




1. The ruling and Order in Miscellaneous Application No. 437 of 2022 be reviewed and set aside.
  2. Costs of the application be provided for.
- 1.2 The grounds upon which the application is based are set out in the affidavit of the applicant, Dibya Francis briefly that;
1. The ruling was delivered in total disregard of the Applicant's affidavit in reply and the submissions. There were errors apparent on the face of the record of the court that warrant the review of the ruling and the order.
  2. There is a new and important matter of evidence which was not within the applicant's access at the time when the ruling was delivered. The Applicant is aggrieved by the erroneous ruling which alters the status quo at the detriment and contrary to the legal regime of interim orders.
  3. The administrator of the Estate of the late Mathias Luboyera distributed the suit property to a beneficiary before it was sold to Allan Atumuhaire and another, who are in actual possession of the same. It is just and equitable to review the ruling and order delivered in Miscellaneous Application No. 437 of 2022 to avoid a travesty of justice and absurdity.
- 1.3 The Respondents filed an affidavit in reply opposing this application on the following grounds;
1. That the applicant does not state the error that warrants the review of the ruling and order delivered in Miscellaneous Application No. 437 of 2022. The court relied on the grounds and case law principles to grant the temporary injunction.



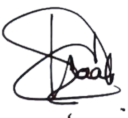
2. That the Ruling was not a mistake and if the 3<sup>rd</sup> Respondent opened Criminal charges, it cannot be blamed on the Ruling and Respondents/Plaintiffs.
3. That for Court to Review an Injunction, there has to be a mistake or error apparent on the face of the record, a discovery of new and important evidence which after the exercise of due diligence was not within the Applicant's knowledge or sufficient reason has been produced by the applicant which the applicant has not provided.
4. That the Applicant is not aggrieved by the Temporary Injunction he seeks to Review and Set Aside.

## **2.0 Representation.**

- 2.1 At the trial, the Applicant Dibya Francis was self-representing while the 1<sup>st</sup> to 6<sup>th</sup> Respondents were represented by Counsel Apwono Stella Charity of M/S Apwono Advocates & Associates, Kampala.

## **3.0 Background of the Application.**

- 3.1 The Respondents herein filed Miscellaneous Application No. 437 of 2022 seeking that a Temporary Injunction be issued against the current applicant, the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, Amutuhaire Allan, Byomuhangi Racheal and the 3<sup>rd</sup> Respondent Nagujja Claire Luboyera (the Administratrix of the Estate of the late M.K Luboyera) restraining them and all their representatives acting under them or with their authority from



evicting their sitting tenants or carrying out any renovation or construction of their kibanja and its developments comprised at Kyadondo Block 178 Block 6806 formerly 305 situated at Nakwero Manyangwa in Wakiso District pending the determination of the main suit No. 161 of 2022. The application was granted.

- 3.2 The applicant herein filed this application in review of the said ruling of the court against the 1<sup>st</sup> to 6<sup>th</sup> Respondents who were applicants therein and the 1<sup>st</sup> to 3<sup>rd</sup> Respondents seeking that the ruling be reviewed and set aside. He contended that the ruling was delivered under a mistaken belief contrary to the legal regime on interim orders, resulting in a travesty of justice.

#### **4.0 Issue to be determined by the Court.**

- 1. Whether there are sufficient grounds to warrant the review and setting aside of the ruling in Miscellaneous Application No. 437 of 2022?**

#### **5.0 Parties' written submissions.**

- 5.1 I perused and analyzed each parties' written submissions. I thus appreciate the arguments in their endeavor to resolve this application their favor. These written submissions by the parties shall offer me guidance when I am resolving this application.
- 5.2 Further, I evaluated and examined both parties' affidavit evidence and the documentary evidence, as required by law.



## **6.0 Resolution of Issues by Court.**


### **The Law on Review.**

6.1 **Section 82 (a) 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 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 judgement 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.

6.2 **Order 46 (1) of the Civil Procedure Rules, SI- 71-1** provides that;

- 1. 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,



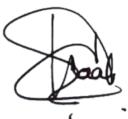
desires to obtain a review of the decree passed or order made against him or her, may apply for a review of judgment to the Court which passed the decree or made the order.

2. A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except where the ground of the appeal is common to the applicant and the appellant, or when, being respondent, he or she can present to the appellate Court the case on which he or she applies for the review.

6.3 The grounds for review were enunciated in the case of **FX Mubuke Vs UEB High Court Misc. Application No. 98 of 2005** to be:

- i) That there is a mistake or manifest 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.

6.4 In the case of **Edison Kanyabwera Vs Pastori Tumwebaze, Supreme Court Civil Appeal NO. 6 of 2004**, it was held that; "in order that an error may be a ground for review, it must be



one apparent on the face of the record, i.e. 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. The error may be one of fact but it not limited to matters to fact and includes also error of law”.

### **Determination.**

#### **Mistake or Error Apparent on the Face of the Record.**

6.5 The Applicant submitted on the ground of mistake or error apparent on the face of the record in 4 parts.

- a) The Applicant contended that the court never considered the applicant’s affidavit in Reply as the 1<sup>st</sup> Respondent in **Miscellaneous Application No. 437 of 2022** and his submissions attached thereto and filed at the court registry on 21<sup>st</sup> July, 2022. He stated that **Order 21 Rule 4 of the Civil Procedure Rules SI 71-1** requires that the decision and reasons for the decisions be shown in the judgements of defended suits. He stated that in the present case, the decision was arrived at without reflecting the side of the instant application but only the cases of the 3<sup>rd</sup> and the 4<sup>th</sup> respondents were considered. He averred that there was an absence of a balanced analysis in Miscellaneous Application No. 437 of 2022 which amounted to an error apparent on the face of the record.

6.6 The court is enjoined to read and consider all evidence, pleadings and submissions presented by all parties to a suit.



The court is required to give reasons as to their decision but the requirement is not that all judgements shall reference verbatim the submissions/pleadings of parties. The matter before hand was an application for a temporary injunction where the law sets out considerations before its grant. The court's role was to consider whether there were sufficient grounds for the grant of a temporary injunction. The law as provided for under **Order 41 Rule 1 of the Civil Procedure Rules SI 71-1** is that the conditions for the grant of a temporary injunction are: 1) show a prima facie (meaning on the face of it) case with a probability of success, 2) irreparable harm will be suffered without the possibility of adequate compensation for damages, and 3) a balance of convenience.

6.7 The Honorable Court considered all three of these grounds and rightfully came to a decision upon consideration and discussion of the evidence on each ground. In this instance, this was not an error apparent on the face of the record.

b) The Applicant further stated that the suit proceeded ex-parte deliberately, after excluding the administrator of the suit estate by non-service of summons upon her. On this, the applicant stated that the administrator of the estate was a necessary party in this suit and that the suit proceeded exparte in a bid to circumvent the evidence that would be adduced by the administrator of the estate.


6.8 The law on Revision under **Section 82 (a) Civil Procedure Act, Cap. 71** provides that any person “*considering himself or*





***herself aggrieved***” by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred. An aggrieved person is a person who has a genuine legal grievance because an order or decision has been made that affects his or her interests in a prejudicial manner (see **Attorney-General of the Gambia v. N’Jie, [1961] 2 All E.R. 504**)

- 6.9 In this application, the 2<sup>nd</sup> Respondent in Miscellaneous Application No. 437 of 2022 would have been the aggrieved party in an instance where she was excluded from participation in the application. The Applicant also had the opportunity in the determination of the aforementioned application to raise a preliminary objection as to the said *ex parte* proceedings, however, neither he nor the two other Respondents in the applications raised an objection. In the case of **Oneti Vincent V Commissioner Land Registration and 60 others Misc. Cause No. 225 of 2021**, submitted by the Respondents, the court stated that for an application for review to succeed, the party applying for review must show that he/she has suffered a legal grievance and that the decision pronounced against him/her by court has wrongfully deprived him or her of something or wrongfully affected his title to something.
- 6.10 In this matter, the applicant is not the person who has suffered the said legal grievance and can therefore not show or prove to this court that he has. It is the administrator of the estate who would have the right against the alleged grievance if any.



6.11 The Administrator of the estate is a party to Civil Suit No. 549 of 2022 wherein the court sought to preserve the status quo and ensure that when the suit was finally determined, there was in fact an estate left to administer. In this regard, this ground of mistake or error apparent on the face of the record fails.

c) The applicants in Miscellaneous Application No. 437 of 2022 misrepresented crucial facts to court that they were the ones in actual possession of the suit property and that they were the ones in control of the tenants, and they tendered a receipt purporting that it was drawn and signed by one of them well as it was all a deception.

d) The sidelined affidavit in reply and submissions were live to this fact, that the receipt which was later referred to in the ruling as evidence of possession was in fact drawn and signed by the applicant in this matter and bears the same signature appearing on the submissions and affidavit attached hereto.

6.12 The applicant's arguments for mistake/error apparent on the face of the Record are arguments that should be raised on appeal and not on Review. The Review of court judgments is intended to correct errors of court in consideration of human fallibility. It shall not be an error apparent on the record if it requires elaborate explanation to make out the said error. It is an error apparent on the face of the record where, without elaborate argument, one could point to the error and say, here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it.



6.13 In **(c) & (d)** above, the applicant makes an argument for who was/is in possession of the suit property. He argues that the Respondents herein misrepresented the facts stating that they were the ones in actual possession. This is not an error on court's part that can be corrected by Review. Where court errs in evaluation of evidence, the legal remedy is an appeal and not Review. Review of court judgments is only meant to rectify errors that may have occurred and is not meant to re-evaluate or re-hear the case. In this regard, grounds (c) & (d) on mistake or error apparent on the face of the record fail.

**Discovery of New and Important Evidence.**


6.14 On the ground of discovery of new and important matter of evidence, the applicant submitted that the new and important evidence is that police summons were issued against the applicant and the administrator of the suit property dated 6th April, 2023.

6.15 This does not constitute a “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”. The Police summons were issued well after the ruling of the court in Miscellaneous Application No. 437 of 2022 issued on 3rd January, 2023. This is not new evidence but rather an effect of the ruling. The court in its ruling rightly sought to maintain the status quo until the final determination of the main suit.



**Another cause analogous to the grounds above.**

- 6.16 On this, the applicant contended that the applicant and the administrator of the suit property before it was sold to the 3<sup>rd</sup> and 4<sup>th</sup> Respondents stand condemned by the ruling of the court in Miscellaneous Application No. 437 of 2022 as criminals who obtained money by false pretenses and are thus aggrieved by the defective ruling.
- 6.17 The applicant seeks to rely on the ground for Review that is “Any other sufficient reason”. In the case of **Buladina Nankya versus Bulasio Konde (1979) HCB 239** it was explained that, “the words, ‘any other sufficient reason’ mean as a reason sufficient on grounds at least analogous to those specified immediately previously’.
- 6.18 **Re-Nakivubo Chemists (U) Ltd (1979) HCB 12**, it was held that the ‘expression sufficient should be read as meaning sufficiently of a kind analogue to the discovery of new and important matter of evidence previously overlooked by excusable misfortune and same mistake or error application on the face of the record’.
- 6.19 In this case, the ground that the applicant and administrator of the estate have been criminally charged is in no way analogous to a mistake or error apparent on the face of the record or the discovery of new and important evidence. The court adjudicated on the matter before it granting a temporary injunction in a bid to preserve the suit estate. The issue that upon the ruling the Applicant and the Administrator of the estate were charged for



obtaining money under false pretenses is not a matter for Review and therefore falls away from the ambit of this court sitting in Review.

6.20 This court finds that the applicant did not prove any of the grounds for Review.

**7.0 Conclusion.**

7.1 In the final result, the application has been found to be lacking in merit. I therefore decide as follows;

1. The application to review and set aside the ruling and orders of Her Worship Katushabe Prossy dated 3<sup>rd</sup> January, 2023 is hereby dismissed.
2. Each party to bear its own costs.

***Dated, Signed and Delivered by email this 30<sup>th</sup> day of November, 2023.***



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**CELIA NAGAWA  
JUDGE**