

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT HOIMA

HCT-16-CV-CR-NO. 0010 OF 2023

(Arising out of HC Civil Appeal No. 034 of 2015)

KIBAALE DISTRICT LOCAL COUNCIL ::::::::::::::: APPLICANT

VERSUS

BENEDICTO KATONGOLE *alias*

OMUKWENDA KATONGOLE ::::::::::::::: RESPONDENT

Before: Hon. Justice Byaruhanga Jesse Rugyema

RULING

[1] This is an Application for Review brought under **Ss. 98,82 & 64(c) CPR** and **O.46 r (1)(a) & 8, O.52 rr 1,2 &3 CPR** seeking the following orders.

(a) That this Honourable Court be pleased to review its finding that the Land Reform Decree was not applicable to the Respondent's occupation of the suit land in 1994 when the Applicant entered thereon in a Judgment delivered on the 17th June, 2020.

(b) That costs of the Application be provided for.

[2] The grounds of the Application are set out in the Affidavit of **Nsamba Peter Powell**, the Applicant's Principal Assistant Secretary in charge of legal Affairs and briefly they are:

1. That there is an error apparent on the face of the record which shall lead to a miscarriage of justice if left to stand.
2. That in the alternative, there is sufficient reason by the Applicant to seek a review of the Court's Judgment.
3. That it is in the interest of justice that this Honourable Court be pleased to grant the orders sought therein.

[3] Counsel for the Applicant, **Mr. Kamugisha of Kamugisha & Co. Advocates, Kampala** submitted that the Applicant was the successful party in the Chief Magistrate's Court wherein it was sued for *inter alia*, trespass. On appeal in a Judgment delivered on the **17th June 2020**, the Respondent was declared a bona fide occupant of the suit land, awarded general damages of **Ugx. 20,000,000=** costs in both Courts, with an order to compensate the Respondent for the value of land it is occupying instead of being evicted.

[4] The Applicant was aggrieved by this Court's decision and filed the present Application for it to review its decision. That the Respondent does not qualify as a bona fide occupant within the meaning of **S.29(2) of the Land Act** as found by this Court, but instead was a customary tenant and this occupation was at sufferance as embodied in **S.3 (2) of the Land Reform Decree, 1975**. That therefore, it is not possible that the Respondent could be covered by **Article 237(1) of Constitution** and the subsequent Land Act by claiming to be a bona fide occupant when he in 1994 was forced out of the land. That the error is so manifest and clear that no Court would permit it to remain on its record. He relied on the authorities of **MK Creditors Ltd Vs. Owora Patrick,**

H.C.M.A. No. 143 of 2015 and Edison Kanyabwera Vs. Pastori Tumwebaze S.C.C.A. No. 6 of 2004.

- [5] Lastly, on the ground of sufficient cause, Counsel submitted that;
- (a) Court ordered compensation to the Respondent for the value of the land the Applicant is occupying as shall be determined by the Chief Government Valuer but the Respondent caused the valuation of only **2.14 acres** instead of **4 acres** as he claimed to have been trespassed on in his testimony and has since occupied the rest of the land under the Applicant's occupation.
 - (b) That the Government Valuer authored 2 Valuation Reports for 2.14 acres and 5.833 acres thus illegally hiking the value of the suit land.
 - (c) That the Respondent also illegally included in his claim and bill of costs, a disturbance allowance of **Ugx. 25,680,000=** as value of the subject matter, yet he had been awarded general damages. That this amounted to double payment and/or unjust enrichment because general damages address the same mischief as disturbance allowance.
 - (d) That the Respondent deliberately misstated the value of the subject matter as **Ugx. 200,000,000=** in his bill of costs by claiming that the suit land was **18 acres** yet he had testified that it was merely about **4 acres**. That Court accordingly taxed the bill on those falsehoods and it is the same taxed bill he seeks to enforce.

[6] Counsel for the Respondent **Mr. Kahuma Andrew of Kahuma & Co. Advocates, Kampala** on the other hand submitted that there are no grounds for review of the Court's Judgment of 17th June, 2020 with the following reasons:

- (a) The Application was filed belatedly on 8th August, 2023, Judgment having been delivered on 17th June, 2020 after a period of more than 3 years.
- (b) That the Application is an abuse of Court process to waste Court time and delay the Respondent's realization of the fruits of Judgment.
- (c) That the Applicant's arguments about the Respondent being a bona fide occupant and the Application of the **Constitution of Uganda 1995** and the **Land Act 1998** instead of the **Land Reform Decree 1975** to the facts of the case does not amount to error or mistake apparent on the face of the record to warrant a review of the Judgment. These would be grounds of appeal. He relied on the authorities of **Hussein Vs. Kakiiza & Anor [1995-1998] 2 EA 135 (SCU)** and **Mapalala Vs. BBC [2002] 1 EA 132 (CA-T)**.

[7] Under **S.82 CPA**, "any person considering himself or herself aggrieved by a decree or order from which an appeal is allowed by this Act from which no appeal has been preferred or by a decree or order from which an appeal is allowed by this act may apply for review of Judgment to the Court which passed the decree or made the order, and the Court may make such order or the decree as it thinks fit". The grounds for review are provided for under **O.46 r (1)(b) CPR** as;

- (a) Discovery of new and important matter of evidence.
- (b) On account of some mistake or error apparent on the face of the record, or
- (c) for any other sufficient reason.

In this case, the Applicant is relying on account of some mistake or error apparent on the face of the record and for any other sufficient reason.

[8] I find that the Applicant's claim that the Respondent did not qualify as a bona fide occupant within the meaning of **S.29(2) of the Land Act 1998** as found by the Appellate Court Judge, but that he was instead a customary tenant and his occupation was at sufferance as embodied in **S.3(2) of the Land Reform Decree 1975**, is not an error apparent on the face of the record. The argument of the Applicant is based on the fact that in evidence, the Respondent claimed that the Applicant trespassed on his land in 1994 and therefore, the **Constitution of Uganda of 1995** and the **Land Act of 1998** could cover him.

[9] The Appellate Judge on page 12 of the Judgment observed as follows:

"In the present case, it is not disputed that the Appellant was on the suit land since 1973 unchallenged until 1994 when the Respondent started claiming ownership. The fact that he had occupied the land for more than 12 years, he had developed it unchallenged by the registered owner, makes him a bona fide occupant of the suit

land. The trial Magistrate therefore erred when he relied on the Land Reform Decree considering that the law came into force in 1975 and did not apply retrospectively. It should be noted that this matter was filed in 2008 when the Constitution and the Land Act were already enacted and hence the trial Magistrate erred by not applying the said law”.

[10] Clearly, the above show that the Appellate Judge was alive to the facts of the case and intentionally considered the law applicable to the parties. He scrutinized and re-evaluated the evidence as adduced before the trial Magistrate and reached a conclusion that the Respondent qualified to be a bona fide occupant under **S.29(2)(a) of the Land Act 1998**. In **Abasi Belinda Vs. Fredrick Kangwamu & Anor [1963] EA 557 (HCU)**, Court held that an erroneous view of evidence or law is not a ground for review, but one of appeal. In this case, what the Applicant is seeking will require arguments to be made as to the applicable law to the dispute. To allow this Application therefore, will mean that this Court would be sitting as an Appellate Court on its own Judgment. As was stated in **Manha & Chitele in the Code of Civil Prodecure (para.44)**.

“An Application for Review does not, of necessity, by the mere fact of its being filed re open questions decided by the order or decision sought to be reviewed The question of whether a review petition should be accepted or rejected has to be

decided with reference to the grounds on which review is permissible, and not on the merits of the claim”.

- [11] For the above reasons, I find that on the face of the Decree, there is neither an error or a mistake to be corrected or rectified.
- [12] As for any other sufficient reason, I find that the alleged illegalities referred to by the Applicant are also not being grounds for review. The Respondent’s occupation of more than the **4 acres** he claimed in his suit upon compensation may be a cause for a fresh action or be sorted out through execution. The Respondent’s inclusion of disturbance allowance in his demand notice when it was not ordered by Court cannot be a ground for review since it is no error made by the Appellate Court Judge. I find that this can also be sorted out by an objection during execution since it is not executable as it was never ordered by Court and therefore it does not comprise the decree.
- [13] Lastly, the Applicant is found guilty of inordinate delay in bringing this Application after 3 years from the date of Judgment. An Application for Review must be promptly filed as soon as the Applicant becomes aware of the Judgment. The Applicant was aware of the Judgment since June, 2020 but never took steps to challenge it. No explanation has been offered by the Applicant for such inordinate delay, see, **Combine Services Ltd Vs. A.G. H.C.M.A. No. 200 of 2009.**
- [14] As a result of the totality of the above, I decline to grant the Application. It is dismissed but with no order as to costs considering the history of this suit whereby as found by the

Appellate Judge, that the suit land is registered in the names of the **Omukama of Bunyoro (By virtue of his office) Reinstated under the provisions of S.3(1) & (5) of the Traditional Rulers (Restitution of Assets and Properties Act Cap.247)** and the **Local Government**, the Applicants are successors in title of the Kibanja thereon and secondly, not to escalate the conflict between the Applicant and its subject, the Respondent.

Dated at Hoima this 15th day of **February, 2023.**



Byaruhanga Jesse Ruyema

JUDGE