

**THE REPUBLIC OF UGANDA,  
IN THE HIGH COURT OF UGANDA AT FORT PORTAL  
HCT-01-LD-MA-NO. 121 OF 2022**

**(Arising from MISCELLANEOUS CAUSE NO. 006 OF 2022)**

**JOYCE KAINA MUGISHA ::::::::::::::::::::::::::::::::::::::::::::::::::::::: APPLICANT**

**VERSUS**

- 1. SAMUEL MUGISHA (Administrator of the estate of the late Jacob Mugisha and in his own capacity)**
- 2. ISEJEMBA PHILIP (Administrator of the estate of the late Bwankya Zaburoni)**
- 3. KAZINI WILFRED RUBONGOYA (Administrator of the estate of the late Kosia Mpazi)**
- 4. MUTEGEKI CHARLES (Administrator of the estate of the late Makaya Wilson)**
- 5. RITA MUKUNDE (Administrator of the estate of the late Mugenyi Stephen) ::::::::::::::::::::::::::::::::::::::::::::::: RESPONDENTS**

**EFORE HON. MR. JUSTICE VINCENT EMMY MUGABO**

**RULING**

This is an application for review of a decision of this court in **MISCELLANEOUS CAUSE NO. 006 OF 2022**. It is made by way of notice of motion under the provisions of section 82 and 98 of The Civil Procedure Act, Section 33 of the Judicature Act, and Order 52 rules 1 & 3 of The Civil Procedure Rules (CPR) seeking for orders that;

- a) The orders granted by His Lordship Justice Vincent Emmy Mugabo be set aside or reviewed
- b) Miscellaneous Cause No. 006 of 2022 be heard inter parte
- c) Costs be in the cause

**Background**

The applicant is one of the beneficiaries of the estate of the late Jacob Mugisha. The said Jacob Mugisha owned 30% of the land comprised in LRV 1795 Folio 18, Busongora Block 18 Plot 6 land at Muhokya, Butakinga in Kasese as a tenant in common together with the 1<sup>st</sup> applicant (5%), Stephen Mugenyi (5%) Mpazi Kosia (20%), Makaya Wilson (10%) and Bwankya Zaburoni (30%). The total land is approximately 493.1 acres.

The applicant had lodged a caveat to bar transactions with the entire land claiming that the said transaction were being made without her involvement and without the involvement of all the beneficiaries to the respective estates of the deceased co-owners. It is this caveat that the respondents sought to vacate Miscellaneous Cause No. 006 of 2022 to allow the sale of part of the land to Watujo Millers Ltd which was to be used to resettle people affected by floods in Kasese district, a program under Office of the Prime Minister. as aforesaid.

Miscellaneous Cause No. 006 of 2022 was determined against the applicant and court ordered for her caveat to be vacated. It is that ruling that the applicant now seeks to review.

The application is supported by the affidavit of Joyce Kaine Mugisha, the applicant and the grounds of the application are briefly as follows;

- a) That she was shocked to be informed that Miscellaneous Cause No. 006 of 2022 was determined against her yet she was never served with any notice of the application as required by law
- b) That there is an error apparent on the face of the record and court should not allow that error to subsist. That the affidavit in support of Miscellaneous Cause No. 006 of 2022 was not commissioned

- c) That the effect of the ruling in Miscellaneous Cause No. 006 of 2022 deprive the applicant of the proprietary interest in land to which she is a beneficiary without affording her a hearing

In reply, the 1st respondent deposed that;

- i. The application discloses no grounds to warrant the decision of court to be reviewed or set aside.
- ii. The applicant deliberately absented herself from the proceedings in Miscellaneous Cause No. 006 of 2022 when she was served but chose not to participate
- iii. The application is overtaken by events as plot 6 of the suit land part of which is the applicant's beneficial share was subdivided into various other plots and transferred to a third party, Watujo Millers Ltd leaving the applicant's beneficial share intact.
- iv. The residue from the sale in iii above is more than sufficient to satisfy the applicant's beneficial entitlement and the applicant's intention is to frustrate the respondents from dealing with their own shares of the suit land.

The respondents filed a supplementary affidavit in support deposed by Cosma A. Kateeba, an advocate and Commissioner for oaths who stated that he commissioned the affidavit in support of Miscellaneous Cause No. 006 of 2022 on 4<sup>th</sup> October 2022 but he might have mistakenly forgot to stamp/seal one of the copies of the affidavit but signed the same.

### **Representation and hearing;**

The Applicant is represented by Mr. Asimwe Edias of Asimwe Advocates & Solicitors. The respondents are represented by Karamagi, Magezi & Co. Advocates. Both Counsel filed written submissions that I have considered in this ruling.

## **Court's Determination**

The only issue for court's determination is **whether the applicants have sufficient grounds for review.**

**Section 82 of the Civil Procedure Act** and the decision in *Busoga Growers Co-operative Union Ltd V Nsamba & Sons Ltd H.C.M.A No. 123 of 2000* lay down the circumstances under which an application for review can be brought. In addition, **Order 46 Rule 1 of the Civil Procedure Rules** and the case of *FX Mubuuke Vs UEB HCMA No. 98 of 2005* offer considerable guidance in as far as the grounds for a review application as concerned.

**Section 82 of the Civil Procedure Act** which governs applications for review of court orders/judgment provides as follows;

*"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 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 provisions above are replicated in **Order 46 CPR** amplifies on the law by providing for the considerations when granting an application for review. It provides as follows;

**"1. Application for review of judgment.**

*(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.* (The underlining is for emphasis).

The considerations were restated in ***Re-Nakivubo Chemists (U) Ltd (1979) HCB 12***, where Manyindo J, as he then was, held that the three cases in which a review of a judgment or orders is allowed are those of;

- a. Discovery of new and important matters of evidence previously overlooked by excusable misfortune.*
- b. Some mistake apparent on the face of record.*
- c. For any other sufficient reasons, but the expression “sufficient” should be read as meaning sufficiently analogous to (a) and (b) above.*

Of the three above, it is not clear the ground under which the instant application is brought. From the affidavit in support, the applicant indicates that there was an error apparent on the face of the record. Again, the impugned error is not specifically stated. The two that could possibly be singled out from the affidavit in support are that the application in

Miscellaneous Cause No. 006 of 2022 was not brought to the applicant's attention and she was therefore denied a right to be heard. Also that the affidavit in support of Miscellaneous Cause No. 006 of 2022 was not commissioned, which would be an illegality.

While determining Miscellaneous Cause No. 006 of 2022, I was satisfied that service of the said application was effected on the applicant individually as well as to her advocates then, H&G Advocates. She chose not to take part in the proceedings and she should not now be allowed to turn back and allege that the application was not brought to her attention.

The non-commissioning of the affidavit in support of Miscellaneous Cause No. 006 of 2022 has been sufficiently explained by the respondents herein. The copies of the affidavit attached to the affidavit in reply as well as the one on court record are all commissioned. Mr. Cosma A. Kateeba who is said to have commissioned it also swore an affidavit stating that he properly commissioned the affidavit in support but might have forgotten to stamp/seal one of the copies which he had well signed.

It has also been brought to the attention of the court that the applicant's caveat has since been vacated, the land subdivided and already transferred to a third party leaving a residue which is more than sufficient to satisfy the applicant's beneficial entitlement. This application would surely be considered to have been overtaken by events. This court is not in the business of issuing orders in vain.

The applicant has fallen far from advancing any possible grounds for a review of court's decision or any sufficient cause to warrant the setting aside of the decision. This application is wholly without merit and is hereby dismissed with costs to the respondents

I so order

Dated at Fort Portal this 28<sup>th</sup> day of April 2023. .

**Vincent Emmy Mugabo**

**Judge**

The Assistant Registrar will deliver the ruling to the parties

**Vincent Emmy Mugabo**

**Judge**

28<sup>th</sup> April 2023.