THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF JINJA AT JINJA

MISC. APPLICATION NO. 018 OF 2022
[Arising from Civil Suit No. 72 of 2019

WAMALWA ROBERT & 15 OTHERS:::::::::::::::::::::::::: APPLICANTS

VERSUS

KIBIMBA LIMITED (Formerly Tilda Uganda Ltd) :::::::::::: RESPONDENT

BEFORE HON. LADY JUSTICE FARIDAH SHAMILAH BUKIRWA

RULING

Background

This is an Application for review brought under Order 46 Rule 1 & 8 of the Civil Procedure Rules S. I 71 -1 and Section 82 of the Civil Procedure Act Cap 71 to review and set aside the Order of Hon. Lady Justice Eva Luswata declaring Civil Suit No. 72 of 2019 to have abated, a declaration that Civil Suit No. 72 of 2019 has not abated and costs of the application.

Brief facts

The Applicants filed Civil Suit No. 72 of 2019 against the Respondent for compensation of UGX 200,000,000/= (Two Hundred Million Shillings) as special damages for loss of or non-use of their land at Hasebere Village, Namayuga parish, Buswale Sub-County, Namayingo District, general damages and costs of the suit.

On 5th March, 2020, Court issued directives wherein the Plaintiffs were to file their witness statements by 30th April 2020, the Defendant by 29th May, 2020 and the matter was adjourned to the 14th day of September 2020 for hearing. The Plaintiffs flouted the directives and on 14th September 2020, when the matter came up for hearing, the Plaintiffs did not appear. On the 28th day of October, 2021 Court declared the suit to have abated. Being aggrieved by the Court order, the Applicants herein applied for review of the said Order.

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Representation

The Applicants are represented by Counsel Naaman Obetta of Legal Aid Project of Uganda Law Society while the Respondent is represented by James Kyazze of Kyazze, Kankaka & Co. Advocates.

Submissions

When the Application came up for hearing, the parties were directed to file their written submissions which are on record. Counsel for the Applicant submitted that the trial court did not have the benefit of considering the exact date being 20th September 2020, when the travel ban on border districts in which the Applicants reside, was lifted by the Government following the covid lockdown period. Counsel contended that the date of 20th September 2020, should have been taken into account by the trial judge in the computation of time to determine whether or not the suit should have abated. Counsel submitted that from the date of lifting of the travel ban being 20th September, 2020 until 11th March when Counsel wrote a letter to court requesting for summons, the computation would amount to 172 days short of the 182 days stipulated under Order 17 Rule 5 of the Civil Procedure Rules for a matter to abate.

He argued that in the absence of documentary evidence before the Court at the time, the Presidential address published on 4th January 2022 after Court had issued the impugned order, qualifies as new evidence and therefore, serves as a ground for review of the trial judge's order that resulted in the abatement of Civil Suit No. 72 of 2019.

Counsel further submitted that Court did not consider their counsel's letter on record requesting for summons or hearing notices filed on 11th March 2021 (marked as Annexure "B") in considering it as a step taken with a view to proceeding with the suit after the mandatory scheduling. Counsel for the Applicant concluded that the Court's failure to consider the aforementioned letter on record amounted to an error apparent on the face of record hence the appropriateness of the application for review. Counsel referred to the case of **Farm Input Care Centre Ltd Vs Klein Karoo Seed Marketing (PTY) Ltd (Supra)** on review.

In reply, Counsel for the Respondents, as had earlier indicated in the Affidavit in Reply, raised a preliminary objection that the suit is totally defective and barred in law for it was instituted by and against the wrong parties. Counsel expounded on the

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same and submitted that Applicants No. 1, 5, 6, 7 and 10 are aliens in the matter and legally have no locus standi to bring this Application as they were not parties to Civil suit No. 72 of 2019 out of which this Application arose.

Counsel for the Respondent submitted that the suit was instituted against Kibimba Limited (Tilder (U) Ltd yet the record in Civil Suit No. 72 of 2019 was corrected and the Respondent's proper name is Kibimba Limited (Formerly Tilda Uganda Ltd) which was brought to the Applicant's notice. Counsel concluded that the Applicant sued a non-existent party. Counsel referred to the case of the **Trustees of Rubaga Miracle Centre Vs Mulangira Ssimbwa HCMA No. 576 of 2006** for the preposition that a suit in the names of a wrong Plaintiff or Defendant cannot be cured by amendment.

Regarding the justification of this Application for review, Counsel submitted that there is no new evidence, mistake or error apparent on the face of record and sufficient cause for the order declaring Civil Suit No. 72 of 2019 to be set aside and the suit reinstated.

Issues

1. Whether the Applicants are entitled to a review of the impugned order
2. Whether the Applicants are entitled to the reliefs sought.

Decision

The Law

Section 82 of the Civil Procedure Act Cap 71 provides that, "*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 review of judgement 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.

Order 46 r 1 of the Civil Procedure Rules S. I 71-1,

Any person considering himself or herself aggrieved –

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(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 from whom the discovery of new and important matter or 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 judgement to the Court which passed the decree or made the order.

Resolution.

I defer the ruling on the preliminary objection until after determination of the Application.

The law as stated above gives the grounds for review. The same were enunciated in the case of **F. X Mubuuke Vs UEB High Court Misc. Application No. 98/2005** to be;

i. That there is a mistake or manifest mistake or error apparent on the face of the record.
ii. That there is discovery of new and important evidence which after exercise of due diligence was not with in 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.
iii. That any other sufficient reason exists.

Counsel for the Applicant premised this Application on discovery of new and important evidence as justification to review the impugned Order.

The new evidence which the Applicant seeks to rely on is laid out in paragraphs 14, 15 and 16 of the Affidavit in support of the Application which I herein reproduce.

> **14. That I am advised by our lawyers, which I advise I verily believe to be true, that the travel ban by Government on the border district of Namayingo between the 18th March, 2020 and the 20th September, 2020 limited the Plaintiff's physical access to their lawyers and/or Court and the Court ought to have taken judicial notice of that and considered it in counting time for purposes of abatement.**

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15. That I am further advised by our lawyers, which information I believe to be true that an application for a hearing date by letter on 11th March, 2021 amounted to a positive step towards the prosecution of our case and therefore our suit could not have abated by then.

16. That the above amounts to new evidence, mistake or error apparent on the face of the record and sufficient cause for the order declaring civil suit No. 72 of 2019 to have abated to be reviewed, set aside and the suit reinstated.

In his submission, Counsel for the Applicant's argument majorly based on the absence of documentary evidence on court record pertaining to the exact date when the travel ban on the border districts in which the Applicants reside was lifted by Government at the time the trial judge issued the Order.

The law as cited above clearly provides for discovery of new evidence as one of the grounds for review. This leads to the question of whether the Applicant's purported new evidence satisfies the criteria for entertaining the Application under review.

I have had a benefit of reading the impugned ruling and found that my learned sister clearly took judicial notice of when the nation-wide lock down was imposed where in at page 7, she clearly stated that, **"I take judicial notice that on 30/4/2020 the government imposed a nation-wide lock down in a bid to curb the spread of Covid 19."**

Section 56 (2) and (3) of the Evidence Act empowers courts to take judicial notice of practices that have attained much notoriety that court would be justified in taking judicial notice of.

It is trite law that when a Court takes judicial notice of something, then there is no need to call evidence in that regard **(See R Vs Simpson [1983] 3 All ER 789, [1983] 1 WLR 1494.**

In **Odongo Too Yasinto & 8 Ors Vs Akumu Hellen HCCA No. 0033 of 2016, Justice Stephen Mubiru** noted that the essential basis for taking judicial notice is that the fact involved is of a class that is so notorious or "generally known" as to give rise to the presumption that all reasonably intelligent persons are aware of it.

From the foregoing, I find that Counsel for the Applicant's contention that the date of 20th September 2020 was not taken into account by the trial judge due to the absence of documentary evidence at the time namely the Presidential address

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published on 4th January 2022 qualifies as new evidence untenable. Once Court took judicial notice of the date when the nation-wide lock down was imposed, proof of the same became irrelevant.

It should be noted that the issues pertaining to the imposition and lifting of Covid 19 lockdown in Uganda were widely publicized on most television stations and radios. It is unlikely that the trial judge was unaware of the date of 20th September 2020 when the lockdown was lifted and movement was permitted in the border districts within which the Applicants resided when she delivered the Order on 28th October 2021. Having taken judicial notice of the lockdown period by my Learned Sister, Counsel for the Applicant's argument in this regard is a mere repetition of the old and overruled argument which can only be entertained on appeal.

I thus concur with Counsel for the Respondent that there is no new evidence, mistake or error apparent on the face of the record that justifies the need to review the Order declaring Civil Suit no. 72 of 2019 to have abated.

In considering Counsel for the Applicant's assertion that the letter on record dated 11th March 2021requesting for a hearing date amounted to a step taken, I find that this argument calls for appraisal and re-evaluation of the evidence which is not tenable in review. The letter was on court record at the time of the making the impugned ruling and was considered by the trial judge thus it is not new evidence. In my opinion, new evidence is evidence that was not on record at the time of delivering the ruling/decision. Revisiting the implication of the letter that was on record at the time of the learned judge delivering her ruling will amount to evaluating evidence on record.

Counsel for the Applicant never pleaded mistake or error and my perusal of the record which has led me to believe that indeed there is no mistake or error apparent on the record.

I thus find that the Applicant has failed to prove any ground to warrant a review. The Application is devoid of merit. I accordingly dismiss it with costs.

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The dismissal of the Application has rendered the preliminary objection devoid of its practical relevance as it is a moot. I find it unnecessary to rule on it.

I so order.

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JUSTICE FARIDAH SHAMILAH BUKIRWA
13/12/2022
Ruling delivered by email.