

**THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
(LAND DIVISION)**

**MISC. APPLICATION No. 974 OF 2019  
(ARISING FROM CIVIL SUIT No. 80 OF 2008)**

**1. KABUYE GIDEON KIRUMIRA**

**2. LEO LULE KIMALEMPAKA=====APPLICANTS**

**VERSUS**

**1. N. SHAN & CO. LTD**

**2. MULOWOOZA & BROTHERS LIMITED**

**3. ATTORNEY GENERAL=====RESPONDENTS**

**BEFORE: HON. MR. JUSTICE HENRY I KAWESA**

**RULING**

This application is by way of Notice of Motion for orders that the Consent Judgment/Decree executed on the 7<sup>th</sup> day of March 2015 be set aside or reviewed.

The application is supported by an affidavit of Kabuye Gideon Kirumira; and Leo Lule Kimalempaka. The Respondents opposed the application by affidavits in reply filed by Hital Prakash; 1<sup>st</sup>

Respondent and James Kibuuka Mulowooza; 2<sup>nd</sup> Respondent. Hital Parik filed a supplementary affidavit in reply.

According to the submissions filed by the Applicant, the Applicants raise a preliminary objection on grounds that the affidavits of the 1<sup>st</sup> Respondent be struck out for containing falsehoods.

In their submissions, the 1<sup>st</sup> Respondent's Counsel also raised a preliminary objection on grounds that the application violates the rules for review under the Civil Procedure Rules and Civil Procedure Act.

Regarding the preliminary objection raised, the Respondent replied that the affidavits bear no falsehood since both affidavits; and maintains that the 1<sup>st</sup> Respondent purchased the suit property. He prayed that the preliminary objection be dismissed with costs.

Having looked at the submissions by the Applicant and a reply thereto, I find no offensive elements in the affidavit of Hetal

Parikh. Perhaps it raises matters worth of further investigations arising from the facts deponed to by the Applicants.

I did not find it necessary to determine the issue raised by the 1<sup>st</sup> Respondent as a preliminary objection because it touches the entire issue before Court; that is whether the Applicant's application merits the tannets of an application for review.

I therefore and will straight away now determine if the Applicant has made out a case for review.

I will also determine the 2<sup>nd</sup> Respondent's preliminary objection alongside this determination.

The law regarding review is Section 83 of the Civil Procedure Act and enshrined in O.9 R12 of the Civil Procedure Rules and O.50 rule 2 of the Civil Procedure Rules.

Section 83 provides that; "Review accrues in circumstances where there is no possibility of an appeal; and there must be proof that the section 82 of the Civil Procedure Act gives a right to any person aggrieved by a decree or order for which an appeal

is allowed, but not preferred or where no appeal is allowed to apply for review of the said judgment.

An aggrieved person has been defined as one who has been deprived of his property as per as per Mohammed Bukenya Albai versus W. E Bukenya and Anor; SCCA No. 56/1996; and 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

The guiding principle is that; *an aggrieved party must “be deponed of his property”.* (Must have a *nexus with the subject matter in dispute showing that while the property is his/hers, it is being taken from him/her as a result of the said legal proceedings thereby causing him to suffer a legal grievance.*’

Applying the above definitions to the Applicant, a look at his pleadings raises eyebrows.

As correctly argued by the 2<sup>nd</sup> Respondent in their preliminary objection, the Applicant's purported notice of motion violated the procedural rules under O.52 R1 of the Civil Procedure Rules and the provisions of Section 2 of the Civil Procedure Rules.

The motion is not signed by Counsel to authenticate the same. The explanation by the Applicant's Counsel that the anomaly is sorted out by the accompanying affidavits is strange submissions.

The rules of procedure are hand maidens of justice, they are not there to be violated at will.

Once the rule is violated, then the arguments raised to correct it cannot be sustained if they make the situation worse. The exhibited failure made the application defective as rightly pointed out.

Given the defect, I noted that the Applicant did not premise his arguments under the law regarding review. The arguments are prolofix and off target. I did not find the grounds as raised from

1,2, (a)-(k) in the notice of motion, does not have a basis for arguments for review.

Taken together with the affidavits in reply, the Applicant appears to be setting up a parallel claim regarding a matter which is already determined in Court. His claim calls for scrutiny of the evidence which is in his own knowledge and was not availed to Court for purposes of detailing the rights of the parties before it.

The evidence that which is the subject matter of contention is not the same subject that the Applicant seems to be addressing on the face of it. This application, on the whole documents, does not bring out any ingredient that shows that the Applicant is an aggrieved party or that there is an error apparent on the face of the record.

This application does not pass for review. I do agree with the submissions by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

I do find no merit in this application.

It is dismissed with costs to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents I so order.

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Henry I. Kawesa

**JUDGE**

22/2/2022

22/2/2022:

Sebowa Frances for the Applicants.

Applicants absent.

1<sup>st</sup> Respondent; Onyenya Joseph.

2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents absent.

Dorothy; Clerk.

Court:

Ruling read to the parties above in the presence of Counsel for the Applicant and the representative of the 1<sup>st</sup> Respondent.

Sgd:

Ayo Miriam Okello.

Deputy Registrar

22/2/2022