

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT MPIGI  
CIVIL APPLICATION NO. 63 OF 2019  
(Arising from Civil Appeal No. 26 of 2016)  
(Arising from Civil Suit No. 87 of 2009)

1. KIHANGA JOHN  
2. KANYONYI PAUL  
3. MUKASA DEO  
4. KIISA AMOOTI  
5. KATEREGA NAMWANDU

.....APPLICANTS

VERSUS

NALWEYISO GETRUDE.....RESPONDENT

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE

Ruling

The Applicants brought the instant application by way of Notice of Motion under **Sections 82** and **98** of the Civil Procedure Act, **Order 46 Rules 1, 2 and 3** of the Civil Procedure Rules, and **Order 52 Rules 1 and 3** of the Civil Procedure Rules against the Respondent for orders that;

1. An order of review of judgment and decree passed in No. 026 of 2016 be made.
2. A Declaration that the judgment and order of the Appellate Court holding that the Respondent be allowed to use and utilize part of the land 3<sup>1/2</sup> acres and the rest to be utilized by the Appellants was an error apparent on the face of the record.
3. Costs be provided for.

The application was supported by an affidavit sworn by Kanyonyi Paulo and the grounds briefly are as follows;

1. That the respondent instituted civil Suit No. 087 of 2009 at the Chief Magistrates Court of Uganda at Mpigi which was decided in favour of the Respondent.
2. Having been aggrieved by the decision, the applicants appealed to this Honourable Court vided Civil Appeal No. 026/2016 an appeal that was subsequently decided in favour of the applicants from where Court made the following orders;

- a. That the judgment of the lower Court made the following orders;
- i. Both the appellants are lawful occupants and the Respondent as the registered proprietor are to stay and utilize the land in dispute.
  - 5 ii. The respondent as the registered proprietor is not to evict the appellants however, she is allowed to use and utilize part of the land,  $3\frac{1}{2}$  acres, and the rest to be utilized by the appellants.
  - iii. To encourage all the parties to live in harmony, I order each to bear their own costs.

- 10 3. That the error is with the third holding of court here above. That total acreage of the suit land occupied by the applicants are only 3.503 acres yet court decreed that the respondent should be allowed to utilize  $3\frac{1}{2}$  acres of land which was the exact size of the suit land.
4. That the land the applicants can be able to award the respondent is  
15 (50x80) near the respondent's grave yard (utilized).
5. That the applicants have not appealed the said court decision.
6. That there is an error which this honorable court has justification to correct.
7. That the application has been brought without undue delay and shall not  
20 prejudice the respondent in anyway.

The application was opposed by an affidavit in reply sworn by the respondent. I will however not reproduce the grounds here under.

### **Representation:**

25 Mr. Magezi Ahmed appeared for the 2<sup>nd</sup> and 3<sup>rd</sup> applicants while Mr. Mugabi Godfrey represented the respondent. The applicants made written submissions. No submissions were made by the respondent.

### **Resolution of the application:**

30 Counsel for the applicant submitted that the application is for review of judgment made in favour of the applicants in Civil Appeal No. 26 of 2016. However, this court erroneously made orders allowing the respondent to utilize and use part of the suit land which was  $3\frac{1}{2}$  acres yet the whole suit land is 3.503 acres leaving the applicants with high risk of being evicted by the respondent. The applicants made a prayer that the said order be reviewed and the suit land be shared.

Counsel added that there is an error apparent on the face of the record and new and important evidence had been discovered that was not available at the time of the appeal that the suit land only measures 3<sup>1/2</sup> acres. That it is on that basis that the applicants pray to be granted exclusive use of their kibanja while the 1<sup>st</sup> respondent retains the right of registered proprietorship without prejudice. Counsel relied on the case of **Mboizi Dison v.Dauli David Robert and 4 Others**, HCT – 04 – CV – MA – 0080 OF 2014, where it was held that;

*“This is a proper case for review in which this court must guard parties against injustice and abuse of court process and that both courts did not have correct evidence before them at the time of the hearing due to inculpable fault of the applicant since both counsel never drew the illegal nature of proceedings to the attention of court.”*

The applicants prayed for costs and relied on the case of **Dorothy TMA V. Elizabeth Muller and Another**, Civil Suit No. 229 of 2011.

I find that this suit does not fall under **Section 82** of the Civil Procedure Act. There is nothing to review because there were two plots of land under dispute and the 3.509 acres was only for Block 112 Plot 50 and Plot 51 was left out for the applicants. It is therefore my understanding that the applicants were ordered to utilize Plot 51 and the respondent Plot 50 and not what the applicants are alleging in this application.

This application lacks merit and is hereby dismissed. Let each part bear its own costs.

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**OUYKO ANTHONY OJOK**

**JUDGE**

**17/03/2022**