THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

CIVIL APPEAL NO 020 OF 2013

(Arising from Civil Miscellaneous Application No 32 of 2011 and Original Civil Application No 02 of 2011)

(CORAM: KAKURU, KIRYABWIRE, MADRAMA JJA)

KAYEMBA KIZZA VINCENT} .....APPELLANT

VERSUS

1. SSENFUMA DAUDA
2. NAMAYANJA HASIFA ..... RESPONDENTS

(Appeal from the Ruling of the High Court at Masaka before Hon. Justice Mike Chibita dated 20th July, 2012)

JUDGMENT OF JUSTICE GEOFFREY KIRYABWIRE

I have had the opportunity of reading the Judgment of Brother the Hon Justice Christopher Madrama in draft and I agree with the findings and final decisions and Orders and have nothing more useful to add.

Dated at Kampala this.....24th.....day of .....June..... 2020

Justice Geoffrey Kiryabwire J.A.

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VERSUS

1. **SSENFUMA DAUDA**
2. **NAMAYANJA HASIFA ..... RESPONDENTS**

CORAM: **Hon. Mr. Justice Kenneth Kakuru, JA**
Hon. Mr. Justice Geoffrey Kiryabwire, JA
Hon. Mr. Justice Christopher Madrama, JA

JUDGMENT OF JUSTICE KENNETH KAKURU, JA

I have had the benefit of reading in draft the Judgment of my learned brother Madrama, JA.

I agree with him that this appeal succeeds only to the extent he has set out in his judgment. I also agree with the orders he has propsed.

As Kiryabwire, JA also agrees it is so ordered.

Dated at **Kampala** this 24th day of June 2020.

.....
Kenneth Kakuru
JUSTICE OF APPEAL

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2. **NAMAYANJA HASIFA} .....RESPONDENTS**

(Appeal from the Ruling of the High Court at Masaka before Hon. Justice Mike Chibita dated 20th July, 2012)

JUDGMENT OF CHRISTOPHER MADRAMA IZAMA

This is an appeal from the ruling of Chibita J, judge of the High Court as he then was in Civil Miscellaneous Application No 32 of 2011 for the court to review its earlier ruling issued on 28th February, 2011 in High Court Miscellaneous Application No 02 of 2011.

The 1st Respondent who was the Applicant claimed to be an aggrieved party entitled to apply for review because his interest had been affected by the decision in Miscellaneous Application No 02 of 2011. He claimed to be the occupant of the suit property having bought it from the 2nd Respondent and which land had been the subject of contention between the Appellant and the 2nd Respondent. The 2nd Respondent admitted having sold the property to the 1st Respondent who had made part payment towards the purchase thereof.

The learned trial judge allowed the application on the ground that the ruling made in the revision application had been reached without hearing from the Applicant who was not a party thereof. Secondly, the learned trial judge held that considering the merits of the matter and in a bid to bring litigation to an end, he would review Miscellaneous Application No 2 of 2011 which he set aside. Thirdly, he ordered the 1st Respondent and the 2nd Respondent to pay a sum of Uganda shillings 5,000,000/= as compensation to the Appellant for his property part of which was taken over by the 1st Respondent. Each of respondents to this appeal was to contribute a sum of Uganda shillings 2,500,000/= with each party to bear its own costs.

The Appellant was aggrieved and filed an appeal against the ruling on the following grounds:

1. The learned trial judge erred in law and fact in that he failed to consider the issue whether it was proper to review a judgment 3 times.
2. The learned trial judge erred in law and fact in that he failed to consider the issue whether the 1st Respondent's application for review (Miscellaneous Application No 32 of 2011) was not res judicata.
3. The learned trial judge erred in law and fact in that he failed to consider the fact that the 1st Respondent was not a bona fide purchaser for value but part of the 2nd Respondent's fraudulent transactions.
4. The learned trial judge erred in law and fact in that he failed to appreciate the fact that the dispute between the Appellant and the 2nd Respondent was not registered land but land held under customary tenure which was the subject of a fraudulent sale by the 2nd Respondent to the 1st Respondent.
5. The learned trial judge erred in law and fact when he set aside the entire ruling in Miscellaneous Application No 2 of 2011 without any justifiable cause after noting the illegalities in the sale transaction between the 1st and 2nd Respondent.

6. The learned trial judge erred in law and fact and occasioned a miscarriage of justice when he ordered the Respondents to pay a mere Uganda shillings 5,000,000/= to the Appellant as compensation for his property without taking into account the value of his plot and house, the suffering he has gone through and the expenses he had incurred.
7. The learned trial judge erred in law and fact when he failed to award costs in the High Court and in the courts below to the Appellant.

The Appellant prays that this court allows the appeal and sets aside the ruling and orders of the trial judge and restores the orders of the Chief Magistrates' or other appropriate orders as the court may deem fit. The Appellant further prays that the costs of the appeal and cost in the courts below be paid to the Appellant.

At the hearing of the appeal the Appellant was represented by learned counsel Mr Dennis Kwizera. The Appellants counsel prayed to proceed in the absence of the Respondent's counsel and his prayers were granted upon satisfaction that the Respondent had been duly served and the appeal was heard in the absence of the Respondent. Learned counsel Mr Kwizera adopted his conferencing notes as his submissions with leave of court and judgment was reserved on notice.

Learned counsel gave a detailed background showing that the appeal has a chequered history having commenced in 2001. The facts are that the husband of the 2nd Respondent to this appeal one Abdalla Kakooza sold a plot of land to the Appellant in 2001. The Appellant subsequently occupied the land and constructed a permanent house which he completed in 2004. The 2nd Respondent sued the Appellant together with her husband in the District Land Tribunal of Masaka for trespass on the said plot whereupon a consent judgment was entered between the parties in 2005. Under the consent judgment, the Appellant was required to pay a sum of Uganda shillings 3,000,000/= to the 2nd Respondent within 2 weeks in consideration

of a plot of land. On 14th June, 2005 the Land Tribunal issued a notice to show cause why execution of the consent judgment should not issue and on 16th July, 2005 execution was carried out.

The Appellant filed an application for review seeking orders for varying and setting aside the consent Judgment before the Chief Magistrate on 31st of January 2011 whereupon the Chief Magistrate declared the consent judgment null and void and set it aside. The 2nd Respondent filed an application for revision of the decision of the Chief Magistrates' Court on the ground that it was irregular and the Chief Magistrate illegally reviewed the Land Tribunal decision and acted illegally in exercising jurisdiction to set aside the consent judgment. On 28th of February 2011 in High Court Miscellaneous Application No 2 of 2011, the High Court issued an order setting aside the consent judgment of 2nd April, 2005. The suit property was restored to the Appellant and the Registrar of Titles was directed to rectify the register. The 2nd Respondent preferred an appeal against the decision in Civil Appeal No 59 of 2011. Before the appeal could be decided, the 1st Respondent filed an application seeking for review of the ruling made on 28th February 2011, the application from which the current appeal arose.

The learned trial judge set aside the revision decision in Miscellaneous Application No 2 of 2011 and directed the Respondents to pay the Appellant Uganda shillings 5,000,000/= as compensation for his property hence the appeal.

Learned counsel for the Appellant reduced the grounds of appeal into 5 issues. These are as follows:

1. Whether it was proper for the learned trial judge to hear the 1st Respondent's application for review?

2. Whether the 1st Respondent was a bona fide purchaser for value of the said plot in light of the illegalities in the sale transaction between the Respondents noted by the trial judge?
3. Whether the learned trial judge erred in law and fact in failing to appreciate the fact that the dispute between the Appellant and the 2nd Respondent was not registered land but land held under customary tenure which was the subject of a fraudulent sale by the 2nd Respondent to the 1st Respondent?
4. Whether the learned trial judge applied the correct principles of law in awarding Uganda shillings 5,000,000/= to the Appellant as compensation for his property?
5. Whether the learned trial judge erred in law and fact in failing to award costs to the Appellant in the High Court and in the lower courts?

Issue number 1 discloses points of law and arises from grounds 1 and 2 of the appeal. In ground one the question is whether the learned trial judge erred in law and fact when he failed to consider the issue of whether it was proper to review a judgment three times. In ground 2 of the appeal, the question is whether the learned trial judge erred in law and fact when he failed to consider the issue of whether the 1st Respondent's application for review namely Miscellaneous Application No 32 of 2011 is not res judicata.

The Appellants counsel submitted that section 82 of the Civil Procedure Act Cap 71 provides for an application for review by any person considering himself or herself aggrieved by a decree or order from which an appeal is allowed by the Act but from which no appeal had been preferred. Or by a decree or order from which no appeal is allowed by the Act. He submitted that an appeal had been preferred against the decision that the 1st Respondent sought to review in Civil Appeal No 59 of 2011 and therefore an application for review could not be entertained. Further that during the proceedings the 1st Respondents counsel admitted that the appeal was

subsisting and then only withdrew it after the application had been made. In the premises, he submitted that an appeal had been preferred which had common grounds between the Respondents and an application for review could not stand.

Secondly, the Appellant's counsel submitted that the judgment of the District Land Tribunal had been reviewed in the Chief Magistrates' court and that the application for revision was the result of the reviewed judgment. Under Order 46 rule 7 of the Civil Procedure Rules, subsequent applications for review are banned. The Appellant's counsel relied on the decision of the Court of Appeal in **Kaijuka v Kananura (Civil Appeal No 42 of 2014**) where it was held that the trial judge had no jurisdiction to entertain review of a reviewed judgment. He submitted that the decision of the High Court in Miscellaneous Application No 2 of 2011 was a result of an application for review before the Chief Magistrate and the 1st Respondent made an application for review of an order which was a result of an application for review. In the premises, he submitted that the application for review was barred by the law.

The Appellant's counsel further submitted that the appeal is barred by the doctrine of *res judicata* as provided for under section 7 of the Civil Procedure Act. He submitted that the 1st Respondent in Miscellaneous Application No 32 of 2011 sought to review and set aside the orders made in Miscellaneous Application No 02 of 2011. The issues in the two applications were the same and specifically the suit land and the 1st Respondent was claiming under the 2nd Respondent therefore the issues in Miscellaneous Application No 32 of 2011 were substantially the same as in Miscellaneous Application No 02 of 2011 and had been finally decided by the same court.

Thirdly, the Appellant's counsel submitted that there was no mistake or error apparent on the face of the record to justify a review and the 1st Respondent failed to prove it. He relied on the Supreme Court decision in **Edison Kanyabwera v Pastori Tumwebaze (SCCA No 06 of 2004**) for the

proposition that for an error to be a ground for review, it must be one that is apparent on the face of the record. It must be an error which does not require any extraneous matter to show its incorrectness. It must also be so manifest and clear that no court would permit such an error to remain on the record. An error may be one of fact or law.

I will first consider points of law which may determine the appeal.

Resolution of the Appeal

This is an appeal from the decision of the High Court in an application for review of a decision which had been made in a revision of the Chief Magistrates' decision. The question of whether the matter was properly before the High Court, is a preliminary question the determination of which however depends on the facts. It is a decision on the merits of the point and if determined would resolve the entire controversy without having to go into other questions raised in the appeal. The circumstances of the appeal however require a detailed account of how the matter or dispute arose from the lower court to the Court of Appeal for justice to be done.

I have carefully considered the record of appeal and the matter arose when in Civil Suit Number 118 of 2004 before the Masaka District Land Tribunal, the 2nd Respondent (Namayanja Hasifa) filed an action against the Appellant and her husband (Mr Abdallah Kakooza) for trespass on a plot of land. She prayed for general damages, eviction orders and costs. The plaint before the tribunal disclosed that on 18th September, 2000, she bought the plot in dispute with her husband Mr Abdallah during the subsistence of their marriage and she has 2 children. That in or around October 2004 she saw the development of the building in their plot without her consent. Thereafter she asked her husband Mr Kakooza how he had sold the plot without her consent and he denied selling it. She thereafter asked the Appellant (Mr Kayembe Kizza) how he came to make developments in the disputed plot whereupon

he said that her husband Mr Kakooza had sold it to him. There are 2 written statements of defence on record before the Land Tribunal. Mr Abdallah Kakooza denied having sold the property to the Appellant. Secondly, the Appellant averred in his separate written statement of defence that he knew the 2nd Respondent and her husband Mr Kakooza who were his friends. He had bought the property in dispute from Kakooza Abdullah who is the plaintiff's (the second Respondent to this appeal's) husband not in cash but on "barter trade format" whereupon he was supposed to give windows and doors to finish up the house which he was building and the Defendant takes windows as payment in kind. That in August 2001 the plot was valued at Uganda shillings 1,500,000 which they agreed upon. Thereafter the plaintiff reported in November 2004 to the local Council court.

The matter in the District Land Tribunal was filed in December 2004. By a consent judgment signed by all the parties and dated by the parties on 2nd April, 2005, the suit was settled and the Defendants were requested to pay Uganda shillings 3,000,000/= to the plaintiff (the second Respondent to this appeal) not later than 16th of April 2005 and upon failure to pay the agreed amount (by 16th April, 2005), the Defendant shall vacate the plot/kibanja in dispute without any condition. It was further stipulated that the plot/kibanja becomes the property of the Defendant after paying the agreed amount. Each party shall bear their own costs of the suit. It is material that the consent Judgment was not endorsed by the tribunal until 7th of June 2005.

By 7th of June 2005 the condition for paying not later than 16th of April 2005 under the terms of the agreement ought to have been fulfilled if one was to abide by the terms of the consent judgment.

Apparently, the consent Judgment was executed and the property reverted back to the 2nd Respondent after execution. Execution proceedings on record show that the 2nd Respondent applied for execution of the decree by the District Land Tribunal and a warrant was issued to City & City Mobile

Auctioneers on 30th of June 2005 to put the 2nd Respondent in possession of the suit property. In other words, it was a warrant to evict the Appellant. The Appellant wrote to the District Land Tribunal indicating that he had managed to pay Uganda shillings 1,200,000/= as part payment for the plot and was remaining with a balance of Uganda shillings 1,800,000 which he requested to be allowed to pay within a period of 45 days in 2 instalments. The letter is dated 16th of June 2005 (page 257 of the record).

Further, the Appellant applied in Miscellaneous Application No 34 of 2005 to the District Land Tribunal of Masaka by notice of motion for orders that the Appellant be reinstated in the property from which he was evicted in execution of the warrant issued to City & City Mobile Auctioneers putting the Respondent (the 2nd Respondent to this appeal) in possession of the suit property and for costs to be provided for. The application was issued on 7th of July 2005 (page 284 of the record).

The matter of execution proceedings was handled in Masaka District Land Tribunal Miscellaneous Application No 35 of 2005. The tribunal ruled that the eviction followed a consent judgment dated 2nd April, 2005. The tribunal allowed the Appellant time to complete his obligations since application for execution had been made. The Applicant only managed to pay Uganda shillings 1,300,000/= which the Respondent rejected (the 2nd Respondent to this appeal). The promise of the Appellant to top up the full amount never came to fruition even after two months from the due date. They found the application to set aside execution without merit and dismissed it with each party to bear his or her own costs. They advised the Appellant to collect his deposits from the District Land Tribunal. The decision of the tribunal is dated 20th of June 2006 about one year later (page 53 of the record). The record shows that the parties appeared before the Tribunal on the 15th and 20th of July 2005.

The record also indicates that the Appellant to this appeal further applied to the Chief Magistrates' Court for review of the consent judgment. This was in Miscellaneous Application No 10 of 2008. The application was issued by the Chief Magistrate on 8th of February 2008 (page 271 of record). The application sought for an order that the consent judgment dated 7th of June 2005 be reviewed/varied or set aside. Secondly, for execution of the consent judgment to be declared null and void. Thirdly, for the suit property to be restored to the Applicant and lastly for costs of the application to be paid for. The grounds of the application were that the consent judgment was entered in error and is null and void. Secondly, that the execution of the consent judgment was issued in error and was premature, null and void. Thirdly, for declaration that the sale of the Applicant's house is null and void. Lastly, for a declaration that the entire proceedings are tainted with fraud and bad faith.

The application was opposed but the ruling of the Chief Magistrates' court is not on record. Apparently from the course of events, the application was allowed and the consent Judgment set aside. Subsequently, the 2nd Respondent filed in the High Court of Uganda at Masaka Revision Application No 02 of 2011. It is for orders that the decision of His Worship Katorogo, Chief Magistrate Masaka in an order dated 3rd of December 2010 be revised, varied and quashed. The application had affidavits in support of and in opposition. For purposes of chronology, the application was issued on 20th of January 2011.

The ruling of the High Court is dated 28th of February 2011. The learned trial judge noted that on 8th February, 2008, the Respondent filed an application for reviewing, varying or setting aside the consent judgment entered by the District Land Tribunal. Secondly, he noted that an order declaring as null and void and setting aside the consent judgment was delivered on 31st of January 2011 hence the application. He found that the application fell within the

ambit of section 83 of the Civil Procedure Act. The learned trial judge however went into extraneous matters alien to the revision application and stated as follows:

> I note however, from my extensive perusal of the record, that the current Applicant has not come to court with clean hands and yet it is an acknowledged principle of law that 'he who comes to equity must come with clean hands'. Why, for example, was the husband, a onetime Defendant let off the hook so inexplicably? The allegations of arrest of the Respondent, signing under duress and the sale of property hitherto, ostensibly being redeemed from sale by the husband betray a less than honest intention.
>
> I am also convinced that the buyer, the current occupant of the property had constructive knowledge of the dispute involving the property at hand. The amount purportedly paid for the property betrays a bit of this knowledge.
>
> There is ample evidence that the Respondent paid for the plot and built the house. It is however difficult to find the basis of the award of shillings 8,000,000/=. I accordingly make the following orders: -

The learned trial judge ordered that the District Land Tribunal Consent Judgment of 2 April 2005 is set aside. Secondly, the order that the suit property is restored to the Respondent (Kayemba Kizza Vincent). Thirdly, order that the registrar of lands should accordingly rectify the register. And finally, for each party to bear its own costs.

I need to note that the very essence of the application for revision was that the learned Chief Magistrate had irregularly and without jurisdiction set aside the consent judgment of the parties. Could the High Court again set aside or should the application for revision be refused? Did the orders amount to revision of the decision of the learned chief magistrate?

Further interlocutory proceedings were taken in the matter but I do not need to refer to it. What is material to this appeal is the intervention of a 3rd party Mr Senfuma Dauda, the 2nd Respondent to this appeal. In Miscellaneous

Application No 32 of 2011 said to arise from Miscellaneous Application No 2 of 2011, he applied in the High Court for the High Court to review and set aside the ruling dated 28th of February 2011 in Miscellaneous Application No 2 of 2011. Secondly, for execution of the order in the suits to be stayed and for provision to be made for costs. His grounds were that he purchased the plot from the 2nd Appellant (Mr Kayemba Vincent). Secondly the Applicant acquired more plots of land and increased the size of his land and transformed it from a customary tenure to registered property. Subsequently he built a house thereon and started living in it from 2006. Proceedings were commenced against the 2nd Respondent in the High Court when she was not in possession of the suit property. The court made an order for cancelation of the certificate of title without affording the Applicant a hearing. He stated that the purchase of the suit property was lawful and was not tainted with fraud. The application was issued on 29th of March 2011.

The matter again came for ruling before the High Court and the learned trial judge held that the basis of the application is that the Applicant who is now the 2nd Respondent to this appeal was an aggrieved party and therefore had a right to be heard because an order was made affecting his property. The trial judge noted that the 2nd Respondent did not dispute the fact that she sold the property to the 1st Respondent. He further noted that the matter had been in court for a long time and litigation must be brought to an end at some point. He found that the orders in the ruling and the revision had been reached without hearing from the Applicant because he was not a party and therefore, he should not be penalised without a hearing. In the premises he ordered that the ruling and orders in Miscellaneous Application No 2 of 2011 are set aside. Secondly, he ordered that the Applicant (who is not the 1st Respondent and the 1st Respondent (who is now the 2nd Respondent) will jointly pay Uganda shillings 5 million/= as compensation to the 2nd Respondent Mr Kayemba Vincent (the Appellant to this appeal).

In effect the decision in the Revision Application in Miscellaneous Application No 2 of 2011 was set aside and further orders were made.

This matter has been riddled with a lot of procedural irregularities starting from the Chief Magistrates' Court. Presumably the Chief Magistrates' court took over the role of the District Land Tribunal, the court which entered the consent judgment. The Chief Magistrates' Court would be exercising jurisdiction vested by **Practice Direction No. 1 of 2006** being the **Jurisdiction of Magistrates' Courts in Land Matters**, where the Chief Justice of Uganda enabled by Article 133 (1) (b) of the Constitution of Uganda conferred powers on Magistrates' Courts to exercise jurisdiction over land mattes in accordance with section 95 (7) of the Land Act which conferred jurisdiction on District Land Tribunals in certain land disputes. Direction 1 of **Practice Direction No. 1 of 2006** provides that:

> 1. Following the expiry of contracts of Chairpersons and Members of the District Land Tribunals, Magistrates' Courts presided over by Magistrates of the rank of Magistrate Grade 1 and above shall exercise jurisdiction over land matters in accordance with Section 95 (7) of the Land Act which provides that in each District until a District Land Tribunal is established and commences to operate under the Act, Magistrates' Courts shall continue to have jurisdiction in Land matters as they had immediately before the commencement of the Act.

Section 82 of the Civil Procedure Act requires an application for review of the judgment to be made to the court which passed the decree or made the order. Having stepped into the shoes of the Masaka District Land Tribunal, the Chief Magistrates' Court could only proceed on the grounds for setting aside an agreement of the parties. An agreement of the parties can be set aside on limited grounds. The problem inherent in the entire proceedings before the Chief Magistrates' court is that execution had been completed by the District Land Tribunal and the property been sold after it had passed to the seller. This is apparent from the notice of motion in the Chief Magistrates' Civil Miscellaneous Application No 10/2008 brought by the Appellant in

which one of the grounds was that the sale of the Applicant's house is null and void. The application admitted that there was a sale of the Applicant's house. As noted earlier, the application was issued on 8th February, 2008. The evidence before the court shows that execution had been completed by June 2006 and an application in the Masaka District Land Tribunal Miscellaneous Application No 35 of 2005 had been dismissed on 20th of June 2006. The application for setting aside the consent judgment was made 2 years thereafter.

Sale of immovable property is governed by the Civil Procedure Rules and the Civil Procedure Act. The law is that a purchaser who buys pursuant to execution of a decree acquires good title.

The property was sold by the 2nd Respondent to whom it had been reverted by the process of execution, the 2nd Respondent to this appeal sold the property to the 1st Respondent. The subsequent sale of the house generates a new cause of action and should be the subject of a separate suit. Moreover, where a consent judgment is set aside, the remedy of the parties is to proceed with the suit. That means that evidence has to be adduced and the learned Chief Magistrate ought to have proceeded to determine the suit on the merits. In this case, it is stated that the consent judgment was set aside and the suit was never heard and certain arbitrary orders of payment of compensation were issued. In any case the suit had never been heard in the District Land Tribunal this is simply because the parties settled the suit by consent Judgment. A consent judgment is a contract between the parties.

In **Brooke Bond (T) Ltd v Mallya [1975] EA 266**, the Respondent had sued the Appellant for damages for wrongful dismissal. At the hearing a compromise was entered into under the signature of the parties, their advocates and the judge. Due to some disagreement between the parties thereafter, the learned trial judge set aside the consent judgment. On appeal

to the Court of Appeal from the decision setting aside the consent judgment, Law Ag P. held it at page 269 that:

> The circumstances in which a consent judgment may be interfered with were considered by this court in Hirani v. Kassam (EACA), 19 E.A.C.A. 131, where the following passage from *Seton of judgments and orders,* 7th Edition vol 1 page 124 was approved.
>
> > *Prima facie,* any order made in the presence and with the consent of counsel is binding on all parties to the proceedings or action, and on those claiming under them···and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of court··· or if consent was given without sufficient material facts, or in misapprehension or ignorance of material facts, or in general for any reason which would enable court to set aside an agreement between the parties.

In **Hassanali v City Motor Accessories Ltd and Others [1972] EA 423**, a Consent Judgment was entered against the Respondent for payment in instalments and that in default of any payment the full amount would become due. There was an application to set it aside. It was held by the East African Court of Appeal that the Court could not interfere with a consent judgment except in circumstances that would provide a good ground for varying or rescinding a contract between the parties. In **Purcell v F C Trigell Ltd (trading as Southern Window and General Cleaning Co) and another [1970] 3 All ER 671** Buckley LJ at page 677 held that:

> In my judgment, this order should be regarded as having a binding contractual effect on which the plaintiff was perfectly entitled to insist.

Last but not least Lindley L.J. in **Huddersfield Banking Co. Ltd v Henry Lister & Son Ltd (1895) 2 Ch D page 273** at page 280 held that a consent order operates as estoppels against a party thereto and bars him or her from asserting something different:

> A Consent Order I agree is an order and so long as it stands it must be treated as such, and so long as it stands it is as good an estoppel as any other order.

There are no valid grounds in the notice of motion for setting aside the consent judgment other than perhaps the first ground. The grounds indicated in the pleadings were as follows:

(1) The "consent judgment" was entered in error and it is null and void.
(2) Execution of the "consent judgment" was issued in error and it was premature and it is null and void.
(3) Sale of the Applicants house is null and void.
(4) The entire proceedings at tainted with fraud and bad faith.

The learned High Court trial judge having found that the consent judgment was wrongly set aside, ought to have sent the file back to the Chief Magistrates' Court to hear the suit. In any case, what was the error or mistake of the parties? It was erroneous to proceed to determine the matter on the merits of the suit. The question of sale of the property was a new cause of action that has never been litigated. It was therefore erroneous to issue the orders in question in High Court Miscellaneous Application No 2 of 2011. That notwithstanding, the High Court judge set aside the orders he had earlier issued in the revision application and those orders are no longer for consideration in this appeal. Suffice it to note that the appropriate order in any case was to remit the suit for trial in the Chief Magistrates' Court.

It follows that the subsequent application giving rise to this appeal ought to have been dismissed or struck out because of having set aside the consent judgment, the proper course was to have the parties heard in a trial court.

I shall further make a few comments about the revision application. Under section 83 of the Civil Procedure Act, revision is supposed to consider whether the trial court exercised jurisdiction not vested in it in law or failed to exercise jurisdiction so vested. Furthermore, the revision court could also determine whether the trial court acted in the exercise of its jurisdiction illegally or with material irregularity or injustice. What was the material irregularity or injustice in setting aside the consent judgment? The material

irregularity or injustice was in proceeding to determine the suit after setting aside the consent judgment instead of having the suit determined after hearing or taking evidence in the suit. The appropriate order thereafter was supposed to be to quash the orders of the Chief Magistrate and remit the matter for hearing.

As far as the application for review is concerned, it, from the same premises, commenced on erroneous grounds. However, the High Court had issued an order cancelling the name of the 1st Respondent from the register. That could not be allowed to stand and the application for review was proper to address the problem in the very court which issued the order on the question of the interest of the 1st Respondent who appears to be a registered proprietor of property. In those circumstances, I cannot fault the learned trial judge for reviewing his own judgment in which he issued the original orders affecting the interest of a 3rd party. Having reviewed it, it was not proper to proceed to issue further orders of compensation. It was sufficient to set aside the order directing the register to rectify the register and restore the status quo before he issued that order and thereafter send the matter back for trial.

Having come to the above conclusion, it is unnecessary to proceed with the rest of the grounds of appeal.

In the premises, this appeal is hereby allowed in part and;

1. The judgment of the High Court is hereby set aside and substituted with this judgment.
2. The orders of the High Court in Miscellaneous Application No 2 of 2011 were set aside and we affirm that order.
3. The orders in Miscellaneous Application No 32 of 2011 are hereby set aside.
4. Exercising the powers of this court under section 11 of the Judicature Act, the certificate of title in respect of Buddu Block 323 Plot 344

registered in the names of Senfuma Dauda on 27th of January 2006 shall remain so registered and the registry shall be rectified to reflect that registration unless the property has been transferred to any bona fide purchaser for value.

5. Any of the Parties are at liberty, subject to the law of limitation to bring a fresh suit against any appropriate party before a court of competent jurisdiction.
6. The Appellant's appeal only partially succeeded and each party shall bear his or her own costs of the appeal.

Dated at Kampala the 24th day of June 2020

Christopher Madrama Izama

Justice of Appeal