THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT PORT PORTAL

MISCELLANEOUS APPLICATION NO. 002 OF 2022

(ARISING FROM CIVIL SUIT NO. 0012 OF 2016)

KABAGAMBE GRACE :: APPLICANT

VERSUS

1. MBABAZI RESTY
2. KYENJOJO TOWN COUNCIL :::::::::::::::::::::::::::::::: RESPONDENTS

BEFORE: HON. JUSTICE VINCENT WAGONA

RULING

Introduction:

The Applicant brought this application under Sections 82 and 98 of the Civil Procedure Act Cap. 71 and Order 46 Rules 1 & 8 of the Civil Procedure Rules for orders that:

1. That the judgment delivered on the 15th day of February 2021 in Civil Suit No. 0012 of 2016 (Mbabazi Resty Vs. Kyenjojo Town Council awarding compensation, general damages and costs to the 1st respondent as against the 2nd respondent for trespass on land located at Nyatungo I.CI..1, Ntooma Ward, Kyenjojo Town Council is reviewed and set aside.

2. That the respondents pay costs of the application to the applicant.

Background:

The background is that the 1st respondent was the plaintiff and the 2nd respondent the defendant in Civil Suit No. 0012 of 2016 whose judgment by Lady Justice Elizabeth Jane Alividza was delivered on 25th February 2021 in favour of the 1st respondent. In the said judgment, the 2nd respondent was ordered to compensate the 1st respondent and pay general damages, interest and costs, for trespass to land located at Nyatungo Village, Ntoma Parish, Kyenjojo Town Council along Kamwenge Road, Kyenjojo District.

The Applicant contends that she is the legal owner of the suit land trespassed upon by the 2nd respondent to which compensation was wrongly awarded to the 1st respondent and that the 1st respondent without knowledge of the applicant and without any color of right claimed ownership of the suit land as forming part of the estate of the late Yowana Tinkasimire whereas not. That judgment was delivered in her favour where she was awarded monetary compensation as well as general damages, interest and costs and she has commenced execution proceedings Vide M/A No. 0024 of 2022.

The applicant further contends that she bought the suit land from the late Yowana Tinkasimire in different bits and later secured a title for some of the plots currently comprised in Block (Road) 139, Plot 49 at Nyantungo Village and she attached copies of the agreements and title. That she is aggrieved by the judgment and decree in Civil Suit No. 0012 of 2016 being the rightful and legal owner of the suit land to which compensation was awarded to the 1st respondent pursuant to the judgment of court in Civil Suit No. 0012 of 2016. The applicant asked court to review the judgment of court in Civil Suit No. 0012 of 2016 on grounds that: (a)

Court was not aware of the new and important evidence regarding ownership of the suit land; (b) that she was not a party to the suit and was not aware of the same since she lived abroad in the USA to be able to present such evidence in court; (c) that she acted promptly without any delay as soon as she became aware of the judgment she seeks to review; (d) that the 1st respondent has no reasonable defence to her actions as she was at all material times aware that the applicant is the true legal owner of the suit land; (e) that if the application for review is not allowed, the applicant will suffer irreparable loss, the 1st respondent shall be unjustly enriched, and the interests of justice shall be defeated.

The 1st respondent opposed the application through her affidavit in reply filed in court on the 31st day of May 2022 in which she contended that she was a wrong party to the suit and that the application was frivolous. She averred that the suit land belongs to the estate of the late Tinkasimire and the same was never sold to the applicant. That the pieces of land described in the agreements and the title are different from the suit land and the neighbors to the suit land include Kabode who bought the same from Tinkasimire and Kasoke Patrick, Kaboyo Abasi and Rwatoro, the applicant, Kamwenge road and the family of the late Zakayo. That the transactions regarding purchase of the land between the applicant and the late Tinkasimire happened later, between 2009 to 2012, while the trespass complained of in Civil Suit No. 012 of 2016, happened prior to or around 2003 whereby the 2nd respondent had already trespassed on the suit land, uprooted the trees on the land and constructed thereon a water facility and the late was already demanding compensation from the 2nd respondent. That in 2009 there was a pending suit over ownership of the suit land where Kasoke Patrick had sued the late Tinkasimire, which was dismissed in 2014. It was contended that at all material times since 2003, the 2nd respondent was in occupation of the suit land and there were visible

developments to wit a water facility, which anyone claiming ownership would have noticed. That the land that the applicant bought, is distinct from the suit land, which is a small piece of land and does not fall within the land referred to in the several agreements that the applicant attached and that the land referred to in the agreements attached as A4 just neighbors the road to the water facility and it does not include the suit land. That the present application is a total connivance between the applicant and the 2nd respondent aimed at defeating the applicant from benefiting from the fruits of the judgment and the same should be dismissed.

The 2nd respondent did not oppose the application and in substance supported the applicant's claim.

Issues:

1. Whether the Applicant has locus standi to apply for review of the judgment in Civil Suit No. 12 of 2016.
2. If so, whether or not her application for review should be allowed.
3. What remedies are available to the parties.

Representation:

Counsel James Byamukama of M/s Byamukama, Kaboneke & Co. Advocates represented the applicant. Counsel Angella Bahenzire of M/s Bahenzire, Kwikiriza & Co. Advocates appeared for the 1st Respondent. Kawalya Ronald a State Attorney of the Attorney General's Chambers, Fort portal Regional Office represented the 2nd respondent. The parties filed written submissions which the Court has considered.

RESOLUTION OF ISSUES:

Resolution of Preliminary Objection:

Counsel for the 1st respondent raised a preliminary point of law, contending that it had the effect of disposing of the matter without going into its merits.

It is trite law as expounded in ***Nakiryowa Majorie Kiddu & Anor. Vs. Maurie S. SerugoKiddu& Anor,***[1] Justice Henry I. Kawesa where held thus: ***"O.15 r. 2 Civil Procedure Rules dictates that once points of law are raised, Court has to resolve them first in a Ruling."***

The point of law is to the effect that the application was brought against a wrong party. It is settled law that a suit by or against a non-existent party is no suit at law and suffers the fate of being dismissed. Justice David Wangutusi in ***Waswa Primo Vs. Moulders Ltd***[2] held thus: "***In my view since the person is non-existent there is no suit filed and where it is filed the anomaly cannot be cured under Order 1 rule 10***".

The Judge added, quoting the decision of Remmy Kasule J (as he then was), in the ***The Trustees of Rubaga Miracle Centre vs. Mulangira Ssimbwa Misc. Application No. 576 of 2006*** where it was held that: "***The law is settled. A suit in the names of a wrong Plaintiff or Defendant cannot be cured by amendment. The Defendant described as the Board of Trustees of Rubaga Miracle Centre Cathedral does not exist in law."***

[1] **Civil Suit No. 587 of 2015, at page 2.**
[2] **Misc. Application No, 685 of 2017 arising from HCT-00-CC-CS-0434- 2017, at page 2.**

It follows from the above authorities that a suit against a non-existent party cannot stand at law and once it is realized that a plaintiff or defendant is non-existent then court must move to strike out the same on that basis. It is thus a point of law which if raised, court must pronounce itself on, first before proceeding to hear the merits of the case.

The same issue was raised by the 1st respondent who asserted that she was wrongly sued in her personal capacity and not in the capacity as an administrator of the estate of the late Tinkasimire Yowana.

Resolution by court:

The heading of the judgment in Court in Civil Suit No. 0012 of 2016 reflects the plaintiff in her personal name and not as an administrator.

In paragraph 3 of the affidavit in support of the application, the applicant indicated thus: ***"In the year 2016, the 1st respondent wrongfully, without color of right and without my knowledge claimed ownership of the suit land on behalf of the estate of her late father Yowana Tinkasimire…."***

The above paragraph ably captured the fact that the 1st respondent was sued on the basis that she claimed the property on the behalf of the estate as an administrator and the applicant did not state that the 1st respondent claimed the land to be hers so as to constitute a suit against her in personam.

Each case must be determined on its own merits. In my view, in this case, the failure to describe the plaintiff in the heading of pleadings as an administrator was

immaterial as the substance of the pleadings clearly demonstrated that one of the administrators of the estate of the late Tinkasimire Yowana was the 1st respondent and she was the one that filed the earlier Civil Suit No. 0012 of 2016 which the applicant seeks to review. I therefore overrule the preliminary objection.

Issue No. 1: Whether the Applicant has locus standi to apply for review of the judgment in Civil Suit No. 12 of 2016.

Section 98 of the Civil Procedure Act grants this court the inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.

Section 82 of the Civil Procedure Act which governs review provides thus:

Any person considering himself or herself aggrieved—

(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of 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.

The person with locus to apply for review must be one who is aggrieved by the judgment of court. An aggrieved party has been defined in ***Muhammed Bukenya Allibai versus W E Bukenya and Anor,***[3] *by Karokora (JSC) as "**Any party who***

[3] *SCCA No. 56 of 1996, at page 6.*

has been deprived of his property" (See also KaloliKabuta Vs. Transroad Uganda Limited, Misc. Application No. 478 of 2019).

It was further noted by Justice Karokora (then JSC) thus: ***"it's trite that a third party may apply for review if he/she establishes that he/she is an aggrieved person, is one who has a legal grievance; per Yusuf versus Nokrach [19710 EA 104, in Re Nakivubo Chemists (U) Ltd (1971) HCB 12, - to the effect that a person suffers a legal grievance if the judgment given is against him or affects his interests.***[4] ***(See also Natunga Sarah Vs. Erivania Sarah & Anor Misc. Application No. 0064 of 2020 at page 2).***

The gist of the above authorities is that a person who has a right to bring an application for review should be one who has suffered a legal grievance and it includes a third party as long as he or she can prove that he or she suffered a legal grievance by virtue of the decision he or she seeks to review. That is, if the judgment affected his or her interest in the subject matter pursuant to the judgment made by court.

The applicant in this case contends that the judgment she seeks to review, that is Civil 0012 of 2016 affected her interest in land she owns. She averred that the land for which the 2nd respondent was ordered to compensate the 1st respondent falls within her titled land, that is land comprised in Block(Road) 139, Plot 50 at Nyantungo Village and that it is land that she bought from the 1st respondent's late father Tinkasimire. The applicant attached agreements showing how she acquired the land from the late Tinkasimire Yowana, part of which she later surveyed and got a title

[4] **Ibid.**

The applicant is thus an aggrieved party since at this stage court does not go into the merits of the claim. What is key is for an aggrieved party to prove that the judgment or decision of court that he or she seeks to review affected him or her in personam or his or her interest in property that court made a decision over or that the decision by implication has an effect on his interest in certain properties.

It is thus the finding of this Court that the applicant as a third party has locus to bring an action for review under section 82 of the Civil Procedure Act Cap. 71 and Order 46 of the Civil Procedure Rules S.I 71 as amended. This issue is resolved in the affirmative.

Issue No.2: Whether the application for review should be allowed

O.46 (1) of the Civil Procedure Rules provides that review is only granted on grounds of:

a) 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 the order made; or,

b) On account of some mistake or error apparent on the face of the record; or,

c) For any other sufficient reason.

The applicant in this case seeks to rely on the grounds of discovery of new important evidence which she could not produce at the time the judgment and decree were made; error apparent on the face of the record; and other sufficient reasons.

(i) The discovery of new and important matter of evidence which could not be produced at the time when the decree was passed or the order made:

Submissions of the applicant:

Counsel for the applicant argued that the applicant is stated to have acquired the suit land from the father of the 1st respondent and she attached agreements to that effect which were witnessed by other people including the 1st respondent herself. She also attached a certificate of title to the two plots which she bought and that all this happened before the death of the 1st respondent's father. That when the 1st respondent lodged a claim for compensation, she did not disclose to court that the suit land had been in fact been disposed of to third parties by her father and was not part of the estate of the late Tinkasimire Yowana. That the applicant was not a party to the suit and was not aware of the case as she stays overseas, until it was published in the media. That as such, at the time judgment was passed, court was not presented with, nor did it consider the evidence as to the true ownership of the suit land. That the applicant did not have the opportunity to avail such evidence to Court since she was not a party and did not know about the suit. It was contended that, had the evidence been presented to court, the court would not have passed judgment awarding compensation to the 1st respondent without joining the applicant to the suit. That this evidence was concealed by the applicant and was thus not contested by the 2nd respondent who did not contest the 1st respondent's claim of the land as forming part of the estate of her late father. Counsel thus submitted that if the application was denied, the applicant shall lose her property rights in the suit land without a hearing which is contrary to the principles of natural justice and thus prayed that the application be allowed.

Submissions of the 1st Respondent:

The 1st respondent on the other hand contended that the transaction alluded to by the applicant happened between 2009 to 2012 and that prior, in 2003, the 2nd respondent had already trespassed on the suit land and uprooted trees for her late father and constructed thereon a water facility and the late had lodged a claim for compensation against the 2nd respondent. That at the time when the said transactions happened, there was a pending suit over the suit land between the late Tinkasimire and a one Kasoke Patrick which was dismissed in 2014 and the 2nd respondent was informed of the process and that the land does not form part of the land referred to in the agreements and the title the applicant attached to the affidavit in support of the motion. The 1st respondent thus asked court to dismiss the application for want of merit.

Submissions of the 2nd Respondent:

The 2nd respondent supported the applicant's contention that, had the evidence relied upon by the applicant been brought to the attention of the trial judge when determining the head suit, it would have had an impact on the outcome of the same on the grounds that the same was titled land registered in the names of the applicant and that by virtue of section 59 of the Registration of Title's Act, a certificate of title is conclusive proof of ownership of the land it refers to. It was contended that, had this fact been disclosed to court, the court would not have awarded compensation to the 1st respondent who was not the owner of the suit land. The 2nd respondent prayed that the application is allowed.

Consideration by Court:

Order 46 Rule 1 of the Civil Procedure Rules provides as follows:

"(1) Any person considering himself or herself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) 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 the order 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 judgment to the court which passed the decree or made the order. *[Emphasis added]*

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except where the ground of the appeal is common to the applicant and the appellant, or when, being respondent, he or she can present to the appellate court the case on which he or she applies for the review."

In ***Guangdong Chinese Co Ltd V. Mcknightegenies Ltd and Others High Court Civil Division Civil Revision No 11 Of 2011***, Hon Justice Eldad Mwangusya (High Court Judge, as he then was) held that:

"The above order envisages a situation where a person against whom a decree or order is made discovers a new or important matter or evidence not in his possession at the time of the trial or there is some mistake or error apparent on the face of the record. The applicant could not evoke this provision because no

decree or order was made against him. It only happened that the decree or order affected him because log book of a motor vehicle that was pledged to him was in his possession."

Similarly, in this case, there is no evidence that the decree passed or orders made in Civil Suit No. 0012 of 2016 were made against the applicant. Rather, the decree passed or orders were made against the 2nd respondent herein, Kyenjojo Town Council, although the applicant claims that her interests were thereby affected in that she or she too, should have been compensated. Be that as it may, I will proceed to consider the merits of the application.

It is trite that an application for review will only be allowed on strong grounds particularly if its effect will amount to re-opening the application or case afresh. This by implication means that the evidence that the applicant alleges was not produced at trial of the main suit should be evidence relevant to the matter adjudicated upon by court in the judgment or ruling that the applicant seeks to review. The evidence should have an impact on the decision made if it were to be considered by court. It is not enough to allege that new evidence was found which could not be produced by the party during trial. The evidence should be that which is compelling and convincing enough and relevant to the decision that the applicant seeks to review. The trial Court has the leverage to look at the evidence that the applicant alleges was not produced during the trial of the decision he or she seeks to review with a sober mind and deep lenses to establish its relevance to the said case as well as the would be effect on the decision that one seeks to review if it was submitted during trial.

The applicant in this application contends that she was not a party to the suit that she seeks to review and as such she could not have adduced the agreements where she bought the suit land from the late Tinkasimire Yowana, father to the 1st respondent and the title which she secured after purchasing the suit land. The agreements alluded to by the applicant were attached as annexure A1 to A8 and the title as B2. The applicant contends that if the agreements and the title had been presented at the trial, they would have had a bearing on the outcome of the head suit and it would have invited the mind of court to order the addition of the applicant as a party to the suit.

On the other hand, the 1st respondent contends that the suit land in Civil Suit No. 0012 of 2016 does not form part of the land referred to in the agreements and the title relied upon by the applicant. It was contended that the transactions involving the applicant happened between 2009 to 2012, and that prior, in 2003, the 2nd respondent had already trespassed on the suit land and uprooted trees for her late father and constructed thereon a water facility and the late had lodged a claim for compensation against the 2nd respondent. That at the time when the said transactions happened, there was a pending suit over the suit land between the late Tinkasimire and a one Kasoke Patrick which was dismissed in 2014 and the 2nd respondent was informed of the process and that the land does not form part of the land referred to in the agreements and the title the applicant attached to the affidavit in support of the motion.

The subject matter in the judgment was land measuring 0.84 of an acre that was occupied by a pump house and pipes and an access road to the pump. The valuation report dated 13th April 2016 relied upon by the trial judge in Civil Suit No. 00012 of 2016 at page 3 indicated that the "area to be compensated is

developed with a water supply system". At page 4, the valuer described the area as that covered by the water pump, area covered by the access road, area covered by the water pipes and eucalyptus tree timber (two in number) and this was the suit land.

In the above regard, the trial judgment had captured the 1st respondent's claim as follows:

"The Defendant without the consent of the Plaintiff entered the suit land, erected and constructed thereon a water supply system, put an access road, planted thereon water pipes and destroyed two mature trees fit for lumbering.

That prior to the Defendant's trespass, the late Yowana Tinkasimire wrote a letter to the Town clerk Kyenjojo District dated 2nd October 2003 requesting him/her to get a land valuer and value the land. That the late Yowana Tinkasimire later received a communication from the office of the Chief administrative Officer (CAO) dated 28th June 2005 in which the CAO was advising him and Mr. Kasoke Patrick to first resolve the dispute between them since both were claiming ownership of the land before the process of compensation could continue." *[Emphasis added].*

The evidence shows that the above position prevailed before the transactions giving rise to the applicant's agreements and claim in this case. In this case, the Applicant relies on several purchase agreements (Annexure) to claim the suit land, the subject matter in Civil Suit No. 0012 of 2016 as hers. **Annexure A1** dated **28/11/2009** describes two plots, each measuring 50x100 feet on Kamwenge Road behind the sub county offices of Nyantungo, opposite the Kingdom Hospital.

Annexure A2 dated **27/10/2010** describes two plots each measuring 50x100 feet, one with a house and the other vacant, whose boundaries are along the road to **Balikya's** home on the upper side of the sub-county. **Annexure A3** dated **03/10/2010** describes a plot measuring 50x100 feet with a house, bordering with the same buyer in the east and the seller on the lower and on the upper side along Kyenjojo Kamwenge road. **Annexure 4** dated **28/05/2010** describes two plots located at Kyenjojo Kamwenge road each measuring 50x100 feet that in the west borders the road to the well, borders the seller to the north and east, and borders to the north with the road. **Annexure A5** dated **28/05/2010** describes a half plot measuring 150x50 feet that borders the road to the sub county headquarters, **Teddy Birungi**, the road to the sub county headquarters, and the seller. **Annexure A7** dated **19/02/2012** is about the purchase of the remaining land bordering **Teddy Birungi. Annexure A8** dated **10/09/2021** relates to adjustments made on three plots measuring 150x100 feet.

The applicant's claim is unclear as to whether her contention is that the suit land in Civil Suit No. 0012 of 2016 comprises all of the land referred to in her agreements and comprised in the title. In particular, the applicant fails to demonstrate which of the above plots are affected by the orders or decree in Civil Suit No. 0012 of 2016. Furthermore, it is also unclear as to whether the applicant claims the whole or only a part of the suit land in Civil Suit No. 0012 of 2016. Assuming that the applicant only claims a part of the Suitland, there is no evidence of survey to demarcate what portion of the suit land the applicant claims.

Whereas Civil Suit No. 0012 of 2016 was about land occupied by a pump house and pipes and an access road to the pump, there is no evidence that the applicant bought land with a water facility or pump and a road to the facility (or land with a

well where a water supply facility could be developed), although there is evidence that the facility, (or land with a well where a water supply facility could be developed), already existed at the time of purchase by the applicant. The agreements presented by the applicant make no mention of purchase by the applicant of land developed with a water pump access road or water pipes; or land with a well where a water supply facility could be developed.

On the contrary, the agreements of the applicant tend to support the position of the 1st respondent by indicating that the suit land in Civil Suit No. 0012 of 2016 was outside of the land purchased by the complainant, in that the applicant's agreement **Annexure 4** dated **28/05/2010** describes two plots located at Kyenjojo Kamwenge road each measuring 50x100 feet that in the west borders the **road to the well**, borders the seller to the north and east, and **borders to the north with the road**. The applicant admitted in rejoinder that at the time of purchase of the portion of land in annexure A4, there was a road though it was later extended. It means that at the time the applicant bought the pieces of land referred to in her agreements and in the title, there was already a water facility or a well and a road to the facility or well.

Further, as per the letter dated 2nd October 2003 written by the late Tinkasimire Yowana attached as R1 to the 1st respondent's affidavit in reply and was responded to by the Chief Administrative Officer of Kyenjojo on 28th June 2005 attached to the 1st respondent's affidavit as R2 which were not contested by the applicant, the late claimed his trees were cut while excavating the trenches for the pipes. These are the trees for which court ordered compensation to the 1st respondent. By virtue of the said letters, it means the trees were cut or destroyed in or around 2003 and this was before the applicant acquired the pieces of land referred to in the

agreements presented by the applicant. Therefore, it cannot be correct to say that the eucalyptus trees for which the 1st respondent was compensated used to be on her land because by then she had not bought any land from the late Yowana Tinkasimire.

All of the evidence referred to above demonstrates that the transactions involving the applicant happened between 2009 to 2012 and that prior, in 2003, the 2nd respondent had already trespassed on the suit land and uprooted trees for her late father and constructed or commenced construction thereon of a water facility and the late Tinkasimire had lodged a claim for compensation against the 2nd respondent.

In addition to the above, although each of the agreements produced and relied upon by the applicant was witnessed by a number of people and the applicant states that she lives outside Uganda, the applicant has not brought evidence from any of those who witnessed the agreements to back or clarify her claims.

In conclusion, I find that the evidence presented by the applicant is a new matter of evidence which could not be produced at the time when the decree was passed or the order made. However, I also find that the applicant could not evoke the provisions of Order 46 Rule 1 of the Civil Procedure Rules as no decree or order was made against her. Be that as it may, going to the merits of the application, I find that the applicant fails to prove on a balance of probabilities that the land referred to in the agreements and the title presented includes the suit land in Civil Suit No. 0012 of 2016. Though it is new evidence presented by the applicant, it is not sufficiently demonstrated on a balance of probabilities, that the evidence was important and relevant to the subject matter in Civil Suit No. 0012 of 2016 and that

if the evidence had been submitted at trial in Civil Suit No. 0012 of 2016 the evidence would have had any effect on the outcome of the matter. This ground therefore fails.

I shall not consider the second ground of ***"other sufficient reason"*** since the resolution of the above ground has a direct impact on the second ground and consideration of the same would be academic.

(ii) **Mistake or error apparent on the face of the record**:

Submissions of the applicant:

The third ground was that there is an error apparent on the face of the record. The applicant's Counsel argued that the applicant brought Civil Suit No. 12 of 2016 as an administratrix of the late Yowana Tinkasimire who was her father and not in her personal capacity and attached letters of administration to that effect. That the judgment was delivered in her personal capacity and that she should have applied to correct the error under section 99 of the Civil Procedure Act before commencing execution proceedings.

Secondly, that the letters of administration to the estate of the late were jointly granted to the 1st respondent and a one Basobozi Richard, a son to the late; that however the 1st respondent instituted the suit alone, which was illegal. That in the case of ***Silver Byaruhanga Vs. Fr Emmanuel Ruvugwaho& Anor. SCCA No. 9 of 2004***, the Supreme Court held that where there are joint administrators of an estate, they must act jointly at all times because section 272 of the succession Act

does not allow them to act singly, otherwise it would defeat the purpose of appointing joint administrators. Counsel argued that the 1st respondent acted illegally to have filed the suit singly without involving the co-administrator which is a fatal error on the face of the record which renders the judgment a nullity. Counsel further submitted that the letters of administration granted by the Magistrate Grade 1 under the administration of Estate (Small Estate) (Special Provisions) Act Cap. 156 were illegal since the estate was over and above the jurisdiction under the said Act which is 50,000 per Section 5 of the Act. Counsel submitted that these are glaring errors which are on the face of the record which no court can leave standing and thus asked court to review and set aside the judgment of court in Civil Suit No. 0012 of 2016.

Submissions of the 1st respondent:

Counsel for the 1st respondent submitted that the issues pointed out are not errors on the face of the record since they are premised on new evidence and that the applicant not being a party, the same should be disregarded.

Consideration by Court:

The Supreme Court in *Edison Kanyabwere Vs Pastori Tumwebaze* [5], *held* that an error may be a ground for review and must be apparent on the face of the record i.e. an evident error which doesn't require any extraneous matter to show its incorrectness. It must be an error so manifest and clear that no court would permit such an error to remain on the record. The error may be of fact or law.

[5] *SCCA No 4 of 2004*

The question then is whether the issues raised by the applicant fall within the description of what amounts to an error apparent on the face of the record as defined by the Supreme Court.

The first issue was that in the judgment, the 1st respondent was not described as an administrator but in her personal names. That she would have applied to correct the same under section 99 of the Civil Procedure Rules.

Section 99 talks about the slip rule which empowers court to correct minor errors as to names, figures or dates which don't alter the judgment and it states thus: ***"Clerical or mathematical mistakes in judgments, decrees or orders, or errors arising in them from any accidental slip or omission may at any time be corrected by the court either of its own motion or on the application of any of the parties."***

It follows therefore that clerical errors or mistakes like spelling of the names of the parties, description of the parties and other arithmetical errors can be corrected under Section 99 of the Civil Procedure Rules. These are not errors on the face of the record for purposes of Order 46 of the Civil Procedure Rules since they are not the making of the parties but by court and court cannot base on a mistake made by the trial judge as regards to the names of the parties, figures in the judgment and improper description of the parties to review and set aside a well considered and reasoned judgment.

It is therefore my finding, that the mistake pointed out by the applicant's Counsel about the description of the 1st respondent in the judgment is not an error apparent

on the face of the record warranting reviewing with the resultant effect of setting aside the judgment.

For the 2nd issue, that is of the 1st respondent suing alone and not jointly with a co-administrator, it was argued by Counsel for the respondent that it was not an error apparent on the face of the record since it required taking into consideration extraneous facts which is not permitted in review. I have considered the judgment and the fact that the 1st respondent sued as an administrator of the estate of the late Yowana Tinkasimire and, is well captured in the judgment. I believe that, as proof that she was administrator, she then attached a photocopy of the grant that I believe the trial judge must have examined and considered.

I will none the less examine the validity of the applicant's contention. Counsel for the applicant submitted that the Supreme Court in ***Silver Byaruhanga Vs. Fr Emmanuel Ruvugwaho & Anor. SCCA No. 9 of 2004***, held that where there are joint administrators of an estate, they must act jointly at all times because section 272 of the succession Act does not allow them to act singly, otherwise it would defeat the purpose of appointing joint administrators.

The facts in the above case are distinguishable and substantially different from the case before this Court. In the said case, one of the executors wrongly got himself registered on the Certificate of Title of the suit land as the proprietor in his personal capacity and sold the suit land without involving the others. The position is different when it comes to protection of the estate. For example, Lady Justice Victoria Nakintu Katamba in ***Godfrey Sekitoleko (suing as an administrator of***

the estate of the late Ruth NamyaloNalongo Vs. Kiyimba Joseph & Anor.[6] Found that ***"An administrator or beneficiary has powers to represent the estate in a suit provided the suit is for the preservation and protection of the estate and the reliefs sought are not for the benefit of the individual but rather for the benefit of the estate and its beneficiaries".*** Accordingly, if the suit is for the protection and preservation of the estate and not for the benefit of a single administrator, an individual administrator can bring such action without involving a co-administrator.

Therefore, in this case, the omission by the applicant to include a co-administrator in Civil Suit No. 012 of 2016 is not fatal and thus not an error apparent on the face of the record to warrant setting aside the judgment.

As regards the validity of the letters of administration granted to the 1st respondent over the estate, in my view, this is not an error apparent on the face of the record in Civil Suit No. 012 of 2016 but a separate point of law requiring evaluation of the facts of the matter and the evidence on the court record that resulted in the grant of the letters of administration as opposed to an evaluation of the record in Civil Suit No. 012 of 2016, a matter that in my view is wholly outside the purview of this application for review of the judgment in Civil Suit No. 012 of 2016.

This ground of the application also fails.

The applicant has on the balance of probabilities failed to prove her case. This application is therefore hereby dismissed.

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[6] **Civil Suit No. 53 of 2016.**

Regarding the award of costs, in the case of ***Prince J. D. C Mpuga Rukidi versus Prince Solomon Kioro and Others, Civil Appeal No. 15 of 1994 (S.C)***, it was held that: *"That however, where Court is of the view that owing to the nature of the suit, the promotion of harmony and reconciliation is necessary, it may order each party to bear his/her own costs."*

For purposes of promoting harmony among the parties, I find it befitting that each party should bear their own costs.

Dated at High Court in Fort portal this 16th day of August 2022.

Vincent Wagona

High Court Judge