

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA  
AT MPIGI**

**MISCELLANEOUS APPLICATION NO. 258 OF 2017**

**1. KIRIRI COTTON CO. LTD**  
**2. RAJANIKANT PATEL :::::::::::::::::::::::::::::::::::APPLICANTS**  
**VERSUS**

**1. PATRICK KATTO**  
**2. EMMANUEL KATTO**  
**3. JOHN KATTO**  
**4. GEORGE KATTO :::::::::::::::::::::::::::::::::::RESPONDENTS**  
*(Administrators of the estate of the late Thomas Lyamulemye Katto)*

**BEFORE: HON. JUSTICE WILSON AMSALU MUSENE**

**RULING**

This was an application under Section 33 of the Judicature Act, Sections 82, 98 and 99 of the Civil Procedure Act and Order 46 rules 2 and 8 of the Civil Procedure Rules.

The Applicants were Kiriri Cotton Co. Ltd and Rajanikant Patel, represented by M/S Wetaka, Kibirango & Co. Advocates, while the Respondents, George Katto and 3 others were represented by M/s Okello Oryem & Co. Advocates. The Applicant was seeking orders that the order of this Court dated 30.3.2017 as well as execution proceedings thereon be set aside, and costs of the application.

Mr. Andrew Wettaka for the applicants submitted that the applicants have since 1934 been lessees on the land in question comprised in LRV 138 Folio 1 and LRV 66 Folio 21 at Kiriri Measuring 166 acres and six acres respectively. He added that when they applied to be registered as proprietors under mailo tenure, under application No. 78 of 2015, the application

as dismissed with costs. And that an order dated 2.6.2017 was taken out, containing terms inconsonance with the ruling.

Counsel added that subsequently, on 30.10.2017, another order was taken out with terms (b) and (c), to the effect that applicants be evicted. He added that those were not the terms of the Court's ruling hence the application to set aside.

In reply, **Mr. Odyang Rogers** submitted that the application is un called for as it re-ignites an already concluded matter and is res-judicata.

10 He added that the applicants are in contempt as per paragraphs 5,6,7,8 and 11 of the affidavit in reply.

It was further stated that when this Court ruled that the 2<sup>nd</sup> Applicant could not be registered as a transferee of the mailo interest, the 1<sup>st</sup> Applicant went on to have his name registered in the lease interest. Counsel for the Respondents further submitted that the stay of the applicants on the land is illegal and that the subsequent registration of lease hold interest be cancelled. He also prayed for compensation of UGX 50,000,000/=.

I have carefully studied the pleadings on record in his application, and considered the submissions on both sides.

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Section 82 of the Civil Procedure Act provides for a Review. A litigant or any person aggrieved by the judgment or order of the court is entitled to apply to the Court which passed the decree or order to review the same. And in **Orient Bank Ltd versus Zaabwe & another, SCCA NO. 17 of 2007**, it was held that the court would apply the slip rule where it is satisfied that it is giving effect to the intention of the court at the time when judgment was delivered. In **Misc. Cause no. 078 of 2015** the Applicants sought a vesting order in respect of mailo interest over the land

in question. This court in summary dismissed the application for vesting order of the mailo interest. The application was dismissed. I therefore agree with the submissions of Counsel for the applicant that the issue of lease was not in picture in the application No. 78 of 2015 which dealt exclusively with mailo interest. This is contrary to paragraphs 5 and 6 of George Katto's affidavit that both lease and mail interest were considered in Misc. Cause no. 078 of 2015.

And it was counsel for the applicants, **M/S Okello Oryem & Co. Advocates** who extracted the earlier order of 2.6.2017.

10 It was therefore not proper on their part to extract another order incorporating eviction of the applicants dated 2.10.2017. That was a slip on the part of this court to sign the second order dated 30.10.2017 arising out of busy schedule. The proper order in **Misc. Cause No. 078 of 2015** was the earlier one dated 2.6.2017. if the Respondents are aggrieved that the subsequent Registration of the lease hold was not proper, then they have a new cause of action against the applicants and the Registrar of titles. Otherwise as of now, it is the order of 2.6.2017 that reflects the ruling of this court.

I accordingly do hereby exercise this courts powers under Section 33 of the judicature Act and Sections 82 and 98 of the Civil Procedure Act to allow this application, and set aside the second  
20 order of this Court dated 30.10.2017.

I exercise the same discretion to order that each party meets their own costs.

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**W. Masalu Musene**  
**Judge**

**18/12/2017**

18/12/2017:

**Mr. Sewanonda Isaac** for the applicant present.

Second Applicant present

**Mr. Moloji Ivan**, holding brief for **Okello Oryem** for Respondent.

1<sup>st</sup> Respondent present.

10 **Betty Lunkuse**, court clerk present.

Court: Ruling read in chambers.

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**W. Masalu Musene**

**Judge**

**18/12/2017.**

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