

1. ZAWEDDE ROSE
2. NVUULE EMMANUEL ::: APPLICANTS
(ADMINISTRATOR OF THE ESTATE OF THE LATE JOSEPH KAMYA SENOGA)


1. **PETER KISENYI**
2. **JOSEPHINE KYAMULABI**
3. **NAMAMONDE CISSY**
4. **NAKKU JUSTINE ::::::::::::::::::::::::::::::::::::::: RESPONDENTS**
5. **SSEBAGALA GODFREY**
6. **SENGENDO VICENT**

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1.2 The grounds upon which this application is presented are briefly that;

1. The applicants are legally and greatly aggrieved by the Consent judgment and decree passed by this Honorable Court in **HCCS No. 198 of 2021; Peter Kisenyi & 5 others Versus Zawedde Rose & Another** in so far as the consent judgment and decree has the effect of unequally and/or selectively benefiting or depriving some beneficiaries of the estate of their vested shares/interest at the detriment of other beneficiaries and 3rd party interests.
2. The consent judgment is not in conformity with the respondents' plaint/pleadings before court as such the respondents cannot be granted more than what they want from court.
3. The consent judgment and the decree were granted in ignorance of material facts about the current status of the estate property.
4. The consent judgment is in contravention of court policy of not granting court judgments not based on the pleadings before court or orders in vacuum.
5. There are sufficient grounds/reasons for reviewing and setting aside the consent judgment and the decree.
6. The respondents' rights and interest in the civil suit shall not be prejudiced if this application is granted.
7. It is fair, just and equitable that this application is granted.

1.3. This application is supported by the affidavits sworn by Zawedde Rose and Nvule Emmanuel, the applicants on 14th July, 2022. They are detailed affidavits, containing evidence in support of this application.



1.4. Further, the applicants swore an affidavit in rejoinder received in this court on 23rd February, 2023 in rebuttal to the 1st, 2nd, 3rd and 4th respondents' affidavit in reply to this application as one response and to the 6th Respondent singly, all filed on the same date.

2. The 1st, 2nd, 3rd, 4th 5th and 6th Respondents' Case.

2.3. The 6th respondent filed an affidavit in reply, sworn by Sengendo Vicent and the 1st, 2nd, 3rd and 4th Respondents filed an affidavit in reply, sworn by the 1st respondent Peter Kisenyi, on his own behalf and on behalf of the 2nd, 3rd and 4th Respondents. The 2nd, 3rd and 4th respondents filed in Court an authorisation document titled: "Authority" signed by the trio. The 5th Respondent filed his affidavit in reply in this court on 21st November, 2022. The respondents' case is well stated in this affidavit as shown herebelow:

"1st, 2nd, 3rd and 4th AFFIDAVIT IN REPLY

1.

2.

3.

4. That the consent judgment in Civil Suit No. 198 of 2021 was proceeded by a meeting of all beneficiaries of the estate of the late Kamya Joseph Senoga on 12th February, 2022 at the home of the deceased.

(Minutes and translation of the said meeting are attached).

5.

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10. That the applicants appeared in court with their counsel who before the court agreed, confirmed the terms of the consent judgment before endorsement by court.

11.

12.

13. That in reply to paragraph 15 of both affidavit

a) The consent is in conformity with the plaint and wishes of the plaintiffs and respondents herein with equal distribution of the Estate properties to the beneficiaries and administratorship of the estate of the late Joseph Kamyia Senoga.


b) The consent is not ring faced as to the properties and beneficiaries but equal and equitable distribution of the properties forming the estate.

c) That the purported ignorance material facts, the facts are disclosed and the same does not affect the distribution of the estate.

d) That the consent judgments are comprised as between parties and therefore not bound entirely by the pleadings.

e) That there are no grounds justifying reviewing the consent judgment after partial performance of the same has been done.

14. That the applicants appeared before court with their counsel Mr. Kakona Joel Geoffrey in court and after court explaining to them the content of the consent judgment they signed the same in the presence of the deputy registrar and cannot turn around to blame their counsel or infer mistake on him and the consent is wide open to only properties to be established as estate properties not otherwise.



15.

16. **That this application is an afterthought and intended to delay the enjoyment of the individual beneficiaries their individual interest.**

17.

18.

19.”

3.0. 5th Respondent’s Affidavit in Reply


3.1.1. Under paragraph 6 he avers that the applicants did not allude fraud, or collusion and the consent was reduced in writing and signed in court in the presence of all the parties and the applicants should not hint that the consent judgment was signed in ignorance of material facts about the current status of the estate property.

3.1.2. Further in paragraph 13 the deponent contends that the applicants should go beyond the façade of merely stating that the consent judgment and decree were granted in ignorance of material facts but should state with clarity the material facts overlooked.

3.2. 6th Respondent’s Affidavit in Reply

3.2.1. It is not true that there are other beneficiaries aggrieved by the consent judgment and if any, the applicants should have mentioned them in the affidavit supporting this application. He further stated under paragraph 7 that prior to the execution of the Consent judgment dated 14th February, 2022, it was the Applicants herein, through their former lawyers of M/S Kibuuka Rashid & Co. Advocates who contacted them with a proposal for settling Civil Suit No. 198 of 2021 out of Court and calling them for a family meeting to agree on the terms of settlement.

3.3 Representation and Hearing



Mr. Babu Regan represented the applicants. Mr. Kaketo Dennis represented the 1st- 4th Respondents, the 5th Respondent in as much he filed his pleadings, he was not represented at the hearing, and Mr. Tomusange Abdul represented the 6th Respondent. The Application was filed with written submissions, and it was agreed that the matter would proceed by filing written submissions which the parties complied with.

4.0. ISSUES:

4.1. The parties filed submissions in which the following issues have been raised for courts determination:

- i. Whether the consent judgment/decreed should be reviewed and set aside?
- ii. What remedies are available to the parties?

5.2. Resolution of this Application by Court.

Issue 1: Whether the consent judgment/decreed should be reviewed and set aside?

5.3. The jurisdiction of Court to review its Orders/Judgements is provided for under Section 82 of the Civil Procedure Act, Cap.71 which 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.”

5.4 Section 82 of the Civil Procedure Act has been enlarged by Order 46 Rule 1 of the Civil Procedure Rules which provides that;

- i) 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.*

5.5. As per the provisions of Order 46 Rule 1 (b) of the Civil Procedure Rules applications for review can be filed by any person considering himself/herself aggrieved by a decree or order under the following circumstances which include: -

- (a) Discovery of new and important matters of evidence previously unknown or could not be produced at the time when the decree was passed or order made;*
- (b) Some mistake or error apparent on the face of record.*

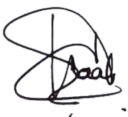
(c) For any other sufficient reason, but the expression “sufficient” should be read as meaning sufficiently of a kind analogous to (a) and (b) above See **Re Nakivubo Chemists (U) Ltd (1979) HCB 12**

The principles mentioned above followed by court governing the discretion to allow or decline an application for review have been summarized in a number of decided cases and they laid down as held in the case of **FX Mubuke Versus UEB High Court Misc. Application No.98 of 2005.**

5.6. Following the filing of Civil Suit No.198 of 2021 against the Applicants, the Respondents sought among others orders revocation of Letters of Administration granted to the Applicants vide HCT-00-CV-AC-0185-2004 on grounds of failure to file an inventory and true account of the deceased’s estate for a period of over 15 years, failure to complete distribution of the estate and failure to recover some of the deceased’s properties, the Applicants and Respondents on their own evolution and while fully represented by their respective counsel executed the consent judgment which the Applicants are now contesting.

5.7. A Consent Judgement derives its legal effect from the agreement of the parties. Therefore, it may only be set-aside on the same ground as those on which contract would be set aside.

5.8. The above view was expressed in the Case of **Hirani vs. Kassam (1952) 19 EACA 131** and by the Court of Appeal for Eastern Africa where an appeal against the review of consent judgment was allowed with costs in **Brooke BandeLiebig Ltd vs. Mallya (1975) EA 266.**



In that case the Court quoted the following passage from Seton on judgments and Orders 7th Ed., Volume 1 at page 124 with approval:

"Prima facie, any Order made in the presence and with the consent of Counsel is binding on all parties to the proceedings or action and on those claiming under them and cannot be varied or discharged unless obtained by fraud or collusion or by an agreement contrary to the Policy of the Court or if consent was given without sufficient material facts, or in misapprehension or in ignorance of material facts or in general for a reason which would enable the Court to set aside an agreement."

5.9. Further, court cannot also set aside a consent judgement when there is nothing to show that counsel for the applicant had entered into it without instructions. Even if the advocate had no specific instructions to enter a consent judgement but only had general instructions to defend the suit, the position would not change so long as counsel is acting for a party in a case and his instructions have not been terminated, he has full control over the conduct of the trial and has apparent authority to compromise all matters connected with the action. **See B.M Technical Services vs Francis X Rugunda [1997] HCB 75**

6.0. I have perused the Applicants application and affidavits in support thereof and the Applicants submissions to enable me appreciate the grievance the Applicants contend they have suffered and whether the Applicants meet the conditions set out in O.46 r.1 (1) of the CPRs to warrant review and setting aside of the consent judgment.

6.1. The Applicants contend under paragraphs 3,5,8,10,11,13 and 14 of their respective affidavits in support of the motion that the judgment



and decree would wrongly deprive them and other beneficiaries of their rights and interest in the property, the consent judgment and decree has the effect of only benefiting the respondents at the detriment of other beneficiaries, the respondents intend to selectively enforce and use the consent judgment to deprive the other beneficiaries of their estate shares/interests, the Applicants previous lawyers did not read, translate and explain to the Applicants who are illiterate the contents of the consent judgment they executed, the consent judgment the Applicants executed is different from what was read, translated and explained to them, some of the land that is included in the consent judgment as estate property has vested to third parties.

6.2. The Applicants by virtue of **Section 101- 103 and 106 of the Evidence Act, Cap. 6** and **HCCS No. 197 of 2008 George William Kakoma Versus Attorney General** has the burden of proving the facts alleged by her in the Plaint on the balance of probabilities. Section 101 (1) of the Evidence Act, Cap. 6 provides that; *“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he or she asserts must prove that those facts exist”*.

The Applicants have not discharged the legal burden conferred upon them.

6.3 I have also perused the affidavit in rejoinder of the Applicants particularly paragraph 4 wherein the respondents set out their various grievances. I have particularly observed that the Applicants major contention is that the estate property was distributed before the execution of the consent judgment basing




on the late Kamya Ssenoga Joseph's will and clan distribution (see para.4 (x)).

- 6.4 Following my perusal of the Applicants petition for Letters of Administration in this Honorable Court, I have noted that the Applicants in their declaration swore that the deceased died intestate. It is on that basis that they were granted Letters of Administration and not Letters of Administration (with a will annexed) or Letters of Probate. I therefore find it wrong for the Applicants to aver that they distributed the property of the deceased according to the deceased's will and yet they declared to this Honorable Court that the deceased died intestate.
- 6.5 It is a fundamental equitable doctrine that he who comes for equity must come with clean hands. However, the Applicants seek to set aside the consent judgment they executed with the respondents largely on the premise that the estate property was already distributed basing on the deceased's Will and yet they informed this Honorable Court that the deceased died intestate.
- 6.6 Further, under paragraph 4 of the consent judgment, the parties agreed to distribute the assets of the estate of the Late Joseph Kamya Ssenoga equally and fairly amongst all the beneficiaries of the estate by the new administrators to be approved by the Honorable Court. I do not find anything wrong with all the newly appointed administrators of the estate of the deceased working together to ensure equal and fair distribution of estate once the amended/fresh letters of administration are granted.

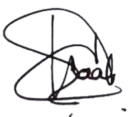


- 6.7 Also, I have noted that other than the Applicants no other beneficiaries have come forth to contest the consent judgment in as far as it would wrongly deprive them of their rights and interest in the estate property and or benefit the respondents to their detriment.
- 6.8 With regard to the Applicants contention of illiteracy, the Applicants have not disputed the fact that their former lawyer had full instructions to represent and defend them in the matter.
- 6.9 Similarly, the Applicants have made contradictory averments in Paragraphs 10 and 11 of their respective affidavits in support of motion where they state under paragraph 10 that their previous lawyers, M/s. Kibuuka Rashid & Co. Advocates did not read, translate and explain to them the true contents of the consent judgment they executed yet they are illiterate and also state under paragraph 11 that they executed a different consent judgment from the one that was read, translated and explained to them by their previous lawyers.
- 7.0 I have also taken the initiative to peruse the 1st and 2nd Applicants Petition for the Letters of Administration vide Administration Cause No. 185 of 2004 filed in this Honorable court on 26th February, 2004 and I have observed that they petitioned for Letters of Administration in the English dialect with no certificate of translation. They also wrote a letter dated 22/3/2021 in the English dialect to the Administrator General requesting to change administrators of the estate of the late



Yosefu Lutale Kamyia on the premise that two of them (Tyaaba Kevin and Kaweesa Emmanuel) were deceased.

- 7.1 The 2nd Applicant also wrote a letter in the English dialect on 18/6/2014 requesting for certified copies of the whole file of Administration Cause No.185 of 2004.
- 7.2 On 25/8/2015, the 2nd Applicant wrote another letter in the English dialect requesting to be availed with certified copies of the court record for purposes of managing the estate of the late Ssenoga Kamyia Joseph.
- 7.3 In addition, just seven (7) days after executing the consent judgment on 14th February, 2022, the Applicants on 20th February, 2022 executed land sale agreement in the English dialect in favor of Alex Mukuluma and Allan Nakedde in respect of properties comprised in Block 125 Plot 247 land at Bugerere (annexure A to the affidavit in reply of the 6th Respondents) and Block 125 Plot 248 land at Bugerere (annexure B to the affidavit in reply of the 6th Respondent) respectively.
- All the above letters and land sale agreements have no certificates of translation and yet they are executed by the Applicants who aver that they are illiterate.
- 7.4 With regard to the Applicants averment that the consent judgment does not conform to the Respondents pleadings in Civil Suit No. 198 of 2021 and that this is in contravention of court policy of not granting court judgments not based on pleadings before court or orders in vacuum.
- I reiterate the fact that a consent judgement derives its legal effect from the agreement of the parties.
- 7.5 The above notwithstanding, I have reviewed the Complaint in Civil Suit No. 198 of 2021 together with the consent judgment to



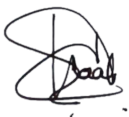
enable me independently confirm the Applicants averments and from my review thereof, I find the orders in the consent judgment to be in conformity with the orders sought in the Plaintiff.

7.6 In the Plaintiff, the plaintiffs sought for the following orders;

- a) An order for revocation of letters of administration granted to the defendants vide HCT-00-CV-AC-0185-2004.
- b) A declaration that the letters of administration granted to the defendants over the estate of the late Joseph Kamya can longer be effectively utilized as two co-administrators are now dead.
- c) An order to appoint new administrators to the estate of the late Joseph Kamya Ssenoga.
- d) An order that the defendants submit a full, true and updated inventory and an account of all the assets and liabilities of the late Joseph Kamya Ssenoga's estate for the period the defendants have managed the estate.
- e) Order for equal distribution of the estate of the late Joseph Kamya Ssenoga amongst all beneficiaries.
- f) A permanent injunction against the defendants restraining them from illegally dealing with the estate of the deceased.
- g) General damages for mismanagement of the estate of the deceased.
- h) Costs of the suit and interest thereon from the date of judgment be provided for from the estate.

7.7. A consent settlement was entered on the following terms:

1. The parties herein have consented to settle Civil Suit No. 198 of 2021 out of court.



2. The Honorable Court be pleased to amend the grant of Letters of Administration to include the current surviving administrators and 3 of the plaintiffs.
 3. The persons appointed to be granted the amended letters of administration are; Zawedde Rose, Nvule Emmanuel, Kisenyi Peter, Nnamamonde Cissy and Ssengendo Vincent.
 4. The Administrators appointed shall distribute the assets of the estate of the late Joseph Kamy Ssenoga equally and fairly amongst all the beneficiaries of the estate by the new administrators to be approved by the Honorable Court.
 5. The legal fees for the counsel for the Plaintiffs and Defendants shall be met from the assets of the estate of the Late Joseph Kamy Ssenoga.
 6. The Administrators undertake to file a report in court after the distribution of the estate of the late Joseph Kamy Joseph.
 7. In the event that any party fails to comply with any of the terms of this consent judgment, the aggrieved party shall be at liberty to execute without any further notification.
- 7.8 It is my considered opinion that items (a), (b), (c), 2 and 3 above all have the same effect of appointing new administrators of estate of the deceased.

The order sought under item (e) of the Plaint conforms with item 4 of the consent judgment.

Item (h) and 5 above are also relatable as they revolve around payment of costs of the suit.

Item 6 and (d) above are also relatable since they all revolve around filing an inventory and account of the estate.



- 7.9. Additionally, the Applicants have also not referred this Honorable Court to the specific court policy being infringed upon and/or provided a copy of the court policy to enable court independently review the policy and make a just and independent conclusion.
- 8.0. The Applicants also aver under paragraph 12 of their respective affidavits in support of the motion that the consent was executed and obtained in ignorance of material facts about the current status of the estate that would have guided court during the process on the appropriate recourse in the matter.
- 8.1 The Applicants are the administrators of the estate of the Late Ssenoga Kamya Joseph vide HCT-00-CV-AC-0185-2004 Letters of Administration were issued to them by this Honorable Court on 24th August, 2004. They averred in their respective affidavits in support of the motion that all the beneficiaries of the estate acquired their respective shares in the estate property (*see paragraphs 6, 7 and 9*).
- 8.2. I find that having been the administrators of the estate of the deceased, the Applicants were best placed to have/know all the material facts pertaining to the deceased's estate, however they decided to keep all this information to themselves without making these disclosures to court.
- 8.3 From the foregoing, I find that the Applicants have failed to prove to this Honorable Court that they fall within the ambit of any of the three conditions to warrant a review and or setting aside of the consent judgment they executed.
- 8.4. On the contrary the Respondents have availed this Honorable Court with proof that the Applicants intend to delay the revocation of the Letters of Administration issued to them on 24th August, 2004 so



that they can fast track the process of selling and transferring the estate properties as seen by the land sale agreements executed between themselves and Alex Mukuluma on 20th February, 2022 in respect of property comprised in Block 125 Plot 247 land at Bugerere (annexure A to the affidavit in reply of the 6th Respondents) and with Allan Nakedde on 20th February, 2022 in respect of property comprised in Block 125 Plot 248 land at Bugerere (annexure B to the affidavit in reply of the 6th Respondent) just seven (7) days after executing the consent judgment on 14th February, 2022.

9.0. Conclusion

- 9.1. The applicants have failed to demonstrate and prove any ground in this application that would warrant this Court to set aside this consent judgement. Again, the applicants failed to show in the affidavits in support and affidavits in rejoinder to this application any ways in which they were prejudiced by the consent judgement.
- 9.2. In the premises, the consent judgement is a valid. The Applicants are not entitled to the remedies sought. Therefore, the application is devoid of merit and is accordingly dismissed with costs to the respondents.

Dated, signed and delivered by email this 20th September, 2023.



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CELIA NAGAWA
JUDGE