THE REPUBLIC OF UGANDA

IN THE HIGH COURT UGANDA AT KAMPALA

[LAND DIVISION]

MISC. APPLICATION NO. 624 OF 2018
(ARISING OUT CIVIL SUIT NO. 176 OF 2014)

EDWARD TYAKUMA::APPLICANT

VERSUS

SAFINA MATOVU:::RESPONDENT
(*ADMINISTRATRIX OF THE ESTATE OF THE LATE HAJI HAMIS*)

BEFORE: <u>HON. MR JUSTICE HENRY I. KAWESA</u>.

RULING

The Applicant filed this application by Notice of Motion for review of judgment and orders in Civil Suit No. 176 of 2014.

The Applicant filed an affidavit in support and Respondent and Respondents filed affidavits in reply and Applicant filed rejoinder.

In his submissions Counsel for the Applicant pointed out that he had a Preliminary Objection and the merit of the affidavit in reply. I note his points but as he chose to raise it in the alternative. I will hold that the provisions of Article 126 (2) of the Constitution shall be invoked and Sec. 98 CPA brought into play to regularize the affidavits so as to enable this Court understand the said points of all parties.

I now turn to the merits of this application. The first question to be determined is:

1. Whether the application discloses grounds for review.

Both Counsel have referred to Section 82 of the Civil Procedure Act and O.46 of the Civil Procedure Rules. These are the grounds for review.

1. A person considering himself/herself aggrieved.

2. Discovery of new important matter of evidence which after the exercise of due diligence was not with his/her knowledge or could not be produced by him at the time the Decree was passed or order made.

3. Mistake or error apparent on the face of the record.

4. Any other sufficient cause.

Issue 1:

Whether the Applicant is an aggrieved person within the meaning of the law:

Counsel referred to Para 4, 12, 13, 14 and 18 to argue that the Applicant is an aggrieved person. He said the suit property was a subject of advance proceedings between John Mwemelle; Defendant in CS 176/2014 and E. Emily Mwemelle, and it was decreed to the children of which Applicant is only and he has been in possession and occupancy of the suit property since 1993. He argues that the judgment in CS 176/2014 adversely affects the Applicant's property and legal interests hence they are aggrieved parties.

However Counsel for the Respondents argued generally that there were no grounds for review.

The finding of the Court is that Paragraphs deponed by Applicants as under Paragraphs 2, 13, 14, 18 all raise information which is a separate set of facts not arising from the cause of action as pleaded in CS 176/2014.

The plaint and cause of action in CS 176/2014 related to breach of contract. Failure to pay for property which the Plaintiff's father had bought from the Defendants and the Defendant failed to pay the purchase price. On the basis of their argument he exercised the right to rescind and re – enter the property. These facts are independent of the allegations the Applicant builds his case on, as per Paragraphs 2, 13, 14, 15, 18, where he claims he is aggrieved because of a different set of transactions regarding a Divorce cause the deceased had with his wife as he pleads in Para 12,13,14,15, 16,17,18. There is a misjoinder of facts, evidence and issues as Applicant merely shows that there could have been an alternative explanation to the failures by the Defendant in CS 176/2014 had he defended the suit.

However, these documents do not amount to a ground for review. As rightly argued by Counsel for the Respondent that mere error or wrong view or difference in opinion is certainly not a ground for review though it may be for appeal. *(See **Muyodi versus Industrial and Commercial Development Corporation and Anor (2006) 1 EA 243 of 246)**.*

The arguments raised by the Applicant are prolifix. They are arguments explaining the fact that the Defendant could have raised certain defenses to the suit but was not able. The fact that there was

no proper service, was a matter judiciously determined or. It is neither an error apparent on the record neither is it a new price of evidence. It does not help Applicant's plea of defective service as an error on the face of the record neither is it a new price of evidence.

The plea of the suit being filed out of time is a substantive matter of law which cannot be argued at this stage by a party who was never party to the suit, and yet it was not even pleaded. Parties are bound by their pleadings. It can not be argued as a new matter of evidence as limitation in the issue that is pleaded at the time of filing. It is not merely discovered after the judgment.

I agree with Respondent's Counsel in submissions on what amounts to an error as per Malla – the code of Civil Procedure (18 Ed) Vol. 1 page 1146 – that there is a clear distinction between an erroneous decision and an error apparent on the face of the record. The first can be corrected by a higher forum; the latter can only be connected by the exercise of the review jurisdiction. Only a manifest error would be aground for review.

I also borrow the reasoning in ***AG & Ors versus Boniface Bayina HCMA NO. 1789 of 2000*** entering ***Levi Outa versus Uganda Transport Company (1995) HCB 340***"

> *"That the expression mistake or apparent on the face of the record refers to an evident error which does not require extraneous matter to show its incorrectness. It is an error so manifest and clear that no Court would permit such an error to*

remain on the record it may be an error of law, but the law must be definite and capable of ascertment".

I agree that in this case before me that there is no such apparent error on record. The matters raised by the Applicant cannot be considered as errors manifest on the face of the record since they all require extraneous evidence to be established.

In the result I find this issue in the negative.

In the result, this application fails on all grounds. It is dismissed with costs to the Respondents.

I so order.

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Henry I. Kawesa
JUDGE
22/02/2022

22/02/2022
Abbas Patrone.

Applicant absent.

Respondent absent.

Court:
Ruling delivered to the parties above.

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Henry I. Kawesa
JUDGE
22/02/2022