

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASINDI
MISCELLANEOUS APPLICATION NO. 0055 OF 2022
(ARISING FROM MISCELLANEOUS CAUSE NO. 0010 OF 2020)

1. KARUNGI YERUSA KASEGU
2. HENRY KALYANI. APPLICANTS

VERSUS

1. KASEGU RICHARD
2. KYOMUGISHA SHARON ANGELLA RESPONDENTS
(Suing through her Attorney Sam Katuba Kiwanuka)

BEFORE: Hon Justice Isah Serunkuma

RULING

This application was brought under Section 82 of the Civil Procedure Act and Order 46 rules 1, 2, 3 & 8 of the Civil Procedure Rules for orders that the Ruling and Orders issued by this Court in Miscellaneous Cause No. 0010 of 2020 on 17th March 2022 be reviewed and set aside.

The application is supported by an affidavit deposed by the first applicant. She is the daughter of the late Kasegu Peter Kikomberwa who passed on 27th December 1993. The late Kasegu was survived by a widow namely, Kasegu Dorothy Nyakamadi and ten children namely, Kangamiteto Charles, Kalyani Henry, Kanyaihe Balaam, Karungi Yerusa Kasegu, Kasegu Richard, Mugisha David, Katushabe Evas, Asaba Margaret and Mutegeki Christine. The widow, Kasegu Dorothy Nyakamadi obtained Letters of

Administration in *Administration Cause No. HCT-12-CV-AC-0023 of 2011* whereupon the estate of the late Kasegu was distributed amongst the beneficiaries and an inventory was accordingly filed. The applicant deposed that the Administrator passed on before signing the transfer forms to enable processing of the Certificates of Tiles.

5 Consequently, this Court granted Limited Letters of Administration to the 1st respondent in Miscellaneous Cause No. 0010 of 2020 for purposes of completing the transfer of title for the land sold to the 2nd respondent.

The applicants now seek to review and set aside the Orders of this Court on grounds
10 that the 1st respondent is not a fit and proper person to be the Administrator of the estate of the late Kasegu Peter Kikomberwa because he sold off his piece of the estate and trespassed on his brother's land. The applicants propose that the court grants a Vesting Order to complete the land transfers or in the alternative, that the court appoints four Administrators for purposes of completing the land transfers.

15 The application is opposed by an affidavit in reply deposed by Kiwanuka Sam Katuba on behalf of the 2nd respondent as her Attorney appointed by Powers of Attorney dated 3rd March 2020. He deposed that the applicants did not take steps to apply for Letters of Administration following the death of the Administrator and did not oppose
20 Miscellaneous Cause No. 0010 of 2020. He further deposed that the applicants had no locus standi to apply for review of the orders given in Miscellaneous Cause No. 0010 of 2020 since they were not parties to that application.

Representations.

At the hearing of the application, learned counsel Prudence Lukoye of M/s LDC Legal Aid Clinic represented the applicant, while learned Counsel Zemei Susan of M/s Zemei, Aber Law Chambers represented the respondents. Both counsels were granted leave to file written submissions which they complied with and court has put into
5 consideration while determining the merits of the case.

Applicants' submissions

Learned counsel for the applicants submitted that any person considering himself or herself aggrieved by a decree or order of the court may apply for review of the order
10 under section 33 of the Judicature Act, Section 82 of the Civil Procedure Act and Order 46 rule 1 of the Civil Procedure Rules. Counsel relied on the case of ***Re Nakivubo Chemist [1979] HCB 12*** where it was held that any person who has suffered a legal grievance may apply for review regardless whether such person was party to the matter against which the order is sought. Counsel also relied on the case of ***Imran***
15 ***Ahmed versus Gapco Uganda Limited; HCMA No. 0492 OF 2013***, where the court held that a 3rd party may apply for review provided that he or she is aggrieved by the order sought to be reviewed. He relied on the case of ***Re Side Botham (1880) 14 Ch. D 458 at 465*** for the proposition that a man is considered aggrieved if he has been wrongfully deprived of something or affected by the decision of court. In the premises, counsel
20 submitted that the applicants qualify as aggrieved persons and have locus to apply for review of the orders of this court notwithstanding that they were not party to the proceedings in Miscellaneous Cause No. 0010 of 2020.

Lastly, counsel submitted that there was sufficient reason for the court to review its
25 orders, namely, that the 1st respondent, who was appointed Legal Representative in

Miscellaneous Cause No. 0010 of 2020 sold off his share of the estate and trespassed on another beneficiary's share.

Respondent's submissions

5 In reply, learned counsel for the 2nd respondent submitted that the applicants did not demonstrate the existence of any sufficient reason to justify the grant of the orders sought in this application. She contended that the 1st respondent, being a beneficiary to his late father's estate, was lawfully appointed as Legal Representative in Miscellaneous Cause No. 0010 of 2020 within the scope of section 221 of the
10 Succession Act.

Secondly, counsel submitted that the applicants having failed to apply for Letters of Administration since 2017 following the death of the sole Administratrix, now oppose this application in bad faith to frustrate the 2nd respondent who lawfully acquired a
15 portion of the suit property from the 1st respondent. In the premises, counsel submitted that the grounds for review have not been satisfied by the applicants and the application ought to be dismissed with costs to the 2nd respondent.

Court's analysis

20 The applicants seek an order for review of the judgment and orders of this court in *Miscellaneous Cause No. 10 of 2020; Kyomugisha Sharon Angella (Suing through her Attorney Sam Katuba Kiwanuka) vs Kasegu Richard*. The orders were granted by the Learned Justice Byaruhanga Jesse Rugyema under section 221 of the Succession Act Cap 162 in the following terms;

“KASEGU RICHARD is appointed Legal Representative of the estate of the late PETER KIKOMBERWA KASEGU with limited Letters of Administration for purposes of specifically having his names registered on the land title comprised in LRV 16111 Folio 6 at Kitumu Buruli, Plot No. 10 Block 9, Masindi, the widow and former Administrator Kasegu Dorothy Nyakamadi having died, to effect transfers from conclusion of the transfer process to the Applicant and other beneficiaries.”

Section 82 of the Civil Procedure Act and Order 46 rules 1 of the Civil Procedure Rules confer a right to any person who considers himself or herself aggrieved by an order or decree of the court to apply for review of that order to the court which passed the order. (*See; Nalebe Ephrance Kiyingi versus Solome Bbosa & 2 Ors; Miscellaneous Application No. 0213 of 2018 [2019] UGHCFD 38*).

In the instant matter, the applicants seek an order for review on the grounds that the 1st respondent, who was appointed Legal Representative of his late father’s estate by this court in Miscellaneous Cause No. 0010 of 2020, sold off his share of the estate and trespassed on another beneficiary’s share of the estate.

This court observes that these grounds were neither substantiated nor proved by the applicants. It does not suffice to merely state in an application for review or affidavit in support of the application that there are sufficient grounds for review of the court’s orders. The applicant in a matter of this nature is required to substantiate the grounds for review and prove the same to the satisfaction of court. This restriction is intended to preserve the paramount principle of finality of court orders.

In line with the principle of finality of court orders, this court rightly observed in *Kassiano Wadri versus Nuru Juma; Civil Appeal No. 0045 of 2014, [2016] UGHCLD 63* thus;

5 *“The general rule is that a court has no power to set aside or vary a final judgment or order granted in finality of any matter which has been passed and entered, because of the public interest in the finality of litigation. Finality of judicial decisions is important so that litigants are afforded the certainty they require to operate effectively... The ability to revisit and change decisions could easily disrupt the lives of litigants affected by the decisions, and cause them*
10 *hardship and loss. The rule is premised on the idea that, overall, the advantages of avoiding uncertainty (and its consequences) outweigh the reasons a court might have for wanting to change a decision in a particular case. Once a validly-made final decision has been issued by court, the court becomes powerless to change it, other than to correct obvious technical or clerical errors, or unless*
15 *specifically authorized to do so by statute or regulations.”*

On the basis of the above principles, this court holds the view that a review of the court’s decisions may only be exercised where clear and substantiated grounds for review are proved by the applicant to the satisfaction of court.

20 Secondly, pursuant to Section 221 of the Succession Act, a beneficiary may be appointed Legal Representative of an estate for purposes of completing the process of distribution of an estate, following the demise of a sole Administrator. To this effect, Section 221 of the Succession Act provides that;

“221. Administration limited to property in which person has beneficial interest

Where a person dies, leaving property of which he or she was the sole or surviving trustee, or in which he or she had no beneficial interest on his or her account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to that property, may be granted to the person beneficially interested in the property, or to some other person on his or her behalf.”

In Miscellaneous Cause No. 0010 of 2020, the 1st respondent was appointed Legal Representative of his late father’s estate following the demise of the substantial Administratrix, Dorothy Kasegu Nyakamadi, with limited powers of administration to specifically complete the process of transfer of titles to other beneficiaries and to the 2nd respondent, to whom he had sold 5 acres out of his share of 12 acres of land in the estate of his late father, Peter Kikomberwa Kasegu. It is not in dispute that the 1st respondent was a beneficiary to the estate of his late father and that he held a beneficial interest in the land comprised in LRV 16111 Folio 6 at Kitumu Kyarubanga, Buruli, Plot No. 10, Block No. 9, Masindi, part of which he sold to the 2nd respondent on 21st December 2017. This property formed the subject of the grant in Miscellaneous Cause No. 0010 of 2020. In the premises, this court finds that the decision and orders of the court in Miscellaneous Cause No. 0010 of 2020 were rightly issued to the 1st respondent within the scope of Section 221 of the Succession Act.

Having held that the 1st respondent was lawfully appointed Legal Representative of his father’s estate, the applicants’ prayer in the alternative, that the court grants a Vesting Order under section 167 of the Registration of Titles Act is rendered redundant on

grounds that the 1st respondent may execute the role of the deceased transferee, Administratrix, for purposes of completing any transfer of title on the suit property. Besides, it is trite procedure that an application for a Vesting Order must first be made to the Registrar of Titles/ Commissioner Land Registration before evoking the inherent jurisdiction of this court. (See; *Nakubulwa Lwanga versus Muwanga Charles and Another; Miscellaneous Cause No. 0172 of 2019, 2021 UGHCLD 164 at Page 4, Edward Babigumira versus Commissioner for Land Registration; HCMC No. 0076 of 2012, and Ronald Oine versus Commissioner Land Registration; HCMC No. 0090 of 2013*).

Consequently, the applicants' alternative prayer for a Vesting Order also fails and the same is denied.

In the final result, this application is dismissed with costs to the 2nd respondent.

I so rule and order.

Dated and delivered on this 31st day of August 2023.



Isah Serunkuma

JUDGE