

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA**

**REVISION CAUSE NO. 016 OF 2015
[ARISING FROM LUGAZI CHIEF MAGISTRATES COURT CIVIL SUIT NO. 66 OF
2009]**

**BOARD OF GOVERNERS OF
ST JOSEPHS H/S NAMAGUNGA.....APPLICANT**

VERSUS

**CHEVARS AGRO TOURISM AND
CARE LIMITED.....RESPONDENT**

RULING

BEFORE: HON. LADY JUSTICE EVA K. LUSWATA

The applicant proceeded under Section 83 Civil Procedure Act (CPA) seeking an order for the High Court to revise the orders of the trial Magistrate in Lugazi Civil Suit No. 66/2009 citing the following grounds:-

1. The suit was brought against the wrong party
2. The respondent has no cause of action against the applicant
3. The trial Court in exercise of its jurisdiction and in making its orders sought to be revised, acted illegally or with material irregularity or injustice
4. It is in the matter of justice that this application be allowed.

Msgr. Kayondo Gerald, the Vicar General of Lugazi Diocese filed an affidavit in support of the application basically stating that St Joseph College Namagunga, (hereinafter called the College) the applicant's predecessor, incurred the liability, (a sum of Shs. 7,760,000) which is the subject of the main suit, before it became the property of the applicant. Further that when the applicant acquired the legal interest in the College from M/s Lugazi Catholic Development Association Ltd (hereinafter the Company) (then in receivership), they specifically did not inherit any of her existing liabilities and as such, the applicant was wrongly sued in the first place and thereafter,

judgment was entered in error against them. He added that a preliminary objection was raised in respect of the latter fact and was wrongly overruled and in addition, the applicant was precluded from calling evidence at the trial.

Mwanje Semujju John Felix, the respondent's Managing Director, filed an affidavit in reply. In brief he deposed that the preliminary objection was overruled on 14/6/2010, after both sides were heard and that that particular decision was never challenged. He continued that the respondent's case was closed on 26/2/2013 and on 16/05/2013, Matovu Fahad, the witness presented by the applicant was disqualified by the trial Magistrate with reasons, thereafter, the applicants were given a chance but failed to present witnesses and the case was then closed at the respondent's instance on 18/03/2014. Thereafter, an application to allow the applicant to present his evidence was on 18/5/2014 dismissed on merit and that ruling was also never challenged. He denied the allegation that the applicant did not own the College at the material time or that the company ever went into receivership, and argued that even then, those facts should have been presented at the trial, of which opportunity was given. That in his knowledge, the applicant changed their name from St Joseph College Namagunga to St Joseph's High School Namagunga in order to defraud their numerous creditors and the application is intended to frustrate the execution process. He concluded that no sufficient reasons had been advanced that warranted issuance of a revision order.

I agree with respondent counsel's submission that the applicant's written submissions were filed late on 15/02/2017, infact, well after the court scheduled date of 1/12/16 and after the respondent's counsel had filed their submissions on 23/12/16. For that reason, those submissions cannot be considered in view of the fact of an earlier filing by the respondent. Allowing the submissions would offend my order made on 16/11/2016 and generally the provisions of Order 18 rr.2 CPR. At the very best, the applicant could only have filed a rejoinder or at least, sought leave to have filing of submissions rescheduled. They did neither and their submissions would thus be an abuse of court process, and they are accordingly expunged and will not be considered. Since the applicant filed an affidavit in support of the application, what is deposed there will be the basis of my ruling.

The revision powers of the High Court are contained in Section 83 CPA. The record of a Magistrate's Court can be called up for revision by the High Court there it 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

Where the application is made without inordinate delay and the High Court finds justification to make a revision order, she has quite wide powers to make orders to revise the lower court's decision to replace them with orders that she deems fit in the circumstances.

That said, the High Court's powers in revision are limited to issues of jurisdiction alone. The Court in **Matembe Vrs Vamulinga (1968)EA 643** following the decision in **Balakrishna Vs Vasudeva (1917) 44 I.A. 261** was succinct. During revision proceedings, the High Court is empowered only to confirm whether the requirements of the law have been duly and properly obeyed by the court whose order is subject to revision. It was stated further that

'It will be observed that the section applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved'.

The same Court added that where a Court has jurisdiction to determine a question and it determines that question, it cannot be said to have acted illegally or with material irregularity because it has come to an erroneous decision of a question of fact or law.

In his affidavit, Msgr. Kayondo Richard appeared not to have any contest against the jurisdiction of the trial Magistrate to hear the suit and the applications made under it. Instead, his contentions are six fold, that:-

- i. The trial magistrate wrongly overruled the applicant's objection that the claim was made against the wrong party
- ii. The trial Magistrate made a wrong decision when she passed the *ex parte* judgment against the applicant even when she was aware that the applicant was the wrong party being sued and the respondent did not have a cause of action against the applicant

- iii. The trial Magistrate wrongly heard the matter *ex parte* and denied the applicant the right to adduce evidence even where good reason was given for the absence of their counsel at some hearings and a witness, Fahad Matovu was presented to testify.
- iv. Even after hearing M/A.29/2014, and alluding to the reasons for the absence of the applicant and their advocate at the trial hearings, she failed to accord the applicant an opportunity to be heard
- v. It would be incorrect in law for the applicant to file submissions as per Court's directions where no evidence was led for them.
- vi. The decision of the trial Magistrate was unfair and occasioned grave injustice upon the applicant who is entitled to be heard

It is clear from the record that the objection raised for the applicant at the hearing of 22/4/2010 was heard interparty and a ruling delivered on 14/6/2010. In my view, and there is no contest to that, the Magistrate had jurisdiction to hear the objection and rule on it. She did so, and in her wise judgment ruled against the applicant on the facts and law. Going by the provisions of Section 83 CPA, that decision cannot be the subject of revision but appeal, which remedy was never sought.

The proceedings of 16/5/13 indicate that there was an attempt by the applicant to present one Matovu Fahad a lawyer with M/s Muganwa Nanteza & Co., Advocates. Counsel Bugembe objected stating that a previous submission by the applicant's advocates indicated that they would present witnesses from the Board of the applicant. That Matovu an unlicensed lawyer could not appear for the applicant and was not shown to be a member of the Board. In reply, counsel Sogon argued that the applicant being a body corporate could appoint directors and that their firm represented the Board and as such, they are deemed to be members of the Board and Matovu was appearing as a member of that firm in that capacity. He continued that a party is not restricted on the witnesses they wish to call and a prayer to bar a witness would be made in bad faith. The Court in rejecting that witness stated that Matovu not being a practicing lawyer, had no locus to give evidence for the applicant and could not testify on matters not within his knowledge. The matter was adjourned with a specific order that the applicant produces other witnesses.

In my view, the trial Magistrate had the mandate to consider an objection raised against a proposed witness for the applicants. She did so and found and ruled that Matovu was incompetent. The belief by Msgr. Kayondo that Matovu was competent to testify and should have been allowed to do so cannot fetter the decision of the Magistrate's decision which was reached after considering the law and facts presented to her by the two counsel. Her decision correct or not should not be the concern of revision proceedings.

The same arguments as above could be advanced for the outcome of M/A 29/2014. It was filed on 7/4/14 seeking orders to stall delivery of judgment and grant leave for the applicant to adduce their evidence. The reasons advanced were that applicant's counsel, intended to call an expert witness at the hearing of 18/3/14 who was unable to attend. Instead, the Magistrate fixed the matter for judgment on grounds that the applicant had failed to produce witnesses. As rightly argued by respondent's counsel, that application was heard on merit and dismissed on 8/5/2014. In the same vein, the Magistrate was clothed with jurisdiction to hear the application which she did. Having followed the correct procedure and applying the correct law, that decision, if considered erroneous by the applicant cannot be the subject of revision but appeal.

It was also argued that it was an error for the trial Magistrate to have passed an *ex parte* judgment against the applicant even when aware that the applicant was wrongly sued and the respondent had no cause of action against them. The record indicates that by their written statement of defence (paragraphs 6-11) the applicants exonerated themselves from liability or indebtedness to the respondent because they came into existence after the company which owned the college, (the latter who was the true debtor) had gone into receivership. Those were facts presented for the applicants in their pleadings and were subject to proof by presenting evidence.

In my view, applicants were given ample opportunity to present that evidence but failed to appear in Court to do so. In fact the matter did not proceed *ex parte* as claimed. In spite of numerous absences and prayers for adjournments, the applicant and their advocate was accommodated and hearing of the suit was left open to allow them present their witnesses. It was not until the hearing of 18/3/2014, when counsel Songoni Watuwa again appeared in court without witnesses that the Court concluded that the applicant had failed or was not prepared to present their case and ordered for the case to be closed and ordered both sides to present their

submissions and reserved her judgment. The trial Magistrate would be justified to base her judgment on the evidence available to make her decision. That again would not be a matter of revision but appeal.

In summary, the applicant has raised no ground to merit an order for revision of the trial Magistrate's decision in the suit. I thereby find no merit in the application and move to dismiss it with costs to the respondent.

I so order.

.....
EVA K. LUSWATA
JUDGE
DATED: 26/04/2018