

5

**THE REPUBLIC OF UGANDA,**

**IN THE COURT OF APPEAL OF UGANDA AT KAMPALA**

**CIVIL APPLICATION NO. 258 OF 2020**

**(ARISING FROM CIVIL APPLICATION NO. 224 OF 2020)**

**(ARISING FROM MISCELLANOUES APPLICATION NO. 219 OF 2020)**

10

**(ARISING FROM CIVIL APPEAL NO. 66 OF 2012)**

**(ALL ARISING FROM CIVIL SUIT NO. 151 OF 1996)**

**1. ROBINNAH MATANDA}**

**2. SUZAN MATANDA}**

**3. SARAH MATANDA}**

15

**4. BETTY KAKAYI}**

**5. ESTHER NAMBUYA}**

**6. JUNIOR MATANDA} .....APPLICANTS**

**7. NIGHT KAKAYI MATANDA}**

**8. MICHAEL WESEKE}**

20

**9. PAUL WAFULA}**

**10. DERRICK WALYAULA}**

**11. MABERI NAKHAIMA}**

**12. FLAVIA MUTONYI MATANDA}**

**VERSUS**

25

**1. P. R. PATEL}**

**2. JOHN NALEMU} ..... RESPONDENTS**

**RULING OF CHRISTOPHER MADRAMA, JA**

5 The Applicants filed this application by Notice of Motion under Section 99 of the Civil Procedure Act, Cap. 71 and Rule 36(1) of the Judicature (Court of Appeal Rules) Directions S.I No. 13-10 for:

- 1) A declaration that the Ruling of this Court dated 7<sup>th</sup> October, 2020 in Civil Application No. 224 of 2020 had an accidental slip or error / mistake and or omission by court.
- 2) An order that the accidental slip or omission or mistake be recalled and corrected with the result that High Court Miscellaneous Application No. 207 of 2015 was for review of the Judge's decision in Civil Appeal No. 66 of 2012 and that the current Notice of Appeal is in respect of the dismissal of the application for review.
- 3) That costs of the application be provided for.

The grounds of the application as averred in the Notice of Motion are:

- 1) The applicants filed Civil Applications No. 219 of 2020 and 224 of 2020 seeking for orders of main and interim stay of execution of the High Court decree in Civil Appeal No. 66 of 2012.
- 2) The said applications followed a Notice of Appeal that had been filed against the orders of the High Court in Miscellaneous Application No. 207 of 2015.
- 3) The said application had sought for review of the Judgement in Civil Appeal No. 66 of 2012 but it was dismissed hence the appeal.
- 4) That upon filing Miscellaneous Application No. 224 of 2020 for an interim order and the submissions thereto, this court delivered ruling in the same on the 7<sup>th</sup> October, 2020 dismissing it.
- 5) That this honourable court contended among others that the decision in the High Court Civil Appeal No. 66 of 2012 had not been challenged, a contention that was not true.
- 6) That by so finding, this court came to a conclusion that there was no appeal pending in this court against the decision of the High Court in Civil Appeal No. 66 of 2012.
- 7) That High Court Civil Appeal No. 66 of 2012 was challenged *vide* Miscellaneous Application No. 207 of 2015.

- 5 8) That there is a notice of appeal pending in this court challenging the decision in Miscellaneous Application 207 of 2015 which was challenging Civil Appeal No. 66 of 2012.
- 9) That the said finding had an accidental slip or omission and or error that should be corrected.
- 10 10) That owing to the above, the Applicants desire that this honourable court revisits its decision.
- 11) That it is in the interest of Justice that this application is granted.

The application is supported by the affidavit of the first Applicant, Robinah Matanda which gives the facts in support of the application. The facts are that the Applicants filed Civil Applications No. 219 of 2020 and No. 224 of 2020 seeking for orders of a main and interim stay of execution, respectively, of the High Court decree in Civil Appeal No. 66 of 2012. Before filing the said applications for stay of execution, the Applicants had filed a Notice of Appeal against the orders of the High Court in High Court Miscellaneous Application No. 207 of 2015 where the Applicants sought for review of the Judgement in Civil Appeal No. 66 of 2012 but it was dismissed. A copy of Miscellaneous Application No. 207 of 2015 and the Ruling of the High Court in the same application was attached to the affidavit of the first applicant as Annexure "E" and "F" respectively. Upon filing Miscellaneous Application No. 224 of 2020 for an interim order and submissions thereto, this court delivered its ruling thereon on the 7<sup>th</sup> October, 2020 dismissing the application on grounds that the Judgement in High Court Civil Appeal No. 66 of 2012 had not been challenged and there was no appeal pending in this court against the decision of the High Court in Civil Appeal No. 66 of 2012. The Applicants contend that this was an error in the decision of court in so far as High Court Civil Appeal No. 66 of 2012 was challenged by Miscellaneous Application No. 207 of 2015 and there is a notice of appeal filed in this court challenging the Ruling of court in Miscellaneous Application No. 207 of 2015. The Applicants prayed that this court allows this application and recalls its decision in Miscellaneous Application No. 224 of 2020 for purposes of correcting the accidental slip or omission.

5 The application was filed together with the submissions on 13<sup>th</sup> October, 2020 but there is no evidence of service of the application and the submissions on the Respondents who have neither replied to the application nor filed written submissions in reply to the Applicants' submissions. The court however, proceeded to consider the application in  
10 view of its mandate under the provisions of Rule 36(1) of the Rules of this Court which enables the court to move on its own motion to recall and correct its decisions for the purpose of giving effect to its intention at the time of delivering its judgement.

15 The Applicants are represented by Messrs. Songon & Co. Advocates while the Respondents were not represented in this application.

#### **Submissions of the Applicants' counsel.**

20 The Applicants' counsel submitted that there is an accidental error or omission in the court's Ruling in Civil Application No. 224 of 2020 in so far as the court held that Civil Appeal No. 66 of 2012 remained unchallenged and there was no substantive appeal in this court to justify the grant of an interim order for stay of execution of the decree and orders of the High Court in High Court Civil Appeal No. 66 of 2012. Counsel contended that there was a challenge of the orders of the High Court in Civil Appeal No. 66 of 2012 and that challenge was in Miscellaneous Application No. 207 of 2015 which  
25 was dismissed by the High Court hereupon the Applicants appealed to this court against the dismissal.

30 Counsel relied on Section 99 of the Civil Procedure Act, Cap. 71 and Rule 36(1) of the Judicature (Court of Appeal Rules) Directions, S.I No. 13-10 and the Supreme Court decision in **Fang Min v Dr. Kajjuka Mutabazi Emmanuel, SCCA No. 06 of 2009** and **Uganda Development Bank Ltd v Oil Sees (U) Ltd, Miscellaneous Application No. 15 of 1997** for the submission that this court has inherent powers to amend or rectify clerical errors in its Judgement or orders for the purpose of giving effect to its intention at the time of making its judgements or orders. He submitted that the present case falls within  
35 the ambit of Section 99 of the Civil Procedure Act and Rule 36 of the

5     Judicature (Court of Appeal Rules) Directions in so far as there was an  
omission or error by the court when it found that Civil Appeal No. 66 of 2012  
had never been challenged and yet Miscellaneous Application No. 207 of  
10    2015, in respect of which the Applicants filed a notice of appeal, was an  
application for review of the decision of the High Court in Civil Appeal No.  
66 of 2012. Counsel prayed that the application is allowed and the Ruling and  
orders of this court in Civil Application No. 224 of 2020 is revisited and  
corrected to rectify the stated accidental error or omission.

### **Ruling**

15    I have carefully considered the Applicants' application and submissions. The  
Applicants are seeking for orders to recall and correct the Ruling in Civil  
Application No. 224 of 2020 delivered on 7<sup>th</sup> October, 2020. Civil Application  
No. 224 of 2020 was an application for an interim order of stay of execution  
of the decree and orders of the High Court in Civil Appeal No. 066 of 2012.  
The application was handled by me exercising powers of a single Justice of  
20    this court. Upon consideration of the application I found that whereas the  
Applicants sought to appeal a decision refusing an application for stay of  
execution, the decision in the appeal decided by the High Court in High Court  
Civil Appeal No. 0066 of 2012 against which the stay was intended remained  
unchallenged. In essence, there was no Notice of Appeal against the  
25    decision of the High Court in High Court Civil Appeal No. 066 of 2012. The  
Notice of Appeal on record was in respect of Miscellaneous Application No.  
207 of 2015 which sought to appeal a refusal of stay of execution. This Notice  
of Appeal could not help the Applicants as envisaged in Rule 6(2)(b) and  
Rule 76 of the Rules of this Court. What is envisaged under the rules is a  
30    notice of appeal from the decision that is sought to be stayed. It was my  
considered decision that the Applicants ought to have filed a Notice of  
Appeal against the decision in the main appeal, High Court Civil Appeal No.  
066 of 2012. I found no basis to issue an interim order since the decree of  
the High Court had not been challenged by way of an intended appeal. I also  
35    held that this rendered the application incompetent and I accordingly  
dismissed it with costs.

5 The Applicants have now brought this application under the provisions of Section 99 of the Civil Procedure Act and Rule 36(1) of the Court of Appeal Rules. Section 99 of the Civil Procedure Act provides that;

99. Amendment of Judgements, decrees or orders.

10 Clerical or mathematical mistakes in Judgements, decrees or orders, or errors arising in them from any accidental slip or omission may at any time be corrected by the court either of its own motion or on the application of any of the parties.

Rule 36 of the Judicature (Court of Appeal Rules) Directions provides that;

36. Correction of errors.

15 (1) A clerical or arithmetical mistake in any Judgement of the court or any error arising in it from an accidental slip or omission at any time, whether before or after the Judgement has been embodied in a decree, be corrected by the court concerned, either of its own motion or on the application of any interested party so as to give effect to what was the intention of the court when judgement was given.

20 (2) An order of the court may at any time be corrected by the court, either of its own motion or on the application of any interested person, if it does not correspond with the Judgement or ruling it purports to embody or, where the Judgement or order has been corrected under sub rule (1) of this rule, with the Judgement or order as so corrected.

25 The above provisions of the law allow this court to recall and correct its Judgements, orders or decrees containing any arithmetical or clerical mistake or any accidental slip or omission. This jurisdiction of court is intended to ensure that the court gives effect to its intention at the time of delivering its judgement or order.

30 According to **Black's Law Dictionary, 9<sup>th</sup> Edition, page 622**, a clerical error is an error resulting from a minor mistake or inadvertence especially in writing or copying something on the record and not from judicial reasoning or determination. It implies that for an error to be clerical, it must be minor in nature and should not go to the root of the decision of the court or affect

5 the substance of the Judgement, decree or order of court. A substantial mistake of fact or law does not amount to a clerical error.

10 In **Fang Min v Dr. Kaijuka Mutabazi Emmanuel, Supreme Court Civil Application No. 06 of 2009**, the Respondent applied to the Supreme Court to recall and correct its Judgement on the ground that there was a discord between the orders of the Supreme Court and that of the High Court. The Supreme Court considered Rule 35(1) of the Judicature (Supreme Court Rules) Directions, which is in *pari materia* with Rule 36(1) of the Judicature (Court of Appeal Rules) Directions held *inter alia* that:

15 It is therefore, now fairly well settled that there are two circumstances in which the slip rule can be applied namely;

- (1) Where the court is satisfied that it is giving effect to the intention of the court at the time when the Judgement was given; or
- (2) In the case of a matter which was overlooked, where it is satisfied beyond doubt, as to the order which it would have made had the matter been brought to its attention.” (See also held in **Uganda Development Bank v Oil Seeds (U) Ltd, Supreme Court Civil Application No. 15 of 1997** and in **Orient Bank Limited v Fredrick Zaabwe and Mars Trading Limited, Civil Application No. 17 of 2007 (SC),**)

25 In **Orient Bank Limited v Fredrick Zaabwe and Mars Trading Limited, Civil Application No. 17 of 2007 (SC)**, the Supreme Court also considered the circumstances under which the slip rule can be applied. They held that as a general rule, the decision of the court on any issue of fact or law are final, and the unsuccessful party cannot apply for its reversal. The principle of finality of the court’s decisions is based on the rationale that it is of great importance in the administration of justice that there should be an end to litigation (See **David Muhende v Humprey Mirembe, Supreme Court Civil Application No. 5 of 2012** and **John Sanyu Katuramu & 49 others v Attorney General of Uganda, Supreme Court Constitutional Application no. 1 of 2016**)

35 In **Orient Bank Limited v Fredrick Zaabwe and Mars Trading Limited; Civil Application No. 26 of 2007 (SC)** at page 7, the Supreme Court cited with approval the decision of the East African Court of Appeal per Sir Charles

5 **Newbold, P in Lakhamshi Brothers Ltd v R. Raja & Sons (1966) EA 313 at p. 314 that:**

10 "A court will, of course, only apply the slip rule where it is satisfied that it is giving effect to the intention of the court at the time when Judgement was given or in the case if a matter which was overlooked, where it is satisfied beyond doubt, as to the order which it would have made had the matter been brought to its attention."

15 Finally, in **McCarthy v Agard [1933] 2 KB 417, CA** it was held that the court has inherent jurisdiction to vary or clarify an order so as to carry out the court's intention or make the language plain or amend it where a party has been wrongly named or described unless this would change the substance of the judgement. Further, in **Ahmed Kawoya Kanga v Banga Aggrey Fred [2007] KALR 164** the court held that:

20 The error or omission must be an error in expressing the manifest intention of the court. Court cannot correct a mistake of its own in law or otherwise even where apparent on the face of the record. Under the slip rule court cannot correct a mistake arising from its misunderstanding of the law.

25 In the application giving rise to the ruling sought to be corrected, neither the pleadings nor the ruling of the High Court in High Court Miscellaneous Application No. 207 of 2015 were attached by the time the court delivered its ruling in Civil Application No. 224 of 2020. The record shows that Civil Application No. 224 of 2020 was filed on 10<sup>th</sup> September, 2020 under rule 6(2)(b), 42(1) and 43(1) & (2) of the Judicature (Court of Appeal Rules) Directions. Ground 2, 3, 4 & 5 of the notice of motion averred that:

- 30 1. That the Applicants filed Miscellaneous Application No. 207 of 2015 against the Respondents which was unfortunately dismissed by the High Court in Mbale.
2. That the dismissal has a direct bearing on the applicants as they are the beneficial owners of the suit property which the 1<sup>st</sup> respondent seeks to alienate.
- 35 3. That the applicants herein sought for leave of the High Court to appeal to this court and the same was granted on the 28<sup>th</sup> day of August, 2020.



5        4. That in the said application, the applicants herein had sought for stay  
of execution but the same was refused by the High Court.

The application was supported the affidavit of the first Applicant, Robinah  
Matanda who stated *inter alia* that the learned Justice Henry Kaweesa  
decided the application in favour of the Respondents to the Applicants'  
10        dismay whereupon the Applicants instructed their lawyers, M/S Songon &  
Co. Advocates to file an application for leave to appeal the Ruling and orders  
in Miscellaneous Application No. 207 of 2015 and for stay of execution of the  
decree.

The Applicants neither indicated what Miscellaneous Application No. 207 of  
15        2015 was about nor bothered to furnish court with the pleadings or Ruling  
of the High Court in Miscellaneous Application No. 207 of 2015. The court  
proceeded to deliver its ruling on the basis of the evidence or materials  
before it at the material time and this is evident from the excerpts of the  
ruling reproduced below:

20        At page 12 line 8-11 of the Ruling;

“I have tried to find the ruling in the High Court Miscellaneous Application No. 207  
of 2015 in vain but can glean from the ruling in Miscellaneous Application No. 283  
of 2019 arising from Miscellaneous Application No. 207 of 2015 what it was about.”

At Page 12 line 23-28 of the Ruling;

25        “Because I cannot trace the ruling in High Court Miscellaneous Application No.  
207 of 2016 (2015) I have considered the affidavit in reply of the Respondent in  
which there are other proceedings which included a ruling in Miscellaneous  
Application No. 247 of 2017 decided by Hon Lady Justice Susan Okalany in which  
she upheld a preliminary objection and dismissed the application with costs.”

30        At page 16 line 19-22 of the Ruling;

“In other words, the Applicants are seeking to appeal a decision refusing an  
application for stay of execution. However, the decision in the appeal decided by  
the High Court in High Court Civil Appeal No. 0066 of 2012 remains unchallenged.”

And finally, at page 18 line 11-14 of the Ruling;

5           “What is on record is an intention to appeal against a ruling in Miscellaneous Application No. 207 of 2017 (2015) which ruling, though not on record, relates to an application for stay of execution.”

10           It is evident from the above excerpts of the ruling sought to be corrected under the ‘slip rule’ that the Applicants omitted to furnish court with the pleadings or Ruling of the High Court in Miscellaneous Application No. 207 of 2015 which they have now attached to their application and marked as annexure E and F.

          This omission effectively excludes the instant application from the scope and application of the slip rule.

15           Secondly, the Applicants did not show that it was the intention of the court at the time of delivering its Ruling in Civil Application No. 224 of 2020 to grant a stay of execution of the orders of the High Court in High Court Civil Appeal No. 66 of 2012 but for the error in respect of the orders sought in Miscellaneous Application No. 207 of 2015. Thirdly, the Applicants did not demonstrate, that the court would have granted the application for stay of execution of the orders of the High Court in Civil Appeal No. 66 of 2012 had the pleadings and Ruling in Miscellaneous Application No. 207 of 2015 been brought to its attention at the time of making its Ruling in the impugned Miscellaneous Application No. 224 of 2020.

25           In any case, an application for review of a judgment proceeds on the premises that there is an application to review a judgment or order where:

- (a) There is a person/applicant who is aggrieved by a decree or order from which appeal is allowed but no appeal has been preferred or
- (b) Where no appeal is allowed; or
- 30       (c) A party is not appealing from the decree or order.

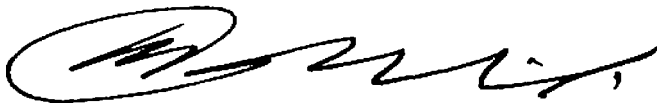
          An appeal lies as of right from an order granting a review application in terms of Order 44 rule 1 (1) (t) which means that such a right resides in the respondents. Applications for review are granted under Order 46 rule 4 of the CPR. However, the review application was not granted. There is no

5 automatic right of appeal under the Civil Procedure Rules where an  
application for review is dismissed and to appeal requires leave under  
Order 44 rule 1 (2) of the CPR. A dismissal of a review application is made  
under Order 46 rule 3 of the CPR. An application for leave to appeal upon  
10 an application for review being dismissed is in the first instance made to  
the court which dismissed the application (the High Court).

To apply for stay of execution of the decree on the basis of an application  
for review of a decree or order is an indirect way to appeal the decree or  
order of the court when no appeal had been preferred as envisaged by  
Order 46 rule 1 of the Civil Procedure Rules. The applicants can only appeal  
15 against the grounds for dismissing the application for review but not the  
decree or order sought to be reviewed.

In the premises, the applicant's application has no merit as there is no error  
or slip of the court in the judgment to warrant any correction. That being the  
case, the application stands dismissed with no order as to costs as the  
20 respondents did not participate in the proceedings.

Dated at Kampala the 21<sup>st</sup> day of May 2021



**Christopher Madrama**

**Justice of Appeal**

5

1

2

3

4

5

6

7