THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA

HOLDEN AT MBALE

HCT-04-CV-MA- 267 OF 2015

1. **DAWULI DAVID ROBERT**
2. **TABONEKA LAWRENCE :::::::::::::::::::: APPLICANTS**

VERSUS

MBOIZI DISON :: RESPONDENT

BEFORE: HON. JUSTICE HENRY I. KAWESA

RULING

Applicant moved this court under Section 98 CPA, 14(2) (4) 33 and 39Judicature Act and order 52 rule 1 and 2 of the Civil Procedure Rules for orders that court recalls and review its orders under HCMA 226/ 2013 and 0080/ 2014 of 22.01.2015.

This court agrees with the background as it relates to the facts giving rise to the orders complained of.

It is however the contention of the applicant's counsel that court should invoke its inherent powers under Section 14(c) 4, 33 and 39 (2) of the Judicature Act to review its earlier orders on grounds that they were granted in error.

This is because contrary to what had been presented to court during review, the court record according to the applicants shows that:-

Under MSCA MT 84 of 1986, the Chief Magistrate by ruling at Tororo extended applicant's time within which to file their appeal.

- ✓ The appeal No. MM 45 of 1999 was filed in Mbale not Tororo following the moving of Kibuku Magistrate court to Mbale circuit.
- ✓ The Chief Magistrate Batema (then delivered the ruling on 21st May 1999, extending the time for the applicant to file the appeal and appellant then filed the same in Mbale following transfer of Kibuku Magistrate court to Mbale Chief Magistrate area.

In rebuttal the respondent argues the contrary. He maintains by his affidavit in reply and submissions on record that:-

1. There is no justification for the application, as it violates the provisions the law for review under order 46 CPR.
2. There was no application for leave to appeal out of time since MT 70 of 1982 from which MSC 84/ 1986, arose had been struck off with costs
3. The MM45/ 1999 Mbale appeal was incompetent and illegal before court

All arguments are noted. I have again perused this file, pleadings and submissions in this matter and do hold as here below;

Jurisdiction

There is no court that grants itself jurisdiction. Jurisdiction is a creation of statute.

Review is provided for specifically under Section 82 CPA. CAP 71 and order 46 rule 1(1) CPR. The law also gives the High Court the disscretion to invoke its inherent powers in order to grant orders which may be necessary to meet the ends of justice, and to prevent abuse of the process of the court.

This court therefore has jurisdiction to hear this matter, so as to allow justice to be done.

Merits of the application

The applicants argue that there is need to review the court orders complained of as they were given in error.

The law is that in all matters of review court examines the following;

a) Discovery of new and important matter or evidence which after the exercise of due diligence was not within his or her knowledge or could not be produced by him.
b) Mistake or error on face of the record.
c) Any other sufficient reason.

Counsel for applicant, relies heavily on error, basing on the fact that court was misled on the genesis of CA45/ 99 from Civil Suit 007/ 1979 (Kibuku).

I have found the following arising from all arguments on this matter

In ***FX Mubiike V UEB HCMA 98/ 2005***, it was held that for a review to succeed on the basis of an error on the face of the record the error must be so manifest and clear that no court would permit such an error to remain on the record.

In the case before me, there is a mix up on the way the entire genesis of the appellate process was handled in Tororo Chief Magistrate Court , under Civil Appeal MM45/99.

As argued by both parties there is confusion regarding the facts of Civil Appeal N0. MT 70 of 1982 which had been struck off, and the subsequent MSC.A84 of 1986 arising there from. Could MSCA 84 of 1986 stand in view of the fact that MT 70 of 1982 had been struck off?

I find that these matters were the same matters that this court considered under its previous review. In the submissions by both counsel, this court did consider the fate of CA 45/ 1999 and concluded that it had been determined and dismissed by Chief Magistrate's court of Tororo.

These matters are not new. All were duly brought to the attention of this court under the first review. All the matters being referred to by applicants were raised by the same parties in the earlier review, and before this court made its decisions, it duly considered them.

I notice that counsel for the applicants attempted to show that there was life in CA MM 48 of 1999 derived from the alleged " Batema Ruling of 21st May 1999, also arising from the "Musene Ruling" extending time .

The genesis of the above scenario is a fusion of confusing details regarding the way the court record as "is" now reflects what transpired.

By virtue of the above assertions, I have given the matter a second look.

I have again perused the record and all annextures referred to but I am unable to be convinced that this court was in error of judgment.

The following glaring inconsistencies stand out on the record so as to render the applicants' assertions inconclusive on this subject:-

i) Civil appeal 70 of 1982 arising from Kibuku MT 7/ 79 was struck off by M. Oganga Chief Magistrate on 18. 09. 1986 with costs.

ii) MT/ 84/ 86, arising from CA/ 70/ 82 was also dismissed by Chief Magistrate Adonyo on 14. 04. 1998.

iii) The same MT/ 84/ 86, got back into the system by the Ruling of "Musene" which incidentally was certified by Chief Magistrate "Adonyo" on 7th 01. 1998, after the dismissal!! by himself.

There is no signed copy of Ruling or a proper chronological record of proceedings to explain how all that transpired in court.

The proceedings then indicates that a one Chief Magistrate " Batema" read out the Ruling and gave other orders which according to the applicant gave rise to the alleged Mbale MM.45 of 1999.

The above are details which counsel and his client ought to have brought to the attention of this court at the time of review. Both counsel did not. They agreed in their submissions that CA. 70 of 82 had been dismissed at Tororo and hence could not have resurfaced in Mbale without an application for reinstatement.

All the issues raised in this application were sufficiently argued before me in the first application and I do not find any new matters to warrant a change in the findings.

There is no sufficient cause shown. In ***R V Nakivubo Chemists (U) Ltd (1979) HCB 12***, it was held that the expression sufficient cause should be read as meaning sufficiently of a kind analogous to the discovery of new and important matter of evidence previously overlooked by excusable misfortune and some mistake or error apparent on the face of the record.

I do not find such evidence here. All matters as argued were the same matters argued only that now new justifications are being given to explain the errors and omissions, by applicants. I do not find that appropriate in a proceeding under review of a previous decision, where parties had a chance to explain themselves. This would amount to abuse of the due process of all if allowed. It would cause injustice to the parties as it will open up a can of all types of worms regarding this litigation of more than 37 years! There should be an end to litigation.

Regarding discovery of new and important matter, it is trite law that the party seeking to relay on that fact must show that he/she had discovered some new and important matter of evidence which inspite of the exercise of due diligence was not within his knowledge at the time judgment was entered and must show by affidavit what grievances he had against the decree passed against him (see: ***Busoga Growers Coop Union Ltd v. Nsamba & Sons Ltd HCMA 123/2000*** (unreported).

In our case there is nothing that was not known to the applicants or their counsel at the time of the judgment. The Applicants' current counsel is merely alleging now that both the previous counsel and their clients did not sufficiently comprehend the proceedings and hence misled court. I do not find anything new in what applicants are raising by way of this current application. I find as was found in ***Yafeesi Itegike v. Jamada Wakafutali HCMA 1/996*** (unreported) that the alleged discovery of new and important evidence the basis of the application for review was false because what is alleged to be new had been exhaustively considered and decided upon in the judgment sought to be reviewed.

For all reasons as stated above, I do not find merit in this application. It fails and is dismissed with costs to the Respondent. I so order.

Henry I. Kawesa

JUDGE

2.2.2017