

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISC. APPLICATION NO. 62 OF 2018
ARISING OUT OF CIVIL SUIT NO 285 OF 2010**

ATTORNEY GENERAL ::: APPLICANT

VERSUS

LT. COL LEVY VINCENT MUGENYI & 51 OTHERS ::::::::::::::::::::::::::: RESPONDENTS

BEFORE: LADY JUSTICE LYDIA MUGAMBE

RULING

1. This application is brought under sections 82 and 98 of the Civil Procedure Act, section 33 of the Judicature Act and Order 46 rules 1(1) and 8 of the Civil Procedure Rules for orders that the award of transport allowance to the Respondents in Civil Suit No. 285 of 2010 be reversed, any other reliefs as the court may deem fit and costs be provided for.
2. The Applicant is represented by Mr. Madete Geoffrey from the Attorney General's chambers and the Respondents are represented by M/s. Tumwesigye, Baingana & Co. Advocates.
3. The application is supported by the affidavit of Mr. Tsubira Sam, a State Attorney in the Attorney General's chambers. The grounds for the application are briefly that the Respondents instituted civil suit No. 285 of 2010 against the Applicant seeking payment in lieu of annual leave, transport allowance and accumulated leave not taken upon retirement from the army. On consent of the parties, on 14th April, 2014 this court entered

judgment on admission in which transport allowances among other orders were granted to the Respondents. Mr. Tusubira averred that the award of transport allowances in lieu of untaken leave is a glaring error contrary to the law applicable and earlier decisions of this court. He also averred that a court of law cannot sanction what is illegal and that it is just and equitable that this court rectifies the error in order to give effect to the intention of the law.

4. The application was opposed by the Respondents through the affidavit in reply of Lt. Col. Wilson Mubiru one of the Respondents. He averred that there was no error and/or illegality in the ruling of the court and/or agreement of the parties. Further that the Applicant is stopped from bringing this application and does not show any justification and/or cause or error for this court to review its ruling. He also averred that under the Uganda People's Defence Forces Act of 2005, the Respondents are entitled to payment in lieu of leave not taken and transport thereof.
5. The right of review just like the right of appeal is a creature of statute and must be given expressly by statute See: *FX Mubwike v. UEB, High Court Misc. Application No. 98 of 2005*)
6. 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.
7. Order 46 rule 1 of the Civil Procedure Rules provides that 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.

8. In **Meera Investments Ltd v. Andreas Wipfler T/A Wipfler Designers & Co. Ltd HCMA No. 163 of 2009** it was held that in an application for review, an aggrieved person must prove; (1) that there is a discovery of new and important facts; (2) there is an error apparent on the face of record, or (3) any other sufficient cause.
9. I have considered all the pleadings and submissions of the parties. I am not convinced that the Applicant meets the standard for review under section 82 of the Civil Procedure Act and Order 46 of the Civil Procedure Rules. This is because the Applicant demonstrates no new and important matter of evidence which after exercise of due diligence was not within his knowledge or could not be produced at the time when the decree was passed or the order made. Moreover, coming four years after the judgment in issue which was based on terms consented to by the Applicant and the Respondents, the intentions of the Applicant are suspect. I therefore find no merit in the application and dismiss it with costs for the Respondents.

I so order.

Lydia Mugambe
Judge
22nd June 2018.