

5

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPLICATION NO. 84 OF 2021
(ARISING FROM CIVIL APPEAL NO. 176 OF 2013)
(CORAM: KAKURU, KIRYABWIRE, MADRAMA, JJA)

10

1. MUGUBI STEVEN BANJA}
2. BANJA ISAAC KYAKWAMBALA} APPLICANTS

VERSUS

15

1. RICHARD BANJA}
2. LAWRENCE MARTIN MUGERWA MUSISI}RESPONDENTS
RULING OF CHRISTOPHER MADRAMA, JA

20

The Applicants lodged this application by Notice of Motion under Section 33 of the Judicature Act, Cap. 13, Section 98 and 82 of the Civil Procedure Act, Cap. 71, Order 46 of the Civil Procedure Rules, S.I 71-1 and Rules 2(2), 43 and 44 of the Judicature (Court of Appeal Rules) Directions S.I No. 13-10, for orders that:

30

- (1) The Consent Judgment/ Decree entered by the Respondents in Civil Appeal No. 176 of 2013 be reviewed and/or set aside.
- (2) That the transfer of the land comprised in Busiro Block 263 Plot 2505, 2506 and 2507, land at Senge, be annulled and/ or cancelled and the land reverts back to the estate of the late Paul M Banja or be registered in the names of the Administrator of the estate of the late Paul M. Banja for distribution to the lawful beneficiaries.
- (3) That costs of the application be provided for.

35

The grounds of the application in the Notice of Motion are that:

- 1) The 2nd Respondent filed H.C.C.S No. 125 of 2010 against the 1st Respondent for orders directing the 1st Respondent to deliver the certificate of title and duly signed transfer forms for the land

5 comprised in Busiro Block 263 Plot 103 at Senge, a declaration that
the suit land does not form part of the estate of the late Paul Banja,
damages and costs of the suit, among others.

10 2) The High Court dismissed the 2nd Respondent's suit.

 3) The 2nd Respondent being dissatisfied with the Judgment of the
High Court appealed to the Court of Appeal vide Civil Appeal No. 176
of 2013.

15 4) During the pendency of the said appeal in the Court of Appeal, the
Respondent entered into a consent Judgment compromising the
appeal.

20 5) The Court of Appeal delivered its Judgment wherein it made
declarations that the 2nd Respondent was not a purchaser of the
suit land.

25 6) The applicants are aggrieved by the Consent Judgment since it
denies them their beneficial shares in the 6 acres of the suit land
which were illegally given to the 2nd Respondent by the 1st
Respondent pursuant to the Consent Judgment/ Decree.

 7) It is just that this application be allowed and the Consent Judgment/
Decree be set aside.

30 The application is further supported by the affidavit of Mugubi Steven
Banja, the first applicant deposed to on his behalf and on behalf of the
second Applicant. The facts deposed to in the application are as follows.

 The Applicants are sons of the late Paul M Banja (hereinafter referred to
as the deceased) and beneficiaries to his estate. The first Respondent
35 and the Applicants' late mother obtained Letters of Administration of the
estate of the deceased in HCT-00-CV-184-2004. On 27th April, 2010, the
second Respondent sued the said Administrators of the estate of the
deceased in HCCS No. 125 of 2010 seeking for orders directing the
Administrators to deliver a certificate of title and duly signed transfer

5 forms for the land comprised in Busiro Block 263 plot 103 land at Senge;
for declaration that the suit land did not form part of the estate of the
deceased at the time of the grant of Letters of Administration, a
declaration that the second Respondent is the rightful and bona fide
owner and occupant of the suit land, general damages and costs of the
10 suit. The High Court dismissed the suit and declared that the
Administrators were the lawful owners of the suit property. The court
further ordered the second Respondent to vacate the suit land. The
second Respondent being dissatisfied with the judgment and decree of
the High Court, appealed to the Court of Appeal in Civil Appeal No. 176 of
15 2013.

While Civil Appeal No. 176 of 2013 was pending before the Court of Appeal,
the second Respondent together with the first Respondent executed a
consent judgment on 8th June 2015 in which they purported to dispose of
the appeal. Pursuant to the consent judgment, the first Respondent
20 transferred 6 acres of the suit property to the second Respondent. The
suit property was subdivided into two plots, namely; plot 2139 measuring
4 acres, which was retained by the estate of the deceased and plot 2140
measuring 6 acres, which was transferred to the second Respondent.
The Court of Appeal delivered its judgment in Civil Appeal No. 176 of 2013
25 on 18th March 2021 and dismissed the second Respondent's claim and
declared that he was not a purchaser of the suit land but a lawful
occupant on only 3 acres of the suit property.

The Applicants pray that the consent judgment/ decree between the
Respondents is set aside so that the suit property reverts to the estate
30 of the deceased and is distributed to the beneficiaries.

In reply, the first respondent Mr. Richard Banja deposed to an affidavit
opposing the application and states that:

The Consent judgment/ Decree having been declared illegal, null and void
by the Court of Appeal the judgment in Civil Appeal No. 176 of 2013 ceased
35 to exist in law and the Applicants are misguided in so far as there is no
consent judgment to refer to. Further, the transfer of the suit property
to the second Respondent was sanctioned and consented to by the family
members of the estate of the deceased and they consented to the

5 transfer of 6 acres of the suit property to the second Respondent while
the remaining 4 acres and compensation money from Uganda Electricity
Transmission Company Limited (UETCL) which compensated the estate
of the deceased for passing electricity lines through the suit property,
10 Applicants. Further, after distributing the estate, an inventory was filed
in court indicating how the estate was distributed. The respondent prays
that the application is dismissed with costs.

The application is further opposed by an affidavit in reply deposed to by
the second Respondent Mr. Lawrence Martin Mugerwa Musisi who states
15 that he did not connive with the first Respondent to execute an illegal
consent judgment/ decree. The impugned consent decree arose out of
well thought out negotiations with the family of the late Paul M. Banja and
the Applicants were beneficiaries of the consent. The impugned consent
judgment was never sealed by the Court of Appeal. The Court of Appeal
20 delivered a judgment which annulled the impugned consent judgment
with the effect that there is only one decision of the Court of Appeal
contained in its judgment in Civil Appeal No. 176 of 2013 and this has since
been appealed against to the Supreme Court. The Applicants have no
legal grievance against the judgment of the court in Civil Appeal No. 176
25 of 2013, and that even if they did, the procedure adopted to challenge it is
incurably defective. This court having passed judgment in Civil Appeal No.
176 of 2013 became *funtus officio* and does not have the power to
entertain the application. Lastly, the second Respondent deposed that the
Applicants were not parties to HCCS No. 125 of 2010 and are not
30 Administrators of the estate of the late Paul Banja and therefore, they do
not have locus in any proceedings arising out of the said suit.

In rejoinder to the Respondents' affidavits in reply, the first Applicant
reiterated that he is a beneficiary to the estate of the deceased with an
interest in the estate. He denied the assertion of the respondents that the
35 family of the deceased consented to the transfer of part of the suit land
to the second Respondent. The first Applicant invited court to pronounce
itself in respect of the 6 acres of the suit land which were given to the
second respondent in execution of the impugned consent judgment.

Representation

5 At the hearing of the application, the Applicants were represented by Counsel Goloba Mohammed of Kavuma Kabenge & Co. Advocates; the first Respondent was represented by M/S Shwekyerera Advocates & Solicitors and the second Respondent was represented by M/S Niwagaba Advocates & Solicitors.

10 With leave of court, the court was addressed in written submissions.

Applicants' submissions

The Applicants' counsel proposed two issues for determination by this courts, namely;

15 1. Whether the application raises sufficient grounds for setting aside a consent judgment/ Decree entered by the Respondents?

2. What remedies are available to the parties?

20 With regard to issue one, counsel submitted that this court is empowered by rule 2(2) of the Judicature (Court of Appeal Rules) Directions, to make orders necessary to meet the ends of justice. This power extends to setting aside judgments which are proved to be null and void after they have been passed (See **Dr. Livingstone Sewanyana vs Martin Alier, Supreme Court Civil Application No. 40 of 1991**). Further, an appeal cannot be settled by consent of parties as this is tantamount to reversing the judgment of the lower court by consent without hearing the appeal (See **Uganda Broadcasting Corporation vs SINBA (K) Limited & 3 others, Court of Appeal Civil Application No. 12 of 2014**).

25 The applicant's counsel further submitted that the consent judgment/ Decree executed by the Respondents to settle Civil Appeal No. 176 of 2013 is null and void in so far as it varies or reverses the judgment of the High Court by decreeing 6 acres of the suit land to the second Respondent contrary to the judgment of the High Court in HCCS No. 125 of 2010 which dismissed the second Respondent's case where he was claiming to be the lawful owner of the suit land. In **Makula International Limited vs His Eminence Cardinal Nsubuga & another, Court of Appeal Civil Appeal No. 4 of 1981**, it was held that the court cannot sanction what is illegal and an illegality once brought to the attention of court overrides all questions of

30
35

5 pleadings including any admissions made thereon.

Secondly, counsel submitted that the impugned consent judgment/ Decree is illegal in so far as it is at variance with the judgment of this Court in Civil Appeal No. 176 of 2013 delivered on 18th March 2021, where the second Respondent's claim to be the lawful owner of the suit land was dismissed. He relied on the judgment of this Court in Civil Appeal No. 10 176 of 2013. This court declared that the second Respondent was a lawful occupant of only 3 acres of the suit land and this is at variance with the impugned consent order/ Decree which purports to give the second Respondent 6 acres of the suit land.

15 Thirdly, the Applicant's counsel submitted that there was an error on the face of the record which justifies the application for review. The error on the face of the record is that there are two conflicting judgments of the Court of Appeal, namely; the consent judgment entered into by the Respondents dated 8th June, 2015, and the judgment of this court in Civil 20 Appeal No. 176 of 2013 delivered on 18th March, 2021.

On issue No 2, on remedies available, the applicants counsel prayed that this court sets aside the consent judgment executed by the Respondents to with the effect that the 6 acres comprised in Busiro Block 263 plots 2505, 2506 and 2507, which were transferred to the second Respondent 25 revert back to the estate of the late Paul M. Banja for distribution to the beneficiaries. Counsel further prayed that this court invokes its power to cancel the certificate of title issued to the second Respondent on grounds that it contains an illegal endorsement or that it was illegally obtained or wrongfully retained. He relied on **Uganda Broadcasting Corporation vs** 30 **SINBA (K) Limited & 3 others, Court of Appeal Civil Application No. 12 of 2014** for the submission that this court has powers to cancel a certificate of title which was illegally obtained or wrongfully retained, even without proof of fraud.

First Respondents' submissions in reply

35 In reply to the Applicants' submissions, the first Respondent's counsel submitted that the consent judgment which the Applicants seek to challenge by this application is non-existent since this court subsequently delivered a judgment in Civil Appeal No. 176 of 2013 on 18th

5 March 2021. He referred to **Annexure "AA"** of the first Respondent's affidavit in reply which is a communication by the Registrar of this court to the Respondents' lawyers, dated 18th March 2021. In **Annexure "AA"**, the Registrar wrote to the Respondents' lawyers that the consent judgment entered into by the Respondents is illegal, null and void because parties
10 cannot by agreement, set aside or vary the judgment of the High Court on appeal. Further the Registrar has no power to enter judgment in any matter at the Court of Appeal. Parties can only consent to withdrawal of the appeal and may thereafter proceed to compromise the decree at the High Court.

15 In the alternative, counsel submitted that the Applicants did not present the application with clean hands since they consented to the arrangement leading to transfer of part of the suit property to the second Respondent and shared the residue of the estate. In the premises, counsel submitted that the application is incompetent and prayed that it
20 is dismissed with costs to the Respondents.

Second Respondents' submissions in reply

The second Respondent filled two sets of written submissions, the first set was filed on 16th May, 2021 while the second set was filed on 8th June, 2021.

25 The second Respondent's counsel submitted that this court became *functus officio* when it delivered its judgment in Civil Appeal No. 176 of 2013 on 18th March, 2021. He relied on **Adneste Monanyana vs the State, Criminal Appeal No. 8 of 2001**, where it was held that once a court has duly pronounced a final judgment or order, it has by itself no authority to
30 correct, alter or supplement it by reason that it becomes *functus officio*, its jurisdiction in the case having been fully and finally exercised.

Secondly, counsel submitted that contrary to the law, the impugned consent judgment was never sealed by this court as a judgment. This rendered it illegal, null and void. Counsel submitted that a judgment must
35 be sealed with the seal of the court for purposes of authentication. He relied on **Caroline Mbojaine & others vs. James Mbojaine, Civil Appeal No. 3 of 2004**. Further, counsel pointed out that this court disregarded the impugned consent judgment on 18th March 2021 thereby rendering it

5 null and void. He referred to the communication of this court **Annexure**
"AA" to the first Respondent's affidavit in reply. It follows that there is
only one judgment of this court, being the judgment in Civil Appeal No.
176 of 2013 which was delivered on 18th March 2021 and has since been
10 appealed against to the Supreme Court. There is no consent judgment to
be reviewed or set aside by this court.

Thirdly, counsel submitted that the Applicants were not parties to HCCS
No. 125 of 2010, and are not Administrators of the estate of the deceased
and have no locus in any proceedings arising from the said suit. Further,
the Applicants have no legal grievance against the judgment of this court
15 and that even if they did, the procedure that they have adopted is
incurably defective. He relied on **Nabudde vs Kkikumi, HCT-04-CV-CA-**
0072-2009, where Musota, J found that the Appellant in that case had no
locus standi to file an appeal since she was not a party to the suit in the
lower court. In the premises, counsel prayed for dismissal of the
20 application with costs.

Applicants' rejoinder

In rejoinder, the Applicants' counsel submitted that this court did not
pronounce itself on the illegality of the impugned consent judgment in its
judgment in Civil Appeal No. 176 of 2021. The judgment of this court in Civil
25 Appeal No. 176 of 2021 only dealt with the merits of the appeal but not the
illegality of the consent judgment which was signed by the Respondents
while the appeal was still pending before the court. Further the
communication of the Registrar of this court in **Annexure "AA"** to the first
Respondent's affidavit in reply was only guidance to the Respondents and
30 their lawyers on the implications of the impugned consent judgment
which they ignored by implementing the impugned consent judgment. The
communication does not constitute a judgment of this court.

Further, counsel reiterated that the illegality of the impugned consent
judgment having been brought to the attention of this court, the court
35 must pronounce itself on the fate of the 6 acres of the suit land which
were given to the second Respondent in implementation of the illegal
consent judgment. He reckoned that by leaving the 6 acres of the suit
land to the second Respondent, the court would condone an illegality.

5 Counsel invited this court to formally pronounce itself on the illegality of the consent judgment and to issue consequential orders to remedy the illegalities that were implanted as a result of the illegal consent judgment.

Ruling

10 I have carefully considered the applicant's application, the reply of the respondents, the submissions of counsel as well as the law.

The brief background is that in High Court Civil Suit Number 125 of 2010 Lawrence Martin Mugerwa Musisi v Richard Banja and Justine Banja; the plaintiff sued for declaration that the suit land is not part of the estate of the late Paul M Banja (the deceased) and for declaration that the plaintiff is the lawful and bona fide owner and occupant of the suit property. The plaintiff further sought an order directing the defendants to deliver the certificate of title and duly signed transfer forms to the plaintiff and in the alternative an order directing the Registrar of titles to counselling the defendant's name from the register and registering the plaintiff as the owner thereof. The defendants were administrators of the estate of the deceased and registered proprietors of land comprised in Busiro Block 263 Plot 103 land at Senge by virtue of being administrators of the estate of the deceased. It was arranged that the defendant was a bona fide/look for occupant of the portion of land measuring 3 acres. The learned trial judge of the High Court found no merit in the suit and dismissed it with costs and enter judgment for the defendants with declarations that the defendants are the lawful owners of the suit property. An order that the plaintiff gives vacant possession of the suit property to the defendants within 10 days from the date of the judgment and in the alternative for the plaintiffs to pay to the defendants the purchase price equivalent to the market price of the suit property within 30 days of the judgment.

The plaintiff was aggrieved and appealed to the Court of Appeal which delivered its decision on 18th of March 2021 and made the declarations that the appellants claim to the suit land as the purchaser has no basis and is dismissed. Secondly, that the appellant is a lawful occupant of 3 acres of the suit land he had occupied since 1990. Thirdly the appellant is

5 entitled to have the costs of the appeal and in the court below.

Prior to the decision of the Court of Appeal in the appeal itself, the parties purported to execute a consent judgment dated 16th of June 2015 between the appellant Mr. Lawrence Martin Mugerwa Musisi and the respondents Richard Banja and Justine Banja in which it is indicated that:

10 "....

1. That the Land comprised in Busiro block 263 plot 2140 (residue by balance) measuring approximately 2.431 hectares be and is hereby decreed to the appellant.
- 15 2. That the remaining four (4) acres comprised in block 253 plot 2139 measuring approximately 1.6190 hectares be and is hereby decreed to the 1st respondent.
- 20 3. That at the execution hereof, the respondent has handed over to the appellant the duplicate certificate for plot 2140 together with signed transfer and consent forms plus two (2) passport photos and photocopy of the identical to enable the appellant transferred the same into his names.
- 25 4. That each party shall bear its own costs to both in this court and the High Court.
5. That this appeal be and is hereby determined and it resolved on the above terms. ..."

30 The application before this court is filed by Mugabi Steven Banja and Banja Isaac Kyakwambala who were not parties to the civil suit or to the appeal but are beneficiaries of the estate of the deceased. The question is whether the application is incompetent for reason of being filed by 3rd parties. As beneficiaries, are the applicants, persons aggrieved?

The term "person aggrieved" can be found under section 82 of the Civil Procedure Act which provides that:

35 82. Review.

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

5 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.

10 The expression "any person aggrieved" was considered by the Supreme Court to include third parties who were not parties to the original proceedings. This was in **Mohamad Alibhai v W.E. Bukonya Mukasa & Others S.C.C.A. NO. 56 of 1996** per Karokora JSC, who delivered the lead judgment of Court. In that appeal, the appellant was not an original party to the proceedings in the High Court. What was crucial under section 82 of the Civil Procedure Act (section 83 before revision) was that the party had to be a person aggrieved within the meaning of the Act. Further in **S.C.C.A. NO. 8 OF 1995; Ladak Abdulla Mohamed Hussein vs. Griffiths Isingoma Kakiiza and Others** it was held by Odoki J.S.C as he then was that section 83 (now section 82 of the revised CPA) allows any person considering himself to be aggrieved to bring an application for review even though he is a third party. Further, section 83 (82 revised) of the Civil Procedure Act confers jurisdiction but the procedure is provided for by the Civil Procedure Rules. In **Re Nakivubo Chemists [1979] HCB 12** the expression "any person considering himself aggrieved" was defined to mean a person who has suffered a "legal grievance" The term "legal grievance" was defined in the **Ex parte side Botham in re Side Botham (1880) 14 Ch. D 458 at 465** per James L.J as an expression which do not really mean a man who is disappointed by a benefit which he must have received if no other order had been made but "a person aggrieved" must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully affected his title ". This expression was further considered by Lord Denning to be of wide import or meaning in **Attorney General of Gambia v N'jie [1961] AC PC at p 617 at p 634** Per Lord Denning that:

35 "the definition of James L.J. is not to be regarded as exhaustive. Lord Esher M. R. pointed out in ex parte. Official Receiver in re Reed, Bowen & Company that the words "*person aggrieved*" are of wide import and not subject to a restrictive interpretation. They do not include of course a mere busy body who is interfering in things, which do not concern him, but they do include a person who has a genuine grievance because an order has been made which

40

5 prejudicially affects his interests.

As beneficiaries, the applicants are alleging that part of the estate of the deceased was wrongfully given away in a consent judgment and they are persons aggrieved by the consent judgment which they allege takes away part of the estate property to which they are entitled as
10 beneficiaries of the estate of the deceased. They are prejudicially affected. They have a right to file this application and therefore the objection on the competence of the application is overruled.

With regard to the application, the respondents concede that the consent judgment is a nullity. Strangely, they say that it is superseded by the
15 judgment of this court dated 18th of March 2021 in which it was held *inter alia* that the appellant/who is now the 2nd respondent to this application is the lawful occupant of 3 acres of the suit property since 1990 and the matter is now on an appeal to the Supreme Court. The consent judgment is neither the judgment of the Court of Appeal, the judgment of the High
20 Court nor the judgment of the Supreme Court. It is simply an agreement of the parties which was endorsed by the Registrar of this court. The agreement is dated 8th of June 2015 and is between the 2nd respondent and the 1st respondent to this application. It was further endorsed by this court on 16th June 2015 by the Registrar of the Court of Appeal. It purports
25 to set aside the dismissal of the High Court and allow the appeal. Obviously the appeal could not be allowed by consent of the parties.

There several authorities on the point that the parties cannot by agreement resolve an appeal from the decision of the High Court and set aside the judgment of the High Court. In **Farida Nantale v Attorney General, Registrar of Titles & House of Dawda (U) Limited; Civil
30 Application No 286 of 2014 (arising out of Civil Appeal No 23 Of 2011)** it was held that a consent in a suit should be filed in the trial court. The Court of Appeals only has jurisdiction under Article 134 (2) of the Constitution of the Republic of Uganda and section 10 of the Judicature
35 Act Cap 13 to hear appeals from the decision of the High Court as prescribed by law. The facts of that appeal were that a consent order had been issued by the Registrar of the Court of Appeal and the order was set aside as an illegality. In **Edith Nantumbwe & 3 Others v Miriam Kuteesa; Court of Appeal Civil Appeal No 294 of 2013, [2013] UGCA 23 (18th**

5 December 2013) the Court considered whether the Registrar of the court had jurisdiction to hear and finally dispose of an appeal. It held that the learned Registrar erred to enter a consent judgment when there was no appeal and the consent was a nullity for want of jurisdiction. Further, jurisdiction cannot be conferred on the Court by agreement of the parties.
10 Further, the court held that a consent judgment is an agreement of the parties and cannot bind or direct persons who are not party to the agreement. Lastly according to the decision in **Slaney v Keane [1970] Ch. 245**, an appellate Court will not allow an appeal to be settled by consent of the parties. In **Bulasio Konde v Bulandina Nankya; Court of Appeal Civil Appeal No 7 of 1980 [UGCA] 1** (14th August 1981) the Court of Appeal cited with approval several authorities for the proposition that an appeal
15 cannot be allowed by consent of the parties.

For instance, in **Lees v Motor Insurer's Bureau [1953] WLR 620** it was held by Denning L. J. that:

20 an appeal could not be allowed by consent, for that would be reversing the judgment of Lord Goddard CJ without hearing the appeal.

It follows that the consent judgment signed by the respondents on 8th June, 2015 and endorsed by the Registrar of this court on 16th June, 2015 is a nullity. The further complaint of the applicants is that pursuant to the
25 consent judgment, the 1st respondent unlawfully gave the 2nd respondent 6 acres of estate property to the detriment of the applicants. This followed the implementation of the consent judgment wherein the suit property was subdivided into plots 2139 measuring 4 acres which was retained for the estate of the deceased and Plot 2140 measuring 6 acres
30 which was transferred to the second respondent. Plot 2140 was further subdivided into plots 2505, 2506 and 2507. Those subsequent transactions are a nullity and form the basis of the grievance against the consent judgment. The respondents cannot argue the nullity of the consent judgment and still want to retain the benefit of the unlawful
35 judgment. The only valid decision which ought to be executed is the decision of the Court of Appeal dated 18th of March 2021 recognising the 2nd respondent as a lawful occupant of 3 acres of the suit land that he occupied since 1990.

To avoid protracted litigation, and exercising the powers of this court

5 under rule 2 (2) of the rules of this court to issue such orders as are
necessary to set aside judgments which have been proved to be null and
void, the following orders issue:

- 10 1. The consent judgment, the subject matter of this application, signed
by the parties thereto on 8th June, 2015 and issued under the hand
of Registrar of the Court of Appeal on 15th June, 2015 is hereby set
aside.
- 15 2. All the transactions relating to execution of the consent judgment
by transfer of Busiro Block 263 plots 2505, 2506 and 2507 at Senge
to the second respondent are null and void and an order issues
cancelling the said registrations and reverting the suit property
back to the estate of Paul M Banja as represented by the
administrators of the estate.
- 20 3. The application succeeds with costs to the applicants.

Dated at Kampala the 29th day of March 2022


Christopher Madrama

25 Justice of Appeal

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPLICATION NO. 84 OF 2021
(ARISING FROM CIVIL APPEAL NO. 176 OF 2013)

1. MUGUBI STEVEN BANJA
2. BANJA ISAAC KYAKWAMBALA..... APPLICANTS

VERSUS

3. RICHARD BANJA
4. LAWRENCE MARTIN MUGERWA MUSISI..... RESPONDENTS

CORAM: Hon. Mr. Justice Kenneth Kakuru, JA
Hon. Mr. Justice Geoffrey Kiryabwire, JA
Hon. Mr. Justice Christopher Madrama, JA

RULING OF HON. MR. JUSTICE KENNETH KAKURU, JA

I have had the opportunity of reading in draft the Ruling of my learned brother Hon. Mr. Justice Christopher Madrama, JA.

I agree with him that this application ought to succeed for the reasons he has set out in his Ruling.

I also agree with the orders he has proposed. I wish only to emphasise that the practice of lawyers and parties seeking to settle their appeals at this Court and the Supreme Court is welcome and supported by the law. Indeed this Court has established an appellate mediation Registry headed by a Registrar to help parties amicably settle their appeals.

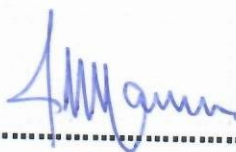
However the settlement is only limited to withdrawal of appeal and other matters such as costs or interest. Parties and their lawyers cannot by consent on appeal reverse, or in any way interfere with the Judgment of the High Court.

See:-American Procurement Company Ltd Vs Attorney General, Civil Appeal Number 0035 Of 2009, Uganda Broadcasting Corporation, Civil Application No. 12 Of 2014 Versus Sinba (K) Limited & Others, Edith Nantumbwe Kizito And Others Vs Miriam Kuteesa Civil Application No. 294 Of 2013.

Parties may however, withdraw their appeals and go back to the High Court and apply to the Judge who passed the decree to allow them compromise it or adjust the decree by consent.

As Hon. Kiryabwire JA also agrees this application succeeds in the terms set out in the Ruling of Hon. Madrama JA.

Dated at Kampala this 29th of March 2022.



.....
Kenneth Kakuru
JUSTICE OF APPEAL

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPLICATION NO. 84 OF 2021
(ARISING FROM CIVIL APPEAL NO.176 OF 2013)

1. MUGUBI STEVEN BANJA
2. BANJA ISAAC KYAKWAMBALA=====APPLICANTS

VERSUS

1. RICHARD BANJA
2. LAWRENCE MARTIN MUGERWA MUSISI=====RESPONDENTS

CORAM HON. MR. JUSTICE KENNETH KAKURU, J.A.

HON. MR. JUSTICE GEOFFREY KIRYABWIRE, J. A.

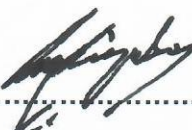
HON. MR. JUSTICE CHRISTOPHER MADRAMA, J. A.

RULING OF HON. MR. JUSTICE GEOFFREY KIRYABWIRE, J.A.

I have had the benefit of reading in draft the Ruling of my learned Brother, Hon. Mr. Justice Christopher Madrama J.A. I agree with his reasons and conclusions.

I agree that the Application ought to succeed for the reasons that he has set out in his Ruling.

Dated at Kampala this.....^{29th}.....day of ^{March}.....2022.


.....
HON. MR. JUSTICE GEOFFREY KIRYABWIRE, J.A.