

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MPIGI

CIVIL REVISION NO.004 of 2018

(Arising from Chief Magistrate Court of Nsangi at Mpigi Divorce Cause No. 2/2017)

HAJJI KASOZ ABDALLAH:.....:APPLICANT

VERSUS

NALWOGA NAKATO:.....:RESPONDENT

BEFORE: HON. JUSTICE OYUKO ANTHONY OJOK

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RULING

Background

This is an application brought under **S. 83 and S.98 of the Civil Procedure Act, O.52r1-3 of the Civil Procedure Rules**. The application seeks for orders that the decision by the trial Magistrate Her Worship Sarah Basemera Anne (Mpigi) be revised and set-aside.

The grounds of the application are set out in the Notice of Motion supported by an affidavit of **Kasozi Abdallah of M/s Muslim Centre for Justice and law** Basiima Building, Plot 401/3 Bombo Road, P.O BOX 6929, Kampala.

20 **The grounds are as follows:**

1. That I got married with the Respondent in 1980 under the Provisions of the marriage and divorce of Mohammedans Act Cap (Marriage Certificate hereto attached and marked A).

2. That I developed irreconcilable differences with the Respondent and hence opted to Divorce.
 3. That I instituted divorce proceedings in the Sharia Court at Uganda Muslim supreme Council which were attended by the Respondent and Judgment was duly delivered (Judgment and proceedings hereto attached and marked B).
 4. That the Respondent instituted Divorce Cause No. 002 of 2017 in the Chief Magistrate's Court of Wakiso at Nsangi.
 5. That the Learned Magistrate while applying the Divorce Act Cap 249 held that the matrimonial property be divided between me and the Respondent equally,
10 (Judgment and record of proceedings hereto attached and marked C and D respectively).
 6. That I have been informed by my lawyers M/s Muslim Centre for Justice and Law which advice I verily believe to be true that the Magistrate Grade One had no jurisdiction to handle a matter which had been handled by a Sharia Court.
 7. That I have been further informed by my said lawyers which advice I verily believe to be true that the learned Magistrate exercised her jurisdiction illegally by applying the divorce Act to a Mohammedan marriage.
 8. That the said judgment occasioned me miscarriage of justice.
- 20 The Respondent ,**Nalwoga Nakato Hasifa** opposed the Applicant's application in her affidavit in reply but briefly are;
- 1) Miscellaneous Application No. 4 of 2018 for revision of judgment that was delivered on 12/10/2017 is not lawfully before court because decree absolute declaring marriage finally dissolved has not yet been issued by trial magistrate Court Nsangi.
 - 2) The time period for Applicant to appeal expired after 30 days from 12/10/2017 that is on 12/11/2017.
 - 3) Applicant if aggrieved by decision of the trial Magistrate Court ,could have applied for review of the decision but not revision by High Court.

- 4) The Judgment of Sharia court alleged in ground 6 of the Notice of motion was not adduced as evidence before trial court hence cannot be relied upon for revision.
- 5) The trial Magistrate Grade one had jurisdiction to handle Divorce proceedings and jurisdiction issue was not raised before trial Magistrate a time of hearing divorce proceedings by Applicant.
- 6) Judgment of trial Magistrate did not occasion miscarriage of Justice to Kasozi Abdallah because even decree absolute has not been pronounced by trial Magistrate's Court.
- 10 7) I affirm this affidavit opposing Applicants' orders sought in the Notice of Motion. No lawful basis for Judgment in Divorce Cause No. 2 of 2017 delivered on 22/10/2017 by her worship Basemera Sarah Anne to be revised and set aside.

Representation:

The Applicant was represented by Kusiima & Co. Advocates and the Respondent was represented by Mugisha Namutale & Co. Advocates.

Both parties never filed submissions.

20 **Resolution by Court.**

S.83 Civil Procedure Act;

“the High Court may call for any case which has been determined under this act by any magistrate's Court, and if that Court appears to have exercised the jurisdiction not vested in it in law, fail to exercise of its jurisdiction illegally or with material illegality or injustice, the High Court may revise the case and may make such orders in it as it thinks fit; but no such powers of revision shall be exercised unless the party shall be given the opportunity of being heard or where, from lapse of time or other cause, in the exercise of that power will involve serious hardship to any person”.

Thus, the grounds for revision are that:

1. The Court failed to exercise the jurisdiction vested in it by law
2. The Court acted in excess of jurisdiction
3. The Court exercised jurisdiction but with material irregularity.

O.52 of the Civil Procedure Rules lays down the procedures which must be met by the Applicant who seeks an order for review

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O.46 r 2 of the Civil Procedure Rules also lays down some conditions to be fulfilled:

10 **On ground No1 Whether or not the decision of the trial magistrate can be revised or set aside.**

This was a case determined by H/W Sarah Basemera Anne Grade one.(Nsangi)the hearing started and thepetitioner Petitioned for the dissolution of their marriage ,Matrimonial property be divided and Judgment was entered in favor of the petitioner.

S.83 of the Civil Procedure Act is very clear that the Magistrate either failed to exercise her jurisdiction vested in it, acted in excess of jurisdiction or exercised the jurisdiction with material irregularity.

20 It's my considered opinion that the instant application is not the one that meets the criteria outlined under S.83 of the Civil Procedure Act.

Since issue number one failed, automatically there is nothing to be revised or set aside.

I therefore find this application incompetent and lacking merit. Itdoes not certify the requirements under **S.83of the Civil Procedure Act.**

The decision as passed by Magistrate Grade One was neither irregular nor illegal.

The Applicant would have preferred an appeal if he was dissatisfied with the decision of the Magistrate and file the memorandum within the time frame and therefore not convinced that this is an application for revision

This application is dismissed with costs to the Respondent both from Lower Court and High Court.

Right of appeal explained.

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HON JUSTICE OYUKO ANTHONY OJOK

JUDGE

Dated this 31st March 2021

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