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The Republic of Uganda

In the High Court of Uganda Holden at Soroti

Miscellaneous Application No. 0188 of 2022

(Arising from High Court Civil Appeal No. 0008 of 2019)

(Arising from Soroti Chief Magistrates Court Civil Suit No. 002/2012)

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Oriokot Julius Applicant

Versus

Eduba John Respondent

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Before: Hon. Justice Dr Henry Peter Adonyo

Ruling

1. Introduction:

20 This is an application brought by way of Notice of Motion under sections 82 & 98 of the Civil Procedure Act and Order 46 rule 17 Order 52 rules 1,2 & 3 of the Civil Procedure Rules for orders that the judgement, orders and decree in High Court Civil Appeal be reviewed and set aside and the costs of this application be provided for.

2. Grounds:

25 The grounds of this application as set out in the application and supporting affidavit sworn by the applicant are that the applicant and the respondent were parties in High Court Soroti Civil Appeal no 0008/2019 where the suit land was resolved by court to be for the respondent and a fresh trial with correct parties was ordered.

30 That there is an error apparent on the face of the judgement where Asio Magdalene the doner of Powers of Attorney to the applicant was



5 mistakenly held to be dead and the donee, the applicant was mistakenly held to have obtained letters of administration to the estate of Asio Magdalene who is alive. That the applicant obtained letters of administration to the estate of Akwar Augenio his late father not Asio Magdalene as in the judgement.

10 That the order for a fresh trial with the correct parties issued by this honourable court when Asio Magdalene was mistakenly held dead would be nugatory.

That the applicant being illiterate was clueless as to the error in the judgement and relied on the professional knowledge of his Advocate to
15 make written submissions and execute legal documents.

That the applicant first filed CA 0329/2022 in the Court of Appeal to challenge the judgement and orders in CA 0008/2019, however, he was letter advised to withdraw the said appeal and filed for review.

Asio Magdalene in her affidavit in support stated that her and the
20 respondent were parties in Civil Suit No. 002/2011.

That due to illness she could not attend court session and represent herself effectively, she thus instructed her lawyers to execute a power of attorney to the applicant who is her brother to pursue the matter.

The said power of attorney was executed and the applicant represented
25 her in the Chief Magistrates Court where judgement was delivered in his favour.

The respondent appealed this decision vide CA 0008/2019 which nullified her powers of attorney for not being compliant with the law and ordered a fresh trial with correct parties.

5 That there is an error on the face of the judgement where she is mistakenly held to be dead yet she is alive to date and readily available for court's physical observation.

That there is an error on the face of the judgement where the applicant was mistakenly held to have obtained letters of administration to her
10 estate yet she is still alive.

That the applicant obtained letters of administration to their father's estate not hers.

That an order for a retrial with correct parties was made when she was mistakenly held dead would be nugatory so is the order for a retrial with
15 the respondent being declared the owner of the suit land.

The respondent in his affidavit in reply stated that the affidavit in support contains matters of law, is argumentative and irrelevant to matters to be replied to and as such is incompetent and an abuse of court process and should be struck out.

20 That the application has no merit and should be struck out with costs since there are no grounds for review and setting aside the judgement.

That the applicant herein has never filed any suit against him for them to be parties in the High Court.

That there is no error apparent on the face of the record as the applicant
25 was improperly added as a party based on a defective power of attorney without any legal effect.

That this application has no merit since the applicant has no locus to institute it since this honourable court is functus officio having ordered a retrial.

5 That there is no error on the face of the judgement since the applicant overstepped his bounds as a donee of the illegal power of attorney and decided to remove Asio Magdalene including himself as a party. That Akwar Augenio whose estate the applicant obtained letters of administration for, was not a party to the pleadings.

10 **3. Representation:**

The applicant was represented by M/s Okanyum Namusana Advocates while the respondent was represented by M/s Ogire and Co. Advocates. This matter proceeded by way of written submissions which shall be considered in the determination of this application.

15 **4. Submissions:**

Counsel for the applicant raised one issue for determination in his submissions, that is;

20 “Whether the Judgement and Orders of this honourable court entered on the 08th day of June 2022 in Civil Appeal No. 008/2019 should be reviewed and set aside?”

Counsel for the applicant submitted that in clarifying the meaning of Review, Justice Remi Kasule (as he then was) in the case of *FX Mubuuke vs UEB HCMA No. 98/2005* had this to say:

25 “... a Review is different from an appeal in that a review is reconsideration of the subject of the suit in the same court under specific conditions set out by the law while an appeal is a rehearing by the appellate court. That Review does not open questions decided upon between the Parties except under specific instances accorded by law...”



5 He submitted that Section 82 of the Civil Procedure Act & Order 46 of the Civil Procedure Rules allow an aggrieved person who has not appealed against the decision to apply for review in the same court (*See: Adonia v Mutekenga [1977] EA 429 and Re-Nakivubo Chemicals (U) Ltd 119791 HCB 12*).

10 Counsel further submitted that an aggrieved person was defined by the Supreme Court in the case of *Mohamed Allibahai v W. E Bukenya & DAPCB SCCA No. 56/1996, [1996]3 KALR 92* where it was held that an aggrieved person within the meaning of section 83 (now section 82) of the Civil Procedure Act or Order 42 rule 1 (now Order 46) means a person who has
15 suffered a legal grievance.

That Odoki, JSC (as he then was) stated *that a person suffers a legal grievance if the Judgement given is against him or affects his interests.*

Counsel submitted that the above definition was applied in the case of *Busoga Growers Co-operative Union Ltd vs Nsamba & Sons Ltd HC (Commercial Court) Misc. Application No. 123 of 2000* where it was stated
20 that;

*"For an application for review to succeed, the party applying for review must show that he/she suffered a legal grievance and that the decision pronounced against him/her by court has wrongly deprived
25 him/her of something or wrongfully affected his/her title to something."*

That under paragraph 2 of the Affidavit in support of the Application, the Applicant states that he was a party to the High Court Civil Appeal No. 008/2009 wherein the court resolved that the respondent is the rightful

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5 owner of the suit land but ordered for a fresh trial as a result of a defective power of attorney relied on by the Applicant.

That he is therefore affected /aggrieved by the decision of court that the respondent was the rightful owner of the land and an order to pay costs of the appeal yet a fresh trial was ordered before another Magistrate
10 because the judgement that led to the appeal was a nullity.

Counsel further submitted that Section 82 of the Civil Procedure Act further states that the Applicant should not have appealed against the decision and under paragraphs 9 and 10 of the Affidavit in Support of the Application, the applicant states that after getting correct legal advice
15 from his advocates (M/S Okanyum Namusana & Co. Advocates) in conduct of the matter, he immediately withdrew the Appeal to the Court of Appeal lodged by his former lawyers practicing under the name M/S Okuku & Co. Advocates.

Thus the judgement was not appealed against and therefore the Applicant
20 is rightly before this honourable court.

Counsel submitted that the grounds for review are clearly provided for and were outlined in *FX Mubuke vs UEB, HC Misc. Application No. 98 of 2005* and these are;

a) That there is a mistake manifest or error apparent on the face of the
25 record.

b) That there is a discovery of new and important evidence which after 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.

30 c) That any other sufficient reason exists.

Counsel for the applicant relied mainly on the first and third grounds.



5 a. An error apparent on the face of the record

For the court to review its judgement and orders there must be an error apparent on the face of the record. (*Mohamed Allibahai v W. E Bukenya & DAPCB SCCA No. 56/1996, [1996]3 KALR 92*. The Supreme Court in the case of *Edison Kanyabwera v Pastori Tumwebaze SCCA No. 6 of 2004* held that

10 "... in order that an error may be a ground of review, it must be one
apparent on the face of the record, i.e. an evident error which does
not require any extraneous matter to show its incorrectness. It must
be an error so manifested and clear that no court would permit such
an error to remain on the record. The error may be one of fact but is
15 not limited to matters of fact, and included also an error of law."

Counsel for the applicant submitted that under paragraphs 3, and 4 of the Affidavit in support of the Application, the Applicant states that Asio Magdalene the donor of Power of Attorney was mistaken to have died and
20 the letters of administration obtained was in respect of her estate. Basing
on this, court ordered a fresh trial with correct parties since the power of attorney relied on by the applicant terminated upon Asio's death rendering a trial a nullity. Court further stated that since Asio Magdalene died, the applicant should have made an application to court to be added
25 as a party.

Court's belief that Asio Magdalene is dead and that the Letters of Administration was in respect of her estate is indeed a mistake apparent on the face of the record which justifies a review as Asio Magdalene is still alive and has attended the court in person on several occasions.

5 **b. Any other sufficient cause which is analogous to the main grounds**

Counsel for the applicant submitted that under paragraph 7 of the Affidavit in support of the Application, the Applicant stated that an order for a retrial with the respondent being declared the owner of the suit land would be nugatory.

10 Counsel submitted that according to the case of *Said vs Maitha [2000]2 EA 505*, court has inherent powers to recall an order before it is perfected to amend the same to rhyme with the intention of court. In the case of *Sardar Mohamed vs Charan Singh Nand Singh & Another [1959]1 EA 793*, court stated that the words any other sufficient reason mean a reason sufficient
15 in the rule.

Counsel submitted that an order for a retrial is the main intention of this honourable court because it found the proceedings at the trial magistrate's court a nullity.

Therefore, to declare the respondent the owner of the suit land would be
20 going against the real intention of court justifying it as a sufficient reason for review. Similarly, to order the applicant to pay for costs of the Appeal yet a retrial was ordered defeats the intention of court which is a retrial.

Counsel for the applicant prayed that this honourable court invokes its inherent powers under Section 98 of the civil procedure Act, cap 71 to
25 recall its orders to amend them in order to rhyme with its intention since they haven't been perfected.

He prayed that honourable court in considering this application for review exercise its discretion judiciously as held in the case of *Abdul Jafar Devji vs Ali RMS Devji [1958] EA 558* and look at the main intention of court which
30 is a retrial. It will be an injustice to the applicant if court maintained the

5 error already pointed out and maintain the order of costs yet the matter is to be tried de novo.

Counsel for the respondent in reply submitted that he strongly opposes the application on grounds that the applicant's affidavit in support contains matters of law, is argumentative and irrelevant to matters to be replied to
10 and such affidavit is incompetent, oppressive and an abuse of court process and the same should be struck out with costs.

The use of the words; *"that there is", "where Asio Magdalena", "where the applicant", "that in a bid", "that ever since", "that the applicants delay"*, contained in paragraphs 3, 4, 8, 9, 11, 12 and 13 are a pointer to the affidavit
15 being argumentative. Which attracts the same to be struck out and the whole application collapses since it will remain without a supporting affidavit.

Counsel submitted that this principle is well elaborated in *Nakiridde Versus Hotel International Ltd (1987) HCB 85*, where it was held that: -

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"Where an affidavit contains matters of law, is argumentative and irrelevant to matters to be replied to and such affidavit is incompetent, oppressive and an abuse of court process and the same should be struck out with costs".

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Counsel prayed that this objection succeeds and therefore disposes off the whole application since it is supported by affidavit which contains matters of law, is argumentative and irrelevant to matters to be replied to and such affidavit is incompetent, oppressive and an abuse of court process and the
30 same should be struck out with costs.

5 Alternatively, but entirely without prejudice to the foregoing counsel for
the respondent submitted that the applicant cited relevant cases for
review and the law correctly but the same fell short of satisfying the
grounds of review as required. Counsel stated that the reason the grounds
for review have not been satisfied is because when court delivered its
10 judgement on 8th of June 2022, it did deliberate on what faulted the
applicant's case and these were how he was added as a party, the death of
Asio and how his name was brought in the pleadings as a party.

That the due process was not followed which required the applicants
name in the pleadings, the question as to the legality of the purported
15 power of attorney that the applicant held which this honourable court
found at page 14 of its Judgement from line 4 to line 10 of the second order
improper and declared it improper and was added as a party based on a
defective power of attorney which had no legal effect on that basis alone
the two legal incidents faulted the decision of the lower court since it was
20 arrived on an illegality as illegal parties were involved in the dispute before
the court and this honourable court made a pronouncement that the trial
process was a nullity and made an order for a fresh trial with proper parties.
Counsel further submitted that the judgement and orders of this
honourable court entered on the 8th day of June 2022 in Civil Appeal No.
25 008 of 2019 should not be reviewed because illegal process or incidence
render the decision illegal and not a mistake apparent on the face of record
or a new discovery and / or any sufficient cause which warrants an
application for a review.

Counsel additionally submitted that at page 5 paragraph 3, from line 9 –
30 14, the applicant seems to suggest that this Honourable court declared the
respondent as the owner of the suit land which is wrong because a scan

5 through the orders made by this Honourable Court on appeal does not indicate so at page 14 of the certified judgement dated 8/6/2022.

A fresh trial was ordered which is an appropriate remedy that the applicant should have pursued to obtain his legal rights after setting aside the lower court's judgement and order.

10 Regarding withdrawal of the appeal in the Court of Appeal counsel for the respondent submitted that the applicant alluded to the fact that he immediately withdrew the appeal to the court of appeal lodged by his former lawyer and yet failed to back it up with evidence by way of a withdrawal order or decree from the court of appeal indicating that the
15 appeal has actually been withdrawn.

The only documents at our disposal is a notice of withdrawal of appeal indicating that he does not intend to further prosecute the above appeal but the decree to that effect has not been served on the respondent since the filing of that appeal to date meaning that the appeal still exists in the
20 court of appeal.

Regarding costs in Civil Appeal No. 0008/2019, counsel for the respondent submitted that it is trite that costs follow the event.

He relied on to **S.27 Civil Procedure Act** which states that *provided* that the costs of any action, cause or other matter shall follow the event unless the
25 court or the judge shall for good reason otherwise order.

Counsel finally prayed that this honourable court judicially exercises its discretion and awards costs of the suit to the respondent since the applicant in his submissions have not satisfied the grounds for review pointed out by the applicant because the power of attorney relied on was
30 a defective power and his name coming into the pleadings without due process was never followed.

5 In rejoinder counsel for the applicant submitted that the applicant's affidavit is not argumentative in any way and the alleged critique by the respondent is merely a matter of style coupled with factual detail narrated and cannot by any stretch of imagination amount to being argumentative. He further submitted that counsel for the respondent elected not to point
10 out how the said content is argumentative. That paragraphs 3,4,8,9,11,12 and 13 that the respondent is claiming to be argumentative do not entail any matters of law, sources of information of belief which are not disclosed, but rather matters of facts, of belief which sources are fully disclosed, all justifying relevant information in evidence for grant of an order or review
15 of the judgement.

5. Determination:

The respondent raised a preliminary objection in his affidavit in reply, which was argued by his counsel to the effect that the applicant's affidavit in support is argumentative.

20 **Order 19 rule 3 of the Civil Procedure Rules** provides that;

(1) Affidavits shall be confined to such facts as the deponent is able of his or her own knowledge to prove, except on interlocutory applications, on which statements of his or her belief may be admitted, provided that the grounds thereof are stated.

25 (2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter or copies of or extracts from documents shall, unless the court otherwise directs, be paid by the party filing the affidavit.

An affidavit is meant to adduce evidence and not argue the application, the
30 applicant's affidavit does that when he goes into detail on the grounds of

5 his application. I do not find the affidavit argumentative and as such this objection is overruled.

This is an application for review of the judgement, orders and decree in **Civil Appeal No. 0008 of 2019.**

Counsel for the applicant sufficiently discussed the law which governs
10 review in this court under **section 82 of the Civil Procedure Act, Order 46**
rule 1 of the Civil Procedure Rules and *FX Mubuuke vs UEB HCMA No. 98/2005.*

Section 82 of the Civil Procedure Act provides that;

Any person considering himself or herself aggrieved—

15 (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 judgement to the court which passed the decree
or made the order, and the court may make such order on the decree or
20 order as it thinks fit.

Order 46 rule 1 of the Civil Procedure Rules provides that;

(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

25 (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
30 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

5 for a review of judgement to the court which passed the decree or made the order.

In *FX Mubuuke vs UEB (supra)* it was held that review is different from an appeal in that a review is reconsideration of the subject of the suit in the same court under specific conditions set out by the law while an appeal is
10 a rehearing by the appellate court. That Review does not open questions decided upon between the Parties except under specific instances accorded by law.

In the instant matter the applicant under his former lawyers M/s Okuku and Co. Advocates had preferred an appeal to the Court of Appeal vide CA
15 0392 of 2022 on the 25th of August 2022, however, on advice of his new lawyers, M/s Okanyum Namusana Advocates that review was a better remedy he withdrew the appeal and filed this application.

The applicant attached a notice of withdrawal of the appeal as annexure 'C' to his application, this notice indicates that the applicant does not
20 intend to further prosecute CA 0329 of 2022 and accordingly withdraws the same.

This notice was received in the Court of Appeal on the 19th of December 2022 and this application filed on the 22nd of December 2022.

Counsel for the respondent submitted that no decree to the effect that
25 the appeal has been withdrawn has been served on them and as such the appeal still exists in the court of appeal.

The process of withdrawal of an appeal from the Court of Appeal is clearly provided for under its rules, which is, the **Judicature (Court of Appeal) Rules** under **Rule 94** and it provides for the withdrawal of an appeal thus;

- 5 (1) An appellant may at any time after instituting his or her own appeal in the court and before the appeal is called on for hearing, lodge in the registry notice in writing that he or she does not intend further to prosecute the appeal.
- (2) The appellant shall, before or within seven days after lodging the
10 notice of withdrawal, serve copies of it on each respondent who has complied with rule 80 of these Rules.
- (3) If all the parties to the appeal consent to the withdrawal of the appeal, the appellant may lodge in the appropriate registry the document or documents signifying the consent of the parties; and the
15 appeal shall then be struck out of the list of pending appeals.
- (4) If all the parties to the appeal do not consent to the withdrawal of the appeal, the appeal shall stand dismissed with costs, except as against any party who has consented, unless the court, on the application of the appellant, otherwise orders.
- 20 (5) An application under sub-rule (4) of this rule shall be made within fourteen days after the lodging of the notice of withdrawal

It true that the applicant herein has only complied with Rule 94(1). However, given that I have seen the notice of withdrawal and the subsequent filing of this application, I find that there is indicated clear
25 intention to withdraw the appeal and the pursuing of the remedy of review.

Since I consider the rest of the procedures under Rule 94 of Judicature (Court of Appeal) Rules as mere technicalities which can be cured by full compliance, this court would direct the applicant to finalise that process without dismissing this current application so as to avoid multiplicity of

5 suits in accordance with the provisions of Article 126 (2)(e) of the
Constitution which enjoins courts to do substantive justice without undue
regard to technicalities. Having said so, I will now resolve this application
on its merits.

Review as a remedy may be brought on the following grounds;

- 10 a) That there is a mistake manifest or error apparent on the face of the
record
- b) That there is a discovery of new and important evidence which after
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
15 passed or the order made.
- c) That any other sufficient reason exists.

Counsel for the applicant relied mainly on the first and third grounds.

Regarding to mistake manifest or error apparent on the face of the record
20 the applicant states under 3, 4 and 5 of the Affidavit in support of the
Application that Asio Magdalene the donor of Power of Attorney was
mistaken to have died and the letters of administration obtained was in
respect of her estate yet the letters he obtained are in respect of his father
Akwar Augenio's estate.

25 Counsel submitted that basing on this, court ordered a fresh trial with
correct parties since the power of attorney relied on by the applicant
terminated upon Asio's death rendering a trial a nullity. Court further
stated that since Asio Magdalene died, the applicant should have made an
application to court to be added as a party.

5 This court in its judgement dated 08th June 2022 indicated that Asio
Magdalene, who instituted the claim against the respondent in the land
tribunal and later Chief Magistrate's Court gave the applicant powers of
attorney to litigate on her behalf, however, that she later passed on and
the applicant obtained letters of administration to her estate and
10 proceeded with the matter. This court arrived at this conclusion basing on
the submissions of the respondent; now applicant.

In this submissions, the respondent's now applicant's counsel M/s
Omongole and Co. Advocates stated first in their introduction at page 1
and later at page 4 that the Oriokot Julius has letters of administration for
15 the suit land and powers of attorney to this case from the late Asio
Magdalene which were registered.

*Given that this information was brought forward by the applicant's counsel
at the time and especially since this matter had come to this court on appeal
which proceeded by way of written submissions this court had no reason to
20 question it.*

Arising from that submission that Asio Magdalene was dead this court
made further findings that the powers of attorney on which the applicant
was relying were non-operative because the position of the law is that a
power of attorney terminates upon death of the principal.

25 *However, given the fact that it has since been brought to this court's
attention that Asio Magdalene is alive as evidenced by her affidavit in
support of the application, the statements in the judgement in CA
0008/2019 constitute an error apparent on the face of the judgement and
record.*

5 This also could also constitute discovery of new and important evidence which after exercise of due diligence was not within the applicant's knowledge because he claimed he was illiterate and only discovered this error when his lawyer explained the judgement to him.

10 However, this discovery does not affect the judgement and its orders because this court had already found that the powers of attorney used by the applicant to represent the Asio in the lower court were defective and as such the proceedings in the lower court were deemed a nullity with a clear order given for a retrial.

15 Regarding the statement in the judgement that the applicant had letters of administration to Asio's estate, I have noted that this court was aware that the applicant had letters to the estate of the late Akwar Augenio as it indicated so on page 6 of the judgement and the trial court judgement also indicated the same, ***the statement that the applicant had letters of administration to Asio's estate was therefore an error, especially given that***
20 ***this court is now aware that Asio Magdalene is alive.***

The applicant further stated under paragraph 7 of his affidavit in support that an order for a retrial with the respondent being declared the owner of the suit land would be nugatory. This constitutes his ground on any other sufficient reason for review.

25 During the determination of Civil Appeal No. 0008 of 2019, this court found that the powers of attorney relied on by the applicant to represent Asio Magdalene were defective and should not have been admitted in the lower court.

5 This meant the applicant had no authority to represent the Asio and as such was improperly added as a party to the suit.

This court further found that trial magistrate had ignored the appellant's now respondent's evidence in reaching her decision, she had also conducted *locus in quo* in absence of one party and proceeded to rely on
10 this evidence in her judgement thus occasioning a miscarriage of justice to the parties.

Court took note of the evidence adduced by the appellant now respondent in the lower court and found that the trial magistrate had erred in ignoring the same.

15 Court then agreed that on a balance of probabilities the appellant now respondent had proved that he was the owner of the suit land.

However, it should be noted that ground 1 in Civil Appeal No. 0008 of 2019 was that the trial court erred in law and fact when it failed to properly
20 evaluate evidence on record and lent its aid to the respondent who found his claim upon an illegal act which is a matter of substantive law and not procedure hence coming to a wrong conclusion.

The essence of this ground was the defective power of attorney and having found that it was indeed defective and as such the proceedings in the lower
25 court were null, any other subsequent findings on the substance of the claim which was land ownership cannot be sustained or held as the final orders of this court given that they were a matter of discourse.

The final orders in Civil Appeal No. 0008 of 2019 were that on the basis of the illegalities the decision of the lower trial court was found to have been
30 arrived at based on an illegality as illegal parties were involved in the dispute before court.

5 Court further added that an illegality once brought before court supersedes all other issues.

Court having found the trial process a nullity ordered for a fresh trial with proper parties, adding that the appeal was succeeding on the basis of the illegality, it thus set aside the judgement and orders of the trial court.

10 I find that the final orders of this court in Civil Appeal No. 0008 of 2019 were therefore very clear on the intention of this court, which were that the trial in the lower court was a nullity and as such the judgement and orders arising there from were set aside with an order for a trial de novo.

15 Having found that there are errors in the judgement and further having noted that this errors do not affect the judgement in its entirety, I would invoke this court's inherent powers under Section 99 Of The Civil Procedure Act which provides for amendment of judgements decrees or orders thus; Clerical or mathematical mistakes in judgements, decrees, or Orders or
20 errors arising 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.

This court, can thus of its own motion amend the judgement in Civil Appeal No. 0008 of 2019 and correct the errors above mentioned given that while
25 they are indeed errors in the judgement they do not warrant the setting aside the entire judgement.

Consequently, I would allow this application and make the below orders.

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6. Orders:

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a. The statements in the judgement in Civil Appeal No. 0008 of 2019 dated 08th June 2022 which indicate that Asio Magdalene is dead are struck off the judgement.

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b. The statements in the judgement in Civil Appeal No. 0008 of 2019 dated 08th June 2022 which indicate that Oriokot Julius has letters of administration to the estate of Asio Magdalene are struck off and shall be replaced with the statement that Oriokot Julius had letters of administration to the estate of the late Akwar Augenio.

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c. Civil Appeal No. 0008 of 2019 did not find that the suit land belonged to the respondent, it ordered a retrial in the lower trial court de novo.

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d. The applicant is allowed to properly withdraw the appeal filed in the Court of Appeal in accordance with the rules of procedure of that court and doing so does not affect the legality of this application.

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e. Line 14 on page 12 in the judgment of this Honourable Court in Civil Appeal No. 0008 of 2019 dated 8th June 2022 which begins with the sentence of;

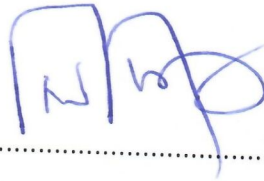
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"Given all these factual ..." up to line which ends with the words "... following his mother after a dispute" is struck off to Leave only "Ground One of the appeal succeeds."

f. Each party bear their own costs.

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I do so order.



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Hon. Justice Dr Henry Peter Adonyo

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Judge

21st September 2023

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