

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA SITTING AT GULU
MISCELLANEOUS CIVIL APPLICATION No. 0058 OF 2016
(Arising from Civil Appeal No. 067 of 2007).

5 **LALWAK ALEX** **APPLICANT**

VERSUS

10 **OPIO MARK** **RESPONDENT**

Before: Hon Justice Stephen Mubiru.

RULING

15 This an application is made under sections 82, 33 and 98 of *The Civil Procedure Act*, and Order
46 rules 1 and 8 of *The Civil procedure rules* seeking a review of the order of this court made on
12th December, 2014 by my learned sister Judge, the then Resident Judge of this High Court
Circuit. I am aware that in *Outa Levi v. Uganda Transport Corporation [1975] H.C.B 353*, it
was held that an application for review of a decree or order ought to be made to the judge who
20 made it, except where that judge is no longer member of the bench in which case review could
be by another judge. However, that is not the only situation in which an order may be reviewed
by a Judge other than the one who made the order. This being an application for review placed
before a Judge who did not deliver the decision sought to be reviewed, the jurisdiction to grant
the orders sought is derived from Order 46 rule 2 of *The Civil Procedure Rules* which provides
25 as follows;

An application for review of a decree or order of a court upon some ground other
than the discovery of the new and important matter or evidence as referred to in rule
(1) of this order or the existence of a clerical or arithmetical mistake or error
apparent on the face of the decree shall be made only to the Judge who passed the
30 decree or made the order sought to be reviewed.

In paragraphs 9 and 10 of the affidavit in support of the notice of motion seeking review of the
order of this court, it is clear that the basis of the application is that the applicant has found an
error apparent on the face of the record. For that reason, this is not the type of application that O

46 r 1 restricts to only the Judge who made the order sought to be reviewed. This court thus has jurisdiction to review the order.

The background to this application is that the applicant sued the respondent before the L.C.II Court over a land dispute and lost the case. He lost further the appeal he lodged with the L.C.III Court. Upon appeal to the Chief Magistrate, he secured a decision in his favour. That decision was appealed to the High Court and on 12th December, 2014 the then Resident Judge reversed the decision of the Chief Magistrate, ordered the applicant to pay general damages of shs. 2,000,000/= and a refund of shs. 400,000/= received as part payment of the costs of appeal.

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In this application, the applicant contends that it was an error on the part of this court to condemn him in general damages for the arrest and detention of the respondent in civil prison whereas this was pursuant to an order of court in execution of its decree, without first affording the applicant an opportunity to be heard and yet the respondent had not claimed any damages. The argument advanced by the applicant is that he should not be punished for an error committed by the Chief Magistrate in issuing a warrant of arrest and detention of the respondent in execution of a decree of the Chief Magistrate's court, subsequently set aside by the High Court.

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In response, counsel for the respondent submitted that awards of general damages and costs are based on the discretionary powers of court and the fact that the court chose to exercise its discretion in that manner does not constitute an n error apparent on the face record. If this court were to exercise its power of revision on that basis it would have assumed appellate powers, which would be erroneous. He prayed that the application be dismissed.

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The question is whether the decision of the then Resident Judge constitutes an error apparent on the face record as contended by counsel for the applicant. The case of *Nyamogo & Nyamogo Advocates v. Kago* [2001] 2 EA 173 defined n error apparent on the face record, thus:

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An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and

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there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal.

10 A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the Court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. That the Court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law is not a proper ground for review. Misconstruing a statute or other provision of law cannot be ground for review but could be a proper ground for appeal since in that case the court will have made a conscious decision on the matters in controversy and exercised his discretion in favour of the successful party in respect of a contested issue. If the court reached a wrong conclusion of law, in circumstances of that nature, it could be a good ground for appeal but not for review otherwise the court would be sitting in appeal on its own judgment which is not permissible in law.

I have considered the pleadings filed by both parties as well as their written submissions before court. I find that the court's intervention is not being sought to correct self-evident errors or omissions on the part of the Court, apparent on the face of the record, which do not require elaborate argument in order to be established but rather matters which another Judge could have taken a different view. What the applicant is asking this court to do is to reverse a decision taken on basis of what he considers to be an incorrect exposition of the law and an erroneous conclusion on a matter on basis of misconstruing the law or improper exercise of discretion. It sounds only on appeal and not in review. This therefore is not a proper subject for proceedings for review and the application is accordingly dismissed with costs to the respondent.

Dated at Gulu this 23rd day of August, 2018

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Stephen Mubiru
Judge,
23rd August, 2018.