

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

COMMERCIAL COURT DIVISION

HCT-00-CC-MA-0532 OF 2004

(Arising from HCT-00-CC-CS-0763-1994)

Habre International Trading Company Ltd

Applicant

Versus

Kampala City Council

Respondent

Legislation referred to:

1. *Civil Procedure Rules*

BEFORE: THE HONOURABLE MR. JUSTICE FMS EGONDA-NTENDE

RULING

1. The head suit from which this application arises was heard and determined on 12th November 2002. It was dismissed on the ground that the pleadings for the plaintiff were signed by an advocate who had no practising certificate at the time the plaint was filed. The applicant did not appeal. Two years later he filed this application seeking to review the decision dismissing the suit. This application was initially heard by my brother, Okumu Wengi, J., but it was subsequently passed on to me, as the judge that had heard and decided the decision sought to be reviewed. This is my ruling in the matter.

2. As far as I can gather from the application it is contended for the applicant that 'it has been discovered after a search that the firm of M/S Kasirye & Company Advocates was indeed a partnership with Peter Paul Kusiima as the second partner and the counsel who drafted and filed the plaint in H.C.C.S. No.763 of 1994 who at the time had a valid practising certificate contrary to the findings of the court.' This would appear to be essentially the thrust of the ground put forth in support of this application.
3. Hussein Abdalla, the managing director of the applicant, swore one of the affidavits in support of this application. He makes, inter alia, the following averments,
 - '4. That the applicant has after a diligent search discovered that indeed the objection was baseless and unfounded as firm of M/s Kasirye & Co. Advocates was at the time a partnership with Dominic Kasirye and Peter Paul Kusiima as its partners and the plaint in H.C.C.S.No. 763 of 1994 was signed and filed by Peter Paul Kusiima who was then in possession of a practicing certificate.
 5. That I am advised by the applicant's counsel whose advise I verily believe to be true that the discovery of the fact that counsel who drafted and filed the plaint in the said suit on behalf of the applicant indeed had a valid practising certificate which fact could not be discovered at the time of the dismissal of the suit that the applicant can apply for review of the court's decision.'
4. Mr. Paul Kusiima swore two affidavits in support of the application and in rebuttal to the affidavit of Mr. John Nyombi against the application. Mr. Kusiima states that he signed and filed the plaint in issue. He further states that Mr. Dominic Kasirye could not have signed the plaint as he was dead at the time the plaint was signed and filed.
5. In opposition to the application two affidavits, sworn by Mr. Nelson Nerima, and Mr. John Nyombi were filed. Mr. Nelson Nerima contends that the applicant is guilty of laches in bringing this application. Mr. Nyombi attached to his affidavit a report of a handwriting expert on the signature of Mr. Dominic Kasirye on the partnership deed, compared with one on the particulars registered with the Registrar of Business names.

6. The law under which this application is brought is stated to be Order 42 Rules 1, 2, and 8 of the Civil Procedure Rules, now referred to as Order XLVI (46) with rules still bearing the same numbers. I shall set it out.

‘1(1) Any person considering himself or herself aggrieved—

(a) by a decree from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed,

and from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his or her knowledge or could not be produced by him or her at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him or her, may apply for a review of

judgement to the court which passed the decree or made the order.’

7. In order for an application for review to succeed on the ground of discovery of new and important matter or evidence, it is imperative for the applicant to show that such new matter or evidence, was not only not within his or her or its knowledge, but that it was not discoverable at the time, by the exercise of due diligence. It is not enough to repeat these expressions. The factual basis for such claim must be laid before the court.
8. The ground advanced by the applicants is that they have discovered that the judgment made in this suit was based on a fact that is not true. And that is that the pleadings were signed, not by Mr. Dominic Kasirye but Mr. Paul Kusiima, and Mr. Kusiima had a practising certificate. This was a matter that was peculiarly in the knowledge of the applicant company and its managing director. When it was raised, the applicant’s lawyers could have ascertained this information from the applicant straight away. They could have sought an adjournment, to investigate the matter, as it may have taken them by surprise. Or they could have applied to call evidence on this matter before the court made a decision. They did neither.

9. In this application, I am unable to see an explanation, or strict proof, of the claim that this so called new evidence, was not in possession of, or could not have been discovered with due diligence, by the applicant. All the applicant required to do when the objection was raised at the conclusion of the trial, was to request for time, and call Mr. Kusiima, who had presented the plaint to court, and he would have explained this matter, especially given the fact that Mr. Dominic Kasirye, died before this suit was filed.
10. I am satisfied that there is no sufficient ground for review of the judgment of this court that has been put forth by the applicant. I dismiss this application with costs.

Signed, dated and delivered at Kampala this 23rd day of August 2006

FMS Egonda-Ntende

Judge