

The Republic of Uganda
In the High Court of Uganda Holden at Soroti
Miscellaneous Application No. 158 of 2022

10 Eswagu William Applicant

Abiro Margaret :::::::::::::::::::: Respondent

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1. Introduction:

20 a) The judgement and orders of His Worship Emmanuel Pirimba delivered on
5th April 2022 be revised and upheld,

25 c) This Honourable Court be pleased to provide an order of eviction against
the respondent.

The grounds of the application are set out in the application and amplified in the supporting affidavit deposed by Eswagu William, the applicant. The grounds

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- 5 a) The applicant filed a suit in the Chief Magistrate's Court of Soroti at Soroti
vide Land Claim No. 071 of 2016.
- b) The applicant was declared the rightful owner of 1½ gardens, forming the
suit land.
- 10 c) The respondent was declared a trespasser, wherein orders for a
permanent injunction, general damages and costs of the suit were made.
- d) An order of vacant possession was not rightly stated in the orders of the
judgement delivered on 5th April 2022.
- 15 e) Because the judgment did not provide for vacant possession, the trial
court, in its ruling of 14/10/2022, stated that it could not execute an order
not granted. As a result, the trial court dismissed the Notice to show cause.
- f) The respondent has continued to occupy the applicant's property, yet the
applicant was declared the rightful owner.
- g) The respondent has stated that the disputed land is the one I am in
occupation.
- 20 h) The application has been brought without delay, and no injustice shall be
caused by granting the orders sought by the applicant.
- In reply to the application, Opolot Simon, a Legal Assistant with M/s Isodo and
Company Advocates knowledgeable in the matters pertaining to the case,
opposed the application and deposed the affidavit in reply, that;
- 25 a) At the start of the trial, the respondent through her lawyers shall raise
preliminary objections to the effect that the application is illegal and
misconceived in as far as;
- i. There is nothing called revision application in law
- ii. The procedure followed by the applicant is irregular
- 30 iii. Despite the irregularity of this suit, no grounds have been raised to
warrant revision

- 5 iv. The application is an afterthought and must be dismissed with costs.
- b) This illegal process purporting to institute a review does not raise any grounds to warrant revision and orders prayed for, as the trial Magistrate was on point on all fours.

The applicant deposed an affidavit in rejoinder to the reply of the respondent
10 that;

- a) I am advised by my lawyers, which advice I believe to be true and correct, that the affidavit in reply contains matters of law, is argumentative and irrelevant to matters to be replied to and should be struck out with costs.
- b) The affidavit in reply is incompetent since it is sworn by a person not a
15 party to the case and violated the Advocates' (Professional Conduct) Regulations

2. Representation and Issues:

According to the pleadings, the applicants were represented by M/S Atigo and Company Advocates, while M/s Omongole and Company Advocates represented
20 the respondents.

The Court allowed the parties to file written submissions in support of their respective cases. I will not reproduce the submissions. However, I have studied and comprehended the same. I have considered the application and the law applicable.

25 3. Issues:

The issues for resolution in this application are as follows:

- a. Whether this is a proper case for revision to wit;
- i. The judgement and orders of His Worship Emmanuel Pirimba delivered on 5th April 2022 be revised and upheld,

5 ii. The ruling and orders of His Worship Okiror Edmond Okwii in Land Claim No. 071/2016 dated 14/10/2022 on Notice to Show Cause be revised and set aside,

 iii. This Honourable Court be pleased to provide an order of eviction against the respondent.

10 b. Whether there are any remedies available to the applicant in the circumstances?

4. Resolution:

The law under which the application is brought is found **Section 83 (c) of the Civil Procedure Act, Cap 71**, provides that The High Court may call for the record of
15 any case which has been determined by any magistrate's 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
20 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

25 e. where, from lapse of time or other cause, the exercise of that power would involve serious hardship to any person.

Also **Section 98 of the Civil Procedure Act, Cap 71**, provide for inherent powers of the court in the terms that;

Nothing in this Act shall be deemed to limit or otherwise affect the inherent power
30 **of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court**

5 As seen from the above pieces of legislations, this court not only has the power of revision but also has such inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. The above are thus taken into account while considering this application.

2. Resolution:

10 On Issue One, the applicant wants this court to investigate the correctness of the decision of the lower court and whether it was able to fully exercise its jurisdiction in the terms cited.

According to the case of *Eliazali Bameka vs Dodovico Nviiri [1973] 1 ULR 134* the High Court can call for a record of any case of a lower Court if it appears that;

- 15 i. A lower court failed to exercise jurisdiction so vested in it; or
ii. It exercised jurisdiction not vested in it; or
iii. It acted irregularly or illegally

Black's Law Dictionary (9th edition), defines revision as a re-examination or careful review for correction or improvement or an altered version of work.

20 The parameters for the High Court to properly apply in its revisional jurisdiction are set out under **Section 83** of the Civil Procedure Act as already indicated, but the pertinent provision in this application is Section 83(c) of the CPA, which states thus the High Court may call for the record of any case which has been determined under the Act by any magistrate's court, and if that court appears to
25 have 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 order in it as it thinks fit; but no such power of revision shall be exercised—unless the parties shall first be given the opportunity of being heard; or where, from lapse of time or other cause, the exercise of that power would involve serious hardship to any
30 person.

5 This court was moved to call for the lower court's file and examine whether there is any exercise of its jurisdiction illegally or with material irregularity or injustice on the record.

In the case of *Mabalaganya v. Sanga* [2005] E.A 152, it was held that; in cases where High Court exercises its revisional powers, its duty entails examination of
10 the record of any proceedings before it 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.

Also according to the case of *Peter Mugoya V James Gidudu & Mukabani Namonye* [1991] HCB 63 the High court has power to make revisional orders.

15 The High Court may also revise an order which would otherwise be appealed from as was held in *Kyeswa v Sebunya* [1993] II KALR 26.

The question for this court to determine is what aspects of the record bear the lower court's exercise of its jurisdiction illegally, or with material irregularity or injustice.

20 The applicant herein has highlighted grounds in paragraphs 8 and 9 stated as follows;

- Paragraph 5: The respondent was declared a trespasser, wherein orders for a permanent injunction, general damages and costs of the suit were made.
- Paragraphs 8: An order of vacant possession was not rightly stated in the
25 orders of the judgement delivered on 5th April 2022.
- Paragraphs 9: Because the judgment did not provide for vacant possession, the trial court, in its ruling of 14/10/2022 stated that it could not execute an order not granted.

As a result, the trial court dismissed the Notice to show cause.

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5 The excerpt of the order of His Worship Emmanuel Pirimba delivered on 5th April 2022 that the applicant prays to be revised and upheld is found on page 1 of the Judgment where His Worship states that;

10 *"... the plaintiff Mr Eswagu William sued the defendant Abiru Margaret for the recovery of 1½ gardens located at Amen B village, Amen Parish, Soroti sub-county, Soroti district, eviction orders, general damages, permanent injunction and costs of the suit."*

It is with no doubt that the plaintiff/applicant was declared the owner of the suit land, that is, the 3 gardens and that the defendant/respondent was declared a trespasser on the suit land 1½ acre of land that she is in occupation of.

15 As regards the remedies, the trial court, in the judgement of the lower trial court it was noted by the trial court as follows;

"The plaintiff filed a suit against the defendant for a declaration that the suit land belongs to him, a permanent injunction restraining the defendants from further trespassing on the suit land, general damages and costs of the suit."

20 *Declaration of ownership:*

The plaintiff submitted that he has discharged the duty required under Section 101 of the Evidence Act that the suit land is his property. That he has also adduced evidence to the required standard of proof on a balance of probabilities. He qualifies to be declared as the owner of the suit land, and I
25 *accordingly declare the plaintiff as the rightful owner of the suit land measuring 3 gardens."*

A review by the trial magistrate vide the ruling in *Miscellaneous Application No. 20 of 2022 delivered on 9th May 2022*, show that the plaintiff was declared the owner of 1½ acres of the land he prayed for in the main suit. That the plaintiff
30 had proved through evidence that the suit land belongs to him and that the defendant's claims over the same are unlawful, and the court has found as such.

5 In the premises, an order that the plaintiff was entitled to the prayer of a permanent injunction to restrain the defendants, their agents, servants from further interfering with the plaintiff's quiet possession and enjoyment of the suit land was made. The trial magistrate then awarded general damages and costs of the suit to that effect to the plaintiff to be paid by the defendant.

10 The excerpt of the ruling and orders of His Worship Okiror Edmond Okwii in Land Claim No. 071 of 2016 dated 14th October, 2022, following a Notice to Show Cause that the applicants seek to be revised and set aside, is in the following terms;

15 *"I have carefully perused the judgement in Civil Suit No. 71 of 2016, the ruling in Miscellaneous Application No. 20 of 2022 and the orders therein, and I find no orders of vacant possession or eviction as prayed for by Counsel for the judgement creditor (now applicant). This court, therefore cannot execute an order not granted. I hereby dismiss the Notice to show cause with no order as to costs" (underlining for my emphasis)*

20 Upon perusal of the plaint dated 20th October 2016 and filed in the Chief Magistrate's Court of Soroti at Soroti vide Civil Suit No. 71 of 2016, I do find that paragraph 3 of the plaint reads that;

25 *"The plaintiff's claim against the defendant is for trespass, recovery of 1½ gardens located in Amen B village, Amen parish, Soroti sub-county, Soroti district, eviction order, general damages, permanent injunction and costs of the suit" (underlining for my emphasis).*

The same prayer is reiterated at the end of the plaint, thus;

(d) an Eviction order be issued against the defendant.

30 In the Notice to show cause dated 2nd April 2022, the plaintiff/applicant applied to court that the defendant/respondent be evicted from the suit property.



5 The matter did not end there in the magistrates' court but has now been brought here in the High Court for revision.

Revision is provided for under Section 83 (c) of the Civil Procedure Act, which empowers this court to call for the record of any case which has been determined by any Magistrate's court and revise it if the court appears to have acted in the
10 exercise of its jurisdiction illegally or with material irregularity or injustice.

In respect of the matter before me, the perusal of the judgement and orders of His Worship Pirimba delivered in Land Claim vide No. 071 of 2016 I do notice that whereas the plaintiff, now applicant, prayed for an order of eviction, it was not granted even though all through the judgement and also in the locus
15 proceedings, the court found out that the defendant had indeed trespassed on the suit land and was in possession of it and yet the court declared the plaintiff (now applicant the rightful owner). The said lower trial court further went on to grant a permanent injunction to the plaintiff.

By this application, the applicant through his supporting affidavit states that;

- 20 a) Because the judgment did not provide for vacant possession, the trial court, in its ruling of 14/10/2022, stated that it could not execute an order not granted. As a result, the trial court dismissed the Notice to show cause. (Paragraphs 8 and 9)
- b) The respondent has continued to occupy the applicant's property, yet the
25 applicant was declared the rightful owner.

When the applicant sought to obtain the fruits of his judgement, the ruling of His Worship Okiror Edmond Okwii in Land Claim No. 071 of 2016 dated 14th October, 2022 was to the effect that;

***"I find no orders of vacant possession or eviction as prayed for by Counsel for
30 the judgement creditor (now applicant). This court, therefore, cannot***

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5 *execute an order not granted. I hereby dismiss the Notice to show cause with
no order as to costs”;*

That decision made matters worse as it rendered the judgement and decree in Land Claim vide No. 071 of 2016 unexecutable.

This is the irregular position which Justice Stephen Mubiru found himself saddled
10 with and which I associate myself with in the case of *Chandira v Asiku (High Court
Miscellaneous Civil Application No. 0011 OF 2014) [2016] UGHCFD 37* when the
learned judge went on to state that;

*“An irregularity is a material when it is shown to have been essential or
influential in procuring the impugned decision, not being merely abstract,
15 theoretical, formal in character or of a technical nature, which is practically
not injurious to the party assigning it. It is one which must be shown to have
affected, or may possibly seriously affect, the rights of the party assigning
it.”*

From the applicant’s supporting affidavit, it is notable that the defendant is in
20 possession of the suit land, and yet the applicant as a plaintiff then was declared
the rightful owner of the suit land both by judgement and on review by the then
trial magistrate.

An order of eviction, therefore, was not only consequential to the declaration of
the plaintiff as the rightful owner of the 1½ acres of the suit land but also to the
25 applicant/plaintiff for it was properly prayed for it in the plaint with the trial
magistrate indicating so it in his judgement but unfortunately did not make any
pronouncement in that respect.

Correspondingly, in law, an order of vacant possession, even though not pleaded
by a plaintiff/applicant, which in this case, the later trial magistrate disallowed at
30 execution, is, to my mind, a natural consequence of the declaration of the
plaintiff/applicant as the rightful owner of the suit land and more so given the

5 fact that the trial court even went to the extent of issuing a permanent injunction in the same regard.

The above is because, as was pointed out in *Odd Jobbs v Mubia [1970] EA 476*, in a court can even decide on an un-pleaded matter if the parties have led evidence and addressed the court on the matter so that the court can;

10 ***"...arrive at a correct decision in the case and to determine the controversy between the parties finally".***

In the judgement vide Land Claim No. 071 of 2016 of the Chief Magistrate's Court of Soroti at Soroti delivered by H/W Pirimba Emmanuel, the learned trial magistrate states on page 5 that:

15 ***"The court, parties and the lawyer of the plaintiff visited the locus in quo. The plaintiff and defendant showed court the boundaries of the land and court moved round the land and took note of the features and noted also that the defendant was using 1½ of the land in dispute while the plaintiff was also using 1½ of the land in dispute following the division by the clan."***

20 The said court conducted locus and found that the defendant now respondent was in occupation of the suit land.

From the perusal of the record of the lower court, therefore, I would find that the parties led evidence to the fact that there was trespass on the suit land and that the defendant was in possession of the same, which upon the plaintiff being
25 declared the rightful owner, should naturally have been made to vacate the same by way of an order of eviction if justice is not only to be done but seen to be done.

The case of *Odd Jobbs v Mubia [1970] EA 476* was also quoted in the Supreme Court case of *Simba (K) Ltd & 4 Ors v Uganda Broadcasting Corporation (Civil Appeal 3 of 2014) [2015] UGSC 21*, the court observed and held as follows;
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5 *"In the instant case, the record shows that all the parties not only led evidence by way of affidavits in support of their respective positions in the application, but their lawyers addressed the court on all the issues raised in the pleadings and by the court during the course of hearing the application as well.*

10 *On top of that, the learned Justices of Appeal had before them; the Record of Appeal in CACA No. 107 of 2012, which included the record of proceedings right from the High Court to the Court of Appeal pertaining to all the transactions that had led to the sale of the suit property to the 5th Appellant. It follows, therefore, that notwithstanding the finding that there was no*
15 *pleading or prayer for the cancellation of the 5th Appellant's certificate of title, since the evidence before the court had disclosed that the whole transaction leading to the sale of the property to the 5th Appellant was based on an illegal consent judgment and thus null and void, the court was obliged to make that order, after establishing that fact, in line with the authority*
20 *of Odd Jobs (supra)".*

Given the fact that this court is bound by the decision of Supreme Court above which I have found no reason to depart from, it is my finding that an eviction order, though pleaded but not granted by the court and a vacation order, though not pleaded, would naturally result as a consequence of the declaration that the
25 applicant/plaintiff herein is the rightful owner of the suit land in the matter which was decided upon by the lower trial court given the fact of the finding of the said court that the defeated defendant was still in occupation of the suit land. Consequently, this issue succeeds.

On Issue No. 2 of whether there are any remedies available to the applicant in
30 the circumstances, I would quickly find and conclude that the trial magistrate should have issued an eviction order and vacation order since the

5 applicant/plaintiff was the successful party in the said court and the
respondent/defendant was found in actual occupation/ possession of the suit
land. This is because the judgment and orders of the trial was rendered
redundant and could not be executed as a result of the omission of the trial court
in issuing the appropriate orders. Accordingly, the remedy here is that the trial
10 court should have issued such orders accordingly. Since it did not do so, its
decision is revised and the order prayed for is issued consequently.

5. Conclusion:

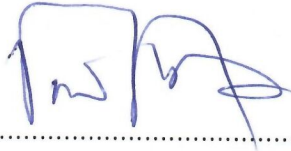
Arising from the above, this court, in the exercise of its inherent powers
enshrined under Section 98 of the Civil Procedure Act, hereby agree and allows
15 this application with orders as below.

6. Orders:

- a) The judgement and orders of His Worship Emmanuel Pirimba delivered on
5th April 2022 are revised to include the consequential orders of eviction
and vacant possession of the suit land of 1½ acres, where the plaintiff was
20 declared the rightful owner of.
- b) The ruling and orders of His Worship Okiror Edmond Okwii in Land Claim
No. 071/2016 dated 14/10/2022 on Notice to Show Cause are set aside as
a consequence of the first prayer granted herein,
- c) The Honourable Court revises the judgement and orders of His Worship
25 Emmanuel Pirimba delivered on 5th April 2022 and accordingly issues an
order of eviction as against the respondent.
- d) Since it was the mistake of the lower trial court in not issuing the proper
orders, I am inclined to allow this application with no order as to costs.
- e) The original file is sent back to the trial court for execution in the terms
30 herein ordered.

I so order.

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Hon. Justice Dr Henry Peter Adonyo

Judge

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5th May 2023