THE REPUBLIC OF UGANDA,

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

HCT-01-LD-CR-NO. 001 OF 2022

(Arising from HCT-01-LD-CR-NO. 001 OF 2019)

(Both arising from Civil Suit No. 007 of 2013)

1. **ELIAS KAKOOZA**
2. **NALUBEGA ANNE**
3. **DIIDA MARY**
4. **KAJUMBA MARY**
5. **AGANYIRA MADRIME**
6. **KIMERA TADEON**
7. **MUWONGE JOSEPH :: APPLICANTS**

VERSUS

1. **AHAISIBWE STEPHEN**
2. **ABIGABA FRANCIS :: RESPONDENTS**

BEFORE HON. MR. JUSTICE VINCENT EMMY MUGABO

RULING

This is an application for review of a decision of this court in **HCT-01-LD-CR-NO. 001 OF 2019**. It is made by way of notice of motion under the provisions of section 82 and 98 of The Civil Procedure Act, and Order 46 rules 1 & 2, and Order 52 rules 1 & 3 of The Civil Procedure Rules (CPR) seeking for orders that;

a) The proceedings, ruling and orders that arose from **HCT-01-LD-CR-NO. 001 OF 2019** be reviewed and set aside
b) Costs of this application be provided for

The application was supported by the affidavit of Elias Kakooza, the 1st applicant and supplementary affidavit in support deposed by the 2nd

applicant, Nalubega Anne. The grounds of the application are briefly as follows;

a) That this court heard and determined **HCT-01-LD-CR-NO. 001 OF 2019** when the applicants were not parties but that the orders therefrom were against them and therefore the applicants were condemned unheard
b) That the applicants in the said **HCT-01-LD-CR-NO. 001 OF 2019** were fictitious persons and as a result, and as a result, people who were not parties to the same ruling ended up taking land belonging to the applicants herein.
c) The respondents herein who were applicants in **HCT-01-LD-CR-NO. 001 OF 2019** did not intend to file the same, were not aware of the application and had never given instructions to anyone to file the same
d) That it would be just and fair that this application is granted to prevent the injustice of the applicants losing their property unheard.

Both respondents deposed affidavits in reply. The 1st respondent deposed that he did not have anything to do with HCT-01-LD-CR-NO. 001 OF 2019 which was in fact brought to his attention when he was served with the present application. He also deposed that he was not aware of the person that used his name to file and pursue HCT-01-LD-CR-NO. 001 OF 2019.

The 2nd respondent deposed that a group of people including Mwesige, Kyomuhendo, Ben, Gorreti and others went to him and convinced him to sign the affidavit in HCT-01-LD-CR-NO. 001 OF 2019 when he was drunk after promising to pay him. He did not understand their intention and he did not know what they were using the affidavit for. Further that he did

not instruct anyone to commence or prosecute HCT-01-LD-CR-NO. 001 OF 2019 in his name.

Background:

The brief background of this matter is that the 1st respondent together with the 3rd-6th applicants filed Civil Suit No. 07 of 2013 against the 2nd respondent and 7th applicant in the Magistrate's court of Kyenjojo. The 1st applicant herein was the trial magistrate. The dispute was in regard to the estate of the late Bulandina Matama. The parties proposed a consent judgment which was signed by some plaintiffs but rejected by others hence its abandonment for a full trial.

The 2nd – 7th applicants without the knowledge and consent of the other parties presented the abandoned consent before the trial magistrate (now 1st applicant) who endorsed the same, allegedly with the aim of acquiring an interest in part of the land from Kimera Tadeo. The trial magistrate then issued a warrant of vacant possession without issuing a notice to show cause why execution should not issue, which warrant expired before it was executed but the same was renewed by the Chief Magistrate and execution ensued evicting the respondents and demolishing buildings on the land. Later, the said Kimera Tadeo sold part of the land to the 1st applicant who proceeded to obtain a certificate of title to the same.

The present respondents filed Revision Application No. 001 of 2019 challenging the proceedings before the magistrate's court and the same succeeded. It was initially heard by Justice Masalu Musene and ruling delivered by Justice Winifred Nabisinde.

During the determination of the revision application, Justice Nabisinde found that the value of the suit land in the magistrate's court was over

and above the pecuniary jurisdiction of the magistrate. She also found that the trial magistrate exercised his jurisdiction irregularly when he endorsed a consent that was not signed by some of the parties to the suit. All the transactions that followed after the irregular proceedings like parceling and sale were cancelled during the revision.

The 1st applicant had bought part of the land from Kimera Tadeo and acquired a certificate of title to the same. This title was also cancelled. The transaction that had also been carried out by the applicants herein were cancelled, hence this application.

Representation and hearing;

The Applicants are represented by Mr. Victor A. Businge of Ngaruye Ruhindi, Spenser & Co. Advocates. The respondents are unrepresented. Counsel for the applicants has filed written submissions that I have considered in this ruling.

Court's Determination

Before I delve into the merits of this application, I need to note that HCT-01-LD-CR-NO. 001 OF 2019 was heard by Justice Wilson Masalu Musene who has since retired and ruling delivered by Justice Winifred Nabisinde who is currently not at this circuit. The present application for review of the said ruling is before me. I am alive to the decision in ***Outa Levi Vs Uganda Transport Corporation [1975] HCB 353*** where it was held that an application for review ought to be made to the judge who made it except where the said judge is no longer a member of the bench. I am also alive to **Order 46 rule 2 of the CPR** which states as follows;

> *"An application for review of a decree or order of a court, upon some ground other than the discovery of the new and important matter or*

evidence as is referred to in rule 1 of this Order, or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the judge who passed the decree or made the order sought to be reviewed."

The above provision gives the court wider powers to entertain applications for review of decisions of other judges except those premised on grounds other than discovery of new matters of evidence or error apparent of the face of the record. This is a proper application for me to exercise the jurisdiction of the court.

The only issue for court's determination is **whether the applicants have sufficient grounds for review.**

Section 82 of the Civil Procedure Act and the decision in ***Busoga Growers Co-operative Union Ltd V Nsamba & Sons Ltd H.C.M.A No. 123 of 2000*** lay down the circumstances under which an application for review can be brought. In addition, **Order 46 Rule 1 of the Civil Procedure Rules** and the case of ***FX Mubuuke Vs UEB HCMA No. 98 of 2005*** offer considerable guidance in as far as the grounds for a review application as concerned.

Section 82 of the Civil Procedure Act which governs applications for review of court orders/judgment provides as follows;

"82. Review.

Any person considering himself or herself aggrieved—

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

(b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order on the decree or order as it thinks fit."

The provisions above are replicated in **Order 46 CPR** amplifies on the law by providing for the considerations when granting an application for review. It provides as follows;

"1. Application for review of judgment.

(1) Any person considering himself or herself aggrieved—

(a) by a decree or order 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 who from the discovery of new and important matter of 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 the 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 judgment to the court which passed the decree or made the order." (The underlining is for emphasis).

The considerations were restated in ***Re-Nakivubo Chemists (U) Ltd (1979) HCB 12,*** where Manyindo J, as he then was, held that the three cases in which a review of a judgment or orders is allowed are those of;

a. *Discovery of new and important matters of evidence previously overlooked by excusable misfortune.*
b. *Some mistake apparent on the face of record.*
c. *For any other sufficient reasons, but the expression "sufficient" should be read as meaning sufficiently analogous to (a) and (b) above.*

Of the three above, it is not clear the ground under which the instant application is brought. From the affidavit in support, the 1st applicant complains of the fact that he was not a party to the revision cause and yet the resultant decision affected his proprietary interest in his land and led to the cancellation of his certificate of title when he was not given a right to be hear. In the first place, I need to note that the 1st applicant was not a party to the revision cause because he was not a party to the decision that was sought to be revised. In fact he is the one that made the decision that was sought to be revised. He was the trial magistrate.

Could it be said that this application is brought on the ground of discovery of new and important matter of evidence? The applicants could have specified which parts of evidence they discovered and that were not available to them when the decision was made. This is not the case. Could it be under the aspect of "error apparent on the face of the record"? Then the applicant could have specified what error appears on the face of this court's record in the revision cause. The fact that a decision was taken that affects the applicants' proprietary interests in the land does not make this an error on the face of the record as to entitle him to file an application for review. This phrase is expounded upon in ***Mulla The Code of Civil Procedure (18th Ed.) Vol. 1 at page 1147,*** as follows;

"Where a statement appears in the judgment of a court that a particular thing happened or did not happen before it, it ought not ordinarily to be permitted to be challenged by a party unless both parties to the litigation agree that the statement is wrong, or the court itself admits that the statement is erroneous. In such circumstances, the remedy available is review."

The learned authors (supra) further elucidated, at page 1146, that there is a clear distinction between an erroneous decision and an error apparent on the face of record. The first can be corrected by a higher forum; the latter can only be corrected by the exercise of the review jurisdiction. Only a manifest error would be a ground for review. I have trouble in identifying the error on the face of the record that the applicant would rely on.

During the determination of HCT-01-LD-CR-NO. 001 OF 2019, Justice Nabisinde elaborately dealt with 3rd party claims, under which the 1st applicant now addresses court. She found that the subsequent actions that arose out of illegal proceedings before the magistrate grade one could not stand. She found that Civil Suit No. 007 of 2013 was riddled with irregularities to which court could not turn a blind eye. With respect to the acquisition of interest by the 1st applicant herein, she had this to say;

"…the same trial magistrate who endorses a consent judgment that was materially illegal also acquired part of the land in dispute. I have also carefully analysed the annexed certificate of title and found that the land described was part of the disputed land.

Additionally, given the background of how the trial magistrate rushed into granting a consent judgment and pushing for execution and thereafter acquired part of the property, it goes to prove that he was

an interested party in this case and secured his personal interest in the disputed land irregularly. Having found that some of the parties who had an interest in the disputed land never signed the consent judgment, and execution proceedings commenced soon thereafter still before the same magistrate, I agree with learned counsel for the applicants that the interest of the trial magistrate was not only irregular but also illegal. …… his acquisition of land in a case he had just entertained cannot be sanctioned by a court of justice. …"

When the sale of part of the land to the 1st applicant and his subsequent acquisition of title was cancelled, the 1st applicant had the option of claiming for the purchase price from whoever sold the land to him. He could not have acquired good title from an illegal sale, out of illegal execution proceedings out of illegal court proceedings that he himself presided over.

Having found that the applicant has not proved the first two grounds for a review application, I suppose he brought it under the auspices of "any other sufficient reason". However, it has been established that the expression "sufficient" should be read as meaning sufficiently analogous to the first two grounds for review. This ground would now also be clearly ruled out of this application.

While it is easier to conclude that the applicants may have been aggrieved by the decision of this court, his application falls far from proving any grounds that would warrant a review of the decision. In any event, granting this application has the undesired absurdity of upholding the illegalities that were committed by among others the 1st applicant and it would also be to validate the irregular and illegal proceedings in the

magistrate's court then presided over by the 1st applicant. Accordingly, this application is dismissed with no order as to costs.

I so order

Dated at Fort Portal this 17th day of January 2023. .

Vincent Emmy Mugabo

Judge

The Assistant Registrar will deliver the ruling to the parties

Vincent Emmy Mugabo

Judge

17th January 2023.