



THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MASINDI
CIVIL MISC.APPLICATION N0-HCT-12-CV-MA-0013 OF 2013
[ARISING FROM CIVIL REVISION APPLICATION N0-0021 OF 2013]

HOIMA DISTRICT NGO FORUM & 6 OTHERS ===== APPLICANTS

VERSUS

MURUNGI CATHERINE & 5 OTHERS ===== RESPONDENTS

RULING

BEFORE HON: MR. JUSTICE BYABAKAMA SIMON-RESIDENT JUDGE

This is an application for review of the decision and orders of this court in **Miscellaneous cause N0-0021/2013**, which was delivered on **13.06.2013**.

It is by Notice of Motion, supported by the affidavit of **Beatrice Rukanyanga [2nd applicant]** and is brought under S.82 of the Civil Procedure Act [CPA] and Order 46 rules 1 and 9 of the Civil Procedure Rules.

It seeks the following reliefs:-

- a) The ruling and order made under civil revision Miscellaneous Cause **N0-0021of 2013** be reviewed, set aside or expunged off court record.
- b) The bill of costs and execution thereof be set aside.
- c) Costs of this application be provided for.

The grounds as enumerated in the motion are that:-

1. The court quashed Extra Ordinary meeting held on 20-03-2013 without a certified copy of the proceedings of the said Extra Ordinary meeting being availed to the registrar for court record and therefore relied on speculations.
2. That the respondents' application that the court relied on contained actions for defamation and declaration contrary to rule 3 of the Judicature [Judicial Review]. Rules S.1, 11/2009 which is specific on actions that can be brought for Judicial Review.
3. That in any case the ruling of court delivered on 13-06-2013 did not amount to a judgment envisaged by the Civil Procedure Act and Civil Procedure Rules Order 21 rule 4.
4. That it is just and equitable that this application be granted.

Mr. Alenyo appeared for the applicants while **Mr. Kasangaki Simon** was for the respondents. By agreement the parties were to file written submissions. At the time of writing this ruling only the applicants had filed their submissions.

The issues for determination as framed by the applicants are:-

1. Whether **Misc. Cause N0- 21 of 2013** was properly before the court as by the laws and rules governing Judicial Review causes.

2. Whether the ruling of court of the **13-06-2013** fulfilled the rules of court Judgment/ruling of court.
3. Whether the order of court dated the **2nd July 2013** on a ruling and proceeding that are unsustainable within our rules and law of Civil Procedure should be reviewed.

Before I can consider the merits of the application, it is important I first address two procedural aspects which are pertinent to the instant matter to wit:-

1. Whether the application is competently filed.
2. Whether this court is competent to quash its own decision upon review.

O.46 r.1 of the Civil Procedure Rules lays down the instances under which an application for review can be made. My reading of the said rule suggests there has to be no appeal filed by the applicant/aggrieved party.

In the instant matter the applicants have lodged an appeal to the Court of Appeal as per the Notice of Appeal dated **19th day of June 2013**, filed on the **20th of June 2013**. The application for review was filed on the **4th of September 2013**.

The legal position is well settled. It was succinctly stated in **SARKAR'S LAW OF CIVIL PROCEDURE [8th Edition] Volume 2 at Page 1592 as follows:**

‘Review application should be filed before the appeal is lodged. If it is presented before the appeal is preferred, court has jurisdiction to hear it although the appeal is pending.

Jurisdiction of a Court to hear review is not taken away if after the review petition, an appeal is filed by any party. An appeal may be filed after an application for review but once the appeal is heard, the review cannot be proceeded with” (emphasis added).

The above passage simply reinforces the position **articulated in O.46 r. (1) (a)** [Supra] that, 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, may apply for a review of judgment to the court which passed the decree or made the order.

It would appear, therefore, a review can be said to be competently filed if it precedes the appeal.

The other limb of a review application is set out in **O.46 r (1) (b)**, in a situation where no appeal is allowed and the aggrieved party discovers new and important matter of evidence which, after the exercise of due diligence, was not within his or her knowledge or could not be provided 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.

The applicants’ contention as can be gathered from the pleadings and the submissions of their counsel is that the court based its ruling in the abstract since there was no certified or any copy of the proceedings of the **20-03-2013**. The other complaint is that the ruling of this court lacked material specifics in that, it did not state the facts, the issues for determination and the reasons for the decision. In that regard, it was argued, the ruling did not conform to

the provisions of **Order 21 rules 4 and 5 of the Civil Procedure Rules**. It is in that context the applicants seek to have the ruling and the consequential orders quashed or set aside.

To grant the said orders would mean this court quashing and setting aside its own decision. This, in my view would be going beyond the purview and scope of the powers of review **under O.46 r.1 of the Civil Procedure Rules**. In an application for review, the judge who passed the judgment, if satisfied that there is sufficient ground for a review, shall either grant or reject the application. It is necessary to point out that in an application for review, the judge is not sitting as an appellate court. In that situation, if the judge is satisfied that the tests for review laid down under order 46 are met, it is expected of him to grant the application by and effecting the relevant and necessary rectification and corrections sought in the judgment. Otherwise the judgment cannot be quashed in a review application_ See also **MAPALALA-Vs- BRITISH BROAD CASTING CO-OPERATION [2002] 1 E.A 132** (Court of Appeal of Tanzania).

In my understanding, an order cannot be reviewed on account of the judge having decided the matter on a foundation of incorrect procedure and/ or that his decision revealed a misapprehension of the law, or that he exercised his discretion wrongly in the case.

In my opinion the proper way to correct a judge's alleged misapprehension of the procedure or the substantive law or his alleged wrongful exercise of discretion is to appeal the decision unless the error be apparent on the face of the record. Misconstruing a statute or other provision of law cannot be a ground for review. Similarly, non compliance with the provisions relating to writing a judgment or ruling does not constitute a ground for review_ See **EASTERN & SOUTHERN AFRICAN DEVELOPMENT BANK -Vs-AFRICAN GREEN FIELDS LTD & OTHERS [2002] 1 E.A 377:**

With that background of the law, it is evident court is unable to grant the orders quashing and setting aside its own ruling in **Misc. Application N0-0021/2013**. I am tempted to add that although the applicants' application has the face of a review application, it has the heart of an appeal.

For the foregoing reasons, I would disallow this application and the same is accordingly dismissed with costs.

SIGNED:-

JUSTICE BYABAKAMA MUGENYI

RESIDENT JUDGE

1ST OCTOBER 2013