

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MUBENDE**  
**MISCELLANEOUS APPLICATION NO.103 OF 2023**  
**{Arising out of High Court Civil Suit No.0210 of 2009}**

1. MUTIIBWA CHRISTOPHER  
2. NANDWULA EVA **APPLICANTS**

**VERSUS**

1. MODIA INVESTMENTS(U)LTD  
2. ATTORNEY GENERAL  
3. NATIONAL WATER&  
SEWERAGE CORPORATION **RESPONDENTS**

**BEFORE HON JUSTICE MOSES KAZIBWE KAWUMI**

**RULING**

This Ruling arises from an application by Notice of Motion with a supporting affidavit sworn by the 1<sup>st</sup> Applicant seeking Orders that;-

1. The judgment and decree in HCCS No.0201 of 2009 be reviewed and set aside.
2. All the execution orders issued by the Court in HCCS No.0210 of 2009 be set aside and/or nullified.
3. An order that the suit land comprised in Buwekuia Block 186 plot 2 subdivided into Plots 3&4 situate at Kabatende in Mubende District reverts back to the estate of late Andeleya Bagenda to be dealt with in accordance with the law of intestate succession.



4. A consequential order issues nullifying the mortgage and all transactions on the suit land formerly comprised in Buwekula block 186 Plot 2 at Kabatende in Mubende District.
5. All matters arising between the Applicants and the 1<sup>st</sup> Respondent and other parties be dealt with in the Applicants' Civil Suit No.18 of 2022 pending in the court
6. Costs of the application to be provided for.

The grounds of the Application which are also laid out in the Affidavit in support sworn by the 1<sup>st</sup> Applicant are summarized below :-

- a) The late Bagenda was the registered proprietor of land comprised in Buwekula block 186 plot 2 at Kabatenda in Mubende District and on his demise the land was registered in the name of Eria Kesi Mujjabi as the Administrator of his estate on 19<sup>th</sup> August 2005.
- b) The Estate Administrator died on 25<sup>th</sup> August 2005 before distributing the estate but after granting Powers of Attorney to Michael Sebaduka Mwebe on 5<sup>th</sup> May 2005 which the latter used to get registered on the title on 20<sup>th</sup> October 2005.
- c) Using the certificate of title Michael Sebaduka Mwebe mortgaged the land to Kampala Financial Services Ltd for U.shs. 80,000,000/= repayable in twelve months but the land was registered into the name of the 1<sup>st</sup> Respondent before the mortgage period expired.
- d) Michael Sebaduka filed HCCS No.0210 of 2009 against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents for declaratory orders, an eviction order and for compensation in the alternative but he passed on before the suit was concluded.
- e) The 1<sup>st</sup> Respondent which had bought the land from Kampala Financial Services Ltd and had become the registered proprietor on 2<sup>nd</sup> March 2010 sought and was granted leave to take over the suit filed by Michael Sebaduka.



- f) On 26<sup>th</sup> March 2013 the court concluded the suit in favour of the 1<sup>st</sup> Respondent as the lawful owner of the suit land and ordered the 2<sup>nd</sup> Respondent to pay Shs. 492,128,000/= to the 1<sup>st</sup> respondent as compensation for her activities on the land.
- g) The Applicants claim to have learnt that the Commissioner Land Registration had in 2010 ordered for Police investigations and the findings indicated that Michael Sebaduka fraudulently dealt in the estate land using forged transfer documents, subdivided the land into Plots 3&4 and failed to pay the loan for the mortgaged Plot 3.
- h) That the applicants who are beneficiaries in the estate of Bagenda Andeleya by virtue of being grandchildren are aggrieved by the judgment and orders of the court issued on 26<sup>th</sup> March 2013 since the court acted on the mistaken belief that Michael Sebadduka lawfully dealt in the land.
- i) That the Applicants became aware of the fraud in 2018 and have suffered a legal grievance since they were they were condemned unheard but dispossessed of their beneficial interest in the estate hence the application to have the judgment of the court reviewed and set aside.

### **Representation.**

M/S Bwanika & Co. Advocates appeared for the Applicants while M/S Twesigye & Co. Advocates appeared for 1<sup>st</sup> Respondent. M/S Katende, Ssempebwa & Co Advocates appeared for the 3<sup>rd</sup> Respondent while the 2<sup>nd</sup> Respondent was not represented.

### **Arguments by the 1<sup>st</sup> Respondent.**

The 1<sup>st</sup> Respondent opposed the application contending that the Applicants fraudulently acquired Letters of Administration by entering a consent judgment in Civil Suit No.31/2021 to have the Grant issued to



Sekasamba Nkata Richard for the same estate in Administration Cause No.174/2013 revoked.

It was further contended that the Applicants have been aware of the alleged fraudulent dealings by Michael Sebaduka since 2009 but sat back and filed the present application on 11<sup>th</sup> April 2023 and are thus estopped from raising any grounds for review. The 1<sup>st</sup> Respondent contends that the Application is only intended to legalize an incompetent civil suit filed by the Applicants.

### **Arguments by the 3<sup>rd</sup> Respondent.**

The 3<sup>rd</sup> Respondent contends that no cause of action is established against her in the application since the trial court did not find her liable as opposed to the 2<sup>nd</sup> Respondent. It was further argued that the application is premised on recovery of land but is barred by limitation and it also lacks any merit to warrant a review of the judgment of the trial court.

Counsel filed submissions which have been considered but not reproduced as they form part of the record.

### **The Law on Review of Decrees/Orders.**

**Section 82 of the Civil Procedure Act and Order 46 Rule 1 of the Civil Procedure Rules** are couched in similar words:-

*'Any person considering himself or herself aggrieved by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or by a decree or order from which no appeal is hereby allowed, and who from the discovery of a 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 the judgment to the court which passed the decree or made the order."*

It settled law that " a person considers himself aggrieved if he/she has suffered a legal grievance" and that "a person suffers a legal grievance if the judgment given is against him or affects his/her interests."

**In Re. Nakivubo Chemists (U)Ltd [1971]HCB 12;Ladak Abdullah Hussein V Griffiths Isingoma Kakiiza &Others. Civil Appeal No.8/1995.**

It is also trite to state that an aggrieved party under section 82 of the Act need not necessarily have been a party to the suit in which the decree/orders sought to be reviewed were issued. Where a third party can prove that he or she is an aggrieved person and has suffered a legal grievance he or she can apply for review.

**Mohamed Alibhai V W.E Bukenya Mukasa&DAPCB.SC CA No.56 OF 1996.**

The grounds for review were spelt out in the case of **F.X.Mubuke Vs UEB.HC Miscellaneous Application No.98 of 2005** to be:

- a) That there is a mistake or error apparent on the face of the record.
- b) That there is discovery of new and important evidence which after exercise of due diligence was not within the applicant's knowledge or could not be produced by him or her at the time when the decree was passed or the order made.
- c) That any other sufficient reason exists.

#### **Decision.**

The Application for review is premised on the alleged fraudulent dealing in the land comprised in Buwekula Block 186 Plot 2 by Michael Sebaduka Mwebe. The allegation is that he was not mandated by the Powers of Attorney to register the land into his name, subdivide and mortgage it to Kampala Financial services who later transferred it to the 1<sup>st</sup> Respondent.



The trial court is faulted for not having detected the illegality in the transactions leading to the decision that the land lawfully belongs to the 1<sup>st</sup> Respondent. A perusal of the record and pleadings in HCCS No,0210 of 2009 reveals that fraud was never pleaded or litigated about in the suit and it cannot be a ground for reviewing the Decree.

It is trite law that fraud must not only be pleaded but also proved which entails submission and evaluation of evidence. Entertaining such in this application would be re-hearing the suit which is outside the ambit of the court in Section 82 of the Act and Order 46 of the Rules.

*“An error apparent on the face of the record must be one which does not require any extraneous matter to show its correctness. It must be an error so manifest and clear that no court would permit such an error to remain on the record.”*

**Edison Kanyabwera V Pastori Tumwebaze. SCCA No.6/2004; Independent Medico Legal Unit V The Attorney General Of Kenya.MA No.2 of 2012.**

The 1<sup>st</sup> Respondent attached to the Affidavit in Reply a Supplementary Affidavit deposed by Nansikombi Ruth, Mutibwa Christopher and Nandawula Eva. It is contended in the Affidavit filed in court on 16<sup>th</sup> May 2023 that **the family** learnt of the fraudulent dealings of Michael Mwebe in 2009.

It follows from the above that the Applicants had all the time since 2009 to either apply to be joined to the suit filed by Michael Sebaduka or to have taken any other remedial intervention on behalf of the estate. Raising the issues in the present application and premised on a falsehood that they learnt of the happenings in 2018 is untenable and smacks of bad faith since no new evidence came to their attention after HCCS No,0210 of 2009 had been concluded.



It is also a fact that recovery of land that was registered into the name of the 1<sup>st</sup> Respondent in 2010 without disclosing any grounds of disability per se renders the application incompetent on account of Limitation.

I find no merit in the application which I accordingly dismiss with costs to be paid to the 1<sup>st</sup> and 3<sup>rd</sup> Respondents.



Moses Kazibwe Kawumi

Judge

25<sup>th</sup> March 2024