

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA
CIVIL DIVISION

MISC. APPLICATION NO. 471 OF 2016

(Arising from HCCS NO. 191 of 2013)

EMOJONG FRANCIS, OKOTH & ORS :::::::::::::::::::: APPLICANT

(All suing by representative action on behalf of numerous others and their own behalf)

Versus

BAUTU ROBERT :::::::::::::::::::: RESPONDENT

T/a SYBA Associates Advocates

BEFORE: HON. MR. JUSTICE STEPHEN MUSOTA

RULING

This is an application for review of the orders of this court in Misc. Application 347 of 2015. The application is by way of Notice of Motion under Section 82 and 98 of the Civil Procedure Act, Order 52 Rules 1, 2, & 3 of the Civil Procedure Rules and other enabling laws.

The applicant is represented by M/s Bwengye & Co. Advocates while the respondent is represented by M/s Arcadia Advocates.

The brief background to this application is that on 20th June 2013, Emojong Francis and Okoth Andrew as well as others instituted High Court Civil Suit 191 of 2013 through a representative order. The suit was instituted on behalf of themselves and others against Uganda Revenue

Authority. On 14th October 2014, the parties to that suit entered a Consent Judgment and agreed that the plaintiffs be paid their terminal benefits. In the consent order, it was agreed *inter alia* that the plaintiffs would be paid through the account of M/s SYBA Advocates in DFCU Bank. The same plaintiffs however are bringing this application seeking for orders of court that the money should be paid directly to their personal accounts. The applicants filed 24 affidavits in support of the application. The respondents filed two affidavits in reply. The hearing of this application was by way of written submission. Whereas the applicants filed submissions, the respondents did not.

I have carefully considered the application as a whole, the affidavits and the submissions on record. It is my considered finding that this application is misconceived. The grounds for setting aside and interfering with the consent judgment are well settled. These were elaborately stated by Mulenga JSC in the case of **Attorney General Vs James Kamoga & another SCCA No. 08 of 2004** while following the decision in **Hirani Vs Kassam [1952] EA 131**. It was stated that the principle upon which court may interfere with the consent judgment is that, prima facie any order made in the presence and with the consent of counsel is binding on parties to the proceedings or action and cannot be varied or discharged unless obtained by fraud or collusion or by an agreement contrary to court policy or if the consent was given without sufficient material facts or in misapprehension or ignorance of material facts or in general for reason which would enable court to set aside an agreement. None of these grounds have been pleaded by the applicants in this case.

Further to this, the principles and grounds for review are well settled. It is trite law that the right to review just like the right to appeal is a creature of statute and must be given expressly by statute See: **FX Mubwike Vs UEB, High Court Misc. Application No. 98 of 2005**

In considering an application for review court exercises its discretion which this court is aware must be exercised judicially; **Abdullah Jaffer Devji Vs Ali RMS Duji [1958] EA 558**

Order 46 of the Civil Procedure Rules clearly states the grounds for review which were discussed in the Mubwike case (supra) to include:

1. That there is a mistake or manifest error apparent on the face of the record.
2. That there is a discovery of new and important evidence.
3. Any other cause.

Both grounds 1 and 2 above are not applicable in the instant case because none of the two was pleaded by the applicants. The ground which remains is the general one; '*any sufficient reason*'.

This ground means a reason analogous to those in the rule. A ground analogous to those in the rule means they should be of the same character and must relate to errors or omissions of court or oversights at the time of making the order. They all must relate to the court record rather than events that took place outside court or after the order was made.

In the instant case, the complaint is that the lawyer has failed to fully remit sums of money which the plaintiffs/applicants claim to be entitled to receive. This complaint has no relation whatsoever with the order that court made. Besides, the order was made by consent of the parties independently. The only thing this court did was to endorse it to give it full force of the law.

For the reason I have given, I find that there are no sufficient grounds to move this court to grant an order of review. Consequently, I will find that this application is misconceived and not properly before court. Clear provisions do exist in law on how to deal with disagreements between an advocate and a client. An application for review is not one of them.

I will accordingly dismiss this application.

Since there is still an advocate-client relationship between the parties hereto, it is in the interest of justice that each party bears its own costs.

I so order

Stephen Musota

J U D G E

30.08.2016