THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISCELLANEOUS APPLICATION NO. 465 OF 2018

(ARISING FROM CIVIL SUIT NO. 259 OF 2014)

1. BASIIMA KABONESA

2. ADUMO SOLOME

3. MUSOKE JAMES :: APPLICANTS

(On behalf of 138 Claimants)

VERSUS

1. THE ATTORNEY GENERAL

2. COFFEE MARKETING BOARD (In Liquidation) :::::::::: RESPONDENTS

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

Introduction

[1] The Applicants brought this Application by Notice of Motion under Sections 14 & 33 of the Judicature Act, Sections 82 & 98 of the Civil Procedure Act and Order 46 rules 1 and 8 of the CPR seeking Orders that;

a) The Consent Judgment entered on 29th July 2015 in Civil Suit No. 259 of 2014 be reviewed and/or varied to include and provide for the terminal benefits of 139 claimants on the same terms as contained in the Consent Judgment.

b) The costs of the application be provided for.

[2] The grounds of the application are set out in the Notice of Motion and in an affidavit in support of the application deposed by **Basiima Kabonesa**, who stated that he was a duly appointed representative for 1,675 claimants who are former workers of the 2nd Respondent. Briefly, the grounds of the application are that on 29th July 2015, the Applicants entered into a consent judgment

with the Attorney General and the Coffee Marketing Board (In Liquidation) by which, inter alia, 1,568 claimants were to be paid a sum of UGX 10,330,013,505/= as total terminal benefits which was premised on a verification report prepared by the Auditor General dated 13th November 2009. The deponent stated that it was recently discovered that the Auditor General's verification report mistakenly omitted to include the total terminal benefits due and claimed by 31 claimants out of the 1,568 amounting to UGX 262,728,584/=. It was also discovered that the verification report omitted to include terminal benefits due to 108 claimants not being part of the 1,568 claimants whose total terminal benefits amounting to UGX 1,370,387,571/= were not included in the consent judgment. The deponent further averred that the fact of the existence of the 108 claimants was a material fact which was mistakenly omitted at the time of entering the consent judgment and the omission to include the 31 claimants in the Auditor General's report on which the consent judgment was premised was a mistake on the part of the Auditor General. He averred that the total terminal benefits due and owing to the 139 claimants is UGX 1,633,116,155/= which when added to UGX 10,330,013,506/= provided in the consent judgment brings the total claim to UGX 11,963,129,661/=. He concluded that the consent judgment aggrieves the 139 claimants and a grave injustice will be occasioned to the said claimants if the consent judgment is not reviewed or varied as they will lose out on their terminal benefits to which they are entitled.

[3] The Respondent opposed the application through an affidavit in reply deposed by **Oburu Odoi Jimmy**, a Principal State Attorney in the Attorney General's Chambers, who stated that the Applicants filed Civil Suit No. 259 of 2014 against the Respondents seeking payments of terminal benefits, general damages, aggravated damages, interest and costs. On 22nd July 2015, a consent judgment was entered between the Applicants and the Respondents. He stated that as a lawyer, he knows that a consent judgment is legally binding

to the parties that sign it and once entered, it seals the compromise between the parties and cannot be varied. He further averred that there has been no material change of circumstances since the making of the consent judgment or any facts showing that the court was misled in some way or another in relation to the facts of the case. He stated that the Applicants should have exercised all due diligence to litigate on all issues which properly belonged to the subject of litigation during subsistence of the case. He also stated that the application does not disclose any element of fraud or collusion, inconsistency or opposition to the policy of the court or any other ground that would ordinarily vitiate a contract in reaching consent. He averred that Civil Suit No. 259 of 2014 has been executed and the 1st Respondent has already made payments to the Applicants and the application that seeks to re-open the case for fresh determination is incompetent, misconceived and lacks merit. He concluded that the application is inordinately late, there was no error apparent on the part of the 1st Respondent to warrant variation of the consent judgment and it does not meet the threshold for issuance of the remedies sought.

[4] By leave of the Court, the Applicants filed an additional affidavit deposed by **Ms. Ann Namatovu Muguluma**, an accountant, to which was attached n expert report.

Representation and Hearing

[5] At the hearing, the Applicants were represented by **Mr. Peter Kimanje Nsibambi** from M/s Kimanje Nsibambi Advocates and **Mr. Mwebesa Raymond** from M/s Kampala Associated Advocates while the Respondents were represented by **Mr. Ojiambo Bichachi**, a State Attorney from the Chambers of the Attorney General. During the hearing, Counsel for the Applicants, by leave of the Court, cross examined an officer from the office of the Auditor General, Mr. Raymond Kasozi, who made a report that was admitted as part of the Respondents' evidence. On the other hand, Counsel for the Respondents also

cross examined Ms. Ann N. Muguluma on her affidavit and the report attached thereto. Thereafter, Counsel for the parties were directed to file written submissions which they did and have been taken into consideration in the determination of the matter before Court.

Issue for Determination by the Court

[6] One issue is up for determination by the Court namely; **Whether the application discloses sufficient grounds to review or vary the Consent Judgment in Civil Suit No. 259 of 2014 entered on 29th July 2017?**

Submissions by Counsel for the Applicants

[7] Counsel for the Applicants relied on the provisions under Section 82 of the Civil Procedure Act, Order 46 rule 1 of the CPR and the cases of *FX Mubuke v Uganda Electricity Board, HCMA No. 98 of 2005* and *Kampala District Land Board v Creston Properties Ltd, HCMA No. 485 of 2021* to the effect that the court can review its own orders where the applicant shows that there is discovery of new and important mater of evidence which was not within his/her knowledge and could therefore not be produced; or that there was some mistake or error apparent on the face of the record or any other sufficient reason. Counsel submitted that all the three instances are present in the present case.

[8] Counsel stated that regarding discovery of new and important matter of evidence, the consent judgment was based on the Auditor General's verification report but out of the 1,568 claimants that were verified by the Auditor General, 31 claimants were mistakenly omitted when it came to the computation of terminal benefits. On the ground of mistake or error apparent on the face of record, Counsel submitted that the Respondents had acknowledged liability by the time they entered into the consent and it was an error apparent on the face of record for only 1,568 claimants to be verified by the Auditor General and to

leave out the 139 claimants who were also non-unionized former employees of Coffee Marketing Board whose claim, representatives and respondents were similar to those that were paid. Counsel prayed that the consent judgment be varied so that the 139 claimants are also paid their terminal benefits.

Submissions by Counsel for the Respondents

[9] In reply, Counsel for the Respondents submitted that the affidavit in support of the application does not disclose any element of fraud, collusion, inconsistency or opposition to the policy of court so as to afford an interference to a consent judgment that was already entered by the Court. Counsel reasoned that the consent judgment has already been executed and the application seeks to reopen the case for fresh determination of a matter already executed. Counsel argued that the consent judgment is legally binding on the parties that signed it, that the matter was heard in court and a judgment passed and the Applicants cannot be seen to bring back the same matter before Court. Counsel cited the case of *Sabiiti Eric v Kampala Capital City Authority, HC Miscellaneous Application No. 316 of 2017* to the effect that a consent judgment derives its legal effect from the agreement of the parties and may only be set aside or rescinded on the same grounds upon which a contract may be set aside or rescinded.

[10] Counsel further submitted that the Applicants agreed to be guided by the Auditor General's report in determining payments as the basis of the consent judgment. The Applicants presented and prosecuted their case and negotiated a full and final settlement of the matter. They had a duty to exercise due diligence and peruse the Auditor General's report as to their best interests before appending their signature and accepting the consent judgment. Counsel also submitted that the application is inordinately late as it was filed four years after the endorsement of the consent. Counsel argued that it is doubtable that

the Applicants had to wait for four years after the consent to discover the omitted claimants.

[11] Regarding the claim that there is an error apparent on the face of the record because only 1,568 claimants were verified by the Auditor General leaving out 139 claimants, Counsel submitted that the consent was entered freely between the parties and the court endorsed it after confirming that the parties had mutually agreed and an allegation of omitting some claimants is not a matter that falls with the domain of an error or mistake apparent on the face of the record. Counsel argued that the issue as to whether the alleged omitted claimants deserve fresh verification is a matter of evidence which does not fall under the scope of review. Counsel concluded that the application is a no-starter, misconceived and does not meet the legal threshold for issuance of the remedies sought under review.

Determination by the Court

[12] The undisputed facts are that the present Applicants, in representative capacity, commenced HCCS No. 259 of 2014 on behalf of 1,568 claimants that were former workers of Coffee Marketing Board (CMB). CMB was at the time under liquidation. The suit was brought against the Attorney General and CMB (In Liquidation) as the defendants. On 29th July 2015, the parties to the above said suit entered into a consent judgment, determining the suit, in the following terms;

"By consent of both parties, judgment is entered as follows:

1. *The plaintiffs shall be paid a total sum of UGX 10,330,013,506/= [also stated in words] as the total terminal benefits for the non-unionized former employees of Coffee Marketing Board who were retrenched between the period 1992-1998 in accordance with the verification report of the Auditor General dated 13th November 2009.*

2. *Each plaintiff shall be paid UGX 10,000,000/= [also stated in words] as general damages.*
3. *Interest shall be paid on general damages at the court rate.*
4. *The issue of costs of the suit, aggravated damages and interest on the terminal benefits are hereby referred to court for determination."*

[13] It is stated by the Applicants that during execution of the said consent by way of effecting payment of the decretal sums, it was discovered that out of the 1,568 claimants that were verified by the Auditor General and in respect of whom the consent judgment was entered, there was a group of 31 claimants in respect to whom computation of their terminal benefits had not been included. As such, although the said 31 claimants were part of the suit, were included in the Auditor General's report and were subject of the consent judgment, they could not be paid as their monies were not included in the agreed sum of UGX10,330,013,505/=. The Applicants therefore brought the present application to, among others, have the consent judgment reviewed and varied to correct the above said anomaly.

[14] In the same application, the Applicants also claimed that it was similarly discovered that there was another group of 108 persons who were former workers of CMB (In Liquidation), were in the same category of non-unionized employees, had lost their employment in similar circumstances and were entitled to terminal benefits in the same manner as was considered and paid for the 1,568 claimants. The Applicants sought to review and vary the consent judgment to accommodate this group of persons as well.

[15] The law on consent judgments or decrees is now well settled. Parties to civil proceedings are free to amicably settle a dispute and consent to a judgment being entered. The parties may do so orally before a judicial officer who then records the consent or they may do so in writing, affix their

signatures and place the same for endorsement by the Court. The provision under *Order 25 rule 6 of the CPR* and the case of *Betuco (U) Ltd & Another v Barclays Bank & Others, HCMA No. 243 of 2009* are instructive. The law further provides that after a consent judgment has been entered, it may be vitiated, varied and/or be set aside where it is proved that it was entered into without sufficient material facts or misapprehension or in ignorance of material facts, or where it was actuated by illegality, fraud, mistake, contravention of court policy or any reason that would enable court to set aside an agreement. See: *Ismail Sunderji Hirani v Noorali Esmail Kassam [1952] EA 131* and *Attorney General & Another v James Mark Kamoga & Another, SCCA No. 8 of 2004* which cited with approval the following passage from **Seton on Judgements and Orders, 7th Edition, Vol 1, page 124**, thus;

> *"Prima facie, any order made in the presence and with consent of counsel is binding on all parties to the proceedings or action, and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of court … or if the consent was given without sufficient material facts, or in misapprehension or in ignorance of material facts, or in general for a reason which would enable a court to set aside an agreement."*

[16] In *Attorney General & Another v James Mark Kamoga & Another (supra)*, it was stated by the Supreme Court that review jurisdiction is also applicable to consent judgments and the trial judge (in that case) had power, and did not err, to entertain the application for review of the consent judgment under Order 46 CPR. The Court further held that a party who consents to a decree may be an aggrieved person within the meaning of Order 46 of the CPR. The Court went on to state thus;

> *"A party against whom a consent decree is passed may, notwithstanding the consent, be wrongfully deprived of its legal interest if, for example, the consent was induced through illegality, fraud or mistake. Obviously, such party is aggrieved within the meaning of Order 46. … the provisions of Order*

46 rule 1 are so broad that they are applicable to all decrees including consent decrees. … the crucial issue for determination … is whether there was sufficient reason for reviewing or setting aside the consent judgment."

[17] It is clear, therefore, that the provisions for review under Section 82 of the CPA and Order 46 of the CPR are applicable to the present matter provided the conditions for review exist. Section 82 of the Civil Procedure Act Cap 71 provides that;

"Any person considering himself or herself aggrieved –

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by decree or order from which no appeal is allowed under this Act,

may apply to the court that passed the decree or order for review of the judgement and the court may make such order on the decree or order as it thinks fit".

[18] The considerations for grant of an application for review of a judgement, decree or order are set out under Order 46 rule 1 of the Civil Procedure Rules, namely;

(i) Discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his or her knowledge or could not be produced by him or her at the time the decree or the order was made;

(ii) On account of some mistake or error apparent on the face of the record; or

(iii) Any other sufficient reason.

[19] In the present application, the Applicants sought to rely on all the above named grounds. From the facts set out herein above, it is clear to me that the omission to include the 31 claimants in the computation that was considered as the basis of the consent judgment was a mistake or error apparent on the face of the record. The said persons were part of the plaintiffs in the suit and

were part of the report of the Auditor General that formed the basis of the consent judgment. Only the computation of their benefits was omitted in the report. At the time of entering the consent judgment, it was believed (at least by the plaintiffs) that they were beneficiaries to the sum agreed upon in the consent settlement. They were therefore within reasonable contemplation of the parties to the consent judgment. Their exclusion, whether inadvertently or intentionally, without any explanation, amounts to a mistake or error apparent on the face of the record.

[20] In law, an error apparent on the face of the record is said to be an evident error which does not require any extraneous matter to show its incorrectness. It must be an error so manifest and clear that no court would permit such an error to remain on record. See: *Edison Kanyabwera v Pastori Tumwebaze, SCCA No. 6 of 2004* and AIR Commentaries: The Code of Civil Procedure by Manohar and Chitaley, Volume 5, 1908. I find the above highlighted error to be in that category and I would find that in respect to the group of 31 claimants that were party to the suit leading to the consent judgment, the Applicants have made out a case for review of the consent judgment to include them and their terminal benefits in as far as they are verifiable in the available reports. In that regard, the ground based on discovery of new and important matter of evidence is irrelevant and requires no consideration; and so is the one of sufficient cause. My finding is that the consent judgment entered on 29th July 2015 shall be reviewed and varied in respect of the claims for the group of 31 persons.

[21] Regarding the group of the 108 persons, the evidence is that they were not party to HCCS No. 259 of 2014. They were, therefore, not within the reasonable contemplation of the parties to the consent judgment. Although they could sustain a cause of action and could even have used the said suit as a test suit, they could only have lawfully pursued their cause of action by bringing another

suit. It is not legally tenable to seek to join a suit that has already been determined, even where the determination was by way of compromise. In real terms, the 108 persons do not qualify as persons aggrieved by the consent decree within the meaning of Section 82 of the CPA and Order 46 of the CPR. As such, in as far as the claim by the group of 108 persons is concerned, the application before the Court is incompetent and wholly without merit.

[22] I will now revert to the verified claims of the 31 claimants. It has been indicated in the report of the Auditor General dated 30th December 2020, which was produced before the Court and admitted in evidence, that out of the 31 claimants, 17 of them had been verified in the 2009 report of the Auditor General which formed the basis of the consent judgment. There is, therefore, no dispute in regard to the 17 claimants and an order shall issue in their favour. That leaves 14 persons for further consideration. The report further showed that one person by name of Wasula James, falling in the category of the 31 claimants, had had his claim verified and computed on his personal file with a sum of UGX 4,140,105/= stated as his terminal benefits. Such brings the verified claimants to 18 in number.

[23] The report then indicated that in respect of two out of the 31 claimants, namely Tassia R and Baruyo B, their personal files had not been received and, as such, could not be verified. The remaining 11 claimants had more than one name combination; that is, there were more than one persons who shared the same surname. As such, they could not be verified by the Auditor General. These included; Bassajasubi, Buuza, Kyeyune M, Kaggwa M, Kalyesubula, Kasango, Muwonge, Mukasa M, Mukasa J, Napolkoli and Nsereko B. It follows, therefore, that 13 out of the 31 claimants could not be verified for payment of terminal benefits. Consequently, even if their existence was contemplated at the time of executing the consent judgment, they could not have formed part of the consent judgment since the consent settlement clearly stated that it was

reached in *"accordance with the verification report of the Auditor General dated 13th November 2009"*. The consent judgment cannot, therefore, be reviewed to include persons that did not fit that description. Their exclusion does not invoke any of the grounds for review. I accordingly reject the application for review in as far as it relates to the said 13 persons.

[24] Consequently, the application for review is only successful in respect of 18 persons as named in the table below;

No.	**Name of Claimant**	**Amount of Terminal Benefits**
1	Odeke David	4,706,717
2	Semazi David	7,404,187
3	Opio Raymond	4,989,832
4	Nabukera Joyce	4,566,496
5	Kyamukobe William	7,280,283
6	Ddungu Livingstone	6,384,875
7	Hassiri Madelena	3,571,358
8	Kabaganda Mary	2,385,444
9	Kyabwampi Winfred	3,075,774
10	Matende George	4,162,582
11	Mukaire Safatiya	6,935,561
12	Nantongo Cissy	2,643,433
13	Nabirye Florence	5,359,743
14	Nkutu Hassan Wasswa	7,089,805
15	Owiny Basil Lee	7,574,564
16	Sande Norah	6,919,593
17	Sunday Vincent	12,497,018
18	Wasula James	4,140,105
TOTAL		**101,687,370**

[25] Accordingly, each of the above named claimants is awarded the sum indicated against their name as duly computed terminal benefits in line with the consent judgment dated 29th July 2015. The consent judgment is, therefore, accordingly reviewed and varied to include the total sum of UGX 101,687,370/=. Similarly, the consent judgment provided for a sum of UGX

10,000,000/= to each claimant as general damages and for interest on the general damages at the court rate. The same term shall apply to the above named 18 persons. The sum of UGX 10,000,000/= awarded to each claimant shall attract interest at 6% per annum from the date of this order until full payment.

[26] Regarding costs of this application, the application has succeeded to a smaller extent. Considering the facts and circumstances of this case, it is ordered that one-quarter of the costs of the application shall be paid to the Applicants by the 1st Respondent.

It is so ordered.

Dated, signed and delivered by email this 28th day of March, 2024.

Boniface Wamala
JUDGE