

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPLICATION NO. 165 OF 2021

(Arising from Civil Application No. 44 of 2021)

(Also arising out of Civil Application No. 43 of 2021)

1. HAJJTI AJIRI NAMAGEMBE

2. KYAGULANYI YASIN

3. MUKASA MOSES ::::::::::::::::::::::: **APPLICANTS**

4. ECEGA RICHARD

5. ADUPU SAM

VERSUS

LUKENGE HAKEEM (Administrator

Of the Late Hajji Jaffar Sentamu) ::::::::::::::::::::::: RESPONDENT

BEFORE: Hon. Justice Stephen Musota, JA

(Sitting as a Single Justice)

RULING OF COURT

This application was filed under Rules 2(2), 43 (1) and (2) and 44 of the Judicature Court of Appeal Rules Directions seeking for orders that;

1. The order of this honorable court allowing Civil Application No. 44 of 2021 be set aside and vacated.
2. Civil Application No. 44 of 2021 be fixed for hearing *inter parties*.
3. Costs of this application be provided for.

The applicant's application is premised on grounds laid out in the Notice of Motion and the affidavit in support of the application deponed by Ajiri Namagembe and the grounds are briefly that;

1. Civil Application No. 44 of 2021 was fixed for 26th day of May
5 2021 at 11:00am
2. However Civil Application No. 44 of 2021 was called at 9:00am
which was before the scheduled time of 11:00am.
3. The applicants were at court on the 26th day of May 2021 at
11:00am and found when Civil Application No. 44 of 2021 was
10 already called and determined in their absence.
4. The applicants were not heard in the civil application No. 44 of
2021 for that reason.
5. The applicants are interested in defending civil application No.
44 of 2021 on its merits.
- 15 6. That calling of the above application for hearing before its
scheduled time amounts to sufficient cause to set aside the
ruling.
7. It is just, fair and in the interest of justice that this application
is allowed.

20 The respondent filed an affidavit in reply deponed by Hakeem
Lukenge on the 20th of May 2021 in which he stated that the
applicant's application is misplaced and that the applicant ought to
have filed a reference to a bench of three judges to vacate the interim
order issued in Civil Application No. 44 of 2021. That the respondents
25 cannot just rely on the time factor when up to now, they have never

filed a reply on record. That the applicants have not shown sufficient cause and grounds to restore the application as they are guilty of dilatory conduct. That the applicants have not showed any injustice they would suffer by an interim order preserving the status quo of the estate properties.

Both parties were directed to file written submissions which they did and which will be carefully considered.

Applicant's submissions

Counsel submitted that this application is premised on the right to be heard under Article 28 of the Constitution and that the right to be heard also entails a suit being heard at the time fixed for its hearing. Civil Application No. 44 of 2021 was scheduled for hearing on the 26th day of May 2021 at 11:00am however, the application was called much earlier at 9:00am and it was allowed with costs. Counsel submitted that the applicants were denied a right to be heard in Civil Application No. 44 of 2021 when the application was called for hearing. Counsel argued that there is sufficient cause to set aside the order allowing the application, restore it and fix it for hearing *inter parties*.

Counsel relied on the Supreme Court decision in **Parimal Vs Veena Civil Appeal No. 1467 of 2011** in which sufficient cause was defined to mean adequate or enough, in as much as may be necessary to answer the purpose intended. That in this case, the applicant did not act in a negligent manner and court ought to exercise its discretion to grant this application.

Respondent's submissions

In reply, the respondent's counsel submitted that any party wishing to challenge a judgment approved by a single judge can only do so by making a reference to a panel of three justices. Counsel argued that
5 jurisdiction of court is only granted by statute and that this application is incompetent before this court under Section 9 of the Civil Procedure Act. Counsel argued that this court consisting of a single justice has no jurisdiction to hear and determine this application under Rule 57 of the Rules of this Court. In addition, that
10 the applicant herein did not file any affidavit in reply in Civil Application No. 44 of 2021 under Rule 51 of the Rules of this Court.

Counsel relied on the Supreme Court decision in **Bitamissi Vs Rwabugunda Misc. Application No. 79 of 2014** in which it was held that for court to exercise the power to restore a matter, the applicant
15 has to satisfy court that he or she was prevented by any sufficient cause from appearing when the matter was called for hearing.

Counsel argued that in the present case, the applicants have not shown sufficient cause and grounds to restore the application for interim order as they are guilty of dilatory conduct. Further, that the
20 applicants have not shown any injustice they would suffer by an interim Order of court preserving the status quo since they have been vandalizing the estate properties. Counsel prayed that this application be dismissed with costs to the respondent.

Consideration of the application.

Rule 57 of the **Judicature Court of Appeal Rules Directions S1 13-10** states that;

57. Rescinding of orders.

5 (1) *An order made on an application heard by a single judge may be varied or rescinded by that judge or any other judge of the court or by three judges of the court on the application of any person affected by the order if—*

10 (a) *the order was one extending the time for doing any act, otherwise than to a specific date; or*

(b) *the order was one permitting the doing of some act, without specifying the date by which the act was to be done, and the person on whose application the order was made has failed to show reasonable diligence in the matter.*

15 (2) *An order made on an application to the court may similarly be varied or rescinded by the court. (Emphasis mine)*

For purposes of Rule 57(2), a court is defined under Rule 3(g) of the Rules of this court as;

20 (g) *“court” means the Court of Appeal of Uganda established under article 129 of the Constitution, and includes any division of the court and a single judge exercising any power vested in him or her sitting alone; (Emphasis mine)*

From the above excerpt, Rule 57(2) of the Rules of this court grants the court, which includes a single justice, power to vary or rescind an order made on an application to the court. However, it has to be proved to this court that the applicant has shown sufficient cause to warrant the grant of a rescinding order of an order of this court. The applicant's case is that they were served hearing notices for Civil Application No. 44 of 2021 for 100:00am however, the matter was called for hearing at 9:00am in the absence of the applicants.

Article 28 of the Constitution of the Republic of Uganda provides for the right to a fair hearing and the fact that the application was called for hearing before its scheduled time, denied the applicants herein a right to a fair hearing.

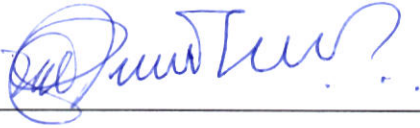
I therefore exercise the powers of this court under Rule 57(2) and Rule 2(2) of this court to allow this application, set aside the order granted in Civil Application No. 44 of 2021 and make the following orders;

1. The order of this court allowing Civil Application No. 44 of 2021 is hereby vacated.
2. Both parties in Civil Application No. 44 of 2021 are directed to file their submissions within 3 days each starting with the applicants from the date of delivery of this ruling.
3. The registrar of this court is directed to fix Civil Application No. 44 of 2021 for hearing *inter parties* before another single justice of this Court.

4. Each party shall bare their own costs of this application.

Dated this 8th day of feb 2021

5



Stephen Musota

JUSTICE OF APPEAL