

5 THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(CIVIL DIVISION)

MISC. APPLICATION NO. 45 OF 2020  
(ARISING FROM MISC. APPLICATION NO. 649 OF 2018)  
10 (ARISING FROM TAXATION APPLICATION NO. 64 OF 2018)  
(ARISING FROM CIVIL SUIT NO. 297 OF 2015)

DFCU BANK LIMITED (FORMERLY CRANE BANK LTD) ::::::::::::::::::::::: APPLICANT  
VERSUS  
WALUSIMBI NELSON T/A WALUSIMBI & CO. ADVOCATES ::::::::::::::::::::::: RESPONDENT

15 BEFORE: HON. JUSTICE ESTA NAMBAYO

RULING

This application was brought under **5.82 and 98 of the Civil Procedure Act and Order 46 Rules 1 & 8 of the CPR**, against Walusimbi Nelson t/a Walusimbi & Co. Advocates, seeking for orders of this court to: -

- 20 1. Review and set aside the Order for re-instatement of Misc. Application No. 389 of 2018, issued by Her Lordship Lydia Mugambe Ssali on the 24<sup>th</sup> of October 2019 in Misc. Application No. 649 of 2018.
2. Costs of the application be provided for.

The grounds of this application are set out in the affidavit in support of the application by  
25 Muhammad Kiwanuka Ssenoga but briefly are that: -

- i. The Respondent filed a claim vide; Misc. Application No. 389 of 2018 for recovery of costs arising from instructions by Crane bank to defend them in Civil Suit No. 297 of 2015 against Mubiru Geoffrey.
- ii. The Application was dismissed by Her Worship Bahinguza Joy Kabagye for want of  
30 prosecution.

- iii. On the 19<sup>th</sup> of November 2019, the Applicant through their lawyers were served with an order re -instating Misc. Application 389 of 2018.
- iv. On perusal of the Court record, it was established that no application was ever filed for re-instatement of Misc. Application No. 389/2018 and that the order had been extracted from Misc. Application No. 649/2018 which sought to re-instate Taxation Application No. 64/2018.
- v. The Applicant has never been served with any court process for re-instatement of Misc. Application 389/2018.
- vi. There is an error apparent on the face of the record for misuse of the order in Misc. Application 649/2018 to reinstate Misc. Application 389/2018 whereas it was intended to re-instate Misc. Application 64/2018.
- vii. The said error is sufficient reason to warrant a review.

In paragraph 4 of his affidavit in reply, Mr. Walusimbi admits that an error was made re-instating MA No. 389 of 2018 instead of MA No. 64 of 2018. That the error was brought to the attention of the Registrar after the order for re- instatement had been granted and the Registrar exercised her powers under the law to make the correction and the Applicants were served with the application but opted to file this application in bad faith.

### **Legal representation**

Learned Counsel Sarah Kisubi together with Yvonne Nakimuli represented the Applicant, while Counsel Andrew Kababi represented the Respondent. Written submissions were filed by the parties as directed by court. I have looked at the submissions.

### **Decision**

**Section 82 of the Civil Procedure Act** 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 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.

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**Order 46 of the Civil Procedure Rules** provides for application for review of judgment and states as follows: -

*(1) Any person considering himself or herself aggrieved -*

65 *(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*  
70 *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. (underlining is mine for emphasis).*

75 In the case of ***Edison Kanyabwera -v-Pastori Tumwebaze, Supreme Court Civil Appeal No. 6 Of 2004*** the court found that;

*“In order that an error may be a ground for 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 manifest and clear that no Court would permit such*  
80 *an error to remain on record. The error may be one of fact but it is not limited to matters of a fact and includes also error of law.”*

In the case of ***Nyamogo & Nyamogo Advocates –v- Kago [2001] 2 EA 173, court noted that;***

85 *“an error which has to be established by a long drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record.”*

In this case, the Respondent admits that there was an error when the trial Judge made orders for re-instatement of MA No. 389 of 2018 under MA No. 649 of 2018 which was an application for re-instatement of TA No. 64 of 2018. Mr. Walusimbi states that after  
90 the Judge had made the erroneous order, he notified the Registrar for correction of the

order and the correction was made. There are two orders signed by different Registrars on different dates on court record. There is no communication whatsoever on court record to show that the Respondent applied for rectification of the error. According to the court record, MA No. 649 of 2018 which Mr. Walusimbi wants to rely on has orders setting  
95 aside the dismissal of MA No. 649 of 2018, which is the application itself and re-instating TA No. 649 of 2018 which is not related to this case. These, in my view, are all errors apparent on the face of the record, under Order 46 rule 1 (b) of the CPR.

Be that as it may, Mr. Walusimbi states in his evidence that it is the Registrar who corrected the error. Order 50 of the CPR provides for the powers of Registrars. Under Order 50 rule  
100 3 CPR, a Registrar is mandated to entertain all formal steps preliminary to the trial, and all interlocutory applications. Application for review does not fall under the category of cases that a Registrar is mandated to handle.

Order 50 rule 7 of the CPR, it is provided that if any matter appears to the Registrar to be proper for the decision of the High Court the Registrar may refer the matter to the High  
105 Court, and a Judge of the High Court may either dispose of the matter or refer it back to the Registrar with such directions as he or she thinks fit.

In this case, the Registrar should have placed the file before the trial Judge for her action. A Registrar cannot review a decision made by a Judge. In the result therefore, I find that this is a proper case to grant this application which I do hereby allow and make orders  
110 that: -

1. **The Order for re-statement of Misc. Application No. 389 of 2018, issued by Justice Lydia Mugambe Ssali on the 24<sup>th</sup> of October 2019 in Misc. Application No. 649 of 2018 be and is hereby reviewed and set aside.**
2. **The Respondent pays costs of this application.**

115 I so order.

**Dated, signed and delivered by mail at Kampala this 30<sup>th</sup> day of March, 2023.**

**Esta Nambayo  
JUDGE**

120 30<sup>th</sup>/3/2023.