

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT FORT PORTAL
HCT - 01 - LD - MA - 0003 OF 2016
(Arising from HCT - 01 - CV - LD - CA - 013 OF 2013)
(Arising from Kasese Civil Suit No. 2 of 2006)

THE BOARD OF GOVERNORS RWENZORI

SAAD ISLAMIC
INSITUTE.....

APPLICANT

VERSUS

UGANDA MUSLIM SUPREME
COUNCIL.....RESPONDENT

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO. ANTHONY OJOK, JUDGE

Ruling

This is an application by way of notice of motion under **Order 48 Rules 1** and **8** of the Civil Procedure Rules for orders that;

- a. The order of this Court made on 15th October 2014 in HCT - 01 - CV - LD - C - 013 of 2013 be reviewed and varied.
- b. The Respondent pays the costs of the application.

Brief facts

The application is supported by an affidavit sworn by Hajji Migdad Saad with the following grounds;

1. That a decree was passed in KAS - 00 - CV - LD - CS - 002 of 2006 in favour of the Applicant where land comprised of Bukonjo Block 26 Plot 26, Kasese was decreed to the

- Applicant and the Certificate of title obtained by the Respondent was found to be tainted with fraud.
2. The Respondent filed Civil Appeal No. HCT - 01 - CV - LD - CA - 013 of 2013 which was withdrawn and the Court made consequential orders cancelling the title comprised of Bukonjo Block 26 Plot 26 Kasese, ordered that a fresh title be issued for the Applicant and a decree of the Chief Magistrate in Civil Suit No. 02 of 2006 be executed.
 3. That the Certificate of title for Bukonjo Block 26 Plot 26 Kasese was in custody of Court at the time the order of cancellation was made and when the Certificate was released by Court and submitted to the Registrar of Titles, he declined to effect the orders on ground that the title was a leasehold issued before Kasese District Land Board and that he could only cancel the title but he had no mandate to issue a fresh title.
 4. That in view of the reasons given by the Registrar of titles, it is necessary that the order be varied and reviewed to direct the cancellation of the entry of the Respondent as registered proprietor and entering the Applicant as registered proprietor.
 5. That the Applicant has failed to execute and take possession of the Land decree too, it is because there was no specific order giving vacant possession to the Applicant.
 6. That there was an error and mistake apparent on the face of the record and there is sufficient cause to review the orders in HCT - 01 - CV - LD - CA - 13 of 2013 to provide for;
 - a. Cancellation of the Respondent as registered proprietor on the title.
 - b. Entry of the Applicant on the title as registered proprietor.
 - c. An order giving vacant possession to the Applicant.
 7. That it is fair, just and equitable that the orders for review be granted.

Abdul Hakim Juma representing U.M.S.C swore the affidavit in reply and averred that there was no new evidence discovered which was not available to the Applicant at the time when Court made the order to cancel the title deed in the names of the Respondent for plot 26 Block 26 Bukonjo Kasese nor was there an error apparent on the face of the record on the said order which has been pointed out by the Applicant. That the title deed to the subject land is a lease which was granted to the Respondent upon application by the Respondent to the Land Lord and an agreement to that effect was executed. That Court cannot order the Land Lord to grant a lease to the Applicant without the Applicant making an application. That there was no order for vacant possession in the original decree. That Court cannot therefore issue the same when it was only to give effect to the decree. That Migdad is not a member of the Applicant and has no powers to swear the affidavit in support of the Application.

Counsel Bwiruka Richard appeared for the Applicant, Counsel David Innocent Nyote and M/s Fitz Patrick Furah &Co. Advocates represented the Respondent. Counsel for the Applicant made oral submissions, and it was agreed that Counsel for the Respondent could make written submissions and a written rejoinder would be made in regard to the same by Counsel for the Applicant.

Counsel for the Applicant submitted that the Chief Registrar on 20th August 2015 issued a Warrant to give vacant possession to the Applicant. However, later stopped the execution on grounds that there was no order granting vacant possession thus, the warrant was withdrawn. However, Court gave an order that, the Applicant is the lawful owner of the suit land.

That with the above there is therefore an error apparent on the face of the record and there is sufficient reason to review the orders of this Court to reflect that the Respondent be cancelled as the alleged proprietor of LRV 3497, Folio 13, Plot 26 Bukonjo Kasese and Another order directing the Registrar of titles to

enter the Applicant as registered proprietor on the said title and thirdly an order giving vacant possession to the Applicant.

Further that this Court must be giving the decree effect and not changing it. That this Court is empowered under **Order 46 Rule 1** to correct such error and mistake to give effect to the Court order.

In the case of **Christopher Katuramu versus Maliya and 3 others, Civil Suit No. 1 of 1989, [1992 - 1993] H.C.B Pg. 159**, it was held that;

“An application to review a Court order is made on discovery of new and important matter of evidence and for a mistake or error apparent on the face of the record.”

Counsel for the Respondent on the other hand submitted that there was no need to seek cancellation of the Respondent's name off the title as this was already granted as per annexure A. That the title deed to the subject land was a lease granted upon application by the Respondent to the Land Lord and an agreement to that effect executed. That therefore there was no foundation for the applicant to be entered as a registered proprietor on the said leasehold title deed. There was no order for vacant possession in the lower Court in the original decree.

That the affidavit in reply intends to look at the application in the following ways;

1. Whether Migdad saad has locus standi to swear the affidavit in support of the application.
2. Whether the application discloses any ground for review of the order of this Honourable Court attached to the application as C and the affidavit in reply as A.
3. Whether the prayers in the notice of motion in this application are proper and can be granted.

Counsel for the Respondent also brought it to the attention of Court that Migdad Saad is neither a board member of the Applicant nor the board Chairman of the same as per the

judgment of the Chief Magistrate's Court of Kasese in Suit No. 2 of 2006. That the said judgment has never been overturned by any Court therefore, Migdad Saad has no locus standi to depone that affidavit on behalf of the Applicant.

Counsel for the Respondent cited the case of **Joy Kaingana versus Boubou (1986) H.C.B 59**, where it was stated that; a person swears an affidavit in a representative capacity and does not show the authority given to him by a party to the suit to qualify him to act on its behalf, makes the affidavit incompetent and defective.

That therefore Migdad swore the affidavit without evidence of his capacity and in the case of **Bitaitana versus Kananura [1977] H.C.B 34**, a false affidavit must be rejected by Court however, minor the falsehood is.

That since the application has no other affidavit other than the impugned affidavit of Migdad, it should fail. Thus, the application should be dismissed with costs.

In rejoinder Counsel for the Applicant submitted that Hajji Migdad Saad who swore the affidavit in support of the application is the Chairperson of the Applicant's Board and this was confirmed in Miscellaneous Application No. 21/2013.

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.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except where the ground of the appeal is common to the applicant and the appellant, or when, being respondent, he or she can present to the appellate Court the case on which he or she applies for the review.

2. To whom applications for review may be made.

An application for review of a decree or order of a court, upon some ground other than the discovery of the new and important matter or evidence as is referred to in rule 1 of this Order, or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the judge who passed the decree or made the order sought to be reviewed.

3. Application where rejected or where granted.

(1) Where it appears to the court that there is not sufficient ground for a review, it shall dismiss the application.

(2) Where the Court is of opinion that the application for review should be granted, it shall grant it; except that no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within

his or her knowledge, or could not be adduced by him or her when the decree or order was passed or made without strict proof of the allegation.”

Counsel for the Respondent submitted that the application does not fulfil the conditions required for review. That the application talks about an error however does not state which one nor is the error stated in the affidavit in support of the application.

That in the circumstances the application is misconceived and should be dismissed.

In rejoinder Counsel for the Applicant also submitted that the error on the face of the record is that title was found to be a leasehold and the Commissioner Land Registration declined to issue a fresh title but could only effect cancellation. That the Commissioner Land Registration suggested that the Court should review the order and direct the Applicant to be entered on the title as the registered proprietor and the Respondent be cancelled as a registered proprietor. That this is exactly what the Applicant is seeking in Court.

Counsel for the Applicant further reiterated that this Court ordered that the judgment of the Chief Magistrate be executed. The Applicant applied for vacant possession of the suit land and a warrant to give vacant possession was issued. The Chief Registrar stopped the execution on ground that there was no specific order giving vacant possession.

I do concur with the submission of Counsel for the Applicant; Court orders cannot be issued in vain. The intention of the Court in its order was to cancel the Respondents as the registered proprietor and for title to be issued to the Applicant.

Further counsel for the Respondent submitted that Court on the advice of the Commissioner Land Registration should order for cancellation of the Respondents as registered proprietors and for entry of the Applicant as the registered proprietor.

Secondly that the Respondent was found to be fraudulent in acquisition of title should not stay in possession due to lack of a clear order giving the Applicant vacant possession.

That **order 46** of the Civil Procedure Rules allows for review if among others there is discovery of new evidence and in the instant case discovery of the fact that the Certificate of title was leasehold is new evidence. Therefore, Court orders cannot be given effect if there is an error or mistake apparent on the face of a record.

In the instant case Court ordered for the cancellation of the Respondents off the Certificate of Title however, did not issue an order for vacant possession which the Applicant now seeks. And from the advice of the Commissioner Land Registration it can be seen that the Respondents can only be cancelled off the Title but no fresh title can be issued because no order was made to the same and then the Certificate of title is also a lease hold.

This Court has the power to review its decision and in the circumstances order for a vacant possession and entry of the Applicant on the Certificate of title. The order previously issued was incomplete and not specific thus constituting an error and mistake on the face of the record.

It is my considered opinion that it is necessary for the order to be varied and reviewed directing the cancellation of the entry of the Respondent as registered proprietor and entering the Applicant as registered proprietor.

In a nut shell therefore, I order that the Applicant be entered on the Certificate of Title and the Respondent cancelled, a fresh Certificate of title be issued in favour of the Applicant as the registered proprietor and vacant possession is also ordered in favour of the Applicant.

This application is allowed. Each party bears its own costs since it was not the Respondent's fault that the Applicant initially did

not pray for vacant possession and thus no order was made in regard to the same.

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OYUKO. ANTHONY OJOK

JUDGE

2/9/16

Delivered in open Court in the presence of;

1. Counsel for the Appellant Bwiruka Richard.
2. Counsel for the Respondent Nyote Innocent.
3. Respondent in Court
4. Appellant in absent.
5. Court clerk - James