

MISCELLANEOUS APP No 868 OF 2019
Arising Out of Misc. Application No. 377 of 2018
(Arising out of Civil Suit No. 93 Of 2018)

2. KAMYA HENRY:..... APPLICANTS

MAWALAZI SAMUEL
(ADMINISTRATOR OF ESTATE OF
MESUSERA A. TAZALIKA):..... RESPONDENT

RULING

- i) An order to review and set aside the judgement in HCCS 420/2010: Mawalazi Samuel (administrator of the estate of Mesusera A. Tazalika) Vs the Administrator General and the Registrar of Titles.
- ii) Costs of this application be provided for.

The grounds of the application were set out in the Notice of Motion and the Affidavit of Kavuma Samuel one of the applicants. He states that;

- i) The applicants were not parties to the original suit but they are seriously aggrieved.
- ii) That the applicants have obtained new and important information that was not available to the trial judge when she made her judgment; the respondent obtained a grant to the estate of Mesusera A. Tazalika Vide HCT/AC/No. 268 of 2010 (Family Division), when there was already an existing grant in the names of Administrator General HCT/AC/382 of 1987. That the property whose registration was cancelled was not transferred in error, fraud or illegally transferred to a one Felicitas Nakisumu as it was lawfully transferred to her by the Administrator General who was the administrator of the estate of her father. That Felicitas was already dead by the time her registration was impugned and she had no chance to defend herself and there was no administrator of the estate at the time. That the applicants are sons of Felicitus Nakisumu with a beneficial interest in her estate and desire to protect the same.
- iii) That it is in the interest of justice that the application is granted.

The applicant Kavuma Samuel further gives details of the above grounds in his affidavit. In addition to Kavuma's affidavit evidence, **Mr. Robert Bogere** the Assistant Administrator General deposed a supplementary affidavit stating that;

12/11/21 Court heard HCCS 420/201 *Mawalazi Samuel (Administrator of the estate of Mesusera A. Tazalika) Vs Administrator General and the Registrar of Titles* and judgment was entered against the office of the Administrator General. That they were never served with process. That he realized that the certificate of No Objection was issued to Mawalazi Samuel, Nakanjako Harriet and Musoke Samuel was issued

in error by the Administrator General and so was the subsequent grant in HCT-AC-268/2010 in respect of the estate of Mesusera A. Tazalika. That the Administrator General had previously applied for the Letters of Administration regarding the said estate and had been granted (HCT-AC-No-382 of 1987).

He further deposes that, the Administrator General using the letters transferred all the land and developments comprised in Kibuga Block 17, Plot 603 at Rubaga and Busiro Block 539, Plot 12 at Namugala in the names of Mususera A. Tazalika into the names of Felicitus Nakisumu. That Felicitus Nakisumu was recorded as the only living child of the late Mesusera A. Tazalika and the applicants as the only children of the said Felicitus Nakisumu. That the registration into her names was not fraudulent. That it was by mistake because of poor records management that Mawalazi Samuel obtained letters of Administration in respect of the same estate. That Mawalazi Samuel is an imposter with no legal rights at all to administer or benefit from the estate.

In reply to the application and the supplementary affidavit the respondent **Mawalazi Samuel** deposed an affidavit stating that; He with Harriet Nakanjako and Samuel Musoke were granted letters of administration to the estate of the Late Mesusera Tazalika on 9th April 2010, the administrator granted them certificate of no objection. That in HCCS No. 420 of 2010 the same Robert Bogere was in personal conduct of the suit as representative of the Administrator General but during the hearing he did not inform the trial court that the Administrator General had applied for letters in HCT-AC-No. 382-1987 and till now he has not adduced evidence to the same. That CKS
12/11/21 he is a customary heir with legal rights to administer and benefit from the estate of late Mesusera Tazalika but not an imposter.

He further deposes that there the applicants have no cause of action for court to review its judgments. That they have failed to disclose an error on face of the record.

That there was no existing grant of Letters of Administration, and that the alleged was not annexed to the application. That the court in its judgment found illegalities and fraud in registration of Nakisumu Felicitas. That the grant of the letters of administration were lawfully granted to them and the application has no merit, it ought to be dismissed with costs to the estate of Mesusera A. Tazalika.

In rejoinder, the Assistant Administrator General **Mr. Bogere Robert** deponed an affidavit that; after a search at the High Court Family Division Archives, it was discovered that the Administrator General's office obtained a grant for the estate of Mesusera Tazalika on 14/9/1987. That they were in error to have issued a certificate of no objection to the respondent to administer the same estate. The respondent took advantage of the old filing system where the copy of the grant had gone missing. That the discovery of new and important matter that was not available at trial and it is a basis for court to review its decision.

The applicants were represented by **M/s Rwakafuuzi & Co. Advocates** and the respondent was represented by **M/s Rukundo Seth & Co. Advocates**. I have read the application and the evidence that has been adduced by both parties. Both the applicants' counsel and counsel for the respondent filed submissions to the application.

My understanding of these facts is that; the respondent in this suit, instituted CS No. 0049 of 2009 in the Chief Magistrates Court Entebbe against the applicants for orders that a permanent injunction be issued against the defendants (applicants herein) from selling, transferring, exchanging, mortgaging or leasing the suit land located at Namugala, Buwaya and general damages plus costs.

Later on 16th December 2010, the respondent instituted a suit HCCS No. 420 of 2010 against the Administrator General and Registrar of Titles seeking orders; for

delivery of certificate of titles for the late Mesusera Tazalika 0.39 hectares of land in Kibuga Block 17 Plot 603 and 6.2 acres of land in Busiro Block 539 Plot 12, recover property and cancel all entries or endorsements made in error, illegally, wrongfully in favour of Nakisumu Felicitus in respect of the late Mesusera A. Tazalika under instrument No. 126615 of 6th October 1987 comprised in Busiro 539 Plot 12, a permanent injunction restraining selling, mortgaging, transferring or in any way dealing with the estates property. Judgment of this court was delivered on 19th day of August 2011 and court held that;

- i) *The certificate of titles for the estate of the late Mesusera Tazaalika, deceased in respect of 0.39 hectares of land comprised in Kibuga Block 17 Plot 603 and 604 and 6.2 acres of land comprised in Busiro Block 539 Plot 12 be delivered by the 1st defendant.*
- ii) *The entries and endorsements made in error illegally and wrongfully in respect of the late Mesusera Tazalika under instrument No. KLA 126615 of 6th October in respect of 6.2 acres of land comprised in Busiro Block 539 Plot 12 in favour of Nakisumu Felicitus, and 0.3 hectares of land comprised in Kibuga Block 17 Plot 603 and 604 in respect of Kawooya George William under instrument No. KLA 176444 be cancelled.*
- iii) *The names of the administrators of the estate of the late Mesusera Tazalika, namely, Mawalazi Samuel, Harriet Nakanjako and Musoke Samuel be registered on the certificate of title of the suit land in their capacity as administrators of the late Tazalika's estate.*
- iv) *A permanent injunction is granted restraining selling, mortgaging, transferring or in any way dealing with the 6.2 acres of land comprised in Busiro Block 539 Plot 12.*
- v) *Damages of Shs. 3,000,000/= are awarded to the awarded to plaintiff.*

vi) *The costs of this application are awarded to the plaintiff.*

On 30/9/2015 in Civil Suit No. 0049 of 2009 at the Chief Magistrate of Entebbe, the Chief Magistrate upheld the High Court decision in HCCS No. 420 of 2010 and made orders accordingly. In this application the applicants seek a review of the decision in HCCS No. 420 of 2010 mainly on a ground that there is new and important evidence that was not available to the trial judge at the time of her judgment.

The application was brought under **Section 82 CPA** which provides as follows;

“Any person considering himself or herself aggrieved by decree or order of court from which an appeal is allowed but from which no appeal has been preferred or by a decree or order from which no appeal is allowed may apply for a review of judgment to the court that passes the decree or made the order.”

Order 46 r.1 (a) and (b) more or less reproduce the wording of the **Section 82 CPA** (supra) verbatim but add the following;

“.....and from the discovery of new and important matter or 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 an account of same mistake or error apparent on the face of the record, or any sufficient reason, desires to obtain a review of the decree passed or order made agaisnt him or her, may apply for a review of judgment to the court which passed the decree or made the order.”

Clearly, O46 r.1 (b) CPR lays out the conditions which the Applicant seeking orders of review must fulfill in order to fall within the ambit of Section 82 CPA (supra). Interpreting the same Section, the court in *Outa vs. Uganda Transport Company [1975] HCB 340* held that the particular conditions are;

- (a) *Discovery of new and important matters of evidence previously overlooked by excusable misfortune.*
- (b) *Some mistake or error apparent on the face of record.*
- (c) *For any other sufficient reason but it has been variously held by courts that the expression "sufficient" shall be read as meaning sufficient of a kind analogous to (a) and (b) above.*

Firstly, in an application for review, court must establish that the applicants are aggrieved persons. An aggrieved party was defined by **Justice Karokora as he then was in Mohammed Allibhai W.E. Bukenya and Another, C.A 56 of 1996**, citing, **Re Nakivubo Chemists (U) Ltd; In the matter of the Companies Act (1979) HCB 12**; to include any party who has been deprived of his property. He also cited the case of **Kawdu vs Bever Ginning Co. Ltd, Akot and Others 1929 AIR Nagpur 185**; noted that, whereas court has inherent powers to review an order passed where it affected a third party; it must be a person who has suffered a legal grievance and the principle applies depending upon the peculiar circumstances of each case.

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In this particular case, the applicants stated that they are the only children and administrators of the late Felicitas Nakisumu. They state that they were deprived of their interests in the estate of their late grandfather Mesusera Tazalika and their mother. That land comprised in **Busiro Block 539 Plot 12** and **Kibuga Block 17 Plot 603** were registered into the names of their mother and in the judgment by this

court in HCCS No. 420/2010, all the entries were declared illegal and wrongfully done and cancelled. The respondent and the other administrators were registered as administrators according to the court order.

Being the beneficiaries of the estate of Felicitas Nakisumu, and administrators, I find that they fall in the ambit of aggrieved persons according to the law. Therefore they have locus to apply for review

This application is mainly premised on the condition that there is new and important information that was not available at the time of trial.

In HCCS No. 420 of 2010, the court canceled the entries of Felicitas Nakisumu stating that they were illegal and wrongfully registered on the basis that it had been proved that the respondent, Harriet Nakanjako and Samuel Musoke were the administrators and beneficiaries of the estate of the late Mesusera Tazalika who was the registered proprietor of 6.2 acres of land in Busiro Block 539 Plot 12 and 0.39 hectares of land in Kibuga Block 17 Plot 603. Evidence had been adduced that the late Mesusera did not transfer his land to anyone before his death but it was discovered upon a search that the land had been transferred in the names of Felicitas Nakisumu with no proof of how she acquired it. The respondent and 2 others had obtained letters of administration of the same in 28th June 2010. According to the evidence that was laid before court, it appeared that Felicitas' registered interests were done fraudulently or illegally.

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However, new information has actually emerged from the evidence that the Administrator General Vide HCT-AC-382/1987 had previously applied for letters of administration for the estate of Mesusera A. Tazalika and using the same letters he transferred all the land and developments comprised in Kibuga Block 17, Plot

603 Rubaga and Busiro Block 539, 12 at Namugala into the names of Felicitas Nakisumu.

In the affidavits to the application, these facts were just stated. The respondent counsel argued that the applicants were stating mere allegations without any evidence. But I note that documentary evidence to this fact was attached to the affidavit in rejoinder by Mr. Bogere Robert (Assistant Administrator General) dated 26th October 2017.

Order 46 of the Civil Procedure Rules allows for review if among others there is discovery of new evidence and in the instant case it has been discovered that, the Administrator General on 14/09/1987 obtained letters of Administration for the Estate of the late Mesusera A. Tazalika and transferred the same to his daughter the late Felicitas Nakisumu as stated in the affidavits. If this evidence was availed at the trial, court would have reached at a different position.

As the matter stands, there are now two grants of letters of Administration deriving from the same estate which cannot be sustained. The respondent and 2 others having obtained on 8/06/2010 and the applicants (children of the late Felicitas Nakisumu) obtained on 2/10/2014.

This Court has the power to review its decision and in light of new facts adduced. The court on 22nd June 2020 made an order for the Commissioner Land Registry to avail certified copies of the titles for the land comprised in Kibuga Block 17, Plot 603 and Plot 604 at Rubaga and Busiro Block 539, Plot 12. A review of the certified copies and documentation from the Lands Registry shows that Felicitas Nakisumu was registered for Block 17 Plot 603 in 1992 under instrument KLA 151344; was registered for Block 17 Plot 604 in 1987 under instrument KLA 126614. There was also a Certificate of Succession by the Administrator General dated 23rd September

1987 given to Felicitas Nakisumu named as the daughter of the deceased in respect of Block 17 Plots 603 and 604 measuring 0.39 Hectares at Kibuga Kyadondo and another Certificate of Succession also dated 23rd September 1987 given to Felicitas Nakisumu named as the daughter of the deceased in respect of Block 539 Plot 12 measuring 6.2 acres at Bulenga Busiro.

The order previously issued under HCCS No. 420 of 2010 was in error, Felicitas Nakisumu was actually registered on land in Busiro Block 539 Plot 12 and land in Kibuga Block 17 Plot 603 and 604.

As of the new evidence laid, the first grant was in error and therefore illegal because already Felicitas Nakisumu the daughter of the deceased Mesusera Tazalika had derived legal interest from an earlier grant by the Administrator General in 1987. An illegality is an illegality. Grant of letters of Administration is governed by the law.

The law on illegalities was well settled in the case of **Makula International Ltd versus His Eminence Cardinal Nsubuga & Anor. (1982) HCB 11** where it was held that a court of law cannot sanction what is illegal, an illegality once brought to the attention of court, overrides all questions of pleadings including any admission made thereon.

It is my considered opinion that it is necessary for the order to be varied and reviewed directing that;

- i) The judgment in HCCS 420/2010: Mawalazi Samuel (administrator of the estate of Mesusera A. Tazalika) Vs the Administrator General and the Registrar of Titles is hereby set aside.
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12/11/21 ii) The earlier order for the Cancellation of the entry of Felicitas Nakisumu as registered proprietor and entering the respondent as registered proprietor is hereby reversed. All entries and endorsement from 19/8/2011 (the time

of judgment in HCCS No. 420/2010) are revoked. Felicitas Nakisumu's names should be registered back as well as the parties who lawfully acquired interest and were registered as per the certified copies of the titles availed by the Commissioner Land Registry.

iii) The letters of administration issued on 8/06/2010 to namely, Samuel Mawalazi, Harriet Nakanjako and Musoke Samuel are hereby revoked and declared void.

iv) Costs of this application be borne by the respondent

It is so ordered.



CORNELIA KAKOOZA SABIITI
JUDGE

Date: 12th November 2021