2020 seeking to amend and substitute the deceased 2nd Defendant in Civil Suit No. 016 of 2019 having been sued.
- 3. That the trial Magistrate acted with material irregularity when she held that the cause of action in Civil Suit No. 16 of 2019 are interwoven and cannot be severed from the interest of the deceased 2nd defendant.

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4. That the trial Magistrate ignored the fact the defendants were sued individually, had a separate and distinct interests on the suit land.
- 5. That the trial magistrate ignored the fact that a cause of action against the deceased persons can not be interwoven.
- 6. That it is in the interest of justice that this application is heard.

The background of this application is that in July 2019, the Applicant filed Civil Suit No. 016 10 of 2019 at the Chief Magistrates Court of Moyo at Adjumani against the respondents seeking among others a declaration of ownership permanent injunction, eviction orders and damages. In the course of the Civil Suit No. 016, the Applicant filed Misc. Application No. 12 of 2020 seeking for amendment and substitution of Asobasi Dominic (the 2nd defendant in Civil Suit No. 016 of 2019), a deceased who was inadvertently joined as a party. That when the above 15 application came up for consideration, the learned trial magistrate instead dismissed the entire suit particularly holding that:

- 1. Having sued a deceased person, the entire suit is a nullity which can not be amended.
- 2. The facts constituting the cause of action in Civil Suit No. 016 of 2019 are interwoven and cannot be served from the interests of the deceased 2nd Defendant.
- 20 Being dissatisfied with the decision of the trial court, the Applicant filed this Application for revision.

The main issue for determination of this application for revision is;

"Whether the learned trial Magistrate acted with material irregularity and injustice when she dismissed the entire suit because the cause of Action in Civil Suit because the cause of action in Civil Suit No. 016 of 2019 are interwoven and can not be severed from the interest of the deceased 2nd defendant."

Representation and Hearing

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At the hearing of this Application, the Applicant was represented by Counsel Ahmed Kassim of M/s Waymo Advocates while the 1st, 3rd and 4th Respondents were represented by Counsel Paul Manzi of M/s Manzi & Co. Advocates.

35 Both Counsel filed written submissions which this Court is going to consider while making its decision.

Submissions of Counsel for the Applicant

Counsel relied on the Black's law dictionary to define revision as a re-examination or careful review for correction or improvement or an altered version of work. Counsel further submitted that Section 83 of the Civil Procedure Act provides that;

> "The High court may call for the record of any case which has been determined under this at by any Magistrate Court and if that court appears to have;

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- a. Exercised a jurisdiction not vested in it in law.
- b. Failed to exercise a jurisdiction so vested.
- c. Acted in the exercise of its jurisdiction illegally or with material irregularity or injustice,
- The High Court may revise the case and may make such order in it as it thinks fit....."

Counsel submitted that its clear from the above provision of the law that decisions are revised whenever the trial Magistrate fails to exercise his or her jurisdiction or where he or she acts 10 illegally or with material irregularity or injustice.

Distinguishing the case of Babubhai Dhanji Pathak Vs Zainab Mrekwe (1964) 1 EA 24 (HCT) as relied on by Counsel for the Respondent from the present case, Counsel also submitted that 15 in the above case, court held that a suit filed in the name of a sole plaintiff who died before institution of the suit is a complete nullity. In the instant case, the suit was filed against several defendants/ respondents in their individual capacity and had separate and distinct interests in the land. That in the above case, the case was not maintainable, having been filed by a sole deceased person, and that the suit had abated however in the present case, the defendants/ \$20\$ respondents are distinct parties to the suit sued in their individual capacity seeking remedies before the court and therefore the deceased 2nd defendant/ respondent ought to have been struck off the suit rather than dismissing the whole suit.

Counsel also relied on the case of Hitila vs Uganda (1969) E. A 219 and submitted that the 25 evidence in the affidavit in support of the Application and the authorities relied on, this case is rightly before this court for revision and that the trial Magistrate acted with material irregularity and injustice when she failed to strike out the deceased 2nd defendant who was not properly before court, but instead chose to dismiss the entire suit thereby causing a miscarriage of justice.

Submissions of Counsel for the 1st, 3rd and 4th Respondents 30

Counsel submitted the trial Court rightly exercised the jurisdiction vested in her in dismissing the entire suit because it was the finding of the trial court that the cause of action against the 6 defendants was interwoven and it could not be severed from the interest of the 2nd defendant. That the finding of the trial court is neither an irregularity nor did it result in an injustice to the Applicant. That even if the trial Court made a wrong finding that cannot be a ground for revision but rather a ground for appeal. Counsel relied on the cases of BABUBHAI DHANJI PATHAK VS ZAINAB MREKWE (1964) 1 E. A 24 HCT and AMIR KHAN VS SHEO BAKSH SINGH (1885) 11 CA L6, A 237 to fortify his averments.

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Counsel therefore submitted that the Application lacks merit and ought to be dismissed.

Determination of the Application by Court.

I have read and considered the pleadings of both Counsel, written submissions. I have also read 45 and advised myself on the authorities relied on by both Counsel and I have considered them while making my decision.

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Section 83 of the Civil Procedure Act provides that; $\$S\%$

"The High court may call for the record of any case which has been determined under this at by any Magistrate Court and if that court appears to have;

- a) Exercised a jurisdiction not vested in it in law.
- b) Failed to exercise a jurisdiction so vested
- c) Acted in the exercise of its jurisdiction illegally or with material irregularity or injustice.

The High Court may revise the case and may make such order in it as it thinks fit....."

15 The above provision was given judicial consideration in Misc. Application No. 0021 of 2015, Uganda Telecom Limited Vs Adratere Oreste wherein Mubiru J noted that;

> "Revision entails a re-examination or careful review or improvement of a decision of the magistrate court after satisfying oneself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings of a magistrate court. It is a wide power exercisable in any proceedings in which it appears that an error material to the merits of the case or involving a miscarriage of justice occurred."

The complaint of the Applicant is that whereas the trial court had the jurisdiction to try the case, it exercised such jurisdiction with material illegality or irregularity. \$25\$

I agree with Counsel for the Applicant in his submission as can be referenced in the submissions of the Applicant above that the case of Babubhai Dhanji Pathak Vs Zainab Mrekwe (1964) 1 EA 24 (HCT) as relied on by Counsel for the Respondent from the present case, Counsel also submitted that in the above case, court held that a suit filed in the name of a sole plaintiff who died before institution of the suit is a complete nullity. In the instant case, the suit was filed against several defendants/respondents in their individual capacity and had separate and distinct interests in the land. That in the above case, the case was not maintainable, having been filed by a sole deceased person, and that the suit had abated however in the present case, the defendants/ respondents are distinct parties to the suit sued in their individual capacity seeking remedies before the court and therefore the deceased 2nd defendant/ respondent ought to have been struck off the suit rather than dismissing the whole suit.

I therefore opine that the Applicant should replace the 2nd Respondent/2nd defendant with his legal representative in case the cause of action is still continuing on the suit land by the estate 40 of the deceased 2nd Defendant / 2nd Respondent.

Accordingly, it is my finding that whereas the trial Magistrate had the jurisdiction to try the case, the same was exercised illegally and with material irregularity which caused injustice to the applicant. By the powers conferred upon this Court by Section 98 of the Civil Procedure Act and Section 33 of the Judicature Act I find that this is a proper application for revision and accordingly the application succeeds with the following orders;

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- 1. The ruling and orders of Her worship Nantaawo Agnes Shelagh dismissing Civil Suit No. 16 of 2019 are hereby set aside.

- 2. The defendants' taxed bill of costs be revised and set aside
- 3. Civil Suit No. 16 of 2019 be reinstated and heard on its merits with proper Parties.
- 4. No costs awarded.

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I so order Dated this

15 $\cdots$ Collins Acellam **JUDGE**

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