THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT MBALE

MISCELLANEOUS CAUSE NO. 337 OF 2021

(ARISING FROM CIVIL REVISION NO.002 OF 2015)

5 ARISING FROM MISCELLANEOUS APPLICATION NO.049 OF 2014

(ARISING FROM LAND SUIT NO.43/2012 AND CIVIL SUIT NO.115 OF 2005)

1. SHABAN NAMONDO
2. DAVID WAKUMIRE
3. SHEIKH RAMATHAN MUBAJE
4. NALITSO FARIS ::APPLICANTS

VERSUS

1. PETRONILA KAKAYI
2. GEORGE KHAEMBA :::::::::::::::::::::::::::::::::::: RESPONDENTS

15 (Suing thru their Attorney

Michael Kitutu)

BEFORE: HON. LADY JUSTICE MARGARET APINY

RULING

The Applicants brought this application by way of Notice of Motion under section 82(b) of the Civil Procedure Act, Cap. 71, Order 46 (1)(b) and Order 52 Rules (1) & (3) of the Civil Procedure Rules S.I 71-1 for orders that;

1. The ruling and orders of this Honourable court in Revision Application No. 02 of 2015 be reviewed and /or set aside.
2. Miscellaneous Application No. 02 of 2015 be heard on the merits as a revision application.
3. Costs of the application be provided for.

55 likelihood of loss if the orders in the application sought to be reviewed are implanted/executed or otherwise put into effect.

l) The decision is illegal and unlawful and as such a manifestation of a mistake or error on the record.

m) The ruling and decision of the leaned trial Judge had no basis in the
60 law or rules of procedure and this constitutes a mistake or an error apparent on the face of the record.

n) The mistake and/or error is glaring and the same ought to be corrected by setting aside the dismissal order hearing the application on the merits.

65 o) It is in the interest of justice that this Honourable court exercises its powers in reviewing its decision and orders.

The Respondents opposed this application through the affidavit in reply deponed by **Micheal Kitutu**, a lawful attorney of the Respondents and responded briefly as follows;

70 1. The suit is incurably defective, res judicata, time barred, abuse of court process, incompetent, brought without locus on behalf of deceased persons, is based on hearsay and falsehoods and when the Applicants are in unpurged contempt of Court.

2. The Applicants were found in contempt of Court which to date they have
75 disobediently refused to purge and they cannot be heard in a new matter in these circumstances.

3. Court already ruled that some of the persons in previous applications were dead by 4/3/2015 when Shaban Namondo similarly purported to bring the Revision Application on their behalf and swear Affidavits in their capacity
80 and this application irregularly seeks to belatedly cure the court's finding.

the court striking out the Notice of Appeal on 18/3/2015 and the ruling dismissing the application for Review of Revision and for extension of time to Appeal on 30/3/2021 and for stay on 30/3/2021.

13. That the Applicants have been negligent and themselves sat on their right to appeal as they were aware that they had no chances or likelihood of success and none has been shown in this Application.

14. THAT the Applicants' application is without any merit and the Respondents completed execution of the Decree the Applicants sought to frustrate and deny them the fruits of their litigation and there is nothing left for the Applicants to Appeal against or stay.

15. The applicants alongside their dead litigants filed an appeal to court of Appeal.

16. He was advised by Respondents' lawyers of M/S Akampumuza & Co. Advocates that paragraphs 9 and 10 of Shaban Namondo's Affidavit is based on illegalities as the court cannot separate the hidden undisclosed dead persons from those who are living and it would be unjust and defeating the administration of justice to grant the Applicants Review.

17. Shaban Namondo confesses that they purported to file before this court Revision Application No. 002 of 2015 against the contempt of court ruling MA No. 249 of 2019 that court dismissed and which are not a ground for appeal or stay of Execution as it is abuse of court process.

18. He was advised by Respondents' lawyers of M/S Akampumuza & Co. Advocates that the Applicants who are admittedly contemnors cannot be heard in a related or subsequent cause in this MA No. 337 of 2021.

19. The court acted legally and within the law, had powers to issue the orders and fines as this was not the pecuniary subject matter of an originating cause or suit but a supplementary proceeding to a main cause in which the above sums

The respondent raised preliminary objection in respect of the want of jurisdiction for Respondent's unpurged contempt of court.

It is the submission of the Respondents that the Applicants were adjudged
170 contemnors in the Chief Magistrates Court No. 049 0f 2014 and as such they are in wilful unpurged contempt of court for which the court cannot exercise its jurisdiction to entertain the Applicant's application.

Counsel for the Applicant responded that the trial in question was marred with illegality and want of jurisdiction, they were not directed to any particular acts
175 they are accused of not complying with and that this is not a matter of preliminary objection.

It was the submission of counsel for the Respondent that this court doesnot have the jurisdiction to entertain the Applicant's review application since they are in willful unpurged contempt of court and relied on the case of Housing finance
180 Bank Ltd versus Edward Musisi MA No. 158 of 2012.

Counsel for the Applicant in response submitted that its an absurdity to require the Applicants comply with orders in an illegal trial and relied on the case of **Makula International Ltd Versus His Emminence Cardinal Nsubuga & Another CA No 94 0f 1981**. He further submitted that the same is not a matter
185 of preliminary objection and lastly that there are no orders that the Applicants are in contempt of.

I have perused both impugned rulings in civil revision no. 002 of 2005 and MA no. 049 of 2014 from the Her Lordship Suzan Okalany and the chief Magistrate respectively and I have also established that it is not in dispute that the Applicants
190 were adjudged to be in contempt of the court orders issued in MA no. 49 of 2014.

What is in contest is the manner within which the Applicants were cited to be in contempt of the said court orders.

220 I note that Court accordingly found the defendants/ applicants herein not only in contempt of the court orders in the main suit but also found them to be in breach for failure to file their affidavits in reply. It's on this basis that the Chief magistrate found the Applicants in contempt of court on the 24th day of October 2014.

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These orders further were not appealed however the Applicants filed an application for revision in this court which was accordingly dismissed on preliminary objections that were raised by the Respondents.

It is trite law that an order of court that has not been successfully challenged by
230 the parties is binding on the parties of the suit and must be complied with whether in the eyes of the party contesting it appears irregular or illegal. This position has been discusses by various courts as in the case of **Hadkinson v Hadkinson [1952] All ER,** Romer L.J relied on the case of **Church v Cremer (1 Coop Temp Cott 342)** where it was held that "A party who knows of an order whether
235 null or valid, regular or irregular, cannot be permitted to disobey it . . . as long as it existed". Additionally, in the case of **Hon. Sitenda Sebalu v Secretary General of the East African Community Ref No. 8/2012,** a judgment of the court if undischarged must be obeyed.

In **LC Chuck and Cremier [1896] ER 885**, it was held that a party who knows
240 of an order whether null or void, regular or irregular cannot be permitted to disobey it. That it would be dangerous to hold that the suitors or their solicitors, could themselves judge whether an order was null or valid- whether it was regular or irregular. That the course of a party knowing of an order which is null or irregular and who might be affected by it is plain.

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It follows from the above authorities that the position of the law is clear; as long as court orders are not discharged, they are valid and since they are valid, they should be obeyed. That being the case, the only way in which a litigant can obtain

I find that the Applicants are in continuous contempt of the court orders and unless they are clean and have unpurged themselves of the said contempt, this
280 court would be condoning their behavior to proceed and determine their applications related to the contempt. The Applicants are moving this court with unclean hands for having failed to comply to orders that was given about 10 (ten) years ago.

285 **2. Application for review is barred by law.**

It's the submission for the counsel for the respondent that this Application is bad in law for disguising the appeal into the application, not being grounded in any new matter and that reviews are concerned with only judgments and not rulings as in the instant case. The Applicant's counsel submits that the respondents can
290 only challenge the Application if it does not state the error apparent on court record and that review can be applied on both judgments and rulings.

This being an Application for review brought under **Section 82 of the Civil Procedure Rules**, there are some grounds stated therein which have further been
295 highlighted under the case of **FX Mubuuke vs. UEB High Court Misc. Application No.9 of 2005** to include;

1. That there is mistake or manifest mistake or error apparent on the face of the record
2. That there is discovery of new and important evidence which after the
300 exercise of due diligence was not within the applicant's knowledge or could not be produced by him or her at the time when the decree was passed or the order made
3. That any other sufficient reason exists.

Counsel for the Applicant states that the grounds of the dismissal of their
305 application is what the Applicants perceive as error on the face of the record and

decree shall be made only to the Judge who passed the decree or made the order
335 sought to be reviewed.

Since I have already established that the Applicants major ground is that there is an error apparent on court, this is not among those applications whose grounds are restricted only to the Judge who made the order sought to be reviewed.
340 Therefore, contrary to the respondent's counsel's submissions, this court has jurisdiction to review the order.

According to section 82 of The Civil Procedure Act, any person considering himself or herself aggrieved; - (a) by a decree or order from which an appeal is allowed by the Act, but from which no appeal has been preferred; or (b) by a
345 decree or order from which no appeal is allowed by the 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.

This court is empowered under Order 46 rules 1 of The Civil Procedure Rule to review its own decisions where there is an "error apparent on the face of the
350 record."

The error or omission must however be self-evident and should not require an elaborate argument to be established. This means an error which strikes one on mere looking at the record, which would not require any long drawn process of reasoning on points where there may conceivably be two opinions (see **Nyamogo**
355 **& Nyamogo Advocates v. Kago [2001] 2 EA 173**). An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under order this Order and rule.

360 Noteworthy, in exercise of the jurisdiction under this provision, it is not permissible for an erroneous decision to be reheard and corrected. An application for review, it must be remembered has a limited purpose and cannot be allowed

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
395 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.

400 A review should not seek to challenge the merits of a decision but rather irregularities in the process towards the decision. Some instances of what constitutes a mistake or error apparent on face of record could entail where the applicant was not served with a hearing notice; where the court has not considered the amended pleadings filed or attachments filed along with the pleadings; where
405 the court has based its decision on a ground without giving the applicant an opportunity to address the same; and violation of the principles of natural justice. (See **arm Inputs Care Centre Limited Versus Klein Karoo Seeds Marketing (Pty) Ltd supra)**

The Applicants state that they are aggrieved by the decision of this court
410 dismissing their revision application on technical issues is erroneous. However the Applicants do not state what error is so apparent to warrant a review other than being aggrieved by the Judge's interpretation and application of the principles of law. To challenge the said decision requires a full analysis why the judge reasoned like that and where she erred in trying to reach her conclusion.
415 The Applicants cannot point to an error that is so apparent and obvious that cannot be left to remain on the court record.

From the foregoing I find that the Application fails on this ground too for being untenable, misplaced and barred in law and accordingly the Respondent's preliminary objection is upheld.

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450 that this application is in utter abuse of court process which this court cannot be seen to condone and entertain.

In the circumstances, the Respondent's preliminary objections are upheld and this application is dismissed for the Applicants being in continued contempt of court 455 orders and not purging themselves thereof. The Application is further dismissed for being barred in law and in complete abuse of the court process.

Before I take leave of this matter, I note that the parties in this same application filed Miscellaneous Application No. 342 of 2021 arising from this same 460 application, which application (Miscellaneous Application No. 342 of 2021) is pending ruling. The mother application having been dismissed, it follows that Miscellaneous Application No. 342 of 2021 is overtaken by events.

Dated at Mbale, this 7th day of December 2022.

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I so order

MARGARET APINY

470 **JUDGE**