THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MASAKA

MISC. APPLICATION NO. 127 OF 2020

(ARISING FROM HCT-06-CR-0004-2019)

(ARISING FROM MISC APPLICATION NO. 057 OF 2017)

WALAKIRA JACOB :::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

NAKALANZI ROSE :::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::::: RESPONDENT

***Before; Hon. Lady Justice Victoria Nakintu Nkwanga Katamba***

**RULING**

This application is brought under Sections 82 and 98 of the Civil Procedure Act, Section 33 of the Judicature Act, Order 46 rules 1,2,& 8 of the Civil Procedure Rules seeking for orders that;-

a) The ruling and orders made by Her Lordship Hon. Lady Justice Winfred N. Nabisinde at the High Court of Uganda at Masaka on the 18th day of September 2020 directing the trial Magistrate to re- write the judgment in Civil Suit No. 150 of 2012 Nakintu Jane versus Walakira Jacob be reviewed and set aside.

b) An order that Civil Revision No. 04 of 2019 filed by the Applicant and currently pending in this Honourable Court be determined on its merit on the basis of the detailed submissions made the parties already on the court record.

c) A consequential order be issued that all applications arising from the decree purportedly issued in Civil suit No. 150 of 2012 Nakintu Jane versus Walakira Jacob be set aside and /or nullified.

d) Costs of this application be provided for.

The grounds of the application as contained in the Applicant`s affidavit are briefly that;

1. The Applicant was adjudged a contemnor vide Misc. Application No. 057 of 2017 and was committed to civil prison for six months for disobeying court orders in Civil Suit No. 150 of 2012;
2. The Applicant preferred a revision application Vide Civil Revision No. 04 of 2019 on the basis that there was no judgment ever issued in Civil Suit No. 150 of 2012;
3. A ruling was delivered by this court in the Civil Revision application, ordering the lower court to rewrite judgment before the revision application can be resolved;
4. The order to rewrite the judgment is alien in law and constitutes an error apparent on the face of the record;
5. The Applicant is aggrieved by the ruling and there is sufficient cause to review the orders of the trial Judge and to determine this Application on the basis of the materials already placed on court record by the parties;

In her affidavit in reply, the Respondent opposed the application and stated that the suit was heard interparty and judgment was delivered on the 15th day of May 2014 and the Applicant was in court during judgment deliver and he also appeared for execution proceedings, it was discovered on the date for execution proceedings that the judgment was missing save for the last page with the orders and signature of the trial Magistrate. The Applicant was found with some exhibits which were supposed to be on the court record, the applicant has brought several and useless claims against the Respondent but has never been successful, the trial judicial officer through his letter dated 10th June, 2020 stated that the presence of a decree on the fie indicates that there existed a judgment from which it was extracted. The application lacks merit and should be dismissed with costs.

In rejoinder, the Applicant averred that the Respondent has not adduced any evidence to prove the existence of the judgment in civil suit No. 150 of 2012 and as such the alleged decree is a forgery and the Respondent has the burden to prove the existence of the judgment.

Both parties filed written submissions.

Counsel for the Applicant submitted that Applicant is aggrieved by the ruling of this court in Civil Revision No. 04 of 2019, there are errors apparent on the face of the record to wit that there was no judgment in Civil Suit No. 10 of 2012 from which the purported decree could have arisen and the revision application should have succeeded on that ground alone, the order to re-write the judgment in Civil Suit No. 150 of 202 before the revision application could be heard was absurd, unjust and illegal. The impugned order condoned an illegality and should therefore be set aside.

In response, counsel for the Respondent contended that the Applicant was no legally aggrieved by the order of the trial Judge and the application should be dismissed basing on that ground alone. The trial court while adjudging the Applicant a contemnor followed the law as the applicant should have applied to court for a legal remedy instead of committing contemptuous acts. The order of the trial Judge directing the trial Magistrate to re-write the judgment was made to enable the parties resolve the matter expeditiously and the trial Judge was right in making the order which should be maintained in dismissing this application.

**Determination of the application;**

***Section 82 of the Civil Procedure Act*** establishes court`s jurisdiction to review its own decrees or orders. It provides that:-

"*Any person considering him/her self-aggrieved by a decree or order from which an appeal is allowed by this Act but from which no appeal has been preferred or by a decree or order from which no appeal is allowed by this Act, may appeal for review of the 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."*

***Section 82 Civil Procedure Act*** has been enlarged by ***Order 46 rule 1 of the Civil Procedure Rules*** which provides that:-

*"Any person considering him/her self-aggrieved by a decree or order from which an appeal is allowed but from which no appeal has been preferred or 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 order was 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 the judgment to the court which passed the decree or made the order."*

I have carefully perused the pleadings, parties submissions, record of proceedings in Misc. Application No. 057 of 2017 and Misc. Application No. 04 of 2019, the file and record of Civil Suit No. 150 of 2012 and I make my decision and observation as follows;

This application for review is based on the ground that there are errors apparent on the record which are detailed and expounded in the affidavit in support of the application and the Applicant`s submissions.

An error apparent on the face of the record was defined in ***Batuk K. Vyas vs Surart Borough Municipality &Ors (1953) Bom 133*** that:

"***No error can be said to be apparent on the face of the record if it is not manifest or self-evident and requires an examination or argument to establish it…" (*****Emphasis mine)**

The case of ***Nyamogo & Nyamogo Advocates v. Kago [2001] 2 EA 173*** defined an error apparent on the face record, to mean:

***"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***" (Emphasis mine)

The Applicant filed an application for revision before this court and the trial Judge decided that the matter be referred back to the trial Magistrate to re-write the judgment which was missing on the record. This was a decision made with the discretion of court and for the proper prosecution of the matter.

The trial judge read the checkered history of this matter and formed an opinion that for her to properly deliberate on the issues arising, she needed the judgment in civil suit No. 57 of 2017. She went ahead to forward the file to the magistrate who heard the matter to write fresh judgment. The Applicant claims that the decision of the trail Judge directing the trial Magistrate to re-write the judgment in Civil Suit No 150 of 2012 is alien to law. This is not a ground for review as is no error that the trial Judge reached a decision in her discretion and wisdom with the intention of having the parties` interests determined and the matter resolved expeditiously.

I find that this was reasoning and judge's appreciation of the law and not an error apparent on the face of record, anybody who finds himself aggrieved with such a decision ought to have appealed against the same and not apply for review.

The grounds advanced by the Applicant are more than simple errors that can be resolved without reasoning and any attempt to resolve the same would be an appeal of this court`s own decision. It is not an error that the trial Judge would have made a decision that is safer for the Parties as suggested by Counsel for the Applicant. In Court of Appeal, ***Civil Appeal***

***No. 2111 of 1996, National Bank of Kenya Vs Ndungu Njau***, the Court of Appeal held that;

***"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 evidence and should not require an elaborate argument to be established. It will not be sufficient ground for review that another Judge could have taken a different view of the matter nor can it be a ground for review that the court proceed on an incorrect expansion of the law".***

The remedy of review is not meant to help a party to prolong a matter or re-litigate the same simply because they are not in agreement with the decision of court. The applicant has failed to demonstrate that there is mistake or error apparent on the face of record and/or any sufficient reason to enable this court set aside its decision. The application is dismissed with costs.

I so order.

Dated at Masaka this 17th day of March, 2021

**Victoria Nakintu Nkwanga Katamba**

**Judge**