

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**CIVIL REVISION NO.33 OF 2012**

**(ARISING FROM Civil Suit No. 30 of 2012 AT WAKISO)**

**UMEME LIMITED----- APPLICANT**

**VERSUS**

**KERCAN PROSPER-----RESPONDENT**

**BEFORE HON. JUSTICE SSEKAANA MUSA**

**RULING**

This is an application for a revision order against the ruling of a Magistrate grade One of Wakiso in which court proceeded ex parte and gave Judgement in favour of the respondent.

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

- A permanent injunction restraining the defendant from continued trespass to the plaintiff's land and order to remove their power line or in the alternative the court orders forthwith give the plaintiff no pole connection service.
- Damages for trespass to be paid by the plaintiff.
- Costs of the suit

The applicant filed a written statement of defence on the 5<sup>th</sup> April 2012 and the respondent as a plaintiff filed a reply to the written statement of defence on the 4<sup>th</sup> day of May 2012.

The case was fixed for hearing on 16<sup>th</sup> August 2012 however it did not proceed after both counsel agreed to adjourn the matter to enable the parties explore

avenues of settlement. The matter was accordingly adjourned to 2<sup>nd</sup> October 2012.

The counsel agreed to an adjournment of the matter since counsel for the plaintiff had intimated that he was sick. However, the plaintiff appeared in court and represented himself and proceeded to raise an objection that the defence ought to be struck out and court indeed struck out the defence.

The court proceeded to hear the plaintiff case and later proceeded to determine the matter in favour of the respondent/defendant. It is this decision that the applicant is challenging for review.

The applicants were represented by Kabayo Alex while the respondent represented himself although he stated that his lawyer is Mr Donge.

The application was brought by way of a letter under Section 83 and I did not come across that letter on record but the matter had been entered as Civil revision number.

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 proceeding in their absence. Also the record shows that the applicant's defence was struck out by the learned trial magistrate.

The applicant contends that the respondent's decision to proceed to represent himself in a matter after he had instructed an advocate without filing a notice of self-representation was wrong or irregular.

The learned trial Magistrate acted in exercise of its jurisdiction illegally or with material irregularity or injustice, when she struck out the defendants defence and proceeded ex parte without any order on record.

The orders given in absence of the applicant are in violation of the right to be heard and the applicant therefore suffered injustice to that extent and this court would not leave such unjust order to proceed.

The court further in execution of its final judgment awarded special damages which had not been specifically pleaded or was not specifically proved at the trial.

This being an action in trespass it only fair that the court hears both parties in the case and determine the same conclusively. The learned magistrate also acted without jurisdiction when she heard the matter as if she 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 the result for the reasons stated herein above this application succeeds and the judgement and orders made in the proceedings are set aside.

The matter should be heard by a Chief Magistrate *de novo* in the interest of Justice.

The lower court file should be returned to the Chief Magistrates Court of Wakiso for hearing and determination.

The court makes no order as to costs

It is so ordered.

**SSEKAANA MUSA**

**JUDGE**

**5<sup>th</sup>/07/2019**