

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO.1474 OF 2021

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(Arising out of Civil Suit No.432 of 2012)

SEREMBA SAMUEL:.....:APPLICANT

VERSUS

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- 1. RHODA NANGOBI**
- 2. COJA PROPERTIES LTD**
- 3. PATRICK KASULU**
- 4. COMMISSIONER LAND REGISTRATION:.....:RESPONDENTS**

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Before: Justice Alexandra Nkonge Rugadya.

RULING.

Introduction:

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This application brought under **Section 43 of the Judicature Act Cap.13, Section 82 & 98 of the Civil Procedure Act Cap.71, Order 1 rule 10 (2), Order 46 rules 1, 2, & 3, and Order 52 rules 1, 2, & 3 of the Civil Procedure Rules SI 71-1** seeks orders that;

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- 1. Court reviews its judgement in Civil Suit No.432 of 2012;**
- 2. The judgement be set aside;**
- 3. The applicant be joined as a party to the suit;**
- 4. The suit be heard de novo;**
- 5. Costs of, and incidental to this application be provided for.**

Grounds of the application:

The grounds of the application are contained in the affidavit in support of Mr. Samuel Seremba, the applicant, as well as the affidavit of his wife, Nakiwala Maria Lyncy.

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In his affidavit in support of the application, the applicant stated *inter alia* that around July 2012, he was approached by a one Matovu Francis who interested him in purchasing the



applicant's land situated in **Kyadondo Block 244 plot 3665 land at Muyenga** which he claimed to have purchased from *Coja Properties* but had not yet transferred the same into his names and that when he (applicant) conducted a search at the land registry, he discovered that on 23rd August, 2004, the land was registered in the names of *Coja Properties*.

5 That on 12th July, 2012, when the applicant entered into a purchase agreement, he made part payment of the purchase price and that although the vendor handed him a copy of the certificate of title, he retained the signed transfer instrument and that around September 2012, the applicant without any restraint or prohibition commenced construction of a residential house which he completed in August 2013.

10 That the applicant and his wife, a one Nakiwala Maria Lyncey started living in the house together with their children until sometime in March, 2021 when they received a letter from **M/s Bamwite & Co. Advocates** informing them of a court decree threatening them with an eviction.

That he did not proceed to transfer the certificate of title into his names owing to the fact that
15 he had not made full payment of the purchase price.

Matovu did not ask him to pay the same immediately and allowed him and his family to stay in the house without making full payment because the two were good friends.

That in 2014, after the applicant had paid the balance, he asked Matovu for the signed transfer instrument to enable him to transfer the land into his names but the same was not
20 availed by Matovu who promised to do so until late 2015, when he informed the applicant that he had failed to locate the same, but that he would trace the directors of *Coja Properties* who had sold him the land to avail him new copies.

That when the applicant kept asking Matovu for the forms, he stated that he had not yet gotten in touch with the directors of the company.

25 In addition, that because the applicant's occupation had never been threatened, he did not feel the need to go beyond the efforts and pressure he exerted on Matovu to avail the transfer forms and that he (applicant) did not have a way of tracing the directors of *Coja Properties Ltd*, because he did not know them or their whereabouts since he had never dealt with them.

In addition, the applicant avers that until mid-2018, he had lost touch with the said Matovu
30 who upon resurfacing informed the applicant that that he had heard that there had been a dispute over the land and he advised the applicant to wait until the same had been resolved before he availed him a new transfer form.

Further, that after receiving the letter from **M/s Bamwite & Co. Advocates**, the applicant contacted them requesting a meeting with the parties interested in the property and that
35 around March 2021, a meeting with Counsel Bamwite, Counsel Elias Seguya and the



applicant was held at **M/s Bbaale & Partners** whereat the applicant requested the parties to have the matter amicably resolved since he had innocently without knowledge of the court proceedings purchased, developed and occupied the property with his family, but he has never heard from them since then.

5 That the applicant is aggrieved with the judgement of this court dated 30th September, 2016 because the same affects his rights as an occupant of the suit land which he developed without any prohibition or restraint and that the matter was not only heard, but also determined without him being heard at all hence the instant application.

10 That because the court was not aware of either the whereabouts of the certificate of title or the status quo of the land and no locus in quo was conducted before the judgement was delivered therefore it is in the interest of justice to grant the remedies sought herein.

Reply by the 1st respondent>

15 The 1st respondent opposed the application through her affidavit in reply wherein she objected to the application on grounds that the same is not only misconceived, but also an abuse of court process and has no merit.

She deponed that she is the owner of the land comprised in **Kyadondo Block 244, plot 36655** at Kisugu Kampala the certificate of title for which was stolen by one Patrick Kasulu of *Kasulu Property Masters* who sold the same to a one Samuel Kenneth Ikopit and caused certificate to fraudulently be registered in the names of **M/s Coja Properties Ltd.**

20 That because the 1st respondent has never transferred or sold to the property to *Coja Properties*, she filed a case against the 2nd, 3rd, and 3rd respondent and a decree allowing the 1st respondent to recover her land and ordering the Commissioner Land Registration to cancel the 2nd respondent's name from the title was issued.

25 The 1st respondent further averred that she did not authorize Patrick Kasulu to sell the property to Ikopit or transfer the same to the names of *Coja Properties Ltd* and that after obtaining judgement in her favor, the 2nd and 3rd respondents applied to have the same set aside but the same was dismissed.

In addition, that the applicant's averments that she bought the property from Matovu are unsustainable since Matovu did not own the suit property.

30 That the question of ownership was conclusively settled by court which declared the 1st respondent as the owner of the suit land and that the certificate of title relied upon by the applicant is a nullity that is not enforceable since the same it was cancelled by court and the applicant was reinstated on the title and given a special certificate of title which is now in her possession.



In addition, that the claim that the applicant bought and developed the suit property is false because there is no proof attached by the applicant to show that the said Nakiwala was his wife or that they occupied the suit property and that the person from whom she claims to have bought the land from has never owned the same and could not therefore pass any
5 interest in the property to the applicant.

That the applicant is not an aggrieved party since he has no interest in the property and that the instant application has since been overtaken by events because the decree was already complied with by the land office therefore the application does not satisfy the conditions warranting this court to review the judgement.

10 **Rejoinder:**

The applicant also filed an affidavit in rejoinder to the 1st respondent's affidavit in reply wherein he stated that at the time he purchased the suit property from Matovu Francis in 2012, he was an equitable interest in it.

That the 1st respondent did not dispute the fact that the applicant constructed a house on
15 the suit property without any injunction, restraint or prohibition against him.

The applicant maintained that he was married to Maria Lyncy Nakiwala in whose names the utility bills are and with whom they live in the suit property together with their children.

He further contended that he was not a party to the application to set aside the judgement in the main cause.

20 Further, that the 1st respondent did not deny that the court in arriving its decision, did not visit the *locus in quo* and that if it had done so, it would have ascertained that the land is developed.

That it is not true that the application is overtaken by events as the decree has not yet been fully executed. The plaintiff/1st respondent has since not yet recovered the land which is still
25 occupied by the applicant and his wife who are aggrieved by the fact that the decree in **Civil Suit No.432 of 2012** shall deprive them of the property.

Representation:

The applicant was represented by **M/s Nambale, Nerima & Co. Advocates & Legal Consultants** while the 1st respondent was represented by **M/s Bamwite & Kakuba
30 Advocates.**

Both counsel filed written submissions in support of their respective clients' cases as directed by this court.



Consideration of the application.

I have carefully read the pleadings, evidence as well as the submissions of both parties, the details of which are on court record and which I have taken into consideration to determine whether or not this application merits the prayers sought.

- 5 **Section 82 of the Civil Procedure Act Cap 71 and Order 46 rule 1 of the Civil Procedure Rules SI 71-1** empowers court to review a judgment where there is a mistake or apparent error on the face of the record.

Section 82 of the Civil Procedure Act provides that:

“Any person considering himself or herself aggrieved –

- 10 ***a. by a decree or order from which an appeal is allowed is allowed by this Act, but from which no appeal has been preferred ; or***
- b. 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***
- 15 ***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; that-

1. ***Any person considering himself or herself aggrieved-***
- 20 ***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***
- 25 ***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.***
- 30
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***
- 35 ***Court the case on which he or she applied for the review.***



It is now a well settled principle that a third party who is affected by an order of court can under inherent powers of court apply for review. **(See: *Mohammad Allibhai v. W.E. Nukonya Musa & A'nor, S.C.C.A No. 56 of 1996*).**

5 It would follow that any party aggrieved who is not necessarily a party to the judgment can apply for its review and to set it aside.

In the case of ***Mohammed Bukenya Albai versus W. E Bukenya and Anor; SCCA No. 56/1996***, an aggrieved person was defined as one who has been deprived of his property. **(See also: *Re Nakivubo Chemists (U) Ltd; in the matter of the Companies Act (1979) HCB.12 and Kandu versus Bever Ginning Co. Ltd, Allot & Others 192 Air NAS. Paragraph 185 all quoted in the Kaloli Tabuta versus Transroad (U) Ltd; MISC. Appl No.478 of 2019 from Civil Suit No.621 of 2017*)**

In the instant case, the applicant by affidavit evidence set out the circumstances under which he came to acquire the suit property.

15 It is not in dispute that he is in occupation of the suit property. To this end, the applicant adduced in evidence copies of bank statements depicting payment of utility bills in the names of his wife as well as photographs of the house set up on what is presumed to be the suit land. None of the above evidence was disputed by any of the respondents.

20 The applicant also adduced in evidence a copy of a notice to vacate the suit land from ***Ms Bamwite & Kakuba Advocates***, the 1st respondent's lawyers who in the said letter informed the applicant of the judgment in the head suit and demanded that she vacates the suit land so that their client could re-enter the same to develop it.

In the case of ***Mushabe Apollo Vs Mutumba Ismael & Anor MA 08 of 2019, Ssekaana J***, court had this to say:

25 *'It is not disputed that this court granted an order for cancellation of the applicant's certificate of title without being heard and consequently the said order affects his rights. The court is enjoined to apply rules of fairness and not to condemn a person unheard....'*

I find no reason to depart from the said principle.

30 There is no doubt that the 1st respondent clearly intends to repossess the suit property which is currently occupied by the applicant. A threat of eminent eviction from property developed and/or occupied by the applicant is sufficient cause to merit an order of review.

A full trial would be necessary for court to establish whether or not the applicant improperly acquired the suit land, where the applicant as an aggrieved party shall be accorded a fair hearing.

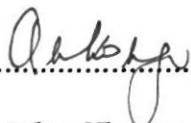


Under **Section 98 of the Civil Procedure Act**, this court is empowered to grant orders to meet the ends of justice. Based on those powers, and in the ultimate interest of justice, I would grant this application.

5 A stay of the execution of the consent decree issues pending the determination of the applicant's rights in a fresh suit.

Each party shall bear its own costs.

I so order.

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10 **Alexandra Nkonge Rugadya**

Judge

25th August, 2022.

Delivered by email

Alexandra Nkonge Rugadya

25/8/2022