

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MPIGI

MISCELLANEOUS APPLICATION NO. 06 OF 2016

(Arising from civil suit No. 135 of 2013)

MPIGI TOWN COUNCIL:.....APPLICANT/DEFENDANT

VERSUS

JAMIL KISUULE:.....RESPONDENT/PLAINTIFF

BEFORE: HON. JUSTICE WILSON MASALU MUSENE

RULING

The Applicant brought this application by Notice of Motion under Sections 82 and 98 of the Civil Procedure Act, Cap 71, O. 46 r 1 (b) and r 8 of the civil procedure rules seeking orders that;

1. Court reviews its orders in HCCS NO. 157 of 2013 awarding the Respondent UGX 30,000,000/= in damages and costs of the suit.
2. Costs the application be provided for.

The brief background of the case is that the Respondent successfully sued the Applicant in HCCS NO. 157 of 2013 for a declaration that the resolution passed by the Applicant council on 28th February 2013 under Min No. 07/02/13 was erroneous, an order quashing it general damages, interest and costs of the suit. Court found that the applicant's conduct was unfair and awarded the Respondent general damages of UGX 30,000,000/= and costs of the suit to which the Applicant now seeks review of the said orders.

The grounds of this application re stated in the affidavit of the Bwanika Mathias, the applicant's Town Clerk but briefly are that;

- a) The applicant is aggrieved by orders of the Honourable court in HCCS NO. 157 of 2013.
- b) That there is a mistake or error apparent on the face of the record for the Honourable Court to review it's said orders which need to be corrected.
- c) That it is just and equitable that the Honourable court reviews and sets aside its orders against the applicant/Defendant.

The Applicant was represented by Nyanzi, Kiboneka & Mbabazi Advocates while the Respondent was represented by M/S BNM Advocates. Both counsel filed written submissions.

Counsel for the Applicant submitted that the applicant is aggrieved by orders of the Honourable Court in HCCS NO. 157/2013. Counsel relied on order 46 r. 1 (b) of the Civil Procedure Rules and Section 82 of the C.P.A to the effect that any person considering himself 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.

Counsel went ahead to define an aggrieved person citing the case of **Busoga Growers Co-operative Union Ltd vs Nsamba & Sons LTD HC (Commercial Court) Misc. application No. 123 of 2000**, where it was stated that;

“For an application for review to succeed, the party applying for review must show that he/she suffered a legal grievance and that the decision pronounced against him/her by court has wrongfully deprived him/her of something or wrongfully affected his title to something.”

Counsel therefore concluded that the Applicant was an aggrieved person who was affected by orders of court of awarding the Respondent general damages of 30,000,000/= for loss of job and earnings yet he was re-instated and continued to get his earnings.

For the Respondent it was argued that the assessment of damages was not based on loss of job and earnings alone, but was a combination of all other factors including dented reputation, mental suffering and anguish occasioned by the Applicant's Council. That the Respondent in paragraph 6 of his reply avers that he spent over six months without being on the Executive Committee of the applicant after the impeachment and during that time, he never earned and was never subsequently paid that money upon his reinstatement by order of court vide M/A No. 247 of 2013.

Counsel for the Applicant further argued that for court to review its orders, there must be an error apparent on the face of the record. On this ground, counsel submitted that the applicant in his affidavit paragraph 6 stated that Court's finding that the Respondent lost his job and earnings yet he was reinstated on his job by virtue of temporary injunction in Misc. Application No. 247 of 2013 is a mistake or error apparent on the face of the record which needs to be corrected or reviewed.

Counsel cited the case of **Edison Kanyabwera Pastori Tumwebaze SCCA No. 6 of 2004** to the effect that:

"....in order that an error may be a ground of 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 manifested and clear that no court would permit such an error to remain on the record. The error may be one of fact but is not limited to matters of fact, and included also an error of law."

Counsel therefore contended that following the said order, the Respondent was reinstated on his job and continued receiving his earnings from the Applicant. Counsel thus invited court to review its findings and decision to award the Respondent 30,000,00/= basing on the allegation that the Respondent lost his job and earnings was an error apparent on the face of the record.

Counsel for the Respondent on the other hand maintained his position that the award of the 30,000,000/= was not only based on loss of job and earnings but on the case as wholly presented. That Court considered other things such as; the Respondent's reputation, a toll on

his career, mental and emotional wellbeing. In addition to that, the Respondent averred that for the entire time he was off the executive committee, he was never paid nor compensated or reimbursed when he returned to the committee pursuant to the Court order.

Counsel for the applicant also contended that there was another mistake or error when court held that only 11 members of the council out of 23 participated in the meeting of 23rd February 2013 from which a resolution to impeach the Respondent was made. Counsel alleged that the said meeting out of 23 members who participated, 12 voted in favour of the censure of the Respondent and not eleven as stated in the judgment which was a gross diversion from Section 23 of the Local government Act Cap 243.

Counsel for the Respondent in their supplementary submissions stated that 12 members voted not 11 as stated by the Applicant however, counsel submitted that the question is how substantial is that error to affect the outcome of the Court's findings on the liability of the Applicant?

Counsel for the applicant relied on Section 26A of the Local Government Act, Cap 243 as amended by Act of 2005, which is to the effect that:

“A council of a lower local government may, by resolution supported by more than half of all the members of the Council, pass a vote of censure against a member of the executive committee of the lower local government council.”

Counsel submitted that the Defendant council was composed of 23 members and half of 23 would be 11 and half but since there is no half a person, they would round off to 12. He stated that only 12 members voted but the act provides for more than half which would be more than 12 and not just 12. Counsel therefore contended that even if the record was corrected the finding of court would remain the same.

Further, that Court's finding that the resolution was unconstitutional to the extent that it caused the Respondent to be punished twice for the same wrong was not challenged by the Applicant. Counsel thus prayed that the application be dismissed with costs.

I have considered submissions by both counsel concerning issues of review and have come to the following decision.

In considering an application for review, court exercises its discretion judicially as was held in the case of **Abdul Jafar Devji vs Ali RMS Devji [1958] E.A 558**. The law under which review is provided is Section 82 of the Civil Procedure Act and Order 46 of the Civil Procedure Rules.

The grounds for review are clearly provided for and were outlined in **FX Mubuuke vs UEB High court Misc. Application No. 98 of 2005** . these are:

1. That there is a mistake manifest or error apparent on the face of the record.
2. That there is discovery of new and important evidence which after exercise of due diligence was not within the applicant's knowledge or could not be produced by him or her at the time when the decree was passed or the order made.
3. That any other sufficient reason exists.

In this application, counsel relied mainly on ground one, which is; "a mistake or an error apparent on the face of the record."

From the Applicant Counsel's submissions Court's finding that the respondent had lost his job and earnings and awarded him damages basing on that was an error apparent on the face of the record as the Respondent was reinstated back on his job. However, counsel for the Respondent stated that for the time he was off the Executive committee of the Applicant, he was never paid nor compensated when he returned on the committee pursuant to the Court order. Further, he argued that the reward of 30,000,000/= by Court was general and not limited to loss of earnings and the job at that time.

What would be noted is that the Respondent was removed from the council and during that time, he was never paid or compensated when he was reinstated. Further, that the applicant's act was unlawful as the act requires a resolution to be passed by more than half of the members of council as stated in **Section 26A of the Local Government act, Cap 243 Amendment of 2005**.

From the record what can be corrected is that 12 members voted instead of the 11 as stated in the lower court judgment but that does not prejudice the applicant in any way as the number still remains short of the requirement of more than half which in this case would have been 13 members or more. I therefore maintain the previous decision that the Applicant acted unlawfully in removing the Respondent and I see no error on the face of the record to that effect.

An error apparent on the face of the record was defined in **Batuk K. Vyas vs Surart Borough Municipality & Ors (1953) Bom 133** that:

“No error can be said to be apparent on the face of the record if it is not manifest or self evident and requires an examination or argument to establish it...”

I also noted that the applicant’s submissions requires arguments and examination which could have been by way of appeal and not review as brought by the applicant. I therefore dismiss this ground on the above reasoning.

Further, it should also be noted that the award of 30,000,000/= as general damages as noted on page 5 of the judgment in HCCS No.157 of 2012 was for;

“ the harm occasioned to him, the huge stain on his reputation, a huge on his carrier, mental and emotional wellbeing, loss of his job and earnings and his peace of mind as he had to suffer the same wrong twice by a resolution that was unlawfully passed by the Defendant/Applicant’s actions.”

Therefore the Applicant’s contention that the award was a mistake on the face of the record since the Respondent was reinstated on his job is incorrect as the award covered several factors other than just job and earnings.

In the circumstances, and in view of the holding and findings as summarized above, I do hereby reject the application for review. The application is accordingly dismissed with costs.

W. Masalu Musene

Judge

21st September, 2017.

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ORDER

This application coming up for final disposal this 21st day of September, 2017 before **Hon. Justice Wilson Masalu Musene** in the presence of **Mr. Magumbi Badru, Vice Chairman of Mpigi Town Council** together with **Talisenta Charles** the enforcement officer and in the presence of the Respondent.

IT IS HEREBY ORDERED THAT:

The application be and is accordingly dismissed with costs.

Given under my hand and the seal of this Honourable Court this.....day of.....2017

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DEPUTY REGISTRAR