

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

MISC. APPLICATION NO. 026 OF 2023

(ARISING FROM MISC. APPLICATION NO. 018 OF 2023

5 **(ARISING FROM CV- CA- 32/22 & FCC NO. 01 OF 2022)**

BIRUNGI NICHOLAS APPELLANT

VERSUS

KAKYO PAMELA RESPONDENT

BEFORE: HON. JUSTICE VINCENT WAGONA

10 **RULING**

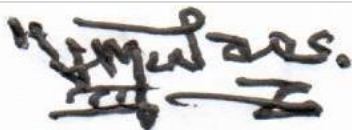
The applicant brought this motion under section 82, 98 and 99 of the Civil Procedure Act, Order 22 rule 25, Order 45 and 52 of the Civil Procedure Rules for orders that:

- 15 **1. The ruling of this Honorable court dated 30th November 2023 awarding shs 9,515,450 as school fees and arrears of shs 1,500,000/- as school requirements to be paid within 30 days be varied.**
- 2. The execution of the said ruling and all orders in Civil Appeal No. 32 of 2022 issued against the applicant be stayed or reviewed.**
- 3. No order should be made as to costs.**

20 The application was supported by the affidavit of Mr. Birungi Nicholas, the applicant who averred as follows:

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1. That on 30th November 2023, Court mistakenly made a ruling where he was ordered to pay Shs 9,515,450/= as school fees arrears for D and Shs 1,500,000/= as school requirements for D to be paid in 30 days and that all other orders in Civil Appeal No. 32 of 2022 remain binding upon him. That
5 the ruling was mistakenly ordered against him since he ceased to be employed as the Acting Town Clerk for Kakinga Town Council due to endless hostilities and continued harassment by the respondent even at the place of work.
2. That the Respondent influenced the Chief Administrative Officer (CAO) to
10 open up a file against him and he was summoned on charges of child neglect. That he had to leave work and had no alternative formal source of income and thus was unable to pay the amounts ordered by Court. That he was financially constrained by the pending salary loan which he took from Centenary Bank of Shs 14,000,000/= which obligation is still pending.
- 15 3. That he was the financial caretaker of his terminally ill biological mother aged 61 years who is ill and he met the medical bills. That he was never a party to any litigation process and the same commenced after he separated with the Respondent. That he also pays school fees of over Shs. 338000 per term for her daughter, Sagamaye Tyra Nicole who schools at Tooro Parents
20 Education Center and takes care of other additional dependants.
4. That he always paid tuition for D at MUBS University within the available means though he never consulted the Respondent over the same. That W is of majority age who should take care of herself. That for W, he paid school fees and the Respondent refused to take W to school.

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5. That court did not consider the above fresh evidence in determining and delivering the said ruling against him which was a mistake on the face of the record which constitute sufficient reason to vary, review the said orders. That he seeks court to intervene and reconcile the parties rather than continuing the adversarial litigation since he doesn't know what the future holds.
6. That it is in the interests of justice that the application is granted with no orders as to costs.

Hearing:

10 The Respondent was served with the motion per the affidavit of service deponed by Nyakahuma Andrew filed on 18th January 2024 which was duly received by the Respondent's lawyers received on 11th January 2024. The Respondent did not respond in the manner provided for in the Civil Procedure Rules as such I will proceed to consider this application exparte.

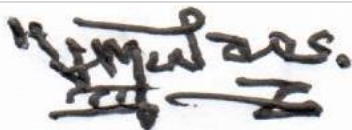
15 ***Representation:***

M/s Bumpenje & Co. Advocates represented the applicant and filed written submissions which I have considered herein.

Issues:

I find the following issues pertinent to the determination of this application thus:

- 20 **(1) Whether this is a proper application for review.**
(2) Whether or not the applicant has presented sufficient cause warranting a review of the orders in civil misc. application no. 0018 of 2023.
(3) What remedies are available to the parties?

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Resolution:

I will consider issues one and two jointly since they relate to the same subject.

Section 82 of the Civil Procedure Act Cap. 71 provides that:

Any person considering himself or herself aggrieved—

5 *(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
10 *thinks fit.*

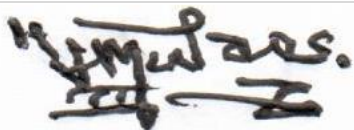
Order 46 rule 1 and 2 of the Civil Procedure Rules S.I 71 also provides that;

1. Application for review of judgment.

(1) Any person considering himself or herself aggrieved—

15 *(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*
20 *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.

Section 82 and Order 46 rule 1 limits the locus standi for purposes of review to a person aggrieved by a decision of Court. In **Re Nakivubo Chemists (U) Ltd [1979]**

5 **HCB 12** court guided that an aggrieved party for purpose of review is one who has suffered a legal grievance. **Justice Karokora JSC (as he then was) in Muhammed Bukenya Allibai Vs. W.E Bukenya & Anor, SCCA No. 56 of 1996** defined an aggrieved party as a party who has been deprived of his property or whose right has been affected by the impugned judgment.

10 The grounds for review are provided for under Order 46 of the Civil Procedure Rules which are; (a) discovery of new and important evidence which could not be produced during trial, (b) That there is some mistake or error apparent on the face of the record (c) any sufficient cause.

The applicant contends that there is a mistake apparent on the face of the record
15 which needs to be reviewed and corrected. In **Levi Outa v Uganda Transport Company [1995] HCB 340**, Court noted thus;

20 *“the expression ‘mistake or error apparent on the face of the record refers to an evident error which does not require extraneous matter to show its incorrectness. It is an error so manifest and clear that no court would permit such an error to remain on the record. It may be an error of law, but law must be definite and capable of ascertainment.”*

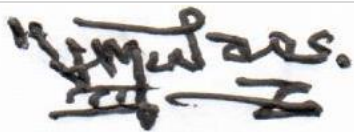
In **Mr. Satis Kumar v Chief Secretary, RA No. 51 of 2013**, court observed thus;

5 “The term ‘mistake or error apparent’ by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of facts or the legal position. If the error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be an error apparent on the face of the record for purposes of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the Court/Tribunal on a point of law or fact.”

10 A mistake or error apparent on the face of the record must be glaring on the face of the court record. It should not require an extensive evaluation of the law and the evidence in order to find and see it. It should not be about the legality or validity of the judgment or decision of court in relation to the laws applicable on the merits. Its resolution should not result in the court sitting as an appellate court to examine the legality and correctness of its own decision, which is a preserve of the appellate court. (See: *BamugayaDeo v Peter Tinkasimire & Anor, HCM No. 90 of 2018*).

15 The applicant contended that court did not take into account the fact that the applicant was no-longer a civil servant and had no substantial alternative source of income and could not fulfill the consequential orders. That he attached a letter of resignation and frustration caused by the Respondent’s acts.

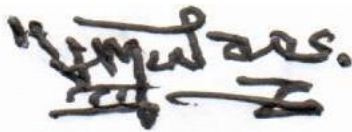
20 I have perused the ruling in Misc. Application No. 018 of 2023, the motion concerned consequential orders resulting from the judgment of court in Civil Appeal No. 32 of 2022. It was not about the applicant’s capacity to pay the



amounts decreed by court. I have not found any error apparent on the face of the record. What the applicant seeks is for court to examine his capacity to pay the sum decree by court which was not a triable issue. An error on the face of the record signifies one which does not require examination of the evidence and the pleadings on record but one which can be easily seen at a glance at the decision of Court. I have therefore not found any error or mistake apparent on the face of the record and none has been pointed out by the applicant.

After considering the pleadings before court and the submissions of counsel I find that that the application at hand does not raise any issue that calls for review.

It appears to me that the applicant seeks to find refuge in court through filing endless applications in Court. I dismiss this application for lack of merit with no orders as to costs since the Respondent did not respond to it. I so order.



Vincent Wagona

High Court Judge / Fort-portal

DATE: 22/03/2024

