

UGANDA / JUDGMENT

Ssemakula Stephen v Kibuuka Herbert (Civil Revision 15 of 2015) [2021] UGHCLD 44 (31 March 2021) [2021] UGHCLD 44

COURT

HC: Land Division (Uganda)

BEFORE

Kazaarwe, J

CASE / FILE NUMBER

Civil Revision 15 of 2015

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA (LAND DIVISION)

CIVIL REVISION No. 15 OF 2015

(ARISING FROM CIVIL SUIT NO. 10 OF 2006)

SSEMAKULA STEPHEN.....APPLICANT

VS

15

KIBUUKA

HERBERT..... RESPONDENT

20 Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

RULING

25 The Applicant, Ssemakula Stephen, brought this motion under section 83 & 98 of the Civil Procedure Act, section 33 of the Judicature Act and Order 52 r 1, 2 and 3 of the Civil Procedure Rules seeking orders that;

- a) The judgment, decree and execution of the decree of Civil Suit No. 10 of 2006 from Mwanga II Road Court be revised by this Honourable Court.

- b) Costs of this Application be provided for.

5 Grounds for the application

These are contained in the affidavit in support of the motion sworn by Ssemakula Stephen, the Applicant and are that;

1. The Grade One Magistrate Court at Mwanga II Road Court exercised jurisdiction not vested in it in law.
- 10 2. The Grade One Magistrate Court of Mwanga II in the exercise of its jurisdiction acted illegally with material irregularity which caused serious injustice on the Applicant.
- 3. The Learned Magistrate Grade one ignored the evidence adduced before Wakiso Court in Criminal Case No. 152 of 2003.
- 15 4. The dispute between the Parties concerns land which is a sensitive matter and it requires this Honourable Court to pronounce itself on the same.
- 5. The Applicant failed to apply within a short time due to the fact that the Judgment and proceedings of the lower Court were not availed to him on time.
- 6. At the time the Trial Magistrate wrote the judgment and decree in Mwanga II 20 Road Court he had been transferred to Buganda Road Court and he moved with the file in his bag.

Reply by Respondent

25 No Reply was filed by the Respondent. This court received a letter from the Respondent requesting to be allowed to file his reply out of time and the matter was fixed to entertain this application.

When the matter came up on the 30th October 2020, the Respondent explained that he had only recently become aware of this application. He requested this Court to allow him engage new advocates and file a reply and submissions to oppose the Application. This

5 prayer was granted by this court.

M/S Buganda Royal Law Chambers filed a notice of change of advocates on the 27th November 2020 indicating that they were representing the Respondent. However, the affidavit in reply and submissions filed by this law firm on the Respondent's behalf

- 10 were in relation to Miscellaneous Application No. 1406 of 2019, arising out of this Civil Revision 15 of 2015. This matter was concluded by this court on the 27th July 2020. The import of this grave oversight on the part of the Respondent's advocates is that he has no reply on court record.
- 15

Counsel for the Applicant filed written submissions which this court has duly considered.

Issue**Whether the Appicant has established sufficient grounds for revision of Civil Suit 20 No. 10 of 2006?**

Under section 83 of the Civil Procedure Act, the High Court may call for the record of any case which has been determined by any subordinate court and may revise the case if that court appears to have;

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

This application is apparently in respect of Civil Suit No.10 of 2006. The lower court record is before me and having subjected it to thorough scrutiny, I observed the following;

- 1. The green court file cover bears reference title- Civil Suit No. 10 of 2006- 5 Mwanga Rd II court.
- 2. Parties are Kibuuka Herbert Plaintiff and Semakula Stephen- Defendant.
- 3. There are only three dates on the court file- 4/2/2020; 11/2/2020 and 30/10/2020- Judgment.
- 4. On the overleaf of the green file cover, secured by staples, is an older yellow file 10 cover with four entries on it as follows;
- i) 7.8.2003- Plaint filed and necessary...paid. Court: Let summons to file a defence be issued. Signed- Magistrate Grade I.
- ii) 8/9/2003 at 5.30pm: Written Statement of Defence filed by the defence Counsel. Signed Magistrate Grade I.
- 15 iii) 9/9/03 Scheduling conference fixed for 18th September 2003 at 9.00am. Signed Magistrate Grade 1
- iv) Court fees paid; UGX. 30,000/=

The file bears a record of proceedings relating to Civil Suit No. 0010/2003. The parties are Kibuuka Herbert- Plaintiff and Semakula Stephen- Defendant, before His Worship

20 G. K Mugoya Magistrate Grade 1. According to the certified record of proceedings, commencement of the proceedings is dated 7th October 2003 and conclusion is dated 28th February 2007. With the last minute reading as follows;

Plaintiff in court-unrepresented

Kaweesa for the Defendant

25 *Oketelo- Interpreter*

Court- Judgment will be ready by 12/3/07 at 9.00am. Costs in the cause. Sign G. K Mugoya

Magistrate Grade One. 28/02/07.

There is immediately after this, a hand-written judgment relating to Civil Suit 5 No.0010/2006. The parties are Kibuuka Herbert v Semakula Steven before His Worship G. K Mugoya Magistrate Grade 1. The hand written judgment is signed but undated. A perusal of the typed judgment indicates that it was delivered on the 19th March 2007.

It is my considered opinion that the lower court record, certified proceedings and 10 judgment are all in respect to the proceedings in Civil Suit No. 0010/ 2003 and not Civil Suit No.10 of 2006. I shall demonstrate below.

Civil Appeal No. 12 of 2007 arising out of Civil Suit No. 0010 of 2003 Mwanga II Rd was filed in the High Court of Nakawa Central Circuit on the 2nd April 2007 by 15 Semakula Stephen the Appellant against Kibuuka Herbert, the Respondent. The Notice of Appeal was drawn and filed by M/S Kaweesa & Co. Advocates. These are the advocates who are on record for Mr. Semakula Stephen in Civil Suit No. 0010 of 2003.

By a letter dated 2nd April 2007, the Ag. Assistant Registrar of this court wrote to the 20 Magistrate Grade I Mwanga II Rd Court directing that the original case file and certified proceedings and judgment in Mwanga II Rd Civil Suit No.010 of 2006- Semakula Stephen v Kibuuka Herbert, be forwarded for the determination of Civil Appeal No.12 of 2007. I observed an alteration on the typed letter where the '6' in 2006 is changed to '3' using ink. The same letter bears a hand written minute stating; '*Robinah p'se type* 25 *proceedings*' It is signed and dated 3rd April 2007.

On the 15th June 2007, Hw Boniface Wamala, Senior Principal Magistrate Grade One, Mwanga Rd II (as he then was), forwarded the original case file in Civil Suit No.0010 of 2003 with the typed and certified copies of proceedings and judgment for the appeal purposes in Civil Appeal No. 12 of 2007.

Miscellaneous Application No. 392 of 2007 arose from Civil Appeal No. 12 of 2007. 5 The Applicant/ Appellant was Semakula Stephen and the Respondent was Kibuuka Herbert. It was heard and determined by Hon. Justice Akiiki Kiiza on the 19th February 2008. He ordered that the application for stay of execution of decree in Civil Suit No. 10 of 2003 Mwanga II Court be dismissed and the costs be met by the Applicant, Semakula Stephen.

The Applicant, Mr. Semakula Stephen firmly maintains that Civil Suit No. 10 of 2003 and Civil Suit No. 10 of 2006 are distinct suits. He has failed however, to produce a certified record of proceedings in Civil Suit No. 10 of 2006 from Mwanga Rd II to support his claims. The entire record before me indicates that the Applicant went to 15 great lengths to mislead this court about the existence of Civil Suit No. 10 of 2006 between the parties before me.

Mr. Semakula Stephen already challenged the decision of the lower court in which he lost by way of appeal to this court. His efforts to secure a stay of execution were 20 unsuccessful. It is not true therefore that he was unable to be availed with the lower court record, before 2015 when he filed this application. It was in his possession by the 15th June 2007, when the record was forwarded to this court for appeal purposes at his instance.

25 Before I take leave of this matter, I am directing that the Registrar of this court take the necessary steps to ensure that any illegalities existent on this court record be investigated by the Inspectorate of Courts.

In conclusion, I find that this application for revision is an abuse of court of process with its foundation built on deceit perpetuated by the Applicant. It is dismissed with costs to the Respondent.

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Olive Kazaarwe Mukwaya JUDGE

31st March 2021

10 Delivered by email to Counsel for the Applicant.

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