

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**CIVIL REVISION NO.04 OF 2018**

**(ARISING FROM MISCELLANEOUS APPLICATION NO.19 OF 2018 Itself arising from Civil Suit No.  
12 of 2016 AT KASANGATI)**

- 1. KAWAGA LAWRENCE**
- 2. SULAIMAN NTEEZI----- APPLICANTS**
- 3. NAMUSAMULA SARAH**

**VERSUS**

**ZIWA & SONS PROPERTY CONSULTANTS LIMITED..... RESPONDENT**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**RULING**

This is an application for a revision order against the ruling of a Magistrate grade One of Kasaganti in which he overruled a preliminary objection that he lacked jurisdiction to hear and determine the matter before him.

The respondent filed a suit in a Magistrates court seeking the following orders;

- A declaration that the defendants are trespassers,
- Vacant possession of land;
- A Permanent injunction restraining the defendants, their agents, employees and/or anyone claiming title under them from undertaking any further dealings with the suit land;
- General damages for trespass and inconvenience caused;
- Costs of the suit

The respondent filed an application for a temporary injunction and before the hearing of this application raised several objections out of which this application for revision arose.

The applicants were represented by Jingo Christopher and the respondent was represented by Matovu Muhamad. In the interest of time court directed the counsel for both parties to file written submissions.

The application was brought by way of Notice of Motion under Section 83 & 98 of the Civil Procedure Act, and Order 52 r1 &3 of the Civil Procedure Rules for Orders that;

1. A revision order be issued by this Honourable court revising the ruling and orders of His Worship Achoka Egesa Freddy Grade One Magistrate of Kasangati under the Chief magistrate's Court of Nabweru for Exercising a jurisdiction not vested in it.
2. The applicant also prayed for costs of this application.

The application was supported by the affidavit of Kawaga Lawrence

In opposition to this Application the Respondent filed an affidavit in reply by Robert Ziwa wherein he vehemently opposed the revision orders sought by contending that the court had jurisdiction to hear and determine the matter before it.

I have considered the respective submissions however I must state that counsel for the respective parties did at some extent venture into issues and preliminary points of law that in my opinion are not fit for consideration in the application of this nature.

This application is confined to the provisions of Section 83 of the Civil Procedure Act and that is strictly revision and such an application cannot be used as an Appeal against findings of the magistrate's court.

Section 83 provides;

The High Court may call for the record of any case which has been determined under this Act by any magistrate's court, and 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 exercise of its jurisdiction illegally or with material irregularity or injustice,

In this application the applicants are only challenging the magistrate grade one for exercising jurisdiction not vested in it.

The applicants contend that the court lacked jurisdiction to hear the matter the value of the subject matter according to them was above 70,000,000/=. The respondent on the other hand contends that the said suit was for trespass to land and the magistrate has jurisdiction to hear and determine the matter.

This matter was before a Magistrate grade One who noted in his ruling as follows;

*“ I am persuaded by section 207 (1)(a) of the M.C.A which gives Magistrates Unlimited jurisdiction in Disputes relating to conversion, damage to property or trespass. Counsel cannot depart from pleadings. I overrule the objection”*

The law cited by the learned trial magistrate is only applicable to the Chief Magistrate and magistrate Grade one. The Jurisdiction of a Magistrate grade one is provided under section 207(1)(b); ***a magistrate grade 1 shall have jurisdiction where the value of the subject matter does not exceed twenty million shillings.*** The learned trial magistrate vested himself with jurisdiction of a Chief Magistrate which was very erroneous.

The question of jurisdiction of court is very important in determining the authority to be exercised by the court as it was explained in **Koboko District Local Government vs Okujjo Swali High Court Miscellaneous Application No. 001 of 2016** where court noted that;

*“One of the “policies of court” is the question of jurisdiction that it is at once fundamental and over-arching as far as any judicial proceeding is concerned. Jurisdiction is the first test in the legal authority of a court and*

its absence disqualifies the court from exercising any of its powers. Jurisdiction means and includes any authority conferred by the law upon the court to decide or adjudicate any dispute between the parties or pass judgment or order. A court cannot entertain a cause which it has no jurisdiction to adjudicate upon.”

In the present case, the learned trial Magistrate was proceeding as if he was the Chief Magistrate. The actions for trespass without considering the value of the subject matter are confined to only Chief magistrate.

There is need to draw a clear distinction between an action for trespass to land envisaged under the Magistrates Courts Act section 207(1)(a) as a common law tort and an Action for recovery of land.

An action for trespass to land occurs when the person directly enters upon another’s land without permission and remains upon the land, places or projects any object upon the land. (*See Salmond and Heuston on the Law of Torts, 19<sup>th</sup> Edition*). It is a possessory action where if remedies are to be awarded, the plaintiff must prove a possessory interest in the land. It is the right of the owner in possession to exclusive possession that is protected by an action for trespass. Such possession must be actual and this requires the plaintiff to demonstrate his or her exclusive possession and control of the land. The entry by the defendant onto the plaintiff’s must be unauthorized. The defendant should not have had any right to enter into the plaintiff’s land. In order to succeed, the plaintiff must prove that; he or she was in possession at the time of trespass; there was an unlawful or unauthorized entry by the defendant; and the entry occasion damage to the plaintiff.

In an action for recovery of land, this is a substantive claim for getting declaratory orders as to the rightful ownership of land. Where there are two competing interests on the land. The duty of the court is to determine between the two parties who is rightful owner of the said land i.e between two titles or interests (Lessor and Lessee) (registered proprietor and Kibanja Owner/Lawful Occupant).

In the result for the reasons stated herein above this application has no merit and is hereby dismissed with costs to the Respondents.

It is so ordered.

**SSEKAANA MUSA**

**JUDGE**

**25/05/2018**