

# **THE REPUBLIC OF UGANDA**

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

**CIVIL APPLICATION NO. 0190 OF 2021**

*(Arising from Court of Appeal Civil Appeal No. 173 of 2012)*

5 **JOHN KAFEERO SENTONGO ::::::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

**PETERSON SOZI ::::::::::::::::::::::::::::::::::::::: RESPONDENT**

**CORAM: HON. JUSTICE F. M. S EGONDA NTENDE, JA**

10 **HON. JUSTICE STEPHEN MUSOTA, JA**

**HON. JUSTICE CHRISTOPHER GASHIRABAKE JA**

## **RULING OF COURT**

15 This is an application for correction of Court's Judgment brought by  
Notice of Motion filed under Rules 2(2) and 36(1) and (2) of the  
Judicature Court of Appeal Rules Directions for orders that;

1. The judgment and Decree of the Court be recalled and the errors arising from the accidental slip or omission in the judgment of the Court in Civil Appeal No. 173 of 2012 be corrected.
- 20 2. Costs of the application be provided for.

The application is supported by the affidavit of the applicant, John Kafeero Sentongo in which he states the grounds upon which this application is premised. The grounds are briefly that;

1. The applicant filed Civil Appeal No. 173 of 2012 arising from High Court Civil Appeal No. 42 of 2003 as well as Chief Magistrates Court of Mengo Civil Suit No. 124 of 1996.
2. That the appeal was determined in the applicants favour and made a declaration that the suit land comprised in Plot 1011, Kyadondo Block 273 belongs to the applicant and also made an award of costs of the appeal and lower courts to the applicant.
3. The court however omitted to make other orders as prayed for by the applicant in his plaint in the Chief Magistrates Court to wit;
  - i. An eviction order against the defendant and or his agent/servants.
  - ii. A permanent injunction to restrain the respondent and/or his servants/agents from entering and/or occupying the said land.
  - iii. General damages.
  - iv. Interest at court's rate.
4. The above omitted orders are incidental and consequential to the Courts finding that the property belongs to the applicant.
5. The applicant has failed to gain access to the property declared by this Court to belong to him.

6. The applicant is entitled to an award of general damages as a result of the respondent's trespass which order was omitted by the Court.

7. It is in the interest of justice that the judgment be recalled in order to give effect to the Court's manifest intention of declaring the property as belonging to the applicant.

For the respondent, Pastor Peter Sozi filed an affidavit in reply and after giving a background to the application, stated that the orders for eviction being sought by the applicant are not incidental to or consequential orders that flow from the determination of Civil Appeal No. 173 of 2012.

### **Representation**

At the hearing of the application, Mr. Gilbert Nuwagaba appeared for the applicant, while Mr. Joel Osekenyi appeared for the Respondent.

### **Submissions of Respective counsel**

In his submission, Counsel Gilbert Nuwagaba for the applicant stated that the applicant obtained a decision of this court to the effect that the suit property comprised in Plot 1011 Kyadondo Block 273 belongs to him which was not sufficient to allow him access the property. That this court omitted, upon review of the case in the Chief Magistrates Court, to make orders that would allow the applicant get access to the property decreed to belong to him. The applicant had sought orders of eviction of the respondent from the suit property as well as an order of a temporary injunction restraining the respondent

from entering upon or occupying the said land. He also sought for general damages for the unlawful entry.

Counsel relied on the decision in **Elizabeth Nalumansi Wamala Vs Jolly Kasande and 2 others Supreme Court Civil Application No. 5 29 of 2017** in which it was held that recalling a judgment for rectification is not limited to the slip rule in Rule 35 but extends to the courts inherent powers in Rule 2(2) of the Rules of this court.

For the respondent, counsel submitted that Rule 36(1) and (2) of the rules of this court applies to correction of a clerical or arithmetical  
10 mistake in any judgment of the court. That the applicant is seeking for orders of eviction and not correction of clerical mistakes made by court and that this rule does not provide room for further determination as sought by the applicant herein. Counsel argued that entertaining this application would automatically require the  
15 court to pay attention to the respondent's interest on the suit land as a lawful occupant.

Counsel argued further that following the determination of the parties' dispute on 4/5/2021, the applicant approached Buganda Land Board for renewal of his lease and lied to the Board that he was  
20 in possession of the suit land. That the powers sought by the applicant are a preserve of a registered proprietor of land with a subsisting lease on the land.

## **Consideration of application**

We have carefully perused the notice of motion, the affidavits in support and objection to the same. We have also considered the submissions of the parties and the authorities they relied upon in support and opposition to this application. The circumstances under which this court is required to apply slip rule under Rules 2 (2) and 36 of the Rules of this Court to correct the error or injustice have been put beyond doubt in a number of authorities.

The Supreme Court case of **David Muhenda VS Humprey Mirembe SCCA No. 5 of 2012** summarizes the circumstances as follows:-

*“Under Rule 2 (2) of the Judicature (supreme Court Rules) Directions S1 11-13, This court has power to recall its judgment and make orders as may be necessary for achieving the end of justice. In doing so, it is not limited to rule 35 of the rule of this court, see for example Livingstone Sewanyana VS Martin Alier Misc. Application No. 40 of 1991 and Nsereko Joseph Kisukye VS Bank of Uganda, Civil Appeal No. 1 of 2012 and Orient Bank Ltd VS Fredrick Zaabwe and another, Civil Application No. 17 of 2007. In Nsereko Joseph Kisukye case, for example, the court recalled the judgment and made clarifications on the orders it had made to make them implementable.*

We must note that the power of the court in this regard is not open ended. This principle is based on the decision of **Lakhamshi**

**Brothers Ltd VS R. Raja and sons [1966] EA 313** page 314 where Sir Charles Newbold P. stated;

5 “.....There are circumstances in which the court will exercise its jurisdiction and recall its judgment, that is, only in order to give effect to what clearly would have been its intention had there not been an omission in relation to the particular matter. But this application and the two or three others to which I have referred go far beyond that. It asks, as I have said, this court in the same proceeding to sit on its own previous  
10 judgment. There is a principle which is of the greatest importance in the administration of justice and the principle is this, it is in the interest of all persons that there should be an end to litigation”.

*This principle was restated in the case of Fangmin VS Dr. Kaijuka Mutabazi Emmanuel SCCA No. 06 of 2009”.*

15 A slip order will only be made where the court is fully satisfied that it is giving effect to the intention of the court at the time when judgment was given, or in the case of a matter which was overlooked, where it is satisfied beyond reasonable doubt, as to the order which it would have made had the matter been brought to its attention. **See UDB Vs  
20 Oil Seeds (U) Ltd Civil Application No. 15 of 1977.**

In the instant case we are persuaded that the order of this court declaring the appellant as the lawful owner of the suit land inadvertently omitted to grant the appellant (applicant herein) vacant possession of the suit land. The respondent’s counsel’s arguments  
25 are ambiguous and inapplicable to the present case. The

respondent's counsel went into a detailed argument of ownership of the suit land, which issue has already been dealt with by this court in Civil Appeal No. 173 of 2012. This court could not have intended to grant ownership of the suit land to the applicant and yet deny him  
5 vacant possession.

We find that there was a mistake on the face of the record. It was a manifest intention of the Court when it made the decision from which this application arises to grant ownership of the suit land to the applicant together with vacant possession of the land.

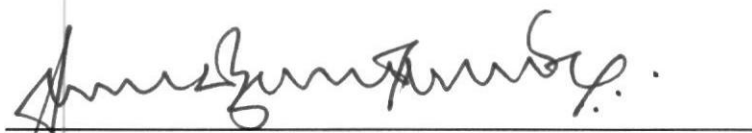
10 Regarding the issue of general damages, it is trite law that these are such as the law would presume to be a direct natural or probable consequence of the act complained of. General damages are awarded upon Courts discretion. It is trite law that general damages are awarded not to punish the wrong party, but restore the innocent  
15 party in a position he or she could have been had the damages not occurred. These requirements cannot be determined at the level of appeal where evidence is not adduced in order to determine the quantum of general damages to be awarded. Award of general damages cannot be regarded as a correction of an error in our  
20 decision. This is not a case in which the appellant should have been granted general damages for trespass to land or interest on the same.

In view of the above analysis, we allow this application under Rule 36 of the rules of this court and adjust the judgment accordingly to include the following orders;

1. An order for eviction of the respondent and/or his agents from the suit land.
2. A permanent injunction to restrain the respondent and/or his agents from entering and/or occupying the suit land.

5 Each party shall bear its own costs of this application.

We so order.



10 **Fredrick Egonda-Ntende,**

**JUSTICE OF APPEAL**



**Stephen Musota,**

15 **JUSTICE OF APPEAL**



**Christopher Gashirabake,**

**JUSTICE OF APPEAL**

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20/06/2022  
Applicant  
  
D.D.

*Handwritten notes:* dhad hup