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**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBALE
HCT-04-CV-CR-001-2004**

KHISA JOSSY.....APPLICANT

VERSUS

POKOTO MICHAELRESPONDENT

BEFORE: THE HON. MR. JUSTICE RUGADYA ATWOKI

RULING

The applicant in this case was the defendant in Bubutu Grade II Magistrates court. He was sued by the respondent/plaintiff for failure to pay dowry.

During the revision proceedings, the applicant informed court that when the suit was called for hearing before the Grade II magistrate of Bubuto, he was asked whether he admitted the claim. He replied that he did not. He was asked whether he had indeed paid dowry, and he stated that he had not. That on that pleading, the magistrate ruled that the claim was admitted, and proceeded to give judgment in favour of the respondent/plaintiff. The respondent did not contradict the statement of the applicant, but only stated that the court had made its ruling, and he was ready to abide by it.

Both parties were un represented by Counsel in the lower court, and in this court, though the notice of motion in respect of this revision application was drawn by FIDA (U) Legal Aid Clinic. He filed the application himself. The applicant sought a revision of the judgement and orders of the trial magistrate Grade II, under S. 83 of the Civil Procedure Act.

His complaint was that the magistrate exercised his jurisdiction with material irregularity, thereby causing injustice to him, in so far as he was not given the opportunity to give the reasons why he did not pay the dowry. He asked court to direct the magistrate to give him a chance to defend himself.

Section 83 provides that the High Court may call for any record of any case which has been determined under the Act by any magistrates 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 ; or
- (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 orders as it thinks fit.

I noted that this case came to the High Court by way of notice of motion. Under section 83 of the Civil Procedure Act, it is the court which calls for the record. But the court must be informed in the first instance before it can take such a step. I took the application to be such information, and upon receipt of the same, the Deputy Registrar of this court called for this file, and it was placed before me for revision. The procedural irregularity, if it existed, was thereby cured. As required by paragraph (d) of that section, both parties were given the opportunity to, and they respectively presented their arguments to court as indicated above.

The record of proceedings in the court of learned trial magistrate reads as follows.

‘ Both parties in court.

Court: Claim read and fully explained to the defendant.

Defendant: I admit the claim

Court: Judgement entered in favour of the plaintiff with costs.’

The rules of procedure governing suits by magistrates Grade II are contained in schedule 3 of the Magistrates Court Act. Rule 23(a) provides as follows

‘On the appearance of both parties before the court, the defendant shall be asked by the magistrate whether or not he or she admits the claim of the plaintiff, and-

(a) if the defendant admits the claim in its entirety, judgment shall be forthwith given for the plaintiff.’

The applicant informed court that he did not admit the claim, save that he conceded that he had not paid dowry. He had reasons why he did not do so. The respondent did not indicate to the contrary. He did not oppose this. That means that the applicant did not admit the claim in its entirety. The magistrate entered judgement in contravention of rule 23(a) above cited.

Failure to pay dowry is not a strict liability civil wrong. There could have been any number and sorts of reasons why dowry was not paid. The applicant ought to have been given a chance to make his defence. He was not given this chance as judgement was entered prematurely against him. The magistrate exercised his jurisdiction with material irregularity.

The judgement and orders of the magistrate are accordingly set aside. The suit shall be retried by a Grade I magistrate. In view of the fact that the

errors were not occasioned by the respondent, I shall not condemn him in costs. Each party shall bear their own costs in this court. The costs in the court below shall abide the results of the retrial.



RUGADYA ATWOKI

JUDGE

04/05/05.

Court: The Deputy Registrar of the Court shall read this ruling to the parties.



RUGADYA ATWOKI

JUDGE

04/05/05.