

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION NO. HCT-00-LD-MA-3608-2023
(ARISING FROM H.C.C.S NO.2904 OF 2016)**

ELIZABETH LWANGA OKWENJE:..... APPLICANT

VERSUS

MONDAY PHILBERT ELIAB:..... RESPONDENT

BEFORE: HON. JUSTICE BERNARD NAMANYA

RULING

Introduction:

1. This application was brought under *Section 33* of the *Judicature Act (Cap 13)*, *Sections 82(a) & 98* of the *Civil Procedure Act (Cap 71)*, and *Order 52 rules 1 & 3* of the *Civil Procedure Rules (SI 71-1)* for orders that: i) the judgment and orders in High Court Civil Suit No.2904 of 2016 (Monday Philbert Eliab v. Denis Abitekaniza) be reviewed and/or set aside; and ii) the costs of the application be provided for.

The case of the applicant:

2. The application is supported by an affidavit sworn by Ms. Elizabeth Lwanga Okwenje. The applicant contends that the contested land is public land which is under the management of National Environment Management Authority (NEMA). That in 2015, acting through her representative, Benon Okwenje, she applied for a lake shore user permit from NEMA and it was issued. The permit is for a period of 5 years from 10 June 2016 to 10 June 2021. It permits Freedom Beach to carry out activities on a lake shore of “Lake Victoria on Plot 6 Kintu Road and Green Space between Kintu Road and Lake Victoria for the proposed



establishment of a beach facility on a maximum area of 3132.3M².” This permit expired on 10 June 2021. One of the conditions of the permit was that it should not be used as a basis for acquiring a certificate of title as such areas are held by the Government in trust for the people of Uganda.

3. Mr. Mugisha Emmanuel Gacharo who is a town clerk of Entebbe Municipal Council swore a supplementary affidavit in support of the application for review of the judgment stating *inter alia*, that the National Environment Act and other laws governing natural resources provide for a buffer distance between the lake and human activities in order to protect the lake. Further, that the contested land falls within the green belt, and that Entebbe Municipal Council does not have any bibanja holders within the green belt.
4. The applicant filed further affidavit evidence stating *inter alia*, that she sought official communication from Entebbe Municipal Council, and they informed her that the respondent is not a kibanja holder, and that the council does not have records of bibanja holders on the contested land which falls within the green belt. That the contested land is held by Entebbe Municipal Council, and does not belong to the respondent. That she is aggrieved by the judgment delivered by the court in Civil Suit No.2904 of 2016 to the extent that her user rights of the land opposite Plot 6 which she owns are in danger of being interfered with. That she has been in occupation of the land opposite Plot 6 since 1993, has set up structures on the land and has a legitimate interest in the land.

The case of the respondent:

5. The respondent filed an affidavit in reply opposing the application. He contends that he acquired a kibanja on the contested land in 1993 from Victoria Nakajja.



or order from which no appeal is allowed, may apply for a review of judgment to the court which passed the decree or made the order.

9. In the case of *FX Mubukuke v. UEB, High Court Miscellaneous Application No. 98 of 2005*, court held that for an applicant to succeed in an application for review of a judgment, they ought to first show that either: i) there is a mistake or error apparent on the face of the record; or 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 iii) that any other sufficient reason exists.
10. In the case of *Mohamed Allibhai v. W.E Bukenya Mukasa & Departed Asians Property Custodian Board, Supreme Court Civil Appeal No. 56 of 1996*, the court laid out the test to be applied in determining whether or not a third party (a party who was not party to the original proceedings that gave rise to the judgment) has locus to file an application for review of the judgment. The court held that a third party has locus to file an application for review of the judgment provided the third party can prove that he or she has suffered a legal grievance. Benjamin Odoki, J.S.C (as he then was) explained thus:

“It is I think well established that while a third party may apply for review...the party must establish that he is an aggrieved person. A person considers himself aggrieved if he has suffered a legal grievance. See Yusufu v. Nokrach (1971) EA 104, and In Re. Nakivubo Chemists (U) Ltd (1971) HCB 12, Ladak Adulla Mohamed Hussein v. Griffiths Isingoma Kakiiza and others Civil Appeal No. 8 of 1995 (unreported). A person suffers a legal grievance if the judgment given is against him or affects his interest.”

supplementary affidavit in support of the application stating that Entebbe Municipal Council does not have any kibanja holders on the disputed land which is a lake shore and is classified as a green belt; and that the respondent is not recognised as a kibanja holder on the disputed land.

15. The respondent claims to have been authorised by Entebbe Municipal Council to use the land in 2007. He produced a letter dated 5 April 2007 by which he applied to use the contested land; the letter reads as follows *inter alia*:

“...I own the above piece of land under which I have been planting seasonal foods. I bought it from Victoria Nakajju in 1992, part of the place is infested with snakes and becoming a security threat.

By clearing the same and building the same will be safe for me and the neighborhood.

I promise to abide with the terms as given to me by the Town Council...”

16. Entebbe Municipal Council by their letter dated 3 May 2007, permitted the respondent to use the land by; their letter states as follows *inter alia*:

“...The Council is in receipt of yours of 5 April 2007 requesting the above facility. Permission has been granted. You will be required to follow the advice of the Municipal Engineer and Medical Officer of Health....Signed (Hon. Muzoora Amon-R”

17. Despite the above authorization to use the contested land, the respondent lost possession of the land to Freedom Beach, who currently undertakes various business activities on the land. I will not address the circumstances under which



the respondent lost possession of the land because they are not relevant to the resolution of the issues in the instant application.

18. It is observed that by submitting to the authority of Entebbe Municipal Council, the respondent acknowledged his lack of absolute ownership of the land. It is an acknowledgement by the respondent that the contested land is under the control of Entebbe Municipal Council, and not under any other form of individual ownership.

The applicable laws:

19. The land which is claimed by the respondent is subject to a number of laws. *Article 8A (1) of the Constitution of Uganda* provides for the application of principles of national interest and common good enshrined in the national objectives and directive principles of state policy. The National objectives and directive principles of state policy set out in the Constitution of Uganda (1995) provide for the protection of lake shores.

Principle No. XIII provides that:

“XIII. Protection of natural resources

The State shall protect important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda.”

Principle XXI provides that:

“XXI. Clean and safe water

The State shall take all practical measures to promote a good water management system at all levels.”

Principle No. XXVII provides that:

“XXVII. The environment



(i) The State shall promote sustainable development and public awareness of the need to manage land, air and water resources in a balanced and sustainable manner for the present and future generations.

(ii) The utilisation of the natural resources of Uganda shall be managed in such a way as to meet the development and environmental needs of present and future generations of Ugandans; and, in particular, the State shall take all possible measures to prevent or minimise damage and destruction to land, air and water resources resulting from pollution or other causes.

iii)...

iv) The State, including local governments, shall—

(a) create and develop parks, reserves and recreation areas and ensure the conservation of natural resources;

(b) promote the rational use of natural resources so as to safeguard and protect the biodiversity of Uganda.”

20. *Articles 237(2)(b), 242 and 245 of the Constitution of Uganda (1995) provide that:*

“237(2)

(b) the Government or a local government as determined by Parliament by law shall hold in trust for the people and protect natural lakes, rivers, wetlands, forest reserves, game reserves, national parks and any land to be reserved for ecological and touristic purposes for the common good of all citizens;

242. Land use

Government may, under laws made by Parliament and policies made from time to time, regulate the use of land.”

245. Protection and preservation of the environment

Parliament shall, by law, provide for measures intended—

(a) to protect and preserve the environment from abuse, pollution and degradation;

(b) to manage the environment for sustainable development; and

(c) to promote environmental awareness.”

21. Sections 34 & 35 of the repealed National Environment Act (Cap 153) provided that:

“34. Limits on the use of lakes and rivers.

(1) Subject to subsection (2), no person shall, in relation to a river or lake, carry out any of the following activities -

(a) use, erect, reconstruct, place, alter, extend, remove or demolish any structure or part of any structure in, on, under or over the bed;

(b) excavate, drill, tunnel or disturb the bed otherwise;

(c) introduce or plant any part of a plant whether alien or indigenous in a lake or river;

(d) introduce any animal, or microorganism, whether alien or indigenous in any river or lake or on, in or under its bed;

(e) deposit any substance in a lake or river or in, on or under its bed, if that substance would or is likely to have adverse effects on the environment;

(f) divert or block any river from its normal course;

(g) drain any lake or river.

(2) The authority may, in consultation with the lead agency, in writing, waive any of the requirements of subsection (1) in respect of any person subject to conditions prescribed by the authority.

(3) For the purposes of this section and section 35 -

(a) "lake" includes natural lakes, artificial lakes, dams, canals, gulfs, bays and inlets; and

(b) "river" includes stream and canal.

(4) The authority shall, in consultation with the lead agency, issue guidelines for the management of the environment of lakes and rivers.

35. Management of river banks and lake shores.

(1) The authority shall, in consultation with the lead agency, take all measures it considers necessary in order to protect the banks of rivers and the shores of lakes in Uganda from human activities that will adversely affect the rivers and the lakes.

(2) Each district environment committee, with the assistance of local environment committees, shall identify the banks of rivers and the shores of lakes within its jurisdiction which are at risk from environmental degradation or which have other value to the local communities and take necessary measures to minimise the risk or recommend to the authority the need for the protection of those areas.

(3) The Minister may, on the advice of the authority, by statutory instrument, declare protected zones along the banks of rivers and the shores of lakes within such limits as it considers necessary to protect those rivers and lakes from deleterious human activities.

(4) In declaring protected zones on the banks of a river and the shores of a lake under subsection (3), the authority shall take into account -

(a) the size of the river or the lake in determining the area of the protected zone; and

(b) the existing interests in the land covered by the protected zone.

(5) Notwithstanding this section, sustainable uses of the protected zone which do not adversely affect the river or the lake may be permitted by the authority, except that where there is doubt relating to sustainable use, an environmental impact assessment in accordance with section 19 shall be conducted.”

22. I have found it relevant to refer to the repealed *National Environment Act (Cap 153)* because the respondent claimed to have been permitted to use the lake shore in 2007 while the law was still in force.

23. *Sections 52 and 53 of the National Environment Act (2019)* provides for the protection of lake shores:

“52. Restrictions on the use of natural lakes and rivers.

(1) The Authority shall, in collaboration with the relevant lead agency, ensure that natural lakes and rivers are conserved for the common good of the people of Uganda.

(2) Subject to subsection (3), a person shall not, in relation to a natural lake or river, carry out any of the following activities—

(a) use, erect, reconstruct, place, alter, extend, remove or demolish any structure or part of any structure in, on, under or over the lake-bed or river-bed;

(b) excavate, drill, tunnel or disturb the lake-bed or river-bed;

(c) introduce or plant any part of a plant, whether alien or indigenous, in a lake or river;

(d) introduce any animal or microorganism, whether alien or indigenous, in any lake or river or on, in or under its bed;

(e) deposit any substance in a lake or river or in, on or under its bed, if that substance would or is likely to have an adverse effect on the environment;

(f) divert or block any river from its normal course; or

(g) drain any lake or river.

(3) The Authority may, in collaboration with the relevant lead agency, authorise any of the activities in subsection (2) subject to conditions prescribed by the Authority.

(4) The Authority shall, in consultation with the relevant lead agency, issue guidelines for the management of the environment where an activity referred to in subsection (2) is authorised.

(5) A person who undertakes an activity under subsection (2) without approval of the Authority commits an offence and is liable, on conviction, to a fine not exceeding thirty thousand currency points or imprisonment not exceeding twelve years or both.

53. Protection of riverbanks, lakeshores and natural beaches.

(1) The Authority shall, in collaboration with the relevant lead agency—

(a) protect riverbanks and lakeshores from human activities likely to adversely affect the rivers, lakes and the living organisms therein;

(b) protect naturally occurring islands existing in rivers or lakes from human activities likely to affect the rivers or the lakes; and

(c) protect natural beaches of rivers and lakes and ensure their conservation for the benefit of the people of Uganda.

(2) The relevant lead agency shall identify the riverbanks and lakeshores within its jurisdiction which are at risk from environmental degradation or which have other value to the local communities and take necessary measures to minimise the risk or recommend to the Authority the need for the protection of those areas.

(3) The Minister may, on the advice of the Authority, by statutory instrument, declare protected zones along the riverbanks, lakeshores and natural beaches within such limits as the Minister considers necessary to protect the rivers, lakes and natural beaches from deleterious human activities.

(4) In declaring protected zones on riverbanks, lakeshores and natural beaches under subsection (3), the Minister shall take into account—

(a) the size of the river or lake;

(b) cultural and natural heritage sites;

(c) the area covered by the natural beaches, rivers or lakes;

(d) the need to regulate open access to the lakes, rivers or natural beaches; and

(e) any other factor that the Minister may, in consultation with the Authority, consider necessary.

(5) Without limiting the general effect of this section, the Authority may, in consultation with the relevant lead agency and subject to this Act, permit sustainable uses of the protected zones which do not adversely affect the river, lake or natural beach.



(6) Subject to subsections (3) and (5), a person shall not undertake activities in the protected zones along riverbanks, lakeshores and natural beaches.

(7) A person who contravenes subsection (6) commits an offence and is liable, on conviction, to a fine not exceeding thirty thousand currency points or imprisonment not exceeding twelve years or both.

(8) In this section—

(a) “lakeshore” means the land not more than 100 metres adjacent to or bordering a lake;

(b) “river bank” means the rising ground, not more than 100 metres long, bordering or adjacent to the natural course of a river in the form of rock, mud gravel or sand and in cases of flood plains includes the point where the water surface touches the land, that land not being the bed of the river.”

24. *The National Environment Act (Cap 153) was repealed by the National Environment Act (2019). However, Regulations made under the repealed National Environment Act (Cap 153) were saved by Section 182 of the National Environment Act (2019). Regulation 2 of The National Environment (Wetlands, River Banks and Lake Shores Management) Regulations, No. 3/2000 provides that:*

“lake shore” means the land not more than 100 metres adjacent to or bordering a lake”

25. *Regulation 21 of the Lake Shores Management Regulations (supra) require local governments to identify lake shores that are at risk from degradation and promote soil conservation measures including bundling, terracing, mulching,*

(1) The Government or a local government shall hold in trust for the people and protect natural lakes, rivers, ground water, natural ponds, natural streams, wetlands, forest reserves, national parks and any other land reserved for ecological and touristic purposes for the common good of the citizens of Uganda.

(2) A local government may, upon request to the Government, be allowed to hold in trust for the people and the common good of the citizens of Uganda any of the resources referred to in subsection (1).

(3) Any resource that is not covered under subsection (1) which is identified after the coming into force of this Act may, upon request to the Government and with the approval of Parliament, be held in trust for the people and for the common good of the citizens of Uganda by a local government.

(4) The Government or a local government shall not lease out or otherwise alienate any natural resource referred to in this section.

(5) The Government or a local government may grant concessions or licences or permits in respect of a natural resource referred to in this section subject to any law.

(6) Parliament or any other authority empowered by Parliament may from time to time review any land held in trust by the Government or a local government whenever the community in the area or district where the reserved land is situated so demands.”

Regional Treaties and Protocols on lake shores management:

30. Uganda is subject to various regional treaties and protocols that impose obligations on the State to protect and preserve Lake Victoria. *The Treaty for the Establishment of the East African Community (2000)* requires Partner States to ensure sustainable utilisation of natural resources such as lakes (See Article

(c) introduce or plant any of a plant whether alien or indigenous on a river bank or lake shore;

(d) introduce any animal or micro-organism, whether alien or indigenous in any river bank or lake shore; or

(e) deposit any substance on a riverbank or lakeshore if that substance would or is likely to have adverse effects on the environment.

(2) The Executive Director may, after considering the application submitted under sub-regulation (1) and after consultations with the lead agency, grant a permit in "Form B" set out in the First Schedule to these Regulations on such conditions as he or she may deem fit."

32. In the case of *Amooti Godfrey Nyakaana v. National Environment Management Authority & Others*, Supreme Court Constitutional Appeal No.5 of 2011 [2015] UGSC 14 (Coram: Katureebe; Tumwesigye; Kisaakye; Arach-Amoko; Odoki, Tsekooko; Okello; JJ.S.C.), the appellant (Amooti Godfrey Nyakaana), who had obtained a lease of land in a wetland in Bugolobi area challenged the constitutionality of restoration orders issued by the NEMA, to cease construction of a residential house in a wetland and restore the wetland, arguing that the orders were inconsistent with his constitutional right to own property. The Constitutional Court decided the case in favour of the respondents. The appellant appealed to the Supreme Court of Uganda. Dismissing the appeal, Bart. M. Katureebe, C.J held that:

"The appellant's certificate of title, physical land and house constructed thereon did constitute property with rights guaranteed and protected by or under the Constitution. But the property was also affected by other provisions of the Constitution which must be read

people of Uganda... In this case, the wetland in question has been characterized by NEMA as a critical wetland around the Capital City, Kampala. It drains into Lake Victoria which has [immense] ecological and economic importance not only to the City but to the Country and the region as a whole... Such wetland should call for properly planned and controlled utilization so that the Constitutional requirement to use the resources for sustainable development is realized. Individual developers putting up houses in such a critical wetland unregulated by NEMA may have grave consequences in future. In that case the State will have failed to protect the environment and use the natural resource – wetland – in a sustainable manner...It is my opinion that the above principles must be adopted and applied if the State is to carry out its Constitutional mandate to protect the environment and guarantee a clean and healthy environment for the citizens, while at the same time promoting sustainable development...”

33. In the case of *Chad Nyakairu v. Edirisa Nyakairu and Another (Civil Suit No. 72 of 2006) [2023] UGHCLD 92 (per Justice Vincent Wagona)*, one of the issues framed for determination by the court was whether ownership of land on a lake shore of Lake Kyaninga in Fort Portal was tenable. The court held that a lake shore is a protected area and thus property of the Government, and managed by NEMA, and that none of the parties in the case could claim ownership of land on a lake shore.
34. In the instant case, the disputed land is located along the shores of Lake Victoria in Entebbe Town within a distance of 100 metres between the water line of Lake

Victoria and Kintu Road. According to the law, a lake shore is defined as land that falls in an area within a distance of 100 metres from the water line of the lake. In the judgment of this court in Civil Suit No.2904 of 2016, it is stated that the disputed land is ‘barely within just 7 meters from the lake’. The law provides that lake shores are protected zones which are under the control of the Government or local governments. According to the law, the disputed land is held by Entebbe Municipal Council for the common good of all Ugandan citizens. The law stipulates that lake shores can only be utilised with the permission of the local government and NEMA.

Locus in quo visit:

35. In addition to the locus in quo visit conducted by the trial Judge in Civil Suit No.2904 of 2016, this court conducted a second locus in quo visit to the disputed land on the 28 February 2024 and verified that the disputed land falls within a lake shore as defined by the law, which is a protected zone subject to user restrictions under the various environmental and land laws. Present at the locus in quo visit were the following: counsel for the applicant and the respondent; Monday Philbert Eliab (respondent); Elizabeth Lwanga Okwenje (applicant); Nanyonga Grace Kigongo (physical planner, Entebbe Municipal Council); and Dennis Abitekaniza (defendant in High Court Civil Suit No.2904 of 2016). Both the applicant and respondent gave evidence at the locus in quo visit and were cross examined and re-examined by the respective counsel.

Discovery of new evidence since the passing of the judgment:

36. Since the passing of the judgment in High Civil Suit No.2904 of 2016, there has been a discovery of new and important evidence in relation to the status of the suit land as a lake shore. Mr. Mugisha Emmanuel Gacharo who is a town clerk of Entebbe Municipal Council swore a supplementary

affidavit in support of the application for review of the judgment stating *inter alia*, that the National Environment Act and other laws governing natural resources provide for a buffer distance between Lake Victoria and human activities in order to protect the lake. He further testified that the contested land falls within the green belt, and that Entebbe Municipal Council does not have any kibanja holders within the contested area which is classified as a green belt. On the basis of the discovery of this new and important piece of evidence, there is sufficient basis for the review of the judgment in Civil Suit No.2904 of 2016.

Conclusion:

37. This court is persuaded by the evidence adduced by Entebbe Municipal Council through, the town clerk, Mr. Mugisha Emmanuel Gacharo that the respondent does not own a kibanja interest on the disputed land. The contested land is a lake shore under the control, care and protection of Government through Entebbe Municipal Council and NEMA.

38. Having regard to the various environmental and land laws, it is the conclusion of this court that the application for review of the judgment has succeeded because of two main reasons:
 - i). The land claimed by the respondent is a lake shore which, under the law, is a protected zone, and held by Entebbe Municipal Council in trust and for the common good of all citizens of Uganda. The law prohibits Entebbe Municipal Council from leasing such land to any person.
 - ii). Although the respondent proved that he was authorised by Entebbe Municipal Council in the year 2007 to operate a restaurant and bar business on the land, he failed to prove that he was permitted by

NEMA to operate business activities on a lake shore which is a mandatory requirement under the law. In the absence of a NEMA permit, the respondent cannot claim any user rights on the disputed land which is a lake shore.

39. Consequently, it is my decision that the conclusion of the court in High Court Civil Suit No.2904 of 2016 that the respondent had proved ownership of the land was an error.

Final order of the court:

40. The judgment of this court in High Court Civil Suit No.2904 of 2016 delivered on the 9 March 2023 is reviewed, and the orders of the court in the said judgment are set aside, and replaced with the following declarations and orders:

- i). That the applicant, respondent and Denis Abitekaniza do not own the land between Plot 4 & Plot 6 Kintu Road, Entebbe Municipality and Lake Victoria; unless permitted by Entebbe Municipal Council and the National Environment Management Authority to temporarily use the land under specified terms and conditions.
- ii). That the land between Plot 4 & Plot 6 Kintu Road, Entebbe Municipality and Lake Victoria is held by the Government through Entebbe Municipal Council, in trust for and for the common good of all the citizens of Uganda.
- iii). That it is prohibited by the law for Entebbe Municipal Council to lease out or otherwise alienate the land opposite Plot 4 and Plot 6 Kintu Road, Entebbe Municipality because it is a lake shore.

- iv). No costs are awarded to the plaintiff in Civil Suit No.2904 of 2016.
- v). Each party shall bear its own costs of this application, all applications between the parties arising from Civil Suit No.2904 of 2016 including Misc. Applications No.91 and 92 of 2024.

IT IS SO ORDERED.



**BERNARD NAMANYA
JUDGE**

7 March 2024

Delivered by E-mail:

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