

**THE REPUBLIC OF UGANDA  
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA  
CONSOLIDATED CIVIL APPLICATIONS NOS. 121 AND 277 OF 2020  
(Arising from Court of Appeal Civil Appeal No. 61 OF 2018)**

**MAJOR (RTD) ROLAND KAKOOZA MUTALE:.....APPLICANT**

**VERSUS**

**BALISIGARA STEPHEN:.....RESPONDENT**

**CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA  
HON. MR. JUSTICE STEPHEN MUSOTA, JA  
HON. MR. JUSTICE REMMY KASULE, AG. JA**

**RULING OF ELIZABETH MUSOKE, JA**

The two highlighted applications were filed by the applicant Mr. Mutale against the respondent, Mr. Balisigara. Both applications arise out of the judgment of this Court rendered in Civil Appeal No. 61 of 2018 (Musoke and Musota, JJA and Kasule, Ag. JA).

In Civil Application No. 277 of 2020 ("the Slip Application"), Mr. Mutale is seeking this Court to correct an alleged material error/slip in the Judgment rendered in Civil Appeal No. 61 of 2018.

Once the slip/error has been corrected, and considering that he was the unsuccessful party in the relevant appeal, Mr. Mutale seeks in Civil Application No. 121 of 2020 (certificate application) to be granted a certificate of importance to lodge a third appeal to the Supreme Court. In the same application, he also seeks this Court to grant an order of stay of execution of its decision in the relevant appeal, pending disposal of the third appeal he intends to lodge in the Supreme Court.

**Background**

Mr. Mutale and Mr. Balisigara have been involved in a dispute over a piece of land situated in Luwero District. Both parties are agreed over the physical

location of the land to which the dispute relates. In 2012, the dispute over the suit land was taken before the learned trial Chief Magistrate for determination, and he determined it in favour of Mr. Balisigara. Mr. Mutale's appeal to the High Court lodged against the decision of the learned trial Chief Magistrate was dismissed, and his further appeal therefrom to this Court was also dismissed.

The two lower Courts considered the evidence and came to the conclusion that Mr. Balisigara was the true owner of the suit land, and Mr. Mutale, merely a trespasser thereon. This Court did not consider the merits of the appeal before it, but struck it out deeming it to have been filed in a manner that was in contravention of the law. The determinations of fact of the lower Courts remain undisturbed.

I observe that the crux of the slip application, is the applicant's contestation as to the correct description of the suit land, as recognized in the Lands Register. I note that, in 2012, when Mr. Balisigara sued Mr. Mutale in the Luwero Chief Magistrate's Court vide Civil Suit No. 138 of 2012 over the suit land, he stated in his Plaintiff, that the description of the suit land was Bulemezi Block 574 Plot 28 at Magoma measuring 114.388 hectares. He claimed that he was the registered proprietor as per the relevant Certificate of Title, which he produced in evidence. Mr. Balisigara claimed that Mr. Mutale had trespassed on the suit land.

In a Written Statement of Defence (WSD) filed on 6th August, 2012, Mr. Mutale disputed the plaintiff's claims of ownership of the suit land. His defence was that the Certificate of Title to the suit land relied on by Mr. Balisigara was a forgery, and he laid out the justification for so claiming. Mr. Mutale pleaded that he had bought the suit land before Mr. Balisigara and was occupying it legally. In an amended WSD filed in 2014, Mr Mutale set out further claims as to the fraudulent manner of acquisition of the Certificate of Title to the suit land by Mr. Balisigara.

In his judgment, the learned trial Chief Magistrate (H/W Rutakirwah) noted that the Certificate of Title relied on by Mr. Balisigara showed that the suit land is at Magoma. He observed that this was at variance with the evidence adduced at the trial which was that the suit land was at Kidula, Matembe in Luwero District. The learned trial Chief Magistrate, however, was of the view that the fact that it was indicated on the title that the land was at Magoma was an error which could be rectified by the Lands Registrar, and Mr. Balisigara could approach the Lands Registrar for that purpose. It is not clear whether Mr. Balisigara, did so. Thus for purposes of the learned trial Chief Magistrate's judgment, the description of the suit land remained as stated in the plaint, that is "Bulemezi Block 574 Plot 28, land at Magoma".

On appeal to the High Court, Namundi, J. in a judgment dated 16th November, 2017, also noted Mr. Mutale's allegations that Mr. Balisigara's title was fraudulent, but stated that no evidence had been placed on record to prove that fraud. Namundi, J. therefore upheld the authenticity of the title adduced by Mr. Balisigara. Further, upon reappraising the evidence on record, the Judge agreed with the findings of the learned trial Chief Magistrate that Mr. Balisigara is the true owner of the suit land. He dismissed Mr. Mutale's appeal. Thus, the material on record is that the suit land Certificate of title adduced by Mr. Balisigara bears correct particulars.

On appeal to this Court, and after considering the record of appeal, this Court summarized the history of the case as brought out by the record, which indicated that the Certificate of Title adduced by Mr. Balisigara had never been cancelled. Thus, in the background to the appeal in my judgment in Civil Appeal No. 61 of 2018, I stated that the dispute between the parties was related to land described as "Bulemezi Block 574 Plot 28, land at Magoma.

Mr. Mutale claims that Mr. Balisigara's title was cancelled by order of the Lands Registrar dated 23rd June, 2015 (See: Annexure No. 2 to the Affidavit in support of the slip application). This alleged cancellation happened after

the hearing in the trial Court was concluded, and thus it was not brought to the attention of the trial Court.

However, although, the alleged cancellation happened before the High Court heard the appeal against the decision of the trial Court, Mr. Mutale did not think it necessary to bring the alleged cancellation to the High Court's attention. This is something that he could have been done by seeking leave to adduce additional evidence.

Mr. Mutale also did not seek leave from this Court, when it considered Civil Appeal No. 61 of 2018, to adduce evidence of the alleged cancellation. Therefore, it must be reiterated that the description of the suit land as borne out by the Court record is Bulemezi Block 574 Plot 28 at Magoma measuring 114.388 hectares, as indicated in my Judgment in Civil Appeal No. 61 of 2018.

### **Representation**

At the hearing, the applicant opted for self-representation, although Mr. Arthur Katongole, learned counsel who was previously retained by the applicant was present in Court. Mr. Ahebwa Stewart and Mr. Amanyamba Caleb, both learned counsel jointly represented the respondent.

I will begin by resolving the slip application. I have carefully studied the pleadings, considered the submissions of the parties and the law applicable in the circumstances.

The applicant submitted that there was an error in the relevant judgment of this Court whereby the suit land was given a wrong description as Bulemeezi Block 574 Plot 28 land situated at Magoma whereas the true description of the suit land should be Block 574 Plot 28 land situated at Matembe in Luwero District. According to the applicant, the description of the suit land set out in this Court's judgment is fictitious and misleading and should be rectified. The applicant further submitted that under **Rule 36 of the Judicature (Court of Appeal Rules) Directions S.I 13-10**, this Court has the power to correct errors of the nature highlighted above. He also cited the decision of

the England and Wales High Court in **Avis M & E UK Ltd vs. Multiplex Construction Ltd [2019] EWHC 169 (TCC)** for the proposition that a Court may correct an error at any time when such error is brought to the Court's attention. He prayed this Court to correct the above highlighted errors.

In response, counsel for the respondent submitted that there was no error relating to the description of the suit land in the relevant judgment. This Court rightly made reference to the description of the suit land as contained in the decisions of the two lower Courts set out as Bulemezi Block 574 Plot 28 land situated at Magoma measuring 114 hectares. Counsel contended that what the applicant is seeking is to have this Court conduct a fresh trial based on new facts and evidence that were never adduced before the trial Court or the first appellate court, a course which this Court is precluded from taking. He cited the Supreme Court decision of **John Sanyu Katuramu and 49 Others vs. Attorney General, Constitutional Appeal No. 3 of 2006 (unreported)** in support of his submissions.

Counsel further submitted that, moreover, the applicant's claim about amendment of the register in 2015 to change the description of the suit land is no longer the correct position. The amendment was reversed and thereafter further subdivisions done. As of today, the description of the suit land is Bulemezi Block 574 Plot 35 land at Matembe.

For those submissions, counsel urged this Court to find that there was no error in the relevant judgment and to dismiss the slip application.

I have studied the submissions of both sides. With regard to correction of clerical errors in a judgment of this Court, **Rule 36 (1)** of the **Rules of this Court** provides as follows:

**"36. Correction of errors.**

**(1) A clerical or arithmetical mistake in any judgment of the court or any error arising in it from an accidental slip or omission may, at any time, whether before or after the judgment has been embodied in a decree,**

**be corrected by the court concerned, either of its own motion or on the application of any interested person so as to give effect to what was the intention of the court when judgment was given.**

**(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 judgment or ruling it purports to embody or, where the judgment or order has been corrected under subrule (1) of this rule, with the judgment or order as so corrected."**

I note that a judgment may be said to have a material error or a "slip", which this Court may be moved to correct, as in the present case, when there is a clerical or arithmetical error or an accidental slip or omission in the said judgment. The main question for determination in the slip application, is whether there was an error in the judgment of this Court, with respect to the description of the suit land, as claimed by Mr. Mutale.

I note that at paragraphs 2 through to 9 of his affidavit in support of the slip application, the evidence of the applicant in support of the slip application reveals, not a material error/slip in the judgment of this Court, but rather new matters that the applicant, Mr. Mutale wants this Court to consider. These matters, concern the alleged cancellation of Mr. Balisigara's title to the suit land, and issuance of a fresh title to the suit land in the applicant's names. Whatever the truth or lack thereof in the said allegations, the same cannot by any stretch be considered as an error/slip.

I also note that the respondent offers a different version of the suit land in his affidavit in reply. Thus, the applicant and the respondent each raise new matters that were not raised either in the trial Court, the first appellate Court or during hearing of the second appeal in this Court. It must be stated that the present slip application is a post judgment application that has arisen after this Court has delivered its judgment in Civil Appeal No. 61 of 2018. It is my view, that this Court is functus officio and cannot reopen a matter which it has concluded so as to consider the new matters that the applicant has raised in his affidavit. This point was made clearly in the decision of the

Supreme Court of India in **Sunita Jain vs. Pawar Kumar Jain & Ors, Case No. 174 of 2008**, where it was held:

**"...as a general rule, as soon as judgment is pronounced or order is made by a Court, it becomes functus officio (ceases to have control over the case) and has no power to review, override, alter or interfere with it."**

Accordingly, I would conclude that there was no material error/slip in the relevant judgment of this Court, and that this Court is functus officio to determine the new matters raised by the applicant in his affidavit in support of the slip application. I would therefore find no merit in the slip application, and I would dismiss it with costs.

I now move on to determine Civil Application No. 121 of 2020 (certificate application). As stated earlier in the introduction, Mr. Mutale filed the certificate application to move this Court to grant him a certificate of importance to lodge an appeal to the Supreme Court from this Court's judgment in Civil Appeal No. 61 of 2018. In the same application, the applicant also seeks this Court to order a stay of execution of its judgment in the relevant appeal pending the hearing and final disposal of the said intended appeal to the Supreme Court.

The evidence in support of the certificate application is contained in an affidavit filed by the applicant.

The respondent opposed the certificate application, and filed an affidavit in support of his case.

I note that the matter from which the relevant appeal to this Court arose, emanated from a trial in a Chief Magistrate's Court. Pursuant to **Section 6 (2)** of the **Judicature Act, Cap. 13**, a further appeal to the Supreme Court from this Court's decision may only be lodged if the applicant obtains a certificate from this Court that the intended appeal would concern a matter of law of great public or general importance. The provision states as follows:

**"6. Appeals to the Supreme Court in civil matters.**

**(1) ...**

**(2) Where an appeal emanates from a judgment or order of a chief magistrate or a magistrate grade I in the exercise of his or her original jurisdiction, but not including an interlocutory matter, a party aggrieved may lodge a third appeal to the Supreme Court on the certificate of the Court of Appeal that the appeal concerns a matter of law of great public or general importance, or if the Supreme Court considers, in its overall duty to see that justice is done, that the appeal should be heard."**

When Civil Application No. 121 of 2020 was called for hearing, the Court ordered the applicant who had opted for self-representation, and the respondent, to file written submissions, according to a schedule set by the Court. Written submissions were filed for the respondent, but none for the applicant.

I have carefully considered the parties' pleadings, the submissions filed on Court record, and the applicable law and authorities. In accordance with Section 6 (2) of the Judicature Act, Cap. 13 referred to earlier, when determining, certificate of importance applications, like the present one, this Court will be aiming to determine whether the intended appeal to the Supreme Court would concern matters of law of great public or general importance. The said matters of law, must arise out of the relevant decision of this Court from which the appeal to the Supreme Court is intended to be lodged.

At paragraph 9 of his affidavit in support, the applicant formulates the matters of law which the intended appeal to the Supreme Court will be concerned with as follows:

- "(i) As well Article 42 of the Constitution provides for a right to just and fair treatment in administrative decisions. Court as a judicial body and has the duty to act in accordance with Article 42 of the Constitution to observe the rights guaranteed by Article 28 of the Constitution which is non-derogable and inviolable under Article 44 of the Constitution.**
- (ii) The Court of appeal did not analyze the issue of jurisdiction and the Court failed to analyze the fact that the suit property is located**



**in Magoma yet it is Plot 28 Block 574 Bulemezi located at Kidula Village, Kabunyata Parish Matembe Kamila Subcounty Luwero District.**

- (iii) The Applicant lodged Civil Appeal No. 61 of 2018 against the Judgment and Orders of Honourable Justice Godfrey Namundi of the High Court of Uganda which was delivered on 16<sup>th</sup> November 2017 after he upheld the Judgment and decree of His Worship Praff Rutakirwah passed on 19/11/2015 in Civil Suit No. 138 of 2012 in the Chief Magistrates Court of Luwero.**
- (iv) On the 23/6/2020, this Honourable Court dismissed my appeal and upheld the decision of the lower Courts.**
- (v) Being dissatisfied with the Judgment of this Honourable Court, I wish to be granted leave to file an appeal in the Supreme Court.**
- (vi) Misc. Appl. No. 0021 of 2010 in which the applicant sought to set aside the decree passed against him in Civil Suit No. 0019 of 2009 on grounds that there wasn't effective service of the process and that the subject matter of the suit was before another Court in a suit the applicant had filed earlier (sic).**
- (vii) The Court of Appeal passed a Judgment against the Applicant and leave has to be granted to the Applicant to the Supreme Court as the Applicant has serious triable issues of law and fact to be tried in this case and the abovementioned points of law justify the grant of a certificate of urgency as they present points of requisite locus and illegality.**
- (viii) Under Section 6 (1) of the Judicature Act, the intended appeal of the Applicant to the Court of Appeal was against a decree the High Court Commercial Division and striking out the Applicant's Notice of Appeal was made under Rules 43 (1) & (2), 44 (1), 82 and 83 of the Court of Appeal Rules Directions and that Decision was an interlocutory order of the Court of Appeal and by striking out the Notice of Appeal, it meant that the entire Appeal was struck out and in effect the Court of Appeal confirmed the Judgment of the High Court and the entire appeal would be disposed of. (sic)**

- (ix) **The Supreme Court of Uganda will be the Third Appellate Court in this matter having originally arisen from the Chief Magistrates Court of Entebbe and later the High Court Commercial Division. The respondent would therefore need leave to appeal to the Supreme Court under S.4 of the Judicature Act which provides that an appeal shall lie to the Supreme Court of Uganda from such decisions of the Court of Appeal as are prescribed by the Constitution, the Judicature Act or any other law but under S.7 of the Judicature Act the respondent would need leave and a Certificate of importance under the Judicature Act and Art. 132 (2) of the Constitution.**
- (x) **The Supreme Court has inherent power to make such orders as may be necessary for achieving the ends of justice.**
- (xi) **The intended appeal will be rendered nugatory if a stay of execution and stay of proceedings is not granted by the Court of Appeal against the implementation of the Judgment /Ruling/ Decree and Orders of the Court of Appeal and payment of the costs pending the hearing and disposal of the Applicant's appeal.**
- (xii) **The applicant has promptly filed a Notice of Appeal against the decision of the Court of Appeal and important questions of law of great public importance and or general importance arises in the intended appeal.**
- (xiii) **It is in the interest of justice and just and proper that the Court of Appeal grants leave to appeal to the Applicant so that they can file their appeal to the Supreme Court.**
- (xiv) **The Supreme Court as the last Appellate Court in Uganda has an overall duty to see that justice is done and it is just and equitable that this application be heard and allowed on its merits in the interests of justice, fairness and to prevent abuse of Court process."**

In his affidavit in reply, the respondent deponed that the applicant failed to demonstrate in his pleadings and evidence, that his intended appeal to the Supreme Court would concern any matter(s) of law of great public or general

importance as required by law. The respondent therefore prayed this Court to find no merit in the present application.

Counsel for the respondent submitted that leave for the applicant to appeal to the Supreme Court should be denied because the intended appeal would not involve any matter of law of great public or general importance as required under **Section 6 (2)** of the **Judicature Act, Cap. 13** for grant of such leave. For description of matters of law of great public or general importance, counsel cited the authority of **Charles Lwanga Masengere vs. God Kabagambe and 2 Others, Civil Application No. 125 of 2009** (unreported) and the Kenya Supreme Court decision in **Hermanus Phillipus Steyn vs. Giovanni Gneccchi-Ruscione, Application No. 4 of 2010 (unreported)**. Counsel contended that none of the points raised in paragraph 9 of the application qualify as points of law of great general or public importance. Most of those points were raised and resolved in the lower Courts and it would not be appropriate for such matters to be raised again on a third appeal to the Supreme Court.

I have noted the submissions for the respondent. In my view, the points that the applicant identifies in paragraph 9 above, are neither properly formulated nor public or general in nature. Most of those points are not even points of law but rather those of fact. Here, I bear in mind the natural and ordinary meaning of the related words "public" or "general" as employed in Section 6 (2) of the Judicature Act, Cap. 13. According to the **Merriam Webster Dictionary (2021)**, the word "public" is defined as follows:

**"...of [something], relating to or affecting all the people or the whole area of a nation or state"**

The word "general" is defined in the following sense in the same Dictionary:

**"...[something] involving, applicable to or affecting to the whole"**

Therefore, guided by the above definitions, it is my opinion that the questions which this Court may certify for determination by the Supreme Court in an intended third appeal, must be questions of law which affect or

relate or are applicable to the nation at large, and not just to the parties in the individual case. There are no such questions raised by Mr. Mutale in the present certificate application.

Accordingly, I would decline to certify that Mr. Mutale's intended third appeal to the Supreme Court against the judgment of this Court in Civil Appeal No. 61 of 2018 would concern any matter of law of great public or general importance. Further, as without such certification, no appeal lies against this Court's decision in the relevant appeal to the Supreme Court, I would decline to grant the order sought by Mr. Mutale to stay execution of the decision of this Court rendered in Civil Appeal No. 61 of 2018. I would dismiss Civil Application No. 121 of 2020 with costs to the respondent.

I would dismiss Civil Application No. 121 of 2020, with costs to the respondent. I would also dismiss Civil Application No. 277 of 2020, with costs to the respondent.

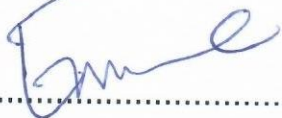
In conclusion, I would set out the decision of the Court as follows:

By unanimous decision (Musoke and Musota, JJA and Kasule, Ag. JA), Civil Application No. 277 of 2020 is dismissed with costs to the respondent.

By majority decision (Musoke, JA and Kasule, Ag. JA; Musota, JA dissenting), Civil Application No. 121 of 2020 is also dismissed with costs to the respondent.

**It is so ordered.**

Dated at Kampala this ..... day of ..... 2021.

10th Jan 2022  


.....  
**Elizabeth Musoke**

Justice of Appeal

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THE REPUBLIC OF UGANDA

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IN THE COURT OF APPEAL OF UGANDA

AT KAMPALA

**Consolidated Civil Applications Nos. 121  
and 277 of 2020**

*(Arising from Court of Appeal Civil Appeal No. 61 of 2018)*

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**Major (Rtd) Roland Kakooza Mutale :::::::::::::::::::: Applicant**

**Versus**

20 **Balisigara Stephen :::::::::::::::::::: Respondent**

**Coram: Hon. Lady Justice Elizabeth Musoke, JA  
Hon. Justice Stephen Musota, JA  
Hon. Mr. Remmy Kasule, Ag. JA**

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**Ruling of Hon. Justice Remmy Kasule, Ag. JA**

30 This Ruling will first resolve Civil Application No. 277 of 2020  
because of the need to maintain proper sequence.

The Applicant, through **Rule 36** of the Rules of this Court seeks to  
correct, under the Slip Rule, an apparent clerical error that he

asserts is in the Judgment of this Court delivered on 23<sup>rd</sup> June, 2020 in **Court of Appeal Civil Appeal No. 61 of 2018**. The Applicant was the Appellant in that Appeal against the Respondent.

The alleged clerical error, according to the applicant, relates to the status of the Certificate of Title of the suit land, Bulemezi Block 574 Plot 28 located at Magoma, Luwero District.

An Affidavit deponed to by the Applicant supports the Application.

The Respondent opposed the Application and filed in Court an Affidavit in reply supporting the grounds for opposing the Application.

Both the Applicant and Respondent filed and proceeded by written submissions, with the permission of Court.

Learned Counsel Arthur Katongole appeared for the Applicant while Ahebwa Stuart and Caleb Amanywa were for the Respondent.

The essence of the submission of the Applicant is that according to the records he had been able to access in the offices of Registrar of Titles, Bukalasa Land Office, Ministry of Lands, Bulemezi Block 574 Plot 28 land located at Magoma of an acreage of 114.388 hectares, the subject matter of litigation in **Civil Appeal No. 61 of 2018** and also in the Courts below, is non-existent.

It is those who purported to sell the suit land to the Respondent who had fraudulently moved the land office to act as if that land Bulemezi Block 574 Plot 28 land at Magoma was in existence whereas not. When the land office found out this fraud, the Commissioner Land Registration, after holding a public hearing

involving all stakeholders, issued an order of cancellation of that  
60 title, amongst others, on 23<sup>rd</sup> June, 2015. The Registrar of Titles,  
Bukalasa Land Office, effected the cancellation order by issuing an  
Amendment Order Instrument No. BUK 13041 dated 16<sup>th</sup> July,  
2015 cancelling the said Title and this fact was communicated by  
the Land Office to the Respondent and to the Chief Magistrate's  
65 Court, Luwero, where, at that time, the said land was the subject  
of litigation in **Civil Suit No. 138 of 2012** between the Respondent  
(Plaintiff) and the Respondent (Defendant).

The above position being the status quo of the suit land, it was  
submitted for the Applicant, that it was necessary to correct the  
70 Judgment delivered in **Court of Appeal Civil Appeal No. 61 of  
2018** to reflect the correct position. The said correction by the  
Court of Appeal was also to automatically affect the Judgment of  
the High Court dated 16<sup>th</sup> November, 2017 in **High Court at  
Kampala Civil Appeal No. 54 of 2015** and also the Judgment  
75 dated 10<sup>th</sup> November, 2015 in Chief Magistrate's Court, Luwero  
**Civil Suit No. 138 of 2012**, wherein the error as to the correct  
status of the suit land had been committed.

The Applicant relied on **Axis M&E (UK) Ltd and Another vs  
Multiplex Construction Europe Ltd [2019] EWHC 169** as  
80 authority that once it had been established that it was legitimate  
to correct an initial error the effect of that decision permitted and  
required that any corrections consequent upon the correction of  
an initial error may be made.

The Applicant thus prayed that, what to him was both an error of  
85 fact and a common error be corrected by allowing this Application  
with costs.

The Respondent opposed the Application through his Affidavit in  
reply dated 11<sup>th</sup> May, 2021, which was clearly dated and duly  
signed by the deponent before a Commissioner for Oaths. There  
90 was thus no merit in the contention of the Applicant by way of a  
preliminary submission that the said Affidavit was defective.

According to the Respondent, there was no error in the Judgment  
of this Court of Appeal delivered in **Civil Appeal No. 61 of 2018**  
that called for any correction because this Court as well as the  
95 High Court and the trial Chief Magistrate's Court Luwero, all  
properly stated the background and the particulars of the suit  
land, the subject of their respective decisions. The Applicant, by  
pursuing this Application was indirectly inviting this Court to re-  
sit in a re-hearing of the already determined **Court of Appeal Civil**  
100 **Appeal No. 61 of 2018.**

The Respondent thus prayed for the Application to be dismissed  
with costs.

In resolving this Application it is necessary to set out the principles  
that govern the "*Slip Rule*" doctrine that **Section 99 of the Civil**  
105 **procedure Act, Cap. 71 and Rule 36(1) of the Rules of this**  
**Court** provide for.

**Section 99 of the Civil Procedure Act** provides that clerical or  
mathematical mistakes in Judgments, Decrees or Orders, or errors  
arising in them from any accidental slip or omission may at any





110 time be corrected by the Court of its own motion or on application  
of any of the parties.

**Rule 36(1) of the Rules of this Court** is in the same terms as  
**Section 99 of the Civil Procedure Act**, but goes further to provide  
that any interested person may apply for the correction and that  
115 the purpose of the correction is: *“So as to give effect to what was  
the intention of the Court when Judgment was given”*.

The Supreme Court as an Appellate Constitutional Court held in  
**Constitutional Appeal No. 3 of 2006: John Sanyu Katuramu  
and 49 Others vs Attorney General** that while a Court of law has  
120 the power to recall its Judgment and make orders as may be  
necessary for achieving the ends of justice, such a power of the  
Court is not open ended. Such a power cannot amount to a re-  
hearing of a cause because:

*“the decision of this Court on any issue or law is final, so that  
125 the unsuccessful party cannot apply for its reversal”*.

Therefore the operation of the Slip Rule must not be resorted to as  
an indirect means to move the Court to sit on appeal in its own  
Judgment and thus circumvent the principle of finality of the  
Court’s decisions. See: **Lakhamshi Brothers Ltd vs R. Raja &  
130 Sons [1966] EA 313**.

The error or omission being corrected must be one expressing the  
manifest intention of the Court. See: **UDB vs Oil Seeds (U) Ltd  
Civil Application No. 15 of 1977**<sup>(s.c.i)</sup> The Court cannot correct a  
mistake of its own in law even where that mistake is apparent on  
135 the face of the record. The Court cannot correct a mistake that is  
the result of that Court’s misunderstanding of the law. See: **David**



**Muhenda vs Humphrey Mirembe SCCA No. 5 of 2012 and Ahmed Kawoya Kanga vs Banga Aggrey Fred [2007] KALR 164.**

140 Subject to the above, the Court has power to recall its Judgment and make orders as may be necessary for achieving the ends of justice such as, for example, making clarifications on the orders the Court may have made so as to make them implementable: See: **Nsereko Joseph Kisakye vs Bank of Uganda: Civil Appeal No. 1 of 2012** (SCU)

145 The Court record clearly shows that the Chief Magistrate's Court, Luwero, held a full trial and on 10<sup>th</sup> November, 2015 and delivered Judgment in **Civil Suit No. 138 of 2012**. One of the issues resolved in that suit was the location and description of the suit land. The trial Court observed that both the Appellant and  
150 Respondent were on the same suit land each one having cattle thereon. Both claimed to have acquired the said land from the same vendors, that is the family of the late Kagodo.

The Court considered the evidence of respective parties and their witnesses as to the exact location and description of the suit land  
155 and came to the conclusion that the land was located at Kidula/Matembe and that the description of the land on the Certificate of Title as being "land at Magoma" was an error on the part of the Registrar of Titles. See: pages 164 and 165 of the Record of Appeal in Court of Appeal Civil Appeal No. 61 of 2018.

160 The trial Chief Magistrate's Court also found in his Judgment in **Civil Suit No. 138 of 2017** that the Appellant had hired the land for grazing on his cattle for a particular period from the vendors to whom he had paid some hiring fees.



At the end of the period of hire, the Appellant had been required  
165 by the vendors to vacate the land. The Appellant had refused to  
do so. The vendors then sold the very land Bulemezi Block 574  
Plot 28 to the Respondent and the Title was transferred and  
registered into his names.

The Respondent then occupied and started using the land. The  
170 Appellant continued resisting to vacate the suit land. The  
Respondent sued him for trespass in Luwero Chief Magistrate's  
Court **Civil Suit No. 138 of 2012**, that gave rise to the already  
stated Appeals to the High Court i.e. **CA No. 54 of 2015** and this  
Court of Appeal i.e. **CA No. 61 of 2018**.

175 It is by way of defence in the Luwero Chief Magistrate's Court **Civil  
Suit No. 138 of 2012** that the Appellant claimed that he had  
bought the suit land from the vendors, the Kagodo family.

The Luwero Chief Magistrate's Court having resolved the issue of  
the location and description of the suit land, as already earlier  
180 stated, and the Appellant now the Applicant in this Application  
being dissatisfied with the Judgment of the Chief Magistrate,  
Luwero, appealed to the High Court at Kampala in **High Court  
Civil Appeal No. 54 of 2015**.

The learned High Court Appellate Judge (Namundi, J.) thoroughly  
185 re-appraised all the evidence adduced, the law availed and the  
conclusions arrived at by the trial Chief Magistrate, before he  
resolved to uphold the Judgment of the trial Chief Magistrate  
Luwero by dismissing the Appellant's Appeal in the Judgment  
delivered on 16<sup>th</sup> November, 2017.

190 The very subject of the Applicant's Application in this Application which the Applicant purports to present as an error on the face of the record, was dealt with by His Lordship of the High Court in his Judgment on pages 203-205 of the "Amended Memorandum of the Record of appeal" in **Court of Appeal Civil Appeal No. 61 of 2018**.

195 The assertion that the trial Chief Magistrate's Court, Luwero, had ignored consideration of evidence that the Certificate of Title of the suit land was cancelled by the Commissioner for Land Registration, was exhaustively dealt with by His Lordship, the Appellate High Court Judge.

200 The remedy for the appellant, if dissatisfied with the holding of the High Court Appellate Judge on that issue, was to appeal against the said holding by lodging an appeal that is proper in law to this Court of Appeal. The Appellant failed to do so as the appeal he lodged, that is Civil Appeal No. 61 of 2018 was wrong in law and  
205 was so disposed of by this Court of Appeal.

Accordingly by lodging this Application, the Applicant is indirectly moving this Court to re-sit and re-hear him in a matter that he failed to successfully pursue in his Court of Appeal **Civil Appeal No. 61 of 2018**. This is contrary to the law.

210 I find no merit in the Applicant's Application No. 277 of 2020. I dismiss the same.

The second Application to determine in this Ruling is **Civil Application No. 121 of 2020** whereby the applicant seeks a Certificate of Importance to lodge a third appeal to the Supreme  
215 Court against the decision of this Court in **Civil Appeal No. 61 of 2018** delivered on 23<sup>rd</sup> June, 2020.



In the same Application the applicant also seeks for an order of stay of execution of the Judgment in Civil Appeal No. 61 of 2018 pending determination of the intended third appeal to the Supreme Court.

**Section 6(2) of the Judicature Act** required the Applicant, as a party seeking to lodge a third Appeal to the Supreme Court having been aggrieved by the Chief Magistrate's Court, Luwero Judgment in Civil Suit No. 138 of 2012 that gave rise to High Court at Kampala Civil Appeal No. 54 of 2015 and later to Court of Appeal Civil Appeal No. 61 of 2018, to first apply to the Court of Appeal for a Certificate of the Court of Appeal that the intended third appeal to the Supreme Court concerns a matter of law of great public or general importance.

A thorough perusal of the Affidavit of the applicant in support of this application shows that the Applicant did not raise any matter showing that the intended appeal to the Supreme Court concerns a matter of law of great public or general importance, that is a matter relating to or affecting all the people or nation or state of Uganda, involving, applicable to or affecting the whole as opposed to just affecting, involving or applicable only to the particular interest of the Applicant.

The Applicant thus never discharged his responsibility in this regard. He has not satisfied this Court that there are any questions of law which affect or relate or are applicable to society as a whole and at large, that justify to be referred to the Supreme Court by way of a third appeal for appropriate determination.


Accordingly, I dismiss Civil Application No. 121 of 2020 for want of merit.

245 As to costs I award to the Respondent as against the Applicant, the costs of both dismissed Applications, namely Civil Applications Nos. 121 and 277 of 2020.

Dated at Kampala this ..... day of ..... **2021**.

12<sup>th</sup> Jan 2022

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.....  
**Remmy Kasule**  
**Ag. Justice of Appeal**

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20<sup>th</sup> July 2021

**THE REPUBLIC OF UGANDA**

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

**CONSOLIDATED CIVIL APPLICATIONS NO. 277 AND 121 OF  
2020**

5 *(Arising from Civil Appeal No. 61 of 2018)*

**MAJOR (RTD) ROLAND KAKOOZA MUTALE ::::::: APPELLANT**

**VERSUS**

**BALISIGALA STEPHEN :::::::::::::::::::: RESPONDENT**

10 **CORAM: HON. JUSTICE ELIZABETH MUSOKE, JA**  
**HON. JUSTICE STEPHEN MUSOTA, JA**  
**HON. JUSTICE REMMY KASULE, AG. JA**

**RULING OF HON. JUSTICE STEPHEN MUSOTA, JA.**

15 I have had the benefit of reading in draft the judgments of my learned  
brother Hon. Justice Remmy Kasule, Ag. JA and my sister Hon.  
Justice Elizabeth Musoke, JA.

I agree that Civil Application No. 277 of 2020, seeking for orders that  
a material error/slip rule obtains as to the status of certificate of Title  
20 of Block 574 Plot 28 located at Magoma, is devoid of merit. The  
operation of the Slip Rule must not be resorted to as an indirect  
means to move Court to sit on appeal in its own judgment and as a

result circumvent the principle of finality of the Court's decisions. The Court cannot correct a mistake that is a result of that courts misunderstanding of the law or facts. Civil Application No. 277 of 2021 ought to be dismissed with costs to the respondent.

5 With regard to Civil Application No. 122 of 2020, it is my considered view that leave ought to be granted to the applicant to lodge a third appeal to the Supreme Court against the decision of this court in Civil Appeal No. 0061 of 2018.

10 The grounds upon which this application is sought and the matters of law of the intended appeal have been ably laid out in the judgment of Hon. Justice Elizabeth Musoke, JA and I find no reason to repeat the same here. My decision is based on two reasons. First, that the letters of Administration upon which the respondent obtained ownership of the suit land were allegedly not legally granted by court  
15 and were based on a forgery.

The alleged conveyance of the suit land to the respondent was based on letters of administration vide Administration Cause No. 24 of 1998 secured by the vendor, Yakobo Kagodo. However, the applicant also found that the alleged owner, Yokobo Kagodo died in 1948 as  
20 evidenced from the mother title which named Yakobo Kagodo as 'deceased'. The letters of administration granted by the Chief Magistrates Court in the same Administration Cause were in respect of the estate of the late Nantumbwe Faith and not Yakobo Kagodo. This, if found true, would certainly taint the subsequent transactions  
25 with fraud that I would opine should be determined by court. None



of the Courts from the Chief Magistrate to this Court sufficiently addressed this revelation to unfold the mystery of the legality of ownership. This can only be addressed by a higher court than this court, otherwise this would tantamount to this court sitting on  
5 appeal in its own decision.

This case is similar to the Supreme Court decision in the case of **Attorney General and another Vs Estate of the Late James Mark Kamoga and another Civil Appeal No. 8 of 2004**. In that case, the respondents instituted Civil Suit No.1183 of 1997 against the two  
10 appellants and 10 other persons, seeking *inter alia* a declaration that they were the lawful owners in freehold title of land, part of which was held by the 1<sup>st</sup> appellant on lease, and other parts of which had been leased by the 2<sup>nd</sup> appellant to the said 10 persons in diverse parcels. The appellants defended the suit, and were jointly  
15 represented by legal officers in the Attorney General's Chambers, who amended the Written Statement of Defence (WSD) twice. The first amendment was dated and filed on 13th November 1998, and the second was dated and filed on 15<sup>th</sup> September 2000.

Subsequently, however, counsel for the respondents negotiated a  
20 settlement with counsel for the two appellants alone, and on 31<sup>st</sup> August 2001, they signed a consent judgment, which was filed on 24<sup>th</sup> September 2001 and was duly entered by the Deputy Registrar on the same date. Nearly six months after the consent judgment was entered, the appellants, applied for orders that  
25 this Honourable Court doth review the Consent Judgment/Order

entered on the 24<sup>th</sup> September 2001 and that the said Consent Judgment/Order be set aside.

5 The respondents opposed the application and averred that the allegation of fraud was not pleaded for the first time in the 2<sup>nd</sup> amended WSD but had been implied even in the 1<sup>st</sup> amended WSD. He also averred that the consent judgment was arrived at in consequence of a compromise settlement he proposed, to the effect that in consideration of the 1<sup>st</sup> respondent conceding to the lifting of a court injunction in another suit, the 1<sup>st</sup> appellant should consent to judgment being entered in civil suits Nos.1183/97 and 1349/99, in favour of the 1<sup>st</sup> respondent.

10 The respondents instituted Civil Suit No.1183 of 1997 against the two appellants and 10 other persons, seeking *inter alia* a declaration that they were the lawful owners in freehold title of land, part of which was held by the 1<sup>st</sup> appellant on lease, and other parts of which had been leased by the 2<sup>nd</sup> appellant to the said 10 persons in diverse parcels. Both the Court of Appeal and the Supreme Court found that litigation in the above matter had not concluded the issues pertaining to fraud and that the same ought to be determined by the filing of proper pleadings where evidence would be adduced and issues of fraud determined. The case was referred back to the High Court where fresh pleadings regarding the issue of fraud were filed.

The Supreme Court further held that:

25 *“Despite the courts below having differed in their conclusions on the issues in this case, neither based its conclusions on the*

principle that a consent judgment can only be interfered with if it is vitiated on any of the aforesaid grounds. The learned trial judge allowed the application for review, solely on the premise of discovery of new and important evidence or matter, coupled with his finding that there was no negligence or derelict of duty by Joseph Matsiko in failing to discover the matter prior to the consent judgment.”

It is my considered view that the issue of fraud in grant of Letters of Administration, which led to the subsequent registration of the respondent on the impugned certificate of title was never adjudicated upon by the court. In my opinion, this court, having realized that there was an alleged fraudulent grant of letters of Administration, which subsequently led to registration of the respondent on the suit land, cannot turn a blind eye to the alleged fraud because Civil Appeal No. 61 of 2018 was filed on issues of technicality.

**Section 6** of the **Judicature Act** states that:

*6. Appeals to the Supreme Court in civil matters.*

*(1) ...*

*(2) Where an appeal emanates from a judgment or order of a chief magistrate or a magistrate grade I in the exercise of his or her original jurisdiction, but not including an interlocutory matter, a party aggrieved may lodge a third appeal to the Supreme Court on the certificate of the Court of Appeal that the appeal concerns a matter of law of great public or general importance, or if the*

Supreme Court considers, in its overall duty to see that justice is done, that the appeal should be heard. (Emphasis mine)

5 In addition, the description of the land at the Chief Magistrates Court was unclear. The Certificate of Title relied on by the respondent stated the land to be located at Magoma. Also, the land was stated to be located at Kidula, Matembe. Because of the gaps in the lower Courts proceedings, this Court was not able to address these pertinent issues. All this evidence points to uncertainties that need to be resolved.

10 It is my finding that this is a dispute that warrants grant of leave to appeal to the Supreme Court for the reasons stated above.

I would therefore grant the applicant leave to appeal to the Supreme Court and to preserve the appeal, I would also grant an order of stay of execution and Injunction of the orders of this court in Civil Appeal  
15 No. 0061 of 2018. I make no orders as to costs.

Dated this \_\_\_\_ day of \_\_\_\_\_ 2021

10/1/2022



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**Stephen Musota**  
**JUSTICE OF APPEAL**