

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

CIVIL DIVISION

MISCELLANEOUS APPLICATION NO. 141 OF 2014

NAMBUSI JAMEO ::: APPLICANT

- VERSUS -

1. KATO YUDA

2. ROSE MATOVU ::: RESPONDENTS

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

RULING

This application is by way of Notice of Motion brought under Section 82 (b) and Section 98 of the Civil Procedure Act (CPA) and Order 46 rule 1 (b), Order 52 rules (1), (2) & (3) of the Civil Procedure Rules for orders that:

1. This court reviews and sets aside as well as stay any proceedings subsequent to the consent decree dated 31st October 2013 in Civil Revision No. 10 of 2013 and have the same heard *inter partes*.
2. Costs of the suit be provided

The application is supported by the affidavit of Nambusi Jameo the applicant in which she deponed that:

1. She was jointly sued with the 2nd respondent by the 1st respondent in Nabweru Chief Magistrate's Court, Civil Suit No. 186 of 2010 for trespass on the suit land and damages which reliefs were granted by the Chief Magistrate's Court of Nabweru on the 8th day of July 2013.
2. That being dissatisfied with the decision of the Chief Magistrate's Court of Nabweru in Civil Suit No. 186 of 2010 she promptly lodged several applications for amendment of judgment.
3. That the 2nd respondent filed High Court Civil Revision No. 10 of 2013 which application was never served on her.
4. That on the 31st day October 2013 the respondents entered into a consent decree in High Court Civil Revision No. 10 of 2013 which was filed without her knowledge and served onto her tenants staying on the suit property.
5. That execution was carried out as a result of the said consent to her detriment occasioning her to suffer irreparable loss that cannot be atoned for by the respondents.
6. That she was informed by her lawyers that the consent decree was fraudulently signed by the respondents and the same respondents led court to mistakenly sign and seal it without informing her.
7. That it is in the interest of justice that court be pleased to invoke its inherent powers and set aside the consent decree and have High Court Civil Revision No. 10 of 2013 heard inter parties and set aside all the subsequent proceedings entered into by the respondents.

In an affidavit in reply sworn by Rose Namatovu the 2nd respondent, she stated that the applicant was served with the hearing notice in High Court Civil Revision No. 10 of 2013 and that the consent decree on the court file was properly entered.

During the hearing of the application the applicant was represented by Ms. Nyangoma Patricia from M/S Nyanzi, Kiboneka & Mbabazi Advocates. The 1st respondent was represented by Kobusingye Annet while the 2nd respondent was represented by Kenneth Kajeke.

Learned counsel for the applicant submitted that the consent decree made by the respondents in the absence of the applicant was only made with the intention to proceed and obtain a warrant of vacant possession against the applicant without entering it on its merits.

Learned counsel further submitted that the applicant suffered two legal grievances from the consent decree arising out of High Court Civil Revision No. 10 of 2013, having the same signed without her knowledge even when she was a party to the Civil Revision. That the applicant's applications that are still pending were overtaken by events when execution was carried out.

Learned counsel relied on the *Nakivubo Chemist (U) Ltd [1971] HCB 12* where it was held that any person considering himself aggrieved is one who has suffered a legal grievance.

In reply learned counsel for the 1st respondent submitted that the parties were all served by the Court when the 1st respondent raised a complaint that he has not received vacant possession despite the favourable judgment passed by the Lower Court. That the applicant's contention that she was not served is unfounded and aimed at denying the respondent the fruits of his judgment. He further submitted that the applicant has not shown good cause. Yet she was aware of the Revisions proceedings but willfully and intentionally or negligently failed to attend.

Learned counsel for the 2nd respondent argued that the evidence before court does not point at any fraud committed by the respondents.

I have considered the application, the law applicable and the submissions by respective counsel. Section 82 of the Civil Procedure Act provides that:

“Any person considering himself aggrieved by a decree or order from which an appeal is allowed by this Act but from which no appeal has been preferred

or by a decree or order from which the appeal is allowed by this Act, may apply for review of the judgment to the Court which passed the decree or made the order, and the court may make such order on the order as it thinks fit.”

According to the affidavit sworn by the 2nd respondent, she depones that the applicant was served with a hearing notice in Civil Revision No. 10 of 2013. On record, an affidavit of service showing that the hearing notices were served on the applicant’s lawyers is attached to the affidavit in reply. Attached too were the hearing notices which were signed and received by the applicant’s advocate M/S Nyanzi, Kiboneka & Mbabazi Advocates.

Therefore the allegation that applicant never instructed the advocates to represent her is an afterthought since the very lawyers are representing her in this application.

It should be noted that the Civil Revision that is the subject of this application was not initiated by the applicant nor the respondents but it was at the initiative of court.

For one to succeed in an application for review an aggrieved party must show that there is discovery of new and important matter of evidence discovered after exercise of due diligence, mistake or error apparent on the face of the record or any other sufficient reason.

In the instant case the applicant has not shown or proved to the satisfaction of court any grounds for review under Section 82 of the Civil Procedure Act and Order 46 rule 1 (b) of the Civil Procedure Rules.

The orders sought to be reviewed were lawfully arrived at by the trial court in accordance with Rules of procedure. The applicant and her lawyers chose not to appear on the day when they

were summoned by court to do so. It was not the respondents' fault that the applicant failed to appear. The allegation of fraud has not been proved by the applicant. From the record, it is clear both the applicant and the lawyers are not telling court the truth. In a supplementary affidavit in support of the motion, deponed by Kagere Yusuf an Advocate practicing with M/S Nyanzi, Kiboneka & Mbabazi Advocates in paragraph 5, he stated that the consent decree caused a legal grievance to the applicant in as far as the applicant had filed applications in the lower court that made the judgment in Civil Suit No. 186 of 2010 to increase the compensatory damages to her but the Civil Revision was fixed for hearing before the applications in the Lower Court were fixed. The applicant also alleges in the affidavit in support of the motion that being dissatisfied with the decision of the Chief Magistrate Nabweru in Civil Suit No. 186 of 2010 she promptly lodged several applications for amendment of judgment. Clearly what the applicant was dissatisfied with in the Lower Court was the quantum of damages and not ownership of the suit land. Despite the dissatisfaction she did not appeal or initiate this revision. Therefore her complaints now are afterthoughts which have no substance.

In the affidavit in rejoinder sworn by the applicant dated 4th September 2013 in paragraph 8 she states that the application she filed in the Lower Court has never been fixed because of the outcome of the consent judgment dated 31st October 2013. That she never instructed the firm of Advocates that was served to represent her in the Civil Revision.

First and foremost, the Advocate in personal conduct of the matter who deponed the supplementary affidavit in support of the motion does not in any way state that they had not instructions to represent the applicant in the Civil Revision. It was the same firm that received the summons by signing and stamping on the originals.

Secondly the allegation that the consent affected the applications she had filed is false. The consent decree on record was entered on the 31st October 2013 and on 3rd December 2013 the applicant was notified that her money was deposited in court. Then on 6th December 2013 the

applicant filed a notice of motion in the Lower Court but was not lodged as it was never signed and/or sealed by the court as required by the law.

It is on that basis that I find the applicant not being truthful. She has failed to prove all the allegations of fraud against the respondents.

There is therefore no basis for this court to review and set aside the consent decree as requested by the applicant.

This application has no merits and stands dismissed with costs to the respondent. I so order.

Stephen Musota

J U D G E

06.05.2015.