

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**  
**MISCELLANEOUS APPLICATION NO. 162 OF 2017**  
**(ARISING FROM CIVIL SUIT NO. 724 OF 2003)**

**THE LAW DEVELOPMENT CENTRE ::::: PLAINTIFF/APPLICANT**  
**VERSUS**  
**DANIEL SERUFUSA WASSWA ::::: DEFENDANT/RESPONDENT**  
**AND**  
**ATTORNEY GENERAL ::::::::::::::::::::::::::: THIRD PARTY**

**BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW**

**RULING:**

The Law Development Centre (LDC) (*hereinafter referred to as the “Applicant”*) brought this application against Daniel Serufusa (*hereinafter referred to as the “Respondent”*) and The Attorney General (*hereinafter referred to as the “Third Party”*) under Sections 34 and 98 of the Civil Procedure Act Cap 71 (CPA); and Order 57 rr.1and 3 of the Civil Procedure Rules SI 71 -1 (CPR) seeking orders that;

- (a) The question arising between the Applicant and Respondent as to who should pay the amounts stated in the decree dated 4/11/2016 in HCCS No. 724 of 2003 be determined by this Court.*
- (b) The decree dated 4/11/2016 be set aside and/or corrected so as to reflect the Attorney General as the Third Party to the suit in line with what was determined by this Court in HCMA No.362 of 2013 (Arising from HCCS No. 724 of 2003).*
- (c) The execution of the decree dated 9/11/2016 against the Applicant by the Respondent be set aside.*

(d) *Pending the determination of this application, the said execution be stayed by this Court.*

The grounds of the application as set out in the motion are that;

35       1. *A question has arisen between the Plaintiff/Applicant and the Defendant/Respondent as to who should pay the amounts stated in the decree issued by this court on the 4<sup>th</sup> November, 2016.*

40       2. *Whereas the Defendant/Respondent has through his new lawyers, M/s Kampala Associated Advocates commenced execution proceedings as against a wrong party, the Plaintiff/Applicant by way of instituting garnishee proceedings against the Plaintiff/Applicant in the Execution Division of this Court in Misc. Application No. 102 of 2017 arising from EMA No. 101 arising from Civil Suit No. 724 of 2003, it is the position of the Plaintiff/Applicant that it is not the party against whom execution should issue in the above suit for reasons that:-*

45       (a) *it is the Government of Uganda, the Third Party in the above suit, who should pay all the amounts in the decree to the Defendant/Respondent particularly when:-*

      (i)     *The Attorney General had been joined as a Third Party to the suit by order of the Court in Misc. Application No. 362 of 2013.*

50       (ii)    *In his ruling dated 6<sup>th</sup> May, 2013, the then trial judge the Hon. Justice Joseph Murangira, among others stated that “..... the Plaintiff/Applicant is entitled to indemnity from Government in respect of compensation sought by the Defendant in his Counterclaim, if at all it is granted to him by the Court.....;”*

(iii) *The said Third Party in the above suit, the Attorney General, failed to file a defence to the Third Party Notice resulting in the Court entering a default judgment against the Attorney General.*

(iv) *In his final judgment, the trial Judge, Hon. Justice Bashaija K. Andrew, stated among others that “..... the Defendant shall surrender the Certificate of Title for the suit land to the Chief Registrar of Titles for cancellation upon the Government paying the sums in (1) and (2) and (5) above plus interest in (3) and (4) above ..”*

(v) *In spite of the above, the Defendant/Respondent commenced execution against the Plaintiff/Applicant even when he or his lawyers knew or ought to have known that the plaintiff is not Government but a distinct institution established by an Act of Parliament.*

3. *No appeal has been proffered against the judgment of Court, in which it was held, among others, that Government should be the party to pay the decretal sum of the Defendant/Respondent.*

4. *In the interest of justice that this application should be granted.*

The application is supported by the affidavit affirmed by Hamis Ddunga Lukyamuzi, the Manager Administration of the Applicant, which amplifies the grounds of the application as follows;

1. *That I am an adult male Ugandan citizen of sound mind and the Manager, Administration of the Law Development Centre, the Plaintiff/Applicant herein.*

2. *That I am well conversant with the facts concerning the above suit and hence competent to make this affirmation.*

3. That in November, 2003 the Law Development Centre (hereinafter called “the Plaintiff/Applicant”) filed a suit against the Defendant/Respondent for, among others, a declaration that it is the owner of land comprised in Block 9 Plot 222 Makerere (hereinafter called “the suit property”), the same having been compulsorily acquired for the Plaintiff/Applicant by Government under the Land Acquisition (Makerere) Instrument, 1987. Photostat copies of the Instrument, the Certificate of Title for the suit Property and the plaint are attached hereto and marked as annexture “A”, “B” and “C” respectively.
4. That the Defendant/Respondent filed its Written Statement of Defence and Counterclaim (copy attached and marked as annexture “D”) in which he counterclaimed for compensation against the Plaintiff/Applicant for the value of the suit property.
5. That in its defence to the Counterclaim, (copy attached and marked as annexture “E”) the Plaintiff/Applicant stated that the suit property was compulsory acquired by Government for the Plaintiff/Applicant and that it was the responsibility of Government to compensate the Defendant/Respondent but not the Plaintiff/Applicant.
6. That by Misc. Application No. 362 of 2013, Arising from Civil Suit No. 724 of 2003 the Plaintiff applied for an Order that a Third Party Notice issues to the Attorney General as a necessary party to the suit for the purposes of indemnifying or otherwise contributing to the liability of the Plaintiff/Applicant under the main suit.
7. That the Court ruled, among others that “...the Plaintiff/Applicant is entitled to indemnity from Government in respect of compensation sought by the Defendant in his

*counterclaim, it at all it is granted to him.” A Photostat copy of the said ruling is attached hereto and marled as Annexure “F”.*

100 8. *That although the Third Party Notice was issued and served to the Attorney General, (copy attached and marked as annexure “G”) the Attorney General did not file its Written Statement of Defence and as a result, the Court entered a default judgment against Government.*

105 9. *That in its final judgment, the Court awarded sums of money to the Defendant/Respondent under various heads and clearly stated, among others, that “..... the Defendant shall surrender the Certificate of Title for the suit land to the Chief Registrar of Titles for cancellation upon the Government paying the sums in (1) and (2) and (5) above plus interest in (3) and (4) above...” A Photostat copy of the judgment is attached hereto and marked as annexure “H”.*

110 10. *That judgment in the above suit was delivered by the Court in our absence and in the absence of our lawyers. Both ourselves and our lawyers, GP Advocates, were not notified of the judgment date.*

115 11. *That the Court also signed and sealed the decree without the approval of our lawyers or ourselves as required by the Civil Procedure Rules. A photostat copy of the decree is attached hereto and marked as annexure “I”.*

12. *That we have been advised by our lawyers, GP Advocates whose advice we verily believe t be true, that:-*

*(a) the heading of the decree does not bring out the fact that the Attorney General is the Third Party to the suit;*

- 120       ***(b) had our lawyers gotten the opportunity of approving the draft decree, they would  
have pointed this out for its inclusion in the decree;***
- (c) the above notwithstanding, the spirit of the judgment clearly shows the fact that it  
is the Government but not the Plaintiff/ Applicant to pay the sums stated in the  
decree;***
- 125       ***(d) the Defendant/Respondent, who was present in court during the proceedings knew  
or ought to have known that the Plaintiff/Applicant was not supposed to pay the  
decretal sum.***
13.   ***As matters stand now, a garnishee order nisi dated 20<sup>th</sup> January, 2017 (copy attached  
and marked as annexure “J”) has been issued by the Court attaching all the***
- 130       ***Plaintiff/Applicant monies at Stanbic Bank (U) Ltd for the payment of  
Ushs.1,079,6000,000/=; Ush. 579,600,000/=; Ushs.500,000,000/= being what the  
Defendant/Respondent states as special damages, interest and general damages  
respectively.***
14.   ***That the Court has also directed Stanbic Bank (U) Ltd, the Plaintiff/Applicant’s bank***
- 135       ***to attend Court on 9<sup>th</sup> February, 2017 at 10:00 a.m. to show cause why it should not  
pay the said monies to the Defendant /Respondent.***
15.   ***That Stanbic Bank (U) Ltd, the Plaintiff/Applicant’s bank, has now blocked all the  
funds of the Plaintiff/Applicant as a result of the garnishee order.***
16.   ***That the Plaintiff/Applicant cannot, effectively carry out its legal mandate of imparting***
- 140       ***legal knowledge and skills to the students who have recently, in the first week of  
January, 2017 commenced their second term studies.***

17. *That the Plaintiff/Respondent has been put to great inconvenience and distress which could have been avoided if it had not been for:-*

(a) *The deliberate and reckless conduct of the Defendant/Respondent in taking out garnishee proceedings against the Plaintiff/Applicant.*

(b) *The failure or omission by the Respondent's lawyers, the offices of the court to find that no execution should have commenced against Plaintiff/Applicant*

18. *That the parties appeared before the Registrar, Land Division on 25<sup>th</sup> January, 2017 in an attempt to resolve the matter amicably but the parties failed to agree, hence this application.*

19. *That I restate it is not the Plaintiff/Applicant who is supposed to pay the decretal sum and costs in the above suit but the Government of Uganda.*

20. *That I have been advised by our lawyers M/s GP Advocates that the heading of the decree should have clearly spelt out the Attorney General as the Third Party to the suit since the Government had already been previously joined to this suit for the purpose of the indemnifying the Plaintiff/Applicant in the event of the Defendant/Respondent being entitled to compensation.*

21. *That I make this affirmation in support of the Plaintiff's/Applicant's application for the reliefs stated in the Notice of Motion.*

22. *That what is stated above is true to the best of my knowledge save for what is stated in paragraph 8,9,10,11,12,13,14,15,16 and 18 which is true to the best of my information and advice as given to me by our said lawyers, M/s GP Advocates.*

Counsel for the parties made their respective submissions which are on court record. I need not to reproduce them in detail but I will make specific reference to some particular aspects of them  
165 when it is called for.

Counsel for the Applicants Mr. George Omunyokol mainly contended that the decree which the Respondent seeks to have executed was extracted and presented to the Deputy Registrar of this Court who sealed it, and that the preparation and extraction of the decree was not done in accordance with requirements of provisions of Order 21 r.7 (2) CPR. For ease of reference I  
170 quote it fully below.

***“Preparation of decrees and orders:***

***(2) It shall be the duty of the party who is successful in a suit in the High Court to prepare without delay a draft decree and submit it for the approval of the other parties to the suit, who shall approve it with or without amendment, or reject it, without undue  
175 delay. If the draft is approved by the parties, it shall be submitted to the registrar who, if he or she is satisfied that it is drawn up in accordance with the judgment, shall sign it and seal the decree accordingly. If all the parties and the registrar do not agree upon the terms of the decree within such a time as the registrar shall fix, it shall be settled by the judge who pronounced the judgment, and the party shall be entitled to be heard on  
180 the terms of the decree as they so desire.”***

The other point raised by Mr. Omunyokol, also related to the above latter, was that as a consequence of the Respondent’s failure to follow the above cited provisions of the law, the Attorney General, the Third Party, was not included in the title - head of the decree and that it created a wrong impression that it was the Applicant to satisfy the decree whereas it was in fact  
185 the Third Party.



For his part, Mr. Musiime counsel for the Respondent advanced the view that since the decree was duly sealed by the Deputy Registrar; it was presumed to have complied with the requirements of the law. Further, that there was no way of telling that the opposite party never made an input since after the decree was sealed it meant that court was satisfied that it had  
190 complied with the requirements under the law. Counsel also advanced several arguments, inter alia, that in view of this application, this Court is *functus officio* and that the case is *res judicata*. I have not felt the need to address all of points Counsel raised largely because they touch on issues that ought to have been raised either before the Deputy Registrar if the preparation and extraction of the decree had been done in accordance with requirements of O.21 r.7 (2) (supra) or  
195 on appeal against the judgment out of which the decree arose.

***Opinion:***

I wish to state that this court would not be *functus officio* or the matter *res judicata* particularly given that the application was brought under section 34 CPA among the enabling provisions. It provides as follows;

200 ***“34. Questions to be determined by the court executing the decree.***

***(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge, or satisfaction of the decree, shall be determined by the court executing the decree and not by a separate suit.”***

This provisions of section 34 (supra) and all applications for review brought under Order 44 CPR  
205 are some of the known exceptions to the *functus officio* rule. Therefore, a court hearing the matters brought under those provisions would not be *functus officio* in any way.

Regarding the issue raised in relation to *res judicata*, I need not to comment on the point except that it does not arise under the provisions of section 7 CPA in the instant case. This matter purely

concerns the determination of which party is liable under the decree to pay the sums due and  
210 owing to the Respondent in compensation for the suit land. That particular matter has not been  
finally determined by a court of competent jurisdiction; hence issues of *res judicata* would not  
arise.

Regarding the issue that the deponent to the affidavit in support of the application is not  
authorized to do by virtue of the Act establishing the Applicant, I find this to be rather far-  
215 fetched an idea because the affirmant clearly states the capacity in which he affirmed the  
affidavit, i.e.; that he is the Manager, Administration of the Applicant. Most importantly, he  
states that he is well conversant with facts concerning the suit. The Law Development Centre Act  
which counsel for the Respondent relied on in section 7 thereof only provides for the  
composition of the management committee of the institution. Section 8 provides for the functions  
220 of the management committee and vests the committee with the authority as the executive  
committee. I have not come across any instance in the provisions that precludes any member of  
the Applicant's administration from affirming an affidavit or carrying out functions whether  
assigned by the committee as the executive authority or otherwise from affirming an affidavit.

As to whether the affirmant should have stated that he has the authority, the presumption is that  
225 he does have the necessary authority. The burden was on the person asserting to the contrary,  
within the terms of Section 102 of the Evidence Act, to adduce evidence that the affirmant does  
not have that authority. No such evidence was adduced but instead it was merely submission  
from the bar. Merely stating that the affirmant is not a member of the management committee is  
to assign a narrow interpretation of the provisions of the Act as regards all the operations of the  
230 LDC.

The main issue is for this Court to determine who; between the Applicant and the Third Party (Attorney General) should pay the amounts stated in the decree dated 4/11/2016 in *HCCS No. 724 of 2003*. The proper issue, in my view, should have been who; between the Applicant and the Third Party (Attorney General); should pay the amounts in a decree arising out of the judgment in *HCCS No. 724 of 2003*. This is because as already stated, the decree dated 4/11/2016 was not drawn in accordance with the terms of the judgment out of which it arose, and therefore did not comply with the law governing the drawing and extracting of decree under Order 21 r.7 (2) CPR (*supra*).

Under *HCMA 367 of 2013 (Arising from HCCS No. 724 of 2003)* the Applicant successfully applied by Third Party Notice, and had the Attorney General added as the Third Party to the proceedings for the purpose of compensation and/ or indemnifying the Applicant in the event that compensation was awarded against the Applicant in favour of the Respondent. One of the grounds in that application was that the Applicant was a wrong party to the counterclaim as the party supposed to compensate the Respondent, if at all, was the Government of Uganda which made the compulsory acquisition of the Respondent's property, the subject of the suit.

On 28/10/2015, it transpired during the proceedings in Court that the parties had met and agreed in light of the Third Party Notice, that the Attorney General – the Third Party to the suit, shall pay the amounts due in compensation to the Respondent. At page 24 of the typed proceedings, it was reported by counsel for the Applicant now Mr. G. Omunyokol and counsel for the Respondent then Ms. Rebecca Mutumba as follows;

***“We agree that in light of the fact that the Attorney General the 3<sup>rd</sup> Party to this suit against whom a default judgment was entered by this Court should pay the compensation due to the defendant as the value of the suit property based on the***

255 *valuation report made by the Chief Government Valuer a copy of which is on the*  
*record. In that report dated 22<sup>nd</sup> January, 2013 signed by Mr. Gilbert Kelmundu there*  
*are values of six claimants' properties one of whom is the defendant. The value of the*  
*defendant in that report for the suit property is Shs.579,600,000/=. It is that sum that*  
*the parties agreed to be paid by Government ....it is important to note that the reason*  
*why the parties state that Government should pay this money since Government is not*  
260 *here, under Section 6(4) of the Land Acquisition Act it is a responsibility of*  
*Government to pay compensation to persons whose lands have been compulsory*  
*acquired under the Act. The suit property was compulsory acquired by Government*  
*pursuant to the Land acquisition (Makerere) Instrument S1 7A of 1987. That*  
*Instrument a copy of which is also on the record was made by the then Minister of*  
265 *Lands ..... in which various plots of land were declared to be land required by*  
*Government for a public purpose."*

In the judgment of this Court, it was clearly stated that the Attorney General/Government shall pay the compensation due and owing to the Respondent. Therefore, the decree extracted which is now sought to be executed as against the Applicant is at variance with the terms of the judgment  
270 of this Court. Since an issue has now arisen concerning which of the parties should pay, this Court determines it that in accordance with and pursuant to its judgment in *HCCS No.724 of 2003*, it is the Third Party, the Attorney General, the right and proper party which shall pay the amount of compensation. In any case, the Third Party was the party adjudged in the judgment of this Court to pay. It follows that the decree is set aside for having been prepared and extracted  
275 not only without following the requirements of the law under Order 21 r.7(2) (*supra*), but also for not reflecting the terms of the judgment.

Before taking leave of this matter I wish to emphasize, particularly with regard to the application of the provisions of Order 21, r.7 (2) CPR, that where the law prescribes an essential step or steps in the proceedings to be taken and parties and /or their lawyers omit to take the steps or  
280 steps for whatever reason, an order or decree subsequently made by a Court in misapprehension of the fact of the omission cannot validate the order or decree arising from the proceedings.

In this case, there was omission by the counsel for Respondent to forward copy of the decree to counsel for the Applicant as an essential step in the proceedings for the preparation extraction of the decree. The decree was, nevertheless, presented to Court and it was sealed by the Deputy  
285 Registrar without being aware of the omission of the essential requirement of then law by Counsel for the Respondent. This is the genesis of this application and all the other applications pending in the Execution Division of this Court. As a Court that issued the decree, since issues have arisen as to the interpretation of that decree sought to be executed; and owing to the fact that it is sought to be executed against the a wrong party the Law Development Centre which  
290 was never adjudged to pay the compensation by this Court, the issue is determined within the context of section 34 CPA and the decree is set aside.

The net effect is that the application is allowed in the terms that the decree in its current form is set aside. It is ordered that a decree properly and clearly reflecting the terms of the judgment be prepared and extracted in accordance with terms of Order 21 r.7 (2) CPR. The Applicants are  
295 awarded costs of this application.

**BASHAIJA K. ANDREW**  
**JUDGE**  
**10/02/2017.**

Mr. Omunyokol George Counsel for the Applicant present.

305 Mr. Musiime Counsel for the Respondent present.

The Applicant's Director present.

The Respondent present.

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Mr. Godfrey Tumwikirize Court Clerk present.

Ruling read in open Court.

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**BASHAIJA K. ANDREW**  
**JUDGE**  
**10/02/2017.**