

1.MOSES KAKEMBO
(Adm. Of The Estate of the Late Charles Segujja)

2.JOYCE NADDABA ::::::::::::::::::::::::::::::::::::::: APPLICANTS

3.ERNEST SENSARIRE SSEMAKADDE
(Administrators of Estate Of Gabriel Galabuzi)

VERSUS

1.SSEKYANZI FRED

2.MUTEBI GRACE :::::::::::::::::::: RESPONDENTS

1.0 Introduction.

1.1 This Ruling relates to an application brought by Notice of Motion under Section 82 and 98 of the Civil Procedure Act, Cap. 71, Section 33 Judicature Act, Cap. 13, Order 46 Rule 1,2 & 8 and Order 52 Rules 1, 2, & 3 of the Civil Procedure Rules SI 71-1 seeking orders that;

1.The Consent Judgment entered between the 1st and 2nd Respondents in Civil Suit No. 207 of 2021 on 16th September, 2021 be reviewed and set aside on grounds of illegality, using court as a tool of fraud, not giving a hearing to the Applicants who are the owners of the suit land comprised in Busiro Block 489 Plot

137 Land at Ssanda, Ssisa, Wakiso District before using the said consent judgment to compromise their interest in the said land.

2. In the alternative and without prejudice, the said Consent Judgment be reviewed and replaced with an order that land comprised in Busiro Block 489 Plot 137 land at Ssanda, Ssisa, Wakiso District be excluded from the impugned Consent Judgment.

3. A consequential order that all acts of the Respondents (or any one of them) pertaining to Busiro Block 489 Plot 137 be reversed and reinstated as they were before the impugned Consent Judgment in Civil Suit No. 207 of 2021.

4. A consequential order that Ssekyanzi Fred, the 1st Respondent herein has no interest whatsoever in the suit land and must refrain from all of his acts of bringing buyers, any other parties and or surveyors to open boundaries, sub- divide or inspect land comprised in Block 489 of Plot 137 Land at Ssanda, Busiro, Wakiso District.


5. Costs for this Application be provided for.

1.2 The grounds of the application are summarized in the Notice of Motion and also set out in the affidavits sworn in support of the application by Moses Kakembo the 1st Applicant herein and holder of Powers of Attorney for the administrators of the estate of the late Gabriel Galabuzi, Mark Daniel Ntambi, joint attorney for the said administrators and Namunoga Proscovia Kibirango the beneficiary of the estate of the late Solome Nabulya. The grounds are contained in paragraphs 1-26 which court has taken considered in determination of this application.



1.3 In opposition of this application, the 1st Respondent filed an affidavit in reply and stated that;

- a) It is true a consent judgment was entered between him and the 2nd respondent in Civil Suit No. 207 of 2021 on 16th September, 2021 and the contents are very clear.
- b) The registered proprietor of land comprised in Busiro Block 489 Plots 4331 and 4332 formerly Plot 137 at Kasuku is Kiyimba Fred the administrator of the estate of the late Blasio Ndaka who was entitled to the same on the blue page to 10 acres of uncertain land. Ernest Sensasire Semakadde and Joyce Naddamba had fraudulently caused the subdivision of Plot 137 yet the estate of the late Galabuzi was not entitled to any portion of land on the blue page and that is why the subdivisions were cancelled and the former Plot reinstated but the same has never been registered in their names as administrators of the estate of the late Galabuzi Gabriel.
- c) The land in dispute was sold to the 1st Respondent on 28th February, 2012 by the late Charles Segujja the father of the 1st applicant and a son of the late Gabriel Galabuzi. After purchase, and making a search he discovered that the property did not belong to the family of the late Gabriel Galabuzi and on 28th March, 2012, himself and the late Charles Segujja entered into another arrangement in which he gave him an alternative piece of land.
- d) The late Charles Segujja died before giving the 1st Respondent transfer forms for the alternative land he had given him and the



1st applicant gave the person he had sold to the title and transfer forms.

- e) Plot 137 together with other plots mentioned in the consent judgment are part of the blue page wherein the person who claims first is allowed to survey off what they are entitled to but on the blue page the late Galabuzi Gabriel is not mentioned anywhere and therefore his estate is not entitled to claim for the same.
- f) The 2nd respondent subsequently registered himself on the aforementioned land as the administrator of the estate of the late Blasio Ndaka yet there were letters of administration in existence granted to Kiyimba Fred who had acquired the same as a son to the late Blasio Ndaka on 22nd December, 1999 vide Probate & Administrative Cause No. 628 of 1997 hence Civil Suit No. 207 of 2021.
- g) The Registrar of titles was not at fault to register Kiyimba Fred as the administrator of the estate of the late Blasio Ndaka and curving off land that the late Blasio Ndaka was entitled to on the blue page as mentioned in the consent judgment.
- h) There was no fraud as alleged by the applicants, the applicants have no proof of ownership of the disputed land as alleged and this application has no likelihood of success.
- i) The applicants were merely fraudsters who caused the Minister of State Dr. Sam Mayanja to halt the process of issuing the certificates of title comprised in Busiro Block 489 Plots 4331 and 4332 land at Kasuku which is part of the estate of the late Blasio Ndaka and not part of the estate of the late Gabriel Galabuzi.



- j) The 1st Respondent objects to the review of the consent judgment in Civil Suit No. 207 of 2021 since there was no fraud as alleged and him and the 2nd respondent are no longer interested in that suit since they have already executed a consent judgment and the decree there in has not been set aside.
- k) The 1st respondent prays that this application is dismissed with costs since the applicants have no claim in law as regards this property.

2.0 Representation and Hearing.

- 2.1 The Applicants were represented by Counsel David Kigozi Ssempala of M/S KSMO Advocates while the 1st Respondent was represented by Counsel Hannington Mulumba of M/S Lule Godfrey & Mulumba & Co. Advocates.
- 2.2 The 2nd Respondent did not file a response and an application to serve by substituted service was filed which was heard and determined on 20th March, 2023 by the Deputy Registrar who ordered that the 2nd Respondent to be served by way of substituted service through advertisement in Bukedde Newspaper. An advert was placed in Bukedde Newspaper at page 20 on 8th June, 2023. An affidavit of service and the original advert are on court record. A default judgment was applied for by counsel for the applicants before the Deputy Registrar and equally prayed that the court grants the same to enable the parties proceed with the application. The same was entered by this court on 17th August, 2023.



2.3 The parties agreed that they would file written submissions which submissions have been considered in determination of this application.

3.0 Burden of Proof.

3.1 In all civil matters like the present application, he who alleges bears the burden to prove his/her case on a balance of probabilities. The Applicants in this case by virtue of Section 101, 102 and 103 of the Evidence Act, Cap.6 has the burden to prove the facts alleged by them in not only the application but also in the supporting affidavit as well. Section 101 of the Evidence Act provides that; *“Whoever desires any Court to give judgment as to any legal right or liability, dependent on the existence of the facts which he or she asserts must prove that those facts exist”*.

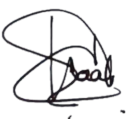
4.0 Parties’ written submissions.

4.1 I perused and analyzed each parties’ written submissions. I thus appreciate and commend each party’s counsel for their submissions and arguments in their respective endeavor in resolving this application in favor of their respective party. The written submissions have been considered in determination of this application.

5.0 Issues for Determination by this Court.

5.1. There are only two issues for determination;

- 1. Whether the Application has merits for review and or setting aside?**
- 2. What are the available remedies to the parties?**



6.0 Determination of Issues

- 6.1 The law on consent judgments/decrees is well settled. Parties to civil proceedings are free to amicably settle a dispute and a consent judgment can be entered. The parties may do so orally before a judicial officer who then records the consent or they may do so in writing, affixing their signatures and place the same for endorsement by the court. **See: Order 25 Rule 6 of the Civil Procedure Rules SI 71-1** and the case of **Betuco (U) Ltd & Another Versus Barclays Bank & Others, HCMA No. 243 of 2009 (Commercial Court)**.
- 6.2 It is also known that after a consent judgment has been entered, it may be vitiated, varied and/or set aside where it is proved that it was entered into without sufficient material facts or in misapprehension or in ignorance of material facts, or 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 Versus Noorali Esmail Kassam [1952] EA 131; and Attorney General & Uganda Land Commission Versus James Mark Kamoga & James Kamala, SCCA No. 8 of 2004.**
- 6.3 “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 the 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.” **Seton on Judgements and Orders, 7th Edition, Vol. 1, page 124**



- 6.4 A consent judgement/decree is passed on terms of a new contract between the parties to the consent judgement. **See: Brooke Bond Liebig (T) Ltd vs. Mallya (1975) EA 266 and Mohamed Allibhai vs. W.E. Bukenya & Another, SCCA No. 56 of 1996.**
- 6.5 The general principle of law is that Court after passing judgement becomes *functus officio* and cannot revisit the judgement or purport to exercise a judicial power over the same matter. There are exceptions, however, to this general rule wherein a Court that has passed a judgment may review it.
- 6.6 The jurisdiction of Court to review its Orders/Judgements is provided for under Section 82 of the Civil Procedure Act, Cap.71 which provides that;
- “Any person considering himself or herself aggrieved— (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order on the decree or order as it thinks fit.”*
- 6.7 Section 82 of the Civil Procedure Act has been enlarged by Order 46 Rule 1 of the Civil Procedure Rules which provides that;
- i) 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 a decree or order from which no appeal is hereby allowed, and who from the 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 when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him or her, may apply for a review of judgment to the Court which passed the decree or made the order.

7.0. The principles followed by our courts as governing the discretion to allow or decline an application for review have been summarized in a number of decided cases with the following grounds as held in the case of **FX Mubuke Vs UEB High Court Misc. Application No.98 of 2005** which are;

- i) That there is a mistake or error apparent on the face of the record.
- ii) That there is discovery of new and important evidence which after exercise of due diligence was not within the applicant's knowledge or could not be produced by him or her at the time when the decree was passed or the order made.
- iii) That any other sufficient reason exists, but the expression "sufficient" should be read as meaning sufficiently of a kind analogous to (a) and (b) above See **Re Nakivubo Chemists (U) Ltd (1979) HCB 12.**

7.1. The applicants averred under paragraph 7 and 8 of his affidavit in support of the motion that on 5th August, 2022, the size of Plot 226 was changed to 1.3 acres from 2 acres and the size of plot 227 was changed to 5.2 acres from 4.5 acres. The said plots 226 and 227 were renumbered to 4331 and 4332 respectively. Therefore, the 1st and 2nd Respondent used the hand of court as a tool of fraud to relate the



estate of the late Blasio Ndaka to the suit land as per their consent judgment and the court proceeded to sanction the decree which become an order of court that the said land belonged to the estate of the late Blasio Ndaka whereas not.

- 7.2. Paragraph 3 of the consent settlement dated 13th September, 2021 states, “that necessary steps are taken and to enable the plaintiff and family of the late Blasio Ndaka acquire Certificate of titles to the land comprised in Busiro Block 489 Plot 137/38/132/73/71/25 land at Sanda Kasuku, Kajjansi Town Council, Wakiso District”. According to the applicant this pronounced ownership of the land which belonged to the estate where the applicants are administrators.
- 7.3. The Applicants submitted that they should be given an opportunity to be heard to enable them demonstrate to court the illegal and fraudulent acts and omission of the 1st and 2nd Respondent for court to reverse and set aside the consent judgment and decree for purposes of justice being done and seen to be done upon the parties. He cited the case of **Ismail Sunderji Hirani Versus Noorali Esmail Kassam [1952] EA 13** that a consent judgment may be set aside where it is proved that it was actuated by illegality, fraud, mistake, contravention of court policy. This court will deal with the allegations of illegality propounded by the Applicants.
- 7.4. The process of entering the Consent judgment contravened the provisions of Articles 28 and 44 of the Constitution of the Republic of Uganda. The applicants deserve a right to be heard to enable them defend their interests in the suit land.
- 7.5. Equally the 1st respondent will have an opportunity to substantially claim his right in the suit land against any person who believes they



have a claim in it so that the rights to the said land are finally determined.

8.0. Conclusion.

8.1. In the final result, this court decides as follows:-

- 1.The application is allowed.
- 2.The Consent settlement and Decree in Civil Suit No. 207 of 2021 Ssekyazi Fred Versus Mutebi Grace is hereby set aside.
- 3.Each Party shall bear their own costs.

Dated, Signed and Delivered by email this 7th day of November, 2023.



**CELIA NAGAWA
JUDGE**