THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISCELLANEOUS APPLICATION NO. 758 OF 2017
(Arising from Civil Suit No. 228 of 2017)

OJIJO PASCAL::APPLICANT

VERSUS

GEOFFREY BROWN:::RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

This is an application brought for review of the Decree in Civil Suit No. 228 of 2017 entered on 28th September 2017 brought under Section 82 of the CPA, Order 46 Rules 1 and 8 of the CPR. The applicant sought that the decree be set aside and the matter be reinstated and heard on its merits as well as costs of the application.

The applicant filed an affidavit in support of the application whose grounds were briefly that;

1. That the applicant is aggrieved by the Decree in Civil Suit No. 228 of 2017 on account of mistakes and errors apparent on the record and there is sufficient reason for review of the said Decree.

2. That there is no formal judgment on the court record from which the Decree could have been extracted and the applicant has been greatly prejudiced by the court's decision.
3. That the Decree was entered upon a suit whose procedure of commencement is unknown in law and/or merely speculative.
4. That the sums awarded in the Decree are not reflective of the purported "liquidated sum" pleaded in the summary plaint.
5. That the purported summary suit was invalidated on account of general damages sought contrary to the law.
6. That the suit is invalid as it was instituted in the names of the wrong party and against a wrong party and is unsustainable.
7. That sufficient reason exists for review of the Decree as the Applicant is prejudiced and it is just and equitable that the Decree be set aside.

The respondent filed an affidavit in reply opposing the grant of this application. The respondent stated that he filed a summary suit civil suit no. 228 of 2017 wherein the applicant filed an application for leave to appear and defend that was dismissed for lack of merit. The respondent stated that this application was just another attempt by the applicant to reintroduce the dismissed application which was an abuse of court process.

The respondent further stated in his affidavit that the suit was rightly commenced under summary procedure because the applicant owed him a liquidated amount of money with interest and that was what was awarded.

That the amount claimed was rightly proven so as to be awarded and that the decretal sum constituted both the principal and interest as expressly stated in the contractual documents.

The respondent stated that there were no justifiable grounds to review and set aside the decree and the applicant doesn't have a defence to the claim.

The applicant filed an affidavit in rejoinder wherein he stated that the respondent's affidavit was based on falsehoods and lacks any merits therefore reiterating the contents of his application.

The application was heard and parties were instructed to file final written submissions which were considered by this court. *Roscoe Yiga* represented the applicant whereas *Dennis Kiwalabye* for the respondent.

The applicant in his submissions framed the following issues for determination by this court;

1. ***Whether court should review and consequently set aside the Decree in the head suit?***
2. ***What are the possible reliefs?***

Order 46 rule (1) of *the Civil Procedure Rules* empowers this court to review its decisions where there is a mistake or a parent error on the face of the record. The case of *Nyamogo & Nyamogo Advocates v Kago [2001] 2 EA 173* defined it thus:

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 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.

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.

In the instant application, the respondent filed a summary suit wherein he sought recovery of **UGX 120,124,429** being general damages, interest at 10% per month and costs of the suit.

According to the record, the specially endorsed plaint was drafted by the respondent. The respondent also wrote a letter to the trial court upon realizing that it was an illegality to seek general damages under that procedure seeking that court deletes the prayer by the respondent for general damages. I have also read the record and have not found a judgment from which the Decree in issue was extracted. There is nothing on the record of court reflecting how the respondent arrived at the liquidated sum that was granted.

There are apparent errors on the record from which this application arises which leaves a lot to be desired. In the circumstances, I find that this matter a proper case for review. The Decree in question was borne out of an error that was never rectified and is therefore tainted. The irregularity in the pleadings required a cure before the actual hearing of the Suit.

With all the above considered, this application is allowed.

The Decree in Civil Suit No. 228 of 2017 from which this application is reviewed and set aside.

The applicant is allowed to file a defence and this matter shall be heard on merit.

Each party shall bear its own costs.

It is so ordered.

SSEKAANA MUSA
JUDGE
26th March 2020