

1.3 This application is seeking the following orders; that:-

(a) The ruling of Hon. Mr. Justice Joseph Murangira dated the 28th day of May, 2013 in Misc. Application NO. 259 of 2010 be set aside and reviewed by this Honourable Court.

(b) Costs of the application be provided for.

1.4 On that date this application came up for hearing, Counsel for the respondent raised a preliminary objection to this application; that:-

“the applicant had no locus stand to bring an application for review of an order as he was not a party to the proceedings that resulted in the order sought to be reviewed”.

1.5 Both Counsel for the parties were directed to file written submissions. Counsel for the respondent complied with the Court directives and filed her submissions well in time. Counsel for the applicant failed or neglected or/and refused to file his reply to the submissions by Counsel for the respondent. In effect, therefore, I am of the considered view that the applicant and his lawyers abandoned this application. The applicant and his lawyers might have been overwhelmed by the submissions and the authorities by Counsel for the respondent.

The delivery of the ruling was scheduled for the 14th day of June, 2013 at 2:00pm. Then on that date at 1:30pm, the court clerk filed on the Court file the applicant's written submission in reply to the submissions that were filed by the respondent, on 13th June, 2013. The said

submissions were brought to my attention and in the interest of justice I halted the delivery of the ruling so as to consider the applicant's belatedly filed written submissions in rejoinder.

- 1.6** In his submissions, Counsel for the respondent labored a lot to show that the applicant has no locus standi to bring this application for review of an order as he was not a party to the proceeding that resulted in the order sought to be reviewed.

Counsel for the applicant argued that:

“ he is quite well clothed to bring the application for a review of an order even when not party to the proceedings under which the order was made in so far as he is a person aggrieved by the said order. Section 82 of the Civil Procedure Act and Order XLVI of the Civil Procedure Rules both clearly state that the any person aggrieved by the Order of the Court may apply for a review of the said order.

The applicant, as legal and equitable owner of the suit property who is in possession of the same and whereat he operates a business is quite aggrieved by the order rendered by His Lordship the Hon. Justice Mr. Joseph Murangira in the MA No. 259 of 2013 as the said order has the cumulative effect of depriving him of the right to conduct his business presently on the suit land and that in effect seeks to return the respondent unto the occupation of the same in a disguised manner by dispossessing the applicant of the suit land.

The said order stated that the respondent is allowed to continue its operations on the suit land under a lease purportedly subsisting until the hearing and final

disposal of the head suit herein. And yet the applicant is currently operating a fuel and gas service station on the suit land and the respondent was evicted therefrom in February 2013 by Kaweesa Badru and Ssempala Obadiah consequent upon a re-entry thereon by the two and automatic termination of the subsisting lease thereby.

It has been held by the Supreme Court of Uganda in Civil Appeal No. 2 of 2001 between Erukana Kuwe vs Vasrambhai Damji Veder that re-entry by a lessor amounts to automatic termination of a lease between a lessor and lessee especially where there is physical or constructive repossession of the property in question.

In the premises, it is the submission of the application that he is an aggrieved person envisaged under the above provisions of the law specifically Section 82 of the Civil Procedure Act and Order XLVI of the Civil Procedure Rules and that he therefore qualifies to have locus standi to bring an application for a review of an order he is aggrieved with even when he is not party to the proceedings under which the order resulted and that the respondent's preliminary objection must fail with costs."

2. Facts of the case

The facts of the case before Court are that the respondent is a legal owner of a **49 year** subsisting lease on land comprised in **Block 16 plot 119** situate at **Ndeeba**. The lessors purported to stage a re-entry on the suit land and claimed to have terminated the Respondent's lease and sold the land to a third party.

On 25 February 2013 when a purported eviction was threatened on the Respondent, the Respondent then established that **Kawesa Badru** and

Sempala Obadiah, (herein referred to as “lessors”) who were Attorneys of the Administrator of the Estate of the **late G.W. Walusimbi** had gotten themselves registered on the original certificate of Title, but this fact of the transfer/change in proprietorship was deliberately concealed from the respondent and that they were the ones attempting to evict the respondent.

The respondent resisted the purported re-entry/ eviction and immediately filed a suit, an application for a temporary injunction and an application for an interim injunction against the lessors and any third party deriving title from them. Since the respondent did not know the identity and/or the existence of any third party rights, the respondent sought interim and temporary remedies to stop any purported re-entry, evictions, infringement of the Respondent’s legal right and interests in the suit land until final disposal of the main case.

An interim injunction was issued on **25th March, 2013** ex parte and hearing of this Application inter-parte was fixed **on 12th April 2013**, after hearing both sides, the Assistant Registrar extended the Interim Injunction until final disposal of the main application for a temporary injunction.

In reply to the Respondent’s application for a temporary injunction, the said **Kawessa Badru** swore an affirmation wherein he revealed that they had sold the land to one **Imran Ahmed** (the applicant herein) on **9th January 2013** and he attached a sale agreement to the said affidavit.

Whereas the Respondent later filed an application to amend the suit and add the said Imran Ahmed as a party (who had claimed to have derived title from the lessors/defendants in **Civil Suit 133/13**) to the main suit; the Respondent had drafted and worded its application and prayers therein for a temporary injunction carefully and tactfully not only to obtain injunctive relief against the lessors but also anyone else who derived title from the lessors and that such injunctive relief should protect the Respondent's lease rights and interests in the suit land from being infringed and alienated until final disposal of the main suit

3. Resolution of the preliminary objection by Court

This injunctive relief/temporary injunction was granted to the Respondent herein vide **Misc. Application No. 259 of 2013** and the ruling was delivered by this Court.

It is this order that the applicant seeks to review and set aside by an application brought under **Section 82 Civil Procedure Act, Cap 71** and **Order 46 Civil Procedure Rules, SI 71-1**.

Counsel for the respondent submitted that the applicant does not have locus standi to apply for review of the order of the Court issued in **Misc. Application No. 259 of 2013** in my ruling delivered on **28th May 2013**. Hence the preliminary objection that the applicant does not have locus to file this application for review. Counsel for the applicant in his submissions does not agree.

It is my considered opinion that an application for review does not of necessity by mere fact of its being filed re-open questions decided by the order or decision sought to be reviewed. Those matters are only re-opened after the application for review is accepted. The question whether a review petition should be accepted or rejected has to be decided with reference to the grounds on which review is permissible, and not on the merits of the claim and the effect of the review is to vacate, reverse or vary the decree or order passed.

The applicant brought the application under Section 82 of the Civil Procedure Act, Cap 71 and Order 46 of the Civil Procedure Rules, SI 71:-

“Section 82 of the Civil Procedure Act provides that:

Any person considering himself or herself aggrieved—

(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 thinks fit.

Then Order 46 of the Civil Procedure Rules provides ; that:-

Application for review of judgment:-

(1) Any person considering himself or herself aggrieved:—

(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 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.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except where the ground of the appeal is common to the applicant and the appellant, or when, being respondent, he or she can present to the appellate Court the case on which he or she applies for the review.

2. To whom applications for review may be made.

An application for review of a decree or order of a court, upon some ground other than the discovery of the new and important matter or evidence as is referred to in rule 1 of this Order, or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the judge who passed the decree or made the order sought to be reviewed.

3. Application where rejected or where granted.

(1) Where it appears to the court that there is not sufficient ground for a review, it shall dismiss the application.

(2) Where the Court is of opinion that the application for review should be granted, it shall grant it; except that no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his or her knowledge, or could not be adduced by him or her when the decree or order was passed or made without strict proof of the allegation.”

Counsel for the applicant in his submissions submitted that the applicant is aggrieved by the order of a temporary injunction that was issued by the Court. **The question to determine by this Court is whether the applicant is an aggrieved party?**

An aggrieved party was defined by **Justice Karokora** as he then was in **Mohammed Allibhai vs W.E. Bukonya and Another, C.A 56 of 1996**, citing, **Re Nakivubo Chemists (U) Ltd; In the matter of the Companies Act (1979) HCB 12**; to include any party who has been deprived of his property. He also cited the case of **Kawdu vs Bever Ginning Co. Ltd, Akot and Others 1929 AIR Nagpur 185**; noted that, whereas court has inherent powers to review an order passed where it affected a third party; it must be a person who has suffered a legal grievance and the principle applies depending upon the peculiar circumstances of each case.

In the same case, **Justice Odoki** observed that it is well established that while a 3rd party may apply for review under the law, the party must establish that he is an aggrieved person. A person suffers a legal grievance if the judgment given is that the appellant in the present case was not a party to the suit. He was a lessee of the 1st respondent who owns a mailo estate. The 2nd respondent was a successor in title to the appellant's predecessor when the latter was expelled from the Country until at the time of the consent judgment when it surrendered its claim to the suit property. The power of re-entry was already in the lease and the consent judgment could not prejudice the appellant. Therefore in order to re-enter the property, the 1st respondent will have to comply with the lease and the procedure laid down in Section 113 of the Registration of Titles Act. He concluded that the appellant did not have locus standi to bring the application for review as he could not consider himself an aggrieved party.

In the case of **Ladak Abdulla Mohamed Hussein vs. Griffiths Isingoma Kakiiza & Others**, Supreme Court Civil Appeal No. 8 of 1995, Odoki JSC cited *Jackques v. Harrison* (1883-4) 12A.C.165, and therein Bowen L.J said;

“There are so far as we can see only two modes open by which a stranger to an action who is injuriously affected through any judgment suffered by a defendant by default can set that judgment aside; and these two modes are amply sufficient to protect any stranger in all cases in all rights. He may, in the first place obtain the defendant’s leave to use the defendants name, if the defendant has not already bound himself to allow use of his name to be made; and he may thereupon in the defendants name apply for leave to have the judgment set aside on such terms as the judge may think reasonable., Or he may if he is entitled without further proceedings to use the defendant and Plaintiff asking, leave to have the judgment set aside and to be at liberty either to defend the action for the defendant on such terms of indemnifying the defendant as the judge may consider right or at all events to be at liberty to intervene in the action....”

In the instant case, the applicant made this application for review of my order in his individual capacity as an aggrieved party but can the applicant be construed to be an aggrieved party with the right to file this application to review?

In the instant case, the applicant made admission in his sworn affidavit in support of the application that he purchased the suit land on **9th January 2013** and obtained possession on **25th February 2013**.

Consequent to the above, the order obtained by the respondent did not deprive the applicant of his alleged proprietary interests in the suit land. The temporary order of injunction was issued to maintain among other temporary reliefs the status quo of the suit land pending the hearing of the main suit as no. 133 of 2013. This injunction is intended not to expose the respondent to the wraths of the applicant, 1st and 2nd defendants in the main suit and any other third parties until the issues between them are fully investigated by this Court. There is no harm caused to the applicant in that regard.

Further, before the hearing of this application, the applicant through his lawyers consented to an application joining the applicant to the main suit as the 3rd defendant. The plaintiff by the order of this Court was to be amended, which as I write this ruling is already done by the respondent. The applicant is now part of the dispute in the main suit, CS No. 133 of 2013. The order which the applicant wants reviewed and set aside is binding on him.

At page 209-210, **M Ssekanna & S. N. Ssekaana, Civil Procedure and Practice in Uganda, July 2007**; it was discussed that interlocutory relief can have the effect over and beyond the ambit of the immediate dispute. Thus, an act in breach of an injunction by a person who was not the subject of that injunction could still amount to contempt of court, if in carrying out the act, the person intends to impede or prejudice the administration of justice.

Therefore, in view of the hereinabove analysis of the facts and the law, this preliminary objection is upheld.

4. Conclusion

In the result and for the reasons given hereinabove in this ruling, this Miscellaneous Application No. 492 of 2013 has no merit at all. The applicant is not an aggrieved person for purposes of the law and therefore, had no locus standi to bring this application for review of the order of this Court against the respondent. The respondent has issues to settle with all the defendants (the applicant inclusive) in the said main suit, Civil Suit No. 133 of 2013 between the parties.

Accordingly, therefore, this application is dismissed with costs to the respondent.

Dated at Kampala this 18th day of June, 2013.

sgd

Joseph Murangira

Judge