

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KABALE
REVISION APPLICATION NO. 02 OF 2025
ARISING FROM CIVIL APPLICATION NO. 143 OF 2021

1. KEHOODA IMMACULATE

2. RWABUHE JOHNSON ::::::::::::::::::::::::::: APPLICANTS

VESRSUS

1. LYAMUJUNGU COOPERATIVE FINANCIAL SERVICES LTD

2. NIWAHABYOONA TOMSON T/A ADADERO AUCTIONEERS

3. MUSHOMA JULIUS RESPONDENTS

RULING BY HON. JUSTICE SSEMOGERERE, KAROLI LWANGA.

This is an application for revision brought under Sections 83 and 98 of the Civil Procedure Act, Cap 282, Sections 2(1)(f) and 34 of the Arbitration and Conciliation Act, Cap 5 and Order 52 Rules 1 and 2 of the Civil Procedure Rules 5-71-1.

Briefly the applicants sought revision of the orders of the Learned Magistrate Grade 1, Olupot Joshua, Kabale Chief Magistrate's Court in which they entertained execution proceedings arising out of an arbitral award. Second, the application sought to set aside the impugned proceedings and execution by the bailiff.

Brief Facts:

The application is supported by an affidavit sworn by Kehooda Immaculate, first applicant who has powers of attorney from her husband, second applicant, who was the subject of execution proceedings in the Chief Magistrate's Court. Second applicant borrowed money from the First

5 Respondent. Second respondent is an auctioneer firm. It is not clear, what the status of the third respondent is; as no specific averments are pleaded against him.

10 In Paragraphs 13, and 14, the applicants sought to set aside the execution orders entered in the arbitral award to which they admit they had consented in Paragraph 7 of the affidavit in support. The Chief Magistrate's Court in Miscellaneous Application No. 1 of 2022 dismissed the application stating it had been overtaken by events. Three affidavits in reply were deposed to by the first, second and third respondents. The principal ground
15 common to the first and second respondents was to the effect that the application was supported by an affidavit sworn by the wrong party, namely the first applicant who had powers of attorney from the second applicant, to the effect that the first applicant was not a party to the proceedings subject of this application. The third respondent, the bailiff
20 swore an affidavit to the effect that the application was devoid of merit. None of the respondents challenged the grounds of the application, relevant to disposal of the matter.

Representation:

25 Applicants were represented by M/S Kodili & Co Advocates, while the respondents were represented by M/S Elgon and Co. Advocates, both of Kabale.

Oral Argument:

30 On April 8, 2025, parties appeared before me. I directed the lower court to forward the record of proceedings, as no decision could be made on the application for revision without the record of proceedings from the lower court. The record was forwarded on April 22, 2025. At the hearing, parties were asked to file written submissions, and the matter came up for mention



5 on May 7, 2025. Parties were requested to find a common ground to resolve the dispute, but failed, hence this decision.

Discussion and Analysis:

Two issues were framed for resolution by this court.

10 (a) Whether the Kabale Chief Magistrates' Court had jurisdiction to enforce an arbitral award.

(b) What are the remedies available to the parties?

As a preliminary matter, on perusal of the 17 paragraphs in the affidavit in support of the application, I find no specific allegation against the third respondent. In the absence of any such allegation and in agreement with
15 paragraph 4, against him, I strike out this application against him under **Order 7 Rule 11 (a) of the Civil Procedure Rules S.I. 71-1** as no cause of action has been disclosed or pleaded against him.

The power of this court on revision are very limited. A revision is not a hearing. See the decision of this court in *Joseph Ntibaza v Majambere*
20 *Ronald Misc. Application No. 005 of 2024*. Section 83 of **the Civil Procedure Act, Cap 282 (the "Act")** provides for various grounds of revision. The relevant one in this case, in Section 83(1)(a) of the Act being exercise of a jurisdiction not vested in it by law. In this case, the question is whether the Grade I Magistrate in the Kabale Chief Magistrate's Court had
25 jurisdiction to enforce the arbitral award.

The second requirement in a revision is that all parties to the proceedings must be given an opportunity to be heard under Section 83(2)(a) of the Act.

I have perused the record for the proceedings and submissions of both parties. The proceedings forwarded to this Court on April 22, 2025 for
30 revision arose from Civil Suit No. 143 of 2021 which arose out of an Arbitration Cause No. 12 of 2024. Ex parte proceedings present a challenge where only one party appears. However, in ex-parte proceedings, the judicial officer must advise themselves if they are vested with jurisdiction, and whether all other ingredients for a proper action like a cause of action

5 exist. The same applies to inter-parties proceedings like this one, where the third respondent would have applied for the cause of action to be struck out against them.

10 In the instant case, the only court proceedings to challenge or set aside an arbitration award under the Arbitration and Conciliation Act, Cap 5 (the "Arbitration Act"). are in Section 34. The powers of court to set aside an arbitration award are provided for in Section 34(2) of the Arbitration Act. Court is defined in Section 2, the interpretation section as:

"Court means the High Court."

15 In this case, I find that the Magistrate Grade I exercised a jurisdiction that was not vested in him. This renders all proceedings in the Chief Magistrate's Court a nullity.

20 Having found the proceedings a nullity as a matter of law, there is no need to entertain objector proceedings as to the standing of the first applicant, in the wrong court, where the impugned proceedings occurred. In any event, there is no prescribed procedure for applying for revision proceedings. Proceedings may be brought by application of an aggrieved party, even a letter may suffice.

25 In *Gulu Municipal Council v Nyeko Gabriel*, 1996 HCB 66, court stated that there is no prescribed procedure for applying for revision proceedings, and that there is no legal prohibition of the revision proceedings being initiated by an application of an aggrieved party moving court to exercise its powers.

In *LDC v Edward Mugalu High Court Miscellaneous Application No. 63 of 1990*, court was of the same view, stating:

30 "any aggrieved party or their lawyer could write to the Registrar High Court drawing their attention to any irregularity of any subordinate or magistrates court in any decision and requesting that the matter be brought to the attention to the court."

The rationale in *Gulu Municipal Council v Nyeko Gabriel* (op cit) cited with approval by Mwangusya E., J., as he then was in *Christopher and Carol*

5 *Sales v Attorney General 2013 UGHC 15*, is that once an illegality in proceedings is brought to the attention of court, it overrides all questions of pleadings including admissions made therein.

Comment:

10 The sentiments of the respondents are noted, the amount involved is fairly modest, and otherwise is in the pecuniary jurisdiction of the Magistrate Grade I, under the Magistrate's Court Act. However, it is important for the law to be enforced as it is, on the statute books.

Findings and Conclusion:

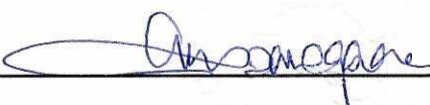
15 Having found the proceedings a nullity, the entire execution proceedings are quashed. Fresh execution proceedings and other applications must be filed with this court.

Costs to the Applicants against the First and Second Respondent(s).

I SO ORDER.

20

DATED AT KABALE THIS^{14th} day of MAY 2025.



SSEMOGERERE, KAROLI LWANGA
JUDGE.

25