

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT UGANDA AT KAMPALA**  
**CIVIL DIVISION**  
**REVISION APPLICATION NO. 20 OF 2019**  
**(ARISING FROM MISC. APPLICATION NO. 40 OF 2019)**  
**(ITSELF ARISING FROM MISC. CAUSE NO. 8 OF 2019)**

**ISAAC MUTAABAZI:.....APPLICANT**

**VERSUS**

**NABOSSA IRENE KROGER:.....RESPONDENT**

**BEFORE: HON. JUSTICE SSEKAANA MUSA**

**RULING**

This is an application for revision of the ruling and orders of the Magistrate Grade One at Makindye (as he then was), His Worship Gakyaro Mpirwe Allan, dated the 6<sup>th</sup> May 2019 brought under Section 83 of the Civil Procedure Act, Cap. 71.

The applicant was the respondent's landlord of premises located at Munyonyo, Makindye Division where she commercially used to house a boutique/shop. The applicant applied for a special certificate to levy distress for rent arrears in the amount of Ugx. 7.8m against the respondent Vide Misc. Cause No. 8 of 2019. The respondent failed to file a defence despite being served with court process.

The Court (Her Worship Mbabazi Edith) then proceeded to hear and determine the application *ex parte* and on the 29<sup>th</sup> January 2019 granted an Order for distress for rent.

Pursuant to that Court Order, distress for rent was on the 22<sup>nd</sup> February 2019 effected by M/s Wadd Associates on behalf of the applicant and in the presence of police officers, the LC II Chairperson, and the LC I Secretary for Defence. A

Return to this effect was filed in court on the 25<sup>th</sup> February 2019 detailing the items distrained and other information.

Vide Misc. Application No. 40 of 2019, the respondent then applied to set aside the Order allowing the applicant to levy distress for rent. In this application, the respondent also prayed for “damages for the unlawful eviction from the premises”.

In his ruling in the application to set aside the ex parte Order, the learned Magistrate framed two issues for his determination being:

- a) Whether the Respondent’s distress order against the Application in Misc. Cause No. 8 of 2019 and all related actions were lawful?
- b) What remedies are available to the parties.

He then proceeded to make the following findings, holdings, and orders:

- a) That service of court process was not effected on the respondent, the respondent having been served through a person that she denied knowing;
- b) That the respondent denied being a tenant and claimed ownership of the premises and that therefore, the proper procedure for the applicant to pursue ought to have been filing an ordinary suit, not proceedings for distress for rent;
- c) That the respondent was entitled to general damages of Ugx. 4m for the actions taken by the Applicant pursuant to the Court Order;
- d) That the order of the court dated the 29<sup>th</sup> January 2019 be set aside;
- e) That all distressed property be returned to the respondent;
- f) That the applicant be restrained from dealing with the suit property in any way;
- g) That the parties are advised to file an ordinary civil suit to determine the question of ownership of the premises; and
- h) That the respondent be awarded the costs of the application.

In making the above findings, holdings and orders, the applicant contended that the learned Magistrate exercised a jurisdiction not vested in him by law and also acted illegally and with material irregularity as demonstrated hereinafter hence this application.

The applicant was represented by *Muwonge Khassim* while the respondent was represented by *Patricia Nyangoma*

The following issues were raised for determination.

1. *Whether the learned Magistrate exercised a jurisdiction not vested in him or acted illegally and/ or with material irregularity and injustice?*
2. *What remedies are available to the parties?*

### **Determination**

According to **Section 83 of the Civil Procedure Act (Cap 71)** the High Court may call for the record of any case which has been determined under this Act by any magistrates court and that court appears to have;

- a) Exercised a jurisdiction not vested in law
- b) Failed to exercise a jurisdiction so vested, or
- c) Acted in exercise of it's 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; but no such power of revision shall be exercised –

- d) Unless the parties shall first be given the opportunity of being heard; or
- e) Where, from lapse of time or other cause, the exercise of that power would involve serious hardship to any person.

It is important to note that revision is a remedy available to an aggrieved party of any judgement passed by the subordinate court where no appeal lies; filed in the High Court by him or her. It is a discretionary and supervisory power of the superior court thus there's no statutory right of revision to an aggrieved party.

In a matter for revision, the court does the examination for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings before the High Court.

For revision to stand, there must have been an error material to the merits of the case or involving a miscarriage of justice and exercise of that power must not involve hardship to any person.

In the case of *Hitila vs Uganda [1969] 1 E.A 219* Court of Appeal of Uganda, where it was held that;

***“In exercising its power of revision, the High court could use its wide powers in any proceedings in which it appeared that an error material to the merits of the case or involving a miscarriage of justice had occurred. It was further held that the court could do so in any proceedings where it appeared from any record that had been called for by the court or which had been reported for orders or in any proceedings which had otherwise been brought to its notice”.***

The applicant contends that the learned Magistrate exercised a jurisdiction not vested in him and acted illegally and/or with material irregularity and injustice when:

- i. In an application for setting aside an ex parte Order, he went ahead to make orders affecting the rights of the parties and restrained the Applicant from dealing with the premises in any way;
- ii. The learned magistrate acted with illegally and with material irregularity and injustice when, in application to set aside an ex parte order, he went ahead to award general damages of Ugx. 4m for distress that was carried out pursuant to a Court order and in the presence of the rightful officials;
- iii. The learned Magistrate acted illegally and with material irregularity and injustice when having set aside the order for the levying of distress, he did not set down the underlying application for distress for hearing and instead directed the parties to file an ordinary suit;
- iv. The learned Magistrate acted with material irregularity and injustice when he relied on hearsay evidence on behalf of the respondent;

Revision is intended to correct errors which do not go to the merits / substance of the dispute not the determination of the rights of the parties. According to the applicant's pleadings and submissions, he is dissatisfied that the magistrate made further orders in an application to set aside an ex parte distress for rent order to wit the grant of general damages an order restraining the applicant from dealing with the premises in any way and an order that the respondent to file an ordinary suit.

Where a court has jurisdiction to determine a question, it cannot be said that it acted illegally or with material irregularity because it has come to erroneous decision on the question of fact or even law.

The court does the examination for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, order or any other decision and the regularity of any proceedings before the High Court. For revision to stand, there must have been an error material to the merits of the case or involving a miscarriage of justice and exercise of that power must not involve hardship to any person.

Where a court has jurisdiction to determine a question, it cannot be said that it acted illegally or with material irregularity because it has come to erroneous decision on the question of fact or even law.

This is because revision is intended to correct errors which do not go to the merits /substance of the dispute not the determination of the rights of the parties.

The applicant, is dissatisfied that the magistrate made further orders in an application to set aside an ex parte distress for rent order when he granted damages as the eviction was conducted in pursuance of a court order and was conducted by a court bailiff and restrained the applicant from dealing with the suit property; making an order for the respondent to file an ordinary suit and the applicant avers in his submissions that the learned magistrate exercised a jurisdiction not vested in him and acted illegally and or with material irregularity and injustice when he issued an order against the respondent (applicant) restraining him from dealing with the suit property in any way, stating that it's an order that ought to have been made under an application for a temporary injunction.

Judicial officers are enjoined and its their duty to promote justice. What then would be the intention for a magistrate to set aside an ex parte order in this case and not stop the applicant from further use of the premises?

The applicant further contends that he is the owner of the suit premises while the respondent contends that the applicant is not her landlord. Therefore, there's a contention as to whether there exists a landlord – tenant relationship between the applicant and the respondent. **Section 2 of the Distress for Rent (Bailiffs) Act** provides that it is only a landlord who has the power to levy any distress for rent.

The Act doesn't refer to a registered owner. What needs to be established is the landlord – tenant relationship under this section which has not been successfully established by the applicant. It is on this basis that the magistrate deemed it fit to advise the respondent to file an ordinary suit so as to determine ownership of the suit property. The learned magistrate was therefore simply guiding the parties on what course of action they ought to have taken when he advised the need for filing an ordinary suit and so this doesn't amount to an illegality.

Furthermore, **Section 98 of the Civil Procedure Act** provides for the inherent powers of court to make orders as maybe necessary to prevent the abuse of the process of court and meet the ends of justice. **Section 207(5) of the Magistrates Courts Act as amended** also permits magistrates to grant any relief which it has power to grant under the Act or any other written law and make such orders as may be provided for by the Act

Section 33 of the Judicature Act empowers courts to grant any orders or remedies as they deem fit so as to promote justice. Therefore, the learned trial magistrate was within jurisdiction when he made further orders granting general damages of Ug shs. 4,000,000 for wrongful eviction and to file an ordinary suit to determine the parties rights on the suit property. He only did what would be expected of a prudent judicial officer.

I therefore find that this application doesn't satisfy the grounds for revision as laid down in **Section 83 of the Civil Procedure Act** because the learned magistrate was acting in his jurisdiction and his decision doesn't have any illegalities or material irregularities in exercise of that jurisdiction. Thus, this application is not competent for revision.

**What remedies are available to the parties.**

Merely because the Magistrates court has taken a wrong view or law or misinterpreted the evidence on record cannot in itself justify revision unless it has also resulted into a grave injustice. In addition, a decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court cannot be corrected by the High Court.

It should be noted that revision is restricted to illegalities and irregularities, and non exercise or irregular exercise of jurisdiction. The main view of revision is not to interfere with or alter the judgement of a lower court but to correct or improve such a judgement keeping subordinate courts within the bound of their jurisdiction. A decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court, cannot be corrected by the High Court.

If the applicant was dissatisfied, he would have preferred an appeal to the High Court.

This application is dismissed with costs to the respondent.

***Ssekaana Musa***

***Judge***

***10<sup>th</sup> March 2023***