

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MASINDI  
MISCELLANEOUS APPLICATION NO. 0011 OF 2022  
(ARISING FROM CIVIL SUIT NO. 0046 OF 2019)

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1. KHAUKA TOM
2. MASABA MICHEAL
3. MUSAHIJA CALEB
4. NDYAMUHAKI NAUME
- 10 5. KOBUSINGYE ALLEN ..... APPLICANTS

VERSUS

1. MBABAZI SAMUEL
2. ISINGOMA JULIUS
- 15 3. MWESIGYE SIMON
4. JOHN MUSOKOTA WILLIAM
5. TUMUSIIME GERALD
6. WABWIRE MESSENGER GABRIEL
7. OCEMA RICHARD
- 20 8. WILSON SHIKHAMA
9. MASERUKA ROBERT ..... RESPONDENTS

BEFORE: Hon. Justice Isah Serunkuma

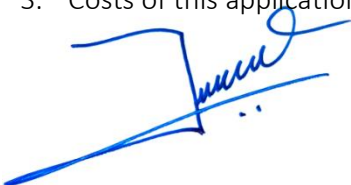
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RULING

This application was brought under Section 33 of the Judicature Act Cap 13, Sections 82 and Section 98 of the Civil Procedure Act Cap 71 and Order 46, rules 1 (1) and 8 of the Civil Procedure Rules S.I 71-1 seeking for the orders that;

1. The consent judgment in Civil Suit No. 0046 of 2019 between the 1<sup>st</sup> respondent and the 2<sup>nd</sup>  
30 to the 9<sup>th</sup> respondents dated the 22<sup>nd</sup> day of October, 2019 be reviewed and set aside for lack  
of consent, fraud, illegality and collusion.
2. All execution proceedings of the said consent judgment and all orders arising therefrom be  
stayed and/or set aside.
3. Costs of this application be in the cause.

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## BACKGROUND

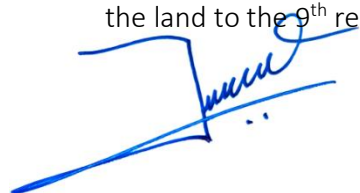
The 1<sup>st</sup> respondent filed Civil suit No. 0046 of 2019 being a representative suit on behalf of 350 residents of three villages of Nyamutenda, Kigulu and Ndoyo in Kitwara Parish, Kiryandongo Sub-County in Kiryandongo District seeking for a declaration and orders against the 2<sup>nd</sup> to the 9<sup>th</sup> respondents that they had been fraudulently registered and given a certificate of title for land described as LRV MAS2 Folio 8 Plot 22 Block 8 Land at Kibanda Kiryandongo.

The 1<sup>st</sup> respondent entered into consent with the 2<sup>nd</sup> to the 9<sup>th</sup> respondents on the following terms;

1. That the defendants (2<sup>nd</sup> -9<sup>th</sup>) respondents shall duly compensate the occupants/persons represented by Mbabazi Samuel bonafidely occupying the suit land Mr. Samuel Mbabazi shall comprise or form part of the compensation team.
2. That the plaintiff shall withdraw Civil Suit No. 0046 of 2019 and the arising injunctive reliefs.
3. That the plaintiff shall withdraw the caveat he filed on the land described as LRV MAS2 Folio 8 Plot 22 Block 8 formerly known as ranch 22.

It is the above consent judgment that aggrieved the applicants hence this application. This application is supported by an Affidavits sworn by the applicants herein setting down the grounds for this application briefly as;

- 1) That the applicants are residents of Nyamutende village, Kitwara Parish in Kiryandongo District located on land described as LRV MAS2 Folio 8 Plot 22 Block 8 formerly known as ranch 22.
- 2) That the applicants together with other residents/occupants applied for a lease of the land they were occupying formerly known as Ranch 22 as sitting tenants to Kiryadongo district land Board through the Directorate Land Matters State House.
- 3) That as they were waiting for their application to be processed, they discovered that the land had instead been granted by way of lease hold to the 2<sup>nd</sup> - 8<sup>th</sup> respondents some of whom were not known to them and neither were they residents on the said land.
- 4) That the applicants and other residents protested the said actions and went to all relevant offices but were further shocked when they learnt that the 2<sup>nd</sup> - 8<sup>th</sup> respondents had sold off the land to the 9<sup>th</sup> respondent.



- 5) That the applicants appealed to the RDC Kiryandongo District who advised them to file a case in court but assigned the 1<sup>st</sup> respondent to assist them and accordingly Civil Suit No. 0046 of 2019 as a representative suit on behalf of the 350 residents of the former ranch 22.
- 6) That the applicants later got to know that Civil Suit No. 0046 of 2019 had been determined and concluded with a consent judgment between the 1<sup>st</sup> respondent and the 2<sup>nd</sup> to 9<sup>th</sup> respondents which consent was contrary to the interest of the applicants as residents of ranch 22.
- 7) That the 1<sup>st</sup> respondent entered the consent without consulting the residents who he was representing and the residents only came to know of the court decision at execution of the court orders.
- 8) That the applicants at all times when informed attended court however they were always never allowed into the court room.
- 9) That the representative order that was granted to the 1<sup>st</sup> respondent was irregular and did not meet the legal requirements as the residents were never verified or ascertained.
- 10) That it is in the interest of substantive justice that this application be allowed.

In contest to this application the respondents in their affidavits in reply contended that;

- 1) That the application was misconceived, brought in bad faith and in total abuse of court process as it contains falsehoods that make it suspect and defective for which they prayed it to be dismissed with costs.
- 2) That the 1<sup>st</sup> respondent was approached by the residents of land comprised in leasehold register volume MAS2 Folio 8 Kibanda, Kiryandongo who were aggrieved by the issuance of title to the 2<sup>nd</sup> - 8<sup>th</sup> respondents and were in fear of illegal eviction.
- 3) That the 1<sup>st</sup> respondent lodged a caveat on the land and on advice of a lawyer he later got a representative order and instituted Civil Suit No. 0046 of 2019 on behalf of the residents.
- 4) That on 20<sup>th</sup> October after a successful mediation with the approval of residents the 1<sup>st</sup> respondent entered into consent with the 2<sup>nd</sup> - 8<sup>th</sup> respondents.
- 5) That in accordance with the consent judgment the 8<sup>th</sup> respondent immediately started to compensate the residents in the presence of the 1<sup>st</sup> respondent thus the 1<sup>st</sup> respondent withdraws Civil Suit No. 0046 of 2019 and the caveat he had lodged.



- 6) That the 1<sup>st</sup> applicant received part payment in compensation and the 2<sup>nd</sup> respondent has been fully compensated for his portion of land although both of them have not yet vacated the land.
- 7) That all the persons the 1<sup>st</sup> respondent represented were residents of the former ranch 22 and that half of the residents have already received their compensation and most have already found alternative places.
- 8) That the application is tainted with gross dilatory conduct and is overtaken by events as the execution process that is to say compensation of most of the residents has been done by the 9<sup>th</sup> respondent.
- 9) That to stay execution of a judgment whose execution is almost complete shall cause unimaginable loss to the 2<sup>nd</sup> - 9<sup>th</sup> respondents who have heavily invested big sums of money in compensation, machinery in clearance and cultivation of the land.

The applicants deponed affidavits in rejoinder whose contents I have put into consideration.

#### **Issues**

- In their submissions neither the applicants nor the respondents framed any issues for determination however in order to get a proper guide in determining this application I will frame two issues for determination that is to say;

**1. Whether the applicant has sufficient grounds for review?**

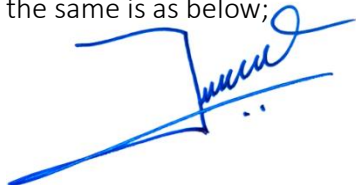
**2. What remedies are available to the parties?**

#### **Representation**

The applicants were represented by M/s Arinaitwe Peter & Co. Advocates and the respondents were represented by M/s Aeton Advocates. Parties were granted leave to file written submissions which were filed promptly.

#### **Determination of court**

- Appropriate consideration has been made as regards the submissions of the parties. My decision on the same is as below;



I will first deal with the preliminary objection raised by the respondents as thus;

That the applicants represented the other residents on the suit land without following the proper procedure as per the law.

5 According to my analysis of the affidavits of the applicants in support of this application the applicants don't mention anywhere that they are representing any other residents. They are clear that they only brought this application for their own interest to protect their land save that their claims cannot be explained without a mention of the other residents on the suit land. As such the objection is overruled.

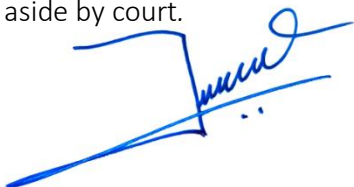
10 The law clearly provides for consent judgments and decrees that is to say parties to civil proceedings have a right to settle their dispute amicably and consent to a judgment. The parties may do so freely before a judicial officer who then records the terms the party have agreed upon, have them signed by the parties and then endorses the same to become a judgment. ***See; Order 25 Rule 6 of Civil Procedure Rules.***

15 It is also clear that since a consent judgment is based on agreement between the parties to the consent then the governing contracts applies. The law provides that once a consent judgment has been entered, it may be vitiated, varied and or set aside where it is proved that it was entered into without sufficient material facts or in misapprehension or in ignorance of material facts or it was actuated by illegality, fraud, mistake, contravention of court policy. A consent judgment once endorsed by court becomes binding on parties to it and can only be challenged by following the  
20 proper procedure.

In the case of Kizza Daniel & Ors vs Uganda Land Commission & Ors; HCMA No. 01237 of 2013 Justice Bashaija held that;

25 *"A consent judgment cannot be varied or discharged unless obtained by fraud or collusion or without sufficient material facts or in misapprehension or ignorance of material facts or in general for a reason which would enable the court to set aside an agreement".*

According to the law and decided cases fraud is one of the grounds upon which a contract can be set aside by court.



In the instant case, counsel for the applicant in his submissions argues that there was fraud in procurement of the consent judgment that is to say;

a) There were irregularities in acquiring the representative order.

b) That the terms of the consent were endorsed without knowledge and consent of the applicants and other residents of ranch 22.

Fraud was defined in the case of ***Fredrick Zaabwe s Orient Bank Ltd and Ors; SCCA NO. 004 of 2006*** to mean “an intentional preservation of truth for purposes of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right.

I agree with counsel for the respondents in his submission regarding the burden to prove for fraud.

In the instant case the applicants in their written submissions allege there was fraud as the representative order was not procured as prescribed by the law.

The law on representative suits is provided for under the Civil Procedure Rules as thus;

***Order 1 rule 8*** provides that;

*One person may sue or defend on behalf of all in same interest.*

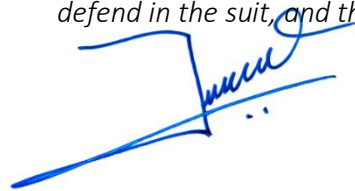
(1) A person may institute a representative suit on behalf of all plaintiffs or all defendants, as the case may be, who have the same actual and existing interest in the subject matter of the intended suit, for the benefit of all.

(2) An application for a representative order shall be made by an intending plaintiff or defendant who intends to represent all plaintiffs or all defendants for the benefit of all as the case may be, who have the same actual and existing interest in the subject matter of the intended suit.

(3) Before the court grants an order for a representative suit, the applicant shall satisfy the court that—

(a) all the plaintiffs or defendants, as the case may be, have an actual and existing interest in the subject matter of the intended suit;

(b) all the persons represented have authorized the applicant to sue or defend in the suit, and the authorization shall be in writing duly signed by the represented



persons, and

(c) the application is brought with a proposed plaint or defense, as the case may be, showing—

(i) a list of all persons so represented; and

5 (ii) that all persons so represented have the same actual and existing interest in the suit.

(4) Subject to sub rule (2), the court shall, in such case, give notice of the institution of the suit to all such persons either by personal service or, where, from the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as  
10 the court may in each case direct.

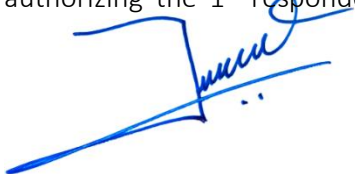
(5) Any person with the same interest wishing to be made a party to a representative suit may apply to the court to be made a party to the suit.

(6) For purposes of this rule, “a representative action” means a suit in which there are numerous persons having the same interest in one suit and where one or more of such persons, may, with  
15 the permission of the court, sue or be sued or may defend in the suit on behalf of or for the benefit of all persons interested.”

Further Order 1 as amended Sub rule (4) provides that;

“Subject to sub rule (2), the court shall, in such case, give notice of the  
20 institution of the suit to all such persons either by personal service or, where, from the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the court may in each case direct.”

From the above provision of the law, a representative order must be given with authority which must  
25 be written and signed from the persons to be represented however this was not done. Whereas it is true that the applicants along with other residents of ranch 22 approached the 1<sup>st</sup> respondent for help in order to pursue their interests in the suit land the right procedures were not followed in acquiring the representative order that is to say; the residents were never called before court to confirm giving authority to the 1<sup>st</sup> respondent, list showing names and signatures of residents  
30 authorizing the 1<sup>st</sup> respondent was not attached, no advert of the representative order was put



anywhere or neither were the residents before court at the time of issuing of the said representative order and to sum it all the Civil Suit No. 0046 of 2019 was filed before attaining the representative order.

5 For clarity according to the evidence on record the representative order was issued on 15<sup>th</sup> October, 2019, Civil Suit No. 0046 of 2019 was filed on 20<sup>th</sup> September, 2019. The consent was entered on the 22<sup>nd</sup> day of October, 2020 and the compensation agreements were signed as early as May, 2019.

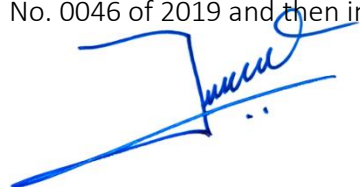
10 The provisions of Order 1 rule 8 of the Civil Procedure Rules have been interpreted by courts before to be mandatory and if not complied with would render the suit incompetent and incapable of amendment. It is important to seek leave of court by obtaining a Representative Order and failure to do so leaves the suit incompetent and the suit cannot be stayed but should be struck out. See: Henry B. Kamoga & Ors Vs Bank of Uganda; HCCS No. 0062 of 2009.

Although the respondents urge that the 9<sup>th</sup> respondent has already started on execution process of the consent order, this court cannot allow to endorse such as the right procedures were not followed in its attainment.

15 Further the compensation agreements relied on by the respondents to prove that execution of the consent order has already commenced have very many irregularities as majority are incomplete that is to say; only one party signed, some don't show the amount of money the residents were compensated and they don't even show acknowledgement of receipt of the money. As such court cannot rely on such to prove that execution of the orders has already started and that the  
20 respondents will incur losses if the application is considered in the positive.

Court cannot sanction an illegality once it has been notified about it merely because one party will incur great losses. See; *Makula International Ltd versus Cardinal Nsubuga; SCCA No. 004 of 1981 and Kisugu Quarries Ltd versus Administrator General (1999) 1 EA 162. (SC).*

25 If the 9<sup>th</sup> respondent had wanted to avoid losses, they would have ensured that the right steps and procedures are followed first in attaining the representative order since they were party to Civil Suit No. 0046 of 2019 and then in entering the consent.



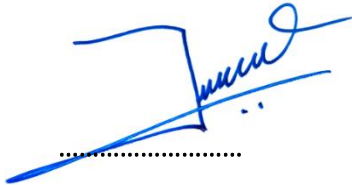


In the result, I allow the application and make the following orders;

- a) Consent judgment in Civil Suit No. 0046 of 2019 and orders therein is hereby set aside.
- b) An injunction against the respondents, their agents or any person attaining authority from them stopping them from further evicting any residents from the suit land.
- 5 c) Costs for this application granted to the applicants.

I so Order.

Dated and delivered this 27<sup>th</sup> day of October 2023.



10 Isah Serunkuma  
JUDGE