

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(FAMILY DIVISION)

MISCELLANEOUS APPLICATION No. 169 OF 2019

5 **(ARISING OUT OF MISC. APPLICATION NO 537 OF 2018)**

(ARISING OUT OF CIVIL SUIT NO. 261 OF 2018)

1. PAUL SSENOGA LUMU

2. HENRY NDUGA

3. ANDREW NTEGE

10 **4. RICHARD KIGOZI=====APPLICANTS**

(Beneficiaries of the estate of the late Nelson Nalukoola Senoga)

Vs

1. ROBINAH SENOGA

2. BENON SENINDE

15 **3. REBECCA TENDO**

4. IRENE NABAGGALA =====RESPONDENTS

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

RULING

20 **Introduction**

This application is brought under Section 82 of the Civil Procedure Act and Order 46 Rules 1,2 and 8 of the Civil Procedure Rules seeking review and setting aside of the ruling and order entered by the Deputy Registrar vide Misc. Application No. 537 of 2018 arising out of Civil Suit No.261 of 2018.

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Background

The applicants filed Civil Suit No. 261 of 2018 against the respondents for revocation of Letters of Administration granted to the respondents vides Administration Cause No. 1587 of 2015. The
10 applicants also filed Misc. Application No. 537 of 2018 seeking a temporary injunction which application was supported by only one affidavit by the 1st applicant, Paul Senoga Lumu. The 1st and 2nd respondent filed affidavits in reply to the said application.

In her ruling dated 4th day of February 2019, the learned Deputy Registrar dismissed the application with costs to the 1st and 2nd respondents on the basis that the affidavit in support
15 deponed by the 1st applicant was defective for non-compliance with the requirements of the law leaving the application without an affidavit in support.

The applicants are aggrieved by that decision and thus this application for review.

Grounds for the Application

1. The applicants are aggrieved by the ruling of the Deputy Registrar of this Court delivered
20 on the 4th day of February 2019.
2. There is an apparent error which needs to be corrected and addressed by Court.
3. The Court treated the Applicant's Application as a representative suit whereas it is not.
4. Whereas Court dismissed the Application on grounds that only one applicant had sworn
25 an affidavit supporting the Application, Court then would have heard the applicant who had deponed an affidavit and not dismiss it as a whole.

5. Substantive justice was denied to the applicant who had deponed an affidavit when the Court dismissed the whole application with orders as to costs to his detriment.

6. Court ordered the 2nd, 3rd and 4th applicants to be awarded costs in error.

7. The respondents filed only two affidavits in reply and the 1st respondent also kept on referring to “WE” without authority from other respondents.

8. It is fair, equitable and in the interest of justice that this application be granted.

Counsel for both the applicants and the respondents filed written submissions in support and opposition of the application.

Upon consideration of the grounds of the application and submissions of Counsel for both sides, this court is of the view that the procedure adopted to seek a remedy from the decision of the learned Deputy Registrar is improper.

Section 82 of the Civil Procedure Act provides that;

“Any person considering himself or herself aggrieved by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or 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.”

Order 46 of the Civil Procedure Rules provides;

“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.

An error apparent on the face of the record was defined as one which is manifest or self-evident and does not require an examination or argument to establish it (see Batuk K. Vyas v Surat Municipality AIR (1953) Bom 133. Accordingly in the case of Kalokola Kaloli Vs Nduga Robert Misc. Application No. 497 OF 2014 , the learned Justice Stephen Musota cited examples of situations that may be described as mistake or manifest mistake or error apparent on the face of the record such as *where a suit proceeds ex-parte when there is no affidavit of service on record; (see the case of Edison Kanyabwere Vs Pastori Tumwebaze SCCA 6/2004)*, or where the court enters a default judgment when there is no affidavit of service or where a summary judgment is entered under Order 36 when there is a pending application for leave to appear and defend on record.... A misdirection or error in judgement by a judicial officer on a matter of law cannot be said to be an error on the face of the record.

It is clear from the foregoing that the 8 grounds that form the basis of this application are concerned with the supposed misdirection or error in judgment by the learned Deputy Registrar on matters of law and fact which cannot be said to be an error on the face of the record within the meaning of O.46 of the Civil Procedure Rules.

The proper course of action would be for the applicants to file an appeal against the decision of the learned Deputy Registrar.

In the circumstances, this application is dismissed with no order as to costs.

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Olive Kazaarwe Mukwaya

JUDGE

Dated at Kampala this 10th day of September 2019