

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**MISC. APPLICATION No. 08 of 2020**  
**(ARISING FROM MISC. CAUSE NO. 145 of 2019)**

**MUSHABE APOLLO----- APPLICANT**

**VERSUS**

- 1. MUTUMBA ISMAEL**
- 2. COMMISSIONER LAND REGISTRATION----- RESPONDENTS**

**BEFORE HON. JUSTICE MUSA SSEKAANA**

**RULING**

The Applicant brought several applications by way of Notice of Motion against the respondents under Section 82 & 98 of the Civil Procedure Act and Section 14 & 33 of the Judicature Act cap 13 and Order 46 r 1,2 & 8 of the Civil Procedure Rules, for orders that;

1. The ruling and orders of judicial review of this honourable court entered on 20<sup>th</sup> December, 2019 in Miscellaneous Cause No. 145 of 2019 be reviewed and set aside.
2. The costs of this application are provided for.

The grounds in support of this application are set out in the Notice of motion affidavit of Mushabe Apollo which briefly states;

1. That applicant is aggrieved by the orders of judicial review which affect his legal and beneficial interest in the land registered as Gomba Block 47 Plot 2.
2. That the record of the judicial review proceedings demonstrated that the applicant was a person likely to be affected by the orders of judicial review having initiated the original complaint to the 2<sup>nd</sup> respondent by which the said proceedings, the subject of judicial review, were commenced. The applicant was neither made party to the proceedings nor served with notice

as required by the rules. This constituted an error apparent on the face of the record.

3. In so far as the applicant was not given notice of the judicial review proceedings he was denied the right to be heard in violation of established principles of natural justice.
4. That on 7<sup>th</sup> January 2020, the applicant learnt of a ruling and order obtained in the said judicial review proceedings by way of a letter from the commissioner Land registration which required me to surrender my certificate of title for cancellation, purportedly on the basis of the orders of this court arising in the proceedings where I was not party and had not been given an opportunity to be heard.

The 1<sup>st</sup> respondent opposed the application by contending that there is no error apparent on the face of the record and it is not a proper application for review as it lacks merit.

He also contended that this application is an abuse of court process and the law and intended to defeat the 1<sup>st</sup> respondent's proprietary interest over the land.

The 2<sup>nd</sup> respondent contended that the implementing of the decision of this court in Miscellaneous Cause No. 145 of 2019 is impossible in light of the Mailo Land Registration procedures and the Land Information system as it entails reinstating a certificate of title over an existing certificate of title.

That upon the receipt of the order arising from Miscellaneous cause No. 145 of 2019, this office wrote to Apollo Mushabe requesting him to bring back the duplicate certificate for purposes on implementing the order which letter also copies to court.

That the office of the 2<sup>nd</sup> respondent maintains that the certificate of title comprised Gomba Block 47 Plot 10 was erroneously created over an existing certificate comprised Gomba Block 47 Plot 2.

In the interest of time the respective counsel were directed to make written submissions and i have considered the respective submissions. The applicant was represented by *Mr. Byenkya Ebert* and *Mr. Bazira Anthony* whereas the 1<sup>st</sup> respondent was represented by *Mr. Mulindwa Ian* and the 2<sup>nd</sup> respondent was represented by *Mr. Ssekiito Moses*

***Whether this is a proper case to review the Judgment?***

The applicant's counsel submitted the Applicant he is likely to be affected by the orders of judicial review having initiated the original complaint to the 2<sup>nd</sup> Respondent by which the said proceedings, the subject of judicial review were commenced. He was neither served with the notice of judicial proceedings nor given a chance to be heard. This constituted a mistake or an error apparent on the face of record.

It ought to be noted that though the Applicant was not a party to **Miscellaneous Cause No. 145 of 2019**, his interests will be affected by the actions of the Respondents by purporting to cancel its certificate of title. In the case of **Ladak Abdulla Mohammed versus Griffins Isingoma Kakiiza & 2 Others C.A No. 8/1995, page 9**, the court held that a third party can apply under the inherent powers of the court to have a judgment reviewed.

A mistake or error apparent on the face of record refers to an evident error which does not require extraneous matter to show its' incorrectness. It is an error so manifest and clear that no court would permit such an error to remain on the record. It may be an error of law, but law must be definite and capable of ascertainment. It must be such as can be seen by one who runs and reads, that is, an obvious and patent mistake. See ***Al-Shafi Investment Group LLC versus Ahmed Darwish Dagher & Another M.A No. 901 of 2017 page 5, Unifright Tracking Services Ltd versus M.D Matovu Transporters Ltd M.A No. 594 of 2018 page 7*** and ***Civil Procedure & Practice in Uganda, 2<sup>nd</sup> Edition by M. Ssekaana & S. Ssekaana page 453.***

Also, in the case of **Wanjiru Gikonyo & 2 Others versus National Assembly of Kenya & Others Petition No. 453 of 2015**, page 6, it was held that, *“In Nyamogo & Nyamogo vs Kogo (2001) EA 174 this court said that an error apparent on the face of 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.”*

The record shows that the applicant’s name featured prominently in the 1<sup>st</sup> Respondent’s pleadings and submissions. It is apparent from the record that the Applicant’s interests in the suit land were always likely to be affected by the Judicial review application the 1st respondent had initiated in this honourable court.

The applicant’s submission is that the 1<sup>st</sup> respondent clearly knew that any eventual outcome of the case would directly affect the Applicant but chose not to include him as a party. This violated one of the basic tenets of Judicial Review as stated under **Rule 6(2), (5), (6)** and **Rule 10(1) and (3)** of the **Judicature (Judicial Review) Rules, 2009**. These provide for principles of natural justice as stated below:

**“6. Mode of applying for judicial review.**

**(2)The notice of motion must be served on all persons directly affected and where it relates to any proceedings in or before a lower Court and the object of the application is either to compel the lower Court or an officer of the lower Court to do an act in relation to the proceedings or to quash them or any order made in the proceedings, the notice or summons shall also be served on the Registrar of the Court and, where any objection to the conduct of the Presiding Officer is to be made, on the Presiding Officer.**

**(5)An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the notice of motion shall be filed before the motion is fixed for hearing and, if any person who ought to be served under the rule has not been served, the**

**affidavit shall state that fact and the reason for it; and the affidavit shall be before the Court on the hearing of the motion.**

**(6)If, on the hearing of the motion, the Court is of the opinion that any person who ought, whether under this rule or otherwise, to have been served, has not been served, the Court may adjourn the hearing on such terms (if any) as it may direct in order that the notice of the motion may be served on that person.”**

**“10. Hearing of applications for judicial review.**

**(1)On the hearing of any motion under rule 6, any person who desires to be heard in opposition to the motion and appears to the court to be a proper person to be heard, shall be heard, notwithstanding that he or she has not been served with notice of the motion or the summons.”**

The main application was about cancellation of the title in order to reinstate Mr. Mutumba Ismael. This shows that the Applicant was an interested party who was bound to be directly affected by the judicial review application. As such, the applicant was supposed to be named as a party or at the very least, served with the Notice of Motion and given the right to be heard before court could pronounce itself on the matter. The failure to name or serve the applicant constitutes an error on the face of the record in all the circumstances of this case.

The right to be heard is a fundamental basic right. It is one of the cornerstones of the whole concept of a fair and impartial trial. The principle of hear the other side is fundamental and far reaching. It encompasses every aspect of a fair procedure and the whole area of the due process of the law. It is constitutionally provided for under **Article 28(1) of the Constitution**. It provides that in determination of civil rights and obligations, or any criminal charge, one is entitled to a fair, speedy and public hearing before an adjudicating body established by law. Also, in the case of **Caroline Turyatamba & 4 Others versus A.G & Another Constitutional Petition No. 15 of 2006, page 12,**

The applicant's counsel submitted that an application for review does not of necessity and by the mere fact of its being filed reopen questions decided by the order or decision sought to be reviewed. Those matters are reopened only after the application for review is accepted. The question whether a review should be accepted or rejected has to be decided with reference to the grounds on which review is permissible, and not on the merits of the claim. The effect of a review is to vacate the decree passed. The decree that is subsequently passed on review whether it modifies, revises, reverses or confirms the decree originally passed is a new decree superseding the original decree. See **Ladak Abdulla Mohammed versus Griffins Isingoma Kakiiza & 2 Others C.A No. 8/1995, page 14.**

It was counsel's contention that there was an error on the face of record because all the Affidavits of the Respondents, submissions, documents (annexures) in Miscellaneous Cause No. 145 of 2019, make reference to the Applicant and his certificate of title yet he was neither a party nor served with the court documents.

The 1<sup>st</sup> respondent vehemently opposed the application and contended that the applicant premises this application on an argument that he likely to be affected by the orders of judicial review having initiated the original complaint to the 2<sup>nd</sup> respondent. According to 1<sup>st</sup> respondent's counsel the applicant is not a person directly affected since the provisions of the law tends to protect the persons directly affected by the decision of the Administrative body.

He further submitted that rule 6(2) provides persons directly affected and not persons that will be directly affected by the decision of this honourable court.

The point presented by the applicant as a ground for an application for review does attract arguments for and against of the said point. Therefore the error is not manifest or apparent on record; it requires an extraneous matter to show the incorrectness.

That his inclusion in the matter would not in any way have changed the outcome of the decision in Miscellaneous Cause No. 145 of 2019.

## ***Determination***

The law on review is set out in Section 82 of the Civil Procedure Act and Order 46 rule of the Civil Procedure Rules. The applicant has premised his application on “***Mistake or error apparent on the face of the record***”

Review means re-consideration of order or decree by a court which passed the order or decree.

If there is an error due to human failing, it cannot be permitted to perpetuate and to defeat justice. Such Mistakes or errors must be corrected to prevent miscarriage of justice. The rectification of a judgment stems from the fundamental principle that justice is above all. It is exercised to remove an error and not to disturb finality.

Reviewing a judgment/ruling based on mistake or error apparent on the face of the record can only be done if it is self-evident and does not require an examination or argument to establish it.

Greater care, seriousness and restraint are needed in review applications since litigation must come to an end. It is neither fair to the court which decided the matter nor to the huge backlog of cases waiting in the queue for disposal to file review applications indiscriminately and fight over again the same battle which has been fought and lost.

Powers of review was also discussed by the Supreme court of India in the case of **Ariban Tuleswar v Ariban Pishak Sharma [1979] 4 SCC 389** as follows;

**“the power of review may be exercised on the discovery of new and important matters or evidence which, after exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But it may not be exercised on the ground that the**

decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate powers which may enable an Appellate court to correct all manners of errors committed by the Subordinate court.

In another case of **Haridas v Smtusha Rani Banik & Ors Civil Appeal No. 7948 of 2004**, the following principles regarding review were laid down;

**“There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by “error apparent”. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Where without any elaborate argument one could point to the error and say here is a substantial point of law which strikes one in the face and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out..... But, there are definitive limits to the exercise of the power of review. the power of review may be exercised on the discovery of new and important matter of evidence.....; it may be exercised where some mistake or error apparent on the face of record is found; it may also be exercised on any analogous ground. But it may not be exercised on ground that the decision was erroneous on merit.”**

It is not disputed that this court granted an Order for cancellation of the applicant’s certificate of title without being heard and consequently the said order affects his rights. The court is enjoined to apply rules of fairness and not to condemn a person unheard especially in judicial review matters. Rule 6 of **Judicature (Judicial Review) Rules, 2009** provide for notification of the affected party in all circumstances.



The question whether a review should be accepted or rejected has to be decided with reference to the grounds on which review is permissible, and not on the merits of the claim. The effect of a review is to vacate the decree passed. The decree that is subsequently passed on review whether it modifies, revises, reverses or confirms the decree originally passed is a new decree superseding the original decree. See **Ladak Abdulla Mohammed v Griffins Isingoma Kakiiza & 2 Others C.A No. 8/1995, page 14.**

In addition, the 2<sup>nd</sup> respondent as the office in charge of the register has also stated and maintained that the certificate of title comprised in Gomba Block 47 Plot 2 by Mushabe Apollo was erroneously created over an existing certificate of title comprised in Gomba Block 47 Plot 2.

Therefore, the sum effect of the order is that under Mailo Land Registration a new certificate of title would be reinstated over an already existing certificate of title.

This is a proper case in which this court would not allow such errors to remain on court record and the court is satisfied to review its earlier orders.

This court would in the circumstances of this case review the order given in the main cause and set aside the orders given.

This application is allowed and each party should bear its costs.

It is so ordered.

***Dated, signed and delivered be email and whatsApp at Kampala this 22<sup>nd</sup> day of May 2020***

**SSEKAANA MUSA  
JUDGE**