

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
HOLDEN AT MBALE**

HCT-04-CV-MA-0085-2013

(Arising from Revision Cause No. 18/2012)

(Arising from Civil Suit No. 006/2009)

HAJI ADAM MOHAMED YAKUBU.....APPLICANT

VERSUS

FUNJO ASUMAN RABOS.....RESPONDENT

BEFORE: THE HON. MR. JUSTICE STEPHEN MUSOTA

RULING

This is an application for Judicial Review of an order made by this court dismissing an application for Revision but at the same time ordering a stay of execution yet there was no pending suit between the parties hereto. The said order of stay of execution of costs has prevented the successful party from realizing the fruits of this court's decision.

The application is supported by the affidavit of the applicant who is represented by **Mr. Kyabakaya** of Fredrick, Francis & Associates Advocates who filed written submissions in support of this application.

I have considered the application as a whole and the submissions by learned counsel for the applicant.

I am satisfied that under S.82 of the Civil Procedure Act this court is clothed with jurisdiction to review its orders as it thinks fit upon an application by any persons aggrieved by the order sought to be reviewed.

I agree with the submission by learned counsel for the applicant that the order for stay of execution was issued in error because there is no subsisting or pending suit between the parties.

It was held in the case of **KANYEBWERA V. TUMWEBAZE [2005] 2 E.A. 86** that:

“..... in order that an error may be a ground for review, it must be one apparent on the face of the record, i.e. an evident error which does not require any extraneous matter to show its incorrectness. It must be an error so manifest and clear that no court would permit such error to remain on record. The “error” may be one of fact but is not limited to matters of fact and includes error of law.....”

See also **MUYONDE V. INDUSTRIAL AND COMMERCIAL DEVELOPMENT AND ANOR [2006] 1 E.A. 243,246.**

The error complained of in this case stares one in the face and it is the duty of this court to correct it.

All conditions to support judicial review have been fulfilled by the applicant and these are:

- (i) This court made the order.

- (ii) The applicant was aggrieved by the order of stay of execution where there was no pending suit.
- (iii) No appeal has been made by the appellant.
- (iv) The mistake in the order complained of has been clearly pointed out to my satisfaction.

Consequently, I will allow this application and revoke the order for stay of execution.

In view of the genesis of this matter, each party shall meet its own costs.

Stephen Musota

JUDGE

30.05.2013