THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISC. APPLICATION NO. 629 OF 2019

(ARISING FROM CIVIL SUIT NO. 527 OF 2004)

ATTORNEY GENERAL::APPLICANT

VERSUS

1. KATENDE SSEMPEBWA & CO. ADVOCATES

2. KARUHANGA, TABARO & ASSOCIATES

3. ELIAB KAVUMA & 15,000 ORS :: RESPONDENTS

BEFORE: HON. JUSTICE ESTA NAMBAYO

RULING

The Applicant, the Attorney General, filed this application under **S. 82, 98 of the Civil Procedure Act, S.14 & 33 of the Judicature Act, Order 46, Order 9 Rule 12, Order 1 Rule 16 & 17 and Order 52 Rule 1 & 3 of the CPR**, against the Respondents, Katende Ssempebwa & Co. Advocates, Karuhanga, Tabaro & Associates and Eliab Kavuma & 15,000 Others (hereinafter referred to as the 1st, 2nd, & 3rd Respondents respectively) seeking for orders that: -

1. **The Certificate of Order issued against the Applicant on the 14th January, 2019 be reviewed and/or set aside.**
2. **The Costs of this application be provided for.**

The grounds of this application are set out in the affidavit in support of the application sworn by Imelda Adongo but briefly are that: -

1. **The Respondents herein entered into a consent where they agreed that the 1st and 2nd Respondents bill of costs be taxed as follows;**
   a) **Item No. 1 of the bill of costs is allowed at Shs. 9,600,000,000/- (Nine Billion and Six Hundred Million) as instruction fees.**
   b) **The VAT payable is Shs. 1,728,000,000/- (One Billion Seven Hundred Twenty-eight million shillings) being 18% of the instruction fees - No. (a) above.**
   c) **Items No. 3-201 of the bill of costs are covered by item No. (a) above.**
2. **The Attorney General was never a party in application No. 665 of 2018 wherein the 1st and 2nd Respondents were seeking inter alia for their Advocates/Clients' bill of costs to be taxed.**
3. **The Respondents in Application No. 665 of 2018 then chose to have the matter settled in the terms proposed above without the participation of the Applicant.**
4. **The Respondent in Misc. Application No. 665 of 2018 then extracted a certificate of order against Government wherein the Respondents included the Applicant in the order as if the Applicant was part of the consent between the Respondents.**
5. **The Applicant was not even accorded an opportunity to be heard over Application No. 665 of 2018.**
6. **The Respondents have no authority to enter into a consent making the Applicant liable and that the terms of the said consent order/certificate of order are prejudicial to the interests of the Applicant.**

7. **The Applicant was never served with a copy of the certificate of order against the Applicant and only came to the Applicant's knowledge when the Applicant was served a copy of Misc. Cause No. 267 of 2019 on 12th September 2019.**
8. **The Respondents entering into a consent judgement making the Applicant liable in the certificate of order without the Applicant's explicit instructions is tantamount to collusion and is in contravention with the law.**
9. **That it is in the interest of Justice that the certificate of order be reviewed and/or set aside.**

The Respondents filed an affidavit in reply opposing this application.

Background to the application.

The brief background to this application is that the 3rd Respondents filed Civil Suit No. 527 of 2004 against the Applicant seeking payment of gratuity. In 2011, Court entered judgement in favour of the 3rd Respondent. The 1st and 2nd Respondents subsequently filed an advocate/client's bill of costs vide M.A No. 665 upon which the parties entered into a consent on the 14th day of January, 2019 for a sum of Ugx. 11,328,000,000/= inclusive of VAT upon which a certificate of order directing the Applicant to pay the legal fees of the 1st and 2nd Respondents out of the proceeds from the judgement debt before remitting the balance to the judgement creditors was extracted.

It is the Applicant's claim that it was never a party in M.A No. 665 of 2018 and the Respondents had no authority to enter into a consent making the Applicant liable, hence this application.

Legal representation

Mr. Richard Adrole, State Attorney from the Attorney General's Chambers represents the Applicant while Counsel Nsubuga Ssempebwa was for the Respondents. Written submissions have been filed by Counsel as directed by Court.

The issue raised for trial is whether there are any grounds for Court to review/set aside the said certificate of order.

Applicant's submissions

Counsel relied on the **Section 82 of the Civil Procedure Act Cap 71 and Order 46 rule 1** of the **Civil Procedure Rules S.I 71-1** that empowers court to review a judgment on grounds of a mistake or apparent error on the face of the record and submitted that it is the duty of the court to correct grave and palpable errors committed by it to prevent miscarriage of justice. He relied on the case of ***Ojijo Pascal -v- Geoffrey Brown M.A 758 of 2017*** where Ssekaana, J cited with approval the case of ***Nyamogo & Nyamogo Advocates -v- Kago [2001] 2 EA 173*** wherein an error on the face of record was defined as; -

"An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. 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. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal.

A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the Court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the

matter. That the Court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law is not a proper ground for review. Misconstruing a statute or other provision of law cannot be ground for review but could be a proper ground for appeal since in that case the court will have made a conscious decision on the matters in controversy and exercised his discretion in favour of the successful party in respect of a contested issue. If the court reached a wrong conclusion of law, in circumstances of that nature, it could be a good ground for appeal but not for review otherwise the court would be sitting in appeal on its own judgment which is not permissible in law."

That further in the case of ***Florence Dawaru –v- Anguiwale & Another HCMA No. 96 of 2016***, Justice Mubiru held that;

"Under Order 46 rules 1 and 8 of The Civil Procedure Rules, a review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the Court. The error or omission must be self-evident and should not require an elaborate argument to be established."

Counsel explained that in the instant case, the 3rd Respondents, who are all ex-servicemen in the King's African Rifles (KAR) World War I and II instituted a suit against the Applicant seeking for a declaration that the Government of Uganda is in law bound to pay them gratuities accrued to them, as ex-servicemen. That the matter was heard and Court delivered judgement on the 11.01.2011 in favor of the 3rd Respondents in which it was ordered that the Government of Uganda is in law bound to pay gratuities to those of the Plaintiffs who produce satisfactory records that they are ex-servicemen who served in His/her Majesty's armed forces in both World Wars, and, that at the time of their discharge therefrom, they were entitled to benefits by way of gratuities which were not paid to them as of 9th August 1957, when the East African territories' respective Governments Uganda inclusive, became responsible to pay the said benefits.

That the Government of Uganda pays such gratuities as shall be ascertained from the records provided by each Plaintiff and calculated in accordance with the formula of calculation that was obtained as of 9th August 1957, to such Plaintiffs, found from the records so provided.

Counsel contended that the Applicant contends in Paragraph 6 of the Affidavit in rejoinder that payment of the decretal sum was to be made to each individual/Plaintiff. Under paragraph 7 of the Affidavit in Rejoinder, the Applicant states that on the 31/10/2018 the 1st and 2nd Respondents filed the Advocates/Clients' bill of costs vide; Misc. Application No. 665 of 2018. That according to paragraphs 3 and 6 of the affidavit -in -support and para 9 of the affidavit in rejoinder, the Applicant contends that the Attorney General was never a party to Misc. Application No.665 of 2018. That the Respondents on the 14th January, 2019 entered into a consent and thereafter extracted a certificate of order against Government based on the terms of the consent. (See paragraph 5 of the affidavit in support of the application).

Counsel submitted that the actions of the Respondents entering into a consent order and making the Applicant liable in the Certificate of Order against Government, without the Applicant's involvement in the proceedings amount to collusion and is in contravention with the law. He thus prayed that this Honorable Court be pleased to review and/or set aside the granted Certificate of order issued against the Applicant on the 14th January, 2019 and the Applicant be awarded costs for this application.

Respondents' Submissions

In reply, counsel for the Respondents relied on Section 82 of the CPA and the case of ***FX Mubuuke -v- Uganda Electricity Board, HCMA No. 98/2005*** *arising from* ***HCCS No. 1526/1999*** where review was defined as a reconsideration of the subject by the same Court under specific conditions set by law. That as a general rule, the Court after passing

judgement becomes functus officio and cannot revisit the judgement or purport to exercise a judicial power over the same matter but a review is an exception to the above rule.

He explained that for a manifest mistake or error apparent on the face of the record to justify review, the error must be manifest and clear that no Court would permit such an error to remain on the record. He agreed with the statement of the law in ***Ojijo Pascal -v- Geoffrey Brown M.A 758 of 2017*** as cited by Counsel for the Applicant in their submissions and submitted that the question which this court should resolve now is whether this Court has enough evidence adduced to justify the claim that there is an apparent error on the face of record. That the Applicant clearly depones in paragraph 14 of the affidavit in rejoinder that the certificate of order has been contested on the ground of error on the face of record, therefore, the resolution of the issue should be confined to error on the face of record as opposed to the other grounds of emergency of new and important evidence and any other sufficient cause.

That the gist in the Applicant's complaint on page 7 of the submissions is that it was wrongly included in the consent order executed between the Respondents and subsequently, made liable to pay the costs. Counsel contended that, the Applicant does not deny that it was the unsuccessful party in HCCS No. 527 of 2004 where it was ordered to pay the 3rd Respondents their gratuity subject to verification as deponed in paragraph 5, 6 and 7 of the affidavit in reply by Mr. Samuel Kananda. That the certificate of order against Government issued by this Court clearly instructed the Applicant to pay the costs of the suit arising from the Advocate/clients' bill from the proceeds of judgement in HCCS No. 527 of 2004 as opposed to the coffers of the Applicant as they are alleging in their submissions.

Counsel averred that there is nothing erroneous about a Court Order directing advocates' fees to be paid out of the proceeds of the judgement directly as opposed to the judgement creditor paying their advocates. He relied on the case of ***Kyambadde & Anor. –v- Uganda***

Electricity Transmission Company Ltd & 3 Ors. M.A No. 234 of 2012 [2012] UGHC 137 (13 July 2012.

Counsel explained that even if there was an error on a point of law, which is denied, the same could not be resolved through review but an appeal where both parties could be heard and evidence led. That particularly in paragraph 9 of the affidavit in support of the application, the Applicant alleges collusion between the Respondents in consenting to the bill of costs. That these are serious allegations and matters that cannot be resolved without hearing evidence as collusion is a serious allegation which needs to be investigated. That the issue of whether the Applicant can be made to pay costs out of the proceeds of a judgement is a question of law arising from the interpretation and application of the law to the facts by the judicial officer as opposed to an error as the Applicant would like this Honourable Court to believe. Counsel submitted that this application is therefore misconceived and should be dismissed with costs to the Respondents.

Applicant's submissions in Rejoinder.

In rejoinder, Counsel for the Applicant submitted that no evidence is required to justify/prove an error apparent on record. That the fact that the Applicant was not a party to the consent executed by the Respondents and yet he was added to the Certificate of Order, is so glaring that it requires no further proof or evidence. That the error is prima facie or apparent on the face of the order granted by Court. He relied on the case of ***Noe Namata –v- Nsololo sub parish M.A No. 28 of 2019*** where Court cited with approval the case of ***Independent Medico Legal Unit –v- The Attorney General of the Republic of Kenya {Application No. 2 of 2012; Arising from Appeal No. 1 of 2011}*** where the East African Court of Justice (Appellate Division) explained the phrase "error on the face of the record".

Counsel submitted that it is not in dispute that they were the unsuccessful party in HCCS No. 527 of 2004, but that it was never a party to M.A No. 665 of 2018 which was in respect

of the Advocates/client bill of costs where the Respondents entering into a consent Order for a sum of Ugx. 11,328,000,000/=. That the Applicant was only brought on board by issuance of the Certificate of Order, which act is challenged.

Counsel further submitted that the consent order issued against the Applicant cannot be complied with because under Section 16 of the Pensions Act, Cap 286, gratuity as granted by Court in HCCS No. 527 of 2004 to the Ex-servicemen in World War I and II is not assignable or transferable. He relied on section 16 of the Pensions Act which states that: -

*"A pension**,** gratuity or other allowance granted under* this Act shall not be assignable or transferable except for the purposes of satisfying; -

a) *a debt due to the Government or a debt relating to tax due under the East African Income Tax Management Act, or any Act amending or replacing it; or*
b) *an order of any court for the payment of periodical sums of money towards the maintenance of the wife, or former wife or minor child of the officer to whom the pension, gratuity or other allowance has been granted,*

and shall not be liable to be attached, sequestered or levied upon for or in respect of any debt or claim except a debt due to the Government or a debt relating to tax due under the East African Income Tax Management Act, or any amending or replacing it.

Counsel emphasized that in this case, the Applicant has demonstrated that there is an error apparent on the face of record that requires to be reviewed by this Honorable Court.

Analysis

Order 46 rule (1) (b) of the Civil Procedure Rules empowers this court to review its decisions where there is a mistake or error apparent on the face of the record.

In the case of ***Edison Kanyabwera –v- Pistori Tumwebaze SCCA No. 6 of 2004*** court held that: -

"In order that an error maybe 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 manifest and clear that no court would permit such 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 *Independent Medico Legal Unit –v- Attorney General of the Republic of Kenya, East African Court of Justice Application No. 2 of 2012 (Arising from Appeal No. 1 Of 2011),* Court noted that: -

"*as the expression "error apparent on the record" has not been definitively defined by statute, it must be determined by the Courts sparingly and with great caution. The "error apparent" must be self-evident; not one that has to be detected by a process of reasoning. No error can be said to be an error apparent where one has to "travel beyond the record" to see the correctness of the judgment. It must be an error which strikes one on mere looking at the record, and would not require any long drawn process of reasoning on points where there may conceivably be two opinions ". A clear case of "error apparent on the face of the record" is made out where, without elaborate argument, one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it."*

In this case, the 1st and 2nd Respondents filed an Advocate/Client's bill against the 3rd Respondents. The parties then entered into a consent. After the consent, the 1st and 2nd Respondents then obtained a Certificate of Order against Government. It is only in this Certificate of Order against Government that the Applicant was added as the 2nd Respondent. The Applicant was not part of the pleadings in MA No. 665 of 2018, neither was it party to the consent order that arose there from. There are no court proceedings to

show that the Applicant was part of/or how it became part of the proceedings in MA No. 665 of 2018. I find that the Applicant was erroneously added as the 2nd Respondent on the certificate of order against Government in MA No. 665 of 2018 because it was not party to the application, the proceedings and/or the consent order that the Respondents came up with arising from the application.

I would therefore allow this application and order that the Certificate of Order against Government issued in Miscellaneous Application No. 665 of 2018 from which this application arises is reviewed and set aside for being erroneously issued against the Applicant.

Having found that the Applicant was erroneously added as a party to MA No. 665 of 2018, it follows that MC No. 267 of 2019 that the 1st and 2nd Respondents filed arising from MA No. 665 of 2018, seeking for orders of mandamus against the Applicant is not sustainable and is hereby dismissed from court with costs.

The Respondents pay costs of this application.

I so order

Dated, signed and delivered at Kampala this 8th day of January, 2024.

Esta Nambayo
JUDGE
8th/1/2024.