

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

MISC. APPLIC. NO. 1262 OF 2019

(ARISING FROM HCCS NO. 2600 OF 2016, FORMERLY HCCS NO. 0600 OF 2015 AT NAKAWA)

ADMINISTRATOR GENERAL

(Suing through Muyanja Sam)

APPLICANT / PLAINTIFF

V

1. KIRYOWA HASSAN
  2. ABDUL SENJALA
  3. NEKUUSA KIBUKA EDWARD
  4. MUSOKE ABDU
  5. ASUMAN SEMWOGERERERE
  6. THE COMMISSIONER LAND REGISTRATION
- RESPONDENTS / DEFENDANTS

BEFORE: HON. LADY JUSTICE P. BASAZA – WASSWA

RULING

Representation

None for the Applicant.

Mr. Kiryowa Joseph for the 1<sup>st</sup> – 5<sup>th</sup> Respondents.

None for the 6<sup>th</sup> Respondent

 31/7.

Introduction:

- [1] The Administrator General (**the A-G**), suing through Muyanja Sam, brought this Application by motion under **Section 98 and 82 of the Civil Procedure Act<sup>1</sup>, and section 3 of the Children Act<sup>2</sup>.**
- [2] In his motion, **the A-G** seeks for Orders that the Judgment and Decree in the **Head suit: HCCS No. 2600 of 2016 by Bashaija Andrew, J., dated May 23, 2017** (here after referred to as "**the impugned decision**"), be partly reviewed. And that the costs of this application be in the cause.

Background:

- [3] The Administrator General (**the A-G**) held letters of Administration to the estate of the **late Enosi Semanda**, by virtue of a grant to him dated April 23, 1991 vide H/C Administration Cause No. 095 of 1991.
- [4] The present application arose from **HCCS No. 2600 of 2016 (formerly HCCS. No. 600 of 2015)**. Here after referred to as '**the Head suit**'. The Head suit was filed on June 25, 2015 **by the Administrator General through his Attorney: Muyanja Sam, vide a Powers of Attorney dated October 21, 2014.**
- [5] For clarity and wholeness, the relevant parts of the said Powers of Attorney read as follows:

*Muyanja Sam 31/7.*

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<sup>1</sup> Cap. 71 of the Laws of Uganda

<sup>2</sup> Cap 59 of the Laws of Uganda

IN THE MATTER OF THE ESTATE OF THE LATE ENOSI SEMANDA

MENGO ADMINISTRATOR GENERAL'S CAUSE NO. 579 OF 1990

POWER OF ATTORNEY

'KNOW ALL MEN WHOM IT MAY CONCERN:

BY THIS POWER OF ATTORNEY GIVEN on the 21<sup>st</sup> day of October 2014, the Administrator General of Uganda of P.O. Box 7151, Kampala, Uganda being the Administrator of the Estate of the late **ENOSI SEMANDA** by virtue of Letters of Administration dated 23<sup>rd</sup> April, 1991 granted under High Court Administration Cause No. 95 of 1991 **DO HEREBY ORDAIN, NOMINATE and APPOINT MUYANJA SAM** of P.O. Box 5039, Kampala to be my true and lawful Attorney and Agent with full power and authority in fact and in law, for me and in my name and on my behalf to execute all or any acts, deeds and things as hereunder stated:-

1. To commence, prosecute, defend any suit by or against me (as Administrator of the Estate of the Late Enosi Semanda) for the recovery of land comprised in KYADONDO BLOCK 82, PLOTS 873 and 463 and all subdivisions arising therefrom.
2. To ...
3. This Power...
4. All costs arising from the actions of the Donee shall be borne by the Donee.
5. Generally to ...
6. For the purpose...
7. And for me...
8. The principal...

IN WITNESS WHEREOF THE DONOR has set his hand on the date and year first above written.

Signed by the

ADMINISTRATOR GENERAL /

PUBLIC TRUSTEE

DONOR'

- [6] In his plaint in the Head suit, **the A-G** complained against the 1<sup>st</sup> – 5<sup>th</sup> Defendants (also 1<sup>st</sup> – 5<sup>th</sup> Respondents herein) that they are trespassers on land comprised in **Kyadondo Block 82 Plot 463 at Kigoogwa Village in Matugga, Bombo Road in Wakkiso District.** Here after referred to as '**the suit land**'.

*Masabwa Musingu 31/7.*



[7] He (**the A-G**) contended that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants entered upon the suit land and erected thereon structures and used part thereof for cultivation, to the detriment of the beneficiaries of the estate of the late Enosi Ssemanda. And that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants sold plots out of the suit land to the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants.

He sought for orders of eviction against the 1<sup>st</sup> - 5<sup>th</sup> Defendants from the suit land, and for Orders of demolition of their structures thereon, for general damages and for costs of the suit.

[8] He (**the A-G**) also complained against the Commissioner Land Registration (**the CLR**), that the latter allegedly wrongly made entries in the Register book in relation to the suit land. And thus sought for an order of cancellation of the Registration of a one Ruth Nakazibwe (deceased) as the Registered Proprietor of the suit land.

[9] In their joint Defence, the 1<sup>st</sup> - 5<sup>th</sup> Defendants denied the said allegations. They contended that **the A-G** sub-divided the suit plot (No. 463) into three (3) plots numbering Plots: 1016, 1017 & 1018, and that the beneficiaries of that estate had sold the said three (3) plots to 3<sup>rd</sup> parties. That having sold the said three plots, **the A-G** lacked locus to institute the Head suit.

[10] When the Head suit came up for hearing on May 16, 2017 **Mr. Kiryowa**: learned Counsel for the Defendants; submitted that there is no suit before Court as **the**

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A-G had renounced the letters of Administration to the said Estate of the late Enosi Semanda.

On that date, the A-G and his Attorney: Mr. Muyanja, were absent.

[11] In the impugned decision, the learned trial Judge: Bashaija Andrew, J., made an observation: 'that by his letter written to the Registrar of the court, the A-G confirmed that he had renounced the letters of administration to the estate of the late Enosi Semanda'. That the A-G attached to his said letter; the Deed of his Renunciation and a Certificate of No Objection that he had issued to Mr. Muyanja Sam, one of the beneficiaries.

[12] The learned trial Judge further observed: 'that the A-G had already distributed the estate among the beneficiaries, and had filed an inventory in court. That some of the beneficiaries such as Ruth Nakazibwe and Irene Semanda had already obtained registration of their names on the certificates of titles'.

He ruled that: 'on the basis of the said Deed of Renunciation, the Certificate of No Objection to Mr. Muyanja Sam, and the distribution of the estate, there was no more estate of the late Enosi Ssemanda to be administered. And that even if Mr. Muyanja was to obtain fresh letters of administration, he would not maintain a suit in the name of the estate of the late Enosi Semanda'.

He accordingly dismissed the suit with costs specifically payable by the Attorney: Mr. Muyanja Sam.

*Nakazibwe 31/7.*

[13] Being aggrieved by the impugned decision, the present application was filed, and hence this Ruling.

Grounds of the present application:

[14] The gist of the grounds for this Application, as detailed in two affidavits in support sworn by Mr. Muyanja Sam, is:

- a) That the A-G as the Principal caused the dismissal of the Head suit.
- b) That the Head suit was dismissed because the office of the A-G wrote to court, without the knowledge and or consent of Mr. Muyanja, requesting that the Head suit be stayed pending a substitution of parties, as Mr. Muyanja was processing letters of Administration.
- c) That the inventory dated February 10, 2017 attached to a letter by the Defendants purporting that the Estate of the Late Enosi Semanda had been distributed was a total lie. That the family of Enosi Semanda have not received their shares in the said estate to-date.
- d) That the current status of the Estate of the late Enosi Semanda is as follows:
  - i) Plot 5 measuring 10 acres was subdivided to create plots **871, 872** and **873** registered in the names of Ruth Nakazibwe, Irene Semanda, and the 1<sup>st</sup> Defendant: Kiryowa Hassan.
  - ii) Plot 463 is registered in the names of Ruth Nakazibwe.
- e) That in 2006, Ms. Namutebi of the office of the A-G advised the family that the office of the A-G had distributed the estate and mistakenly carried out transfers which had to be corrected, and that they would apply for

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cancellation of titles, and transfer the land back to the A-G and re-distribute the Estate land.

- f) That all Mr. Muyanja's cases were dismissed on technicalities, and that to further defeat his suit on technicalities, the A-G renounced the letters of Administration to the estate of the late Enosi Semanda without his knowledge and or consent.
- g) That Mr. Muyanja did not act outside the Powers of Attorney, and that the learned trial Judge erred in law and fact when he held that the costs of the suit be borne personally by the Attorney: Mr. Muyanja.
- h) That it is in the interests of justice that the impugned decision be reviewed and the costs be paid by the office of the A-G who caused the dismissal of the suit on technicalities of procedure.
- i) That a suit vide HCCS No. 145 of 2018 has since been filed against the A-G before the Family Division for negligence in administering the estate of the late Enosi Semanda.

Answer by the 1<sup>st</sup> – 5<sup>th</sup> Respondents

[15] In an affidavit in reply sworn by learned counsel: Mr. Kiryowa, on behalf of the 1<sup>st</sup> – 5<sup>th</sup> Respondent, it was averred: (the gist)

- a) That as the Attorney for the A-G, Mr. Muyanja was specifically ordered to pay costs of the Head suit for the reason that he was obliged by the Powers of Attorney to meet all costs arising from his actions as the Donee.

*Mugambi Mwanjama 31/7.*

- b) That Mr. Muyanja has already paid costs personally in an earlier dismissed suit: Misc. Applic. No. 060 of 2009 in Mpigi Chief Magistrate's Court that he filed using the same Powers of Attorney.
- c) That the bills of costs in the Head suit and in Misc. Applic. No. 969 of 2015 were taxed in the presence of Mr. Muyanja and his Counsel in 2019, and to-date, Mr. Muyanja has not paid or appealed against the same.
- d) That this application for review is superfluous and bad in law.

Further answer to this application

[16] The A-G filed an affidavit in disclaimer sworn by Mr. Mathias Mickey Mwanje, an Assistant Administrator General, by which he stated *inter alia*,

- a) That the A-G renounced the Administration of the said Estate on March 16, 2017, and has never authorized Mr. Muyanja Sam to bring the present application or any other in the names of the A-G.
- b) That the present application was filed by Mr. Muyanja Sam without the knowledge, authority or consent of the A-G.

Rejoinder by the Applicant:

[17] By an affidavit in rejoinder, Mr. Muyanja Sam deponed *inter alia*, 'that the actions leading up to the dismissal of the Head suit were actions of the Donor (the A-G), and not the actions of the Donee'.

*M. Sam/ Mwanje 31/7.*



Question for determination:

**Whether sufficient cause has been shown for the grant of an order for review of the impugned decision?**

Submissions of Counsel:

[18] Learned Counsel for each side filed written submissions, and I have duly considered their arguments. For brevity, I have not reproduced them here. I have only made reference to their arguments where and when necessary.

Analysis by Court:

[19] The law on review of a Decree or an Order by the Court which passed the Decree or Order is stipulated under **Sec. 82 of the Civil Procedure Act, and Order 46 Rule 1 of the Civil Procedure Rules.**

[20] It is well settled that there are three (3) circumstances in which an application for review can be allowed: (See the decisions in **Tanitalia LTD. V Mawa Handels Anstalt**<sup>3</sup> and in **DAPCB v. Waris Ali Fadhul & Anor**<sup>4</sup>)

- i) Upon the Discovery of new and important matters or evidence,
- ii) On account of some mistake or error apparent on the face of the record.
- iii) For any other sufficient reasons, but the expression "*sufficient*" should be read as meaning sufficiently analogous to (i) and (ii) above.

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<sup>3</sup> [1957] E.A at pg. 215 - 218

<sup>4</sup> HC Misc. Applic. No. 716 of 2017

[21] In the present case, it is not expressly or impliedly stated, in the pleadings of the Applicant, on which of the above three instances this application is based.

I note however, that learned Counsel for the Applicant submitted that this application is based on the account that there is 'an error or mistake apparent on the face of the record'. He argued that the Principal (the A-G) caused the dismissal of the suit, and not the Agent (Mr. Muyanja). That the Principal went behind the Agent (*sic*) by filling an inventory and wrote a letter to court without the knowledge or consent of the Agent.

[22] With respect, I do not agree with that argument. The above is not a scenario that can be regarded as being 'an error or mistake apparent on the face of the record'. Rather, it is one that would call for either a fresh hearing, or re-evaluation of evidence, and subsequent debate. The disclaimer by the A-G, as per the affidavit of Mr. Mathias Mickey Mwanje, illustrates that there exist arguments for and in rebuttal to such a proposition.

[23] As it is, the Applicant complains about the basis upon which the learned trial Judge made the award on costs. His complaint is that: 'the learned trial Judge erred in law and fact when he held that the costs of the suit be borne personally by the Attorney: Mr. Muyanja. It is contended that Mr. Muyanja did not act outside the Powers of Attorney, and that the costs should be paid by the office of the A-G whom he claims caused the dismissal of the suit on technicalities of procedure.

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[24] Upon carefully considering all the contentions, and the arguments for and against this application, it is my view: that this application by way of review, cannot be sustained. It is an application with multiple, fundamental flaws:

[25] First, it is trite law that costs are awarded at the discretion of the Court or Judge. The court or Judge has full power to determine by whom, and out of what property and to what extent those costs are to be paid, and to give all necessary directions for that purpose. (See Sec. 27 (1) of the CPA).

[26] Since the complaint in this application challenges the basis upon which the trial Judge exercised his discretion in awarding costs in the Head suit, I find that such complaint does not fall under the purview of an application for a review. Rather, it falls under the purview of an appeal. To wit; the complaint in this matter does not fall under the three circumstances listed above in paragraph [20] of this Ruling, and therefore it can only be entertained in an appeal to the Court of Appeal, and not by way of a review to this Court. This court has no Jurisdiction to entertain it.

[27] Second, I note that the complaint is one essentially brought by Mr. Muyanja against the A-G, whom he claims deliberately caused the dismissal of the Head suit. That being the case, such a complaint cannot be brought in the name of, and on behalf of the A-G, let alone against the Respondents! For that, I agree with Mr. Kiyowa: learned Counsel for the Respondents, 'that this application is misconceived against his clients'. The disclaimer by the A-G, as per the affidavit

*Dismissed with 31/7.*



of Mr. Mathias Mickey Mwanje, also refers. Such a complaint is legally untenable, and is frivolous and vexatious.

[28] **Third**, the A-G, and by implication; his Attorney Mr. Muyanja Sam, have no locus to file this application. The A-G had, as far back as March 2017, renounced the letters of administration granted to him in respect of the estate of the late Enosi Ssemenda. Refer to the acknowledgment of that fact by Mr. Muyanja Sam, in paragraph 22 of his further affidavit in support dated October 26, 2020.

Decision of this court

[29] By reason of these said fundamental flaws, I hold that this application for review is misconceived and misplaced. It is accordingly dismissed with costs to the 1<sup>st</sup> - 5<sup>th</sup> Respondents against **Mr. Muyanja Sam personally**.

I so Order,

 31/7.

**P. BASAZA - WASSWA  
JUDGE**

July 31, 2023

Judgment delivered via email to the parties, and uploaded on the Judiciary ECCMIS Portal. Email to: [kats@kats.co.ug](mailto:kats@kats.co.ug) for the Applicant, and to [kiryowajoseph44@gmail.com](mailto:kiryowajoseph44@gmail.com) for the Respondents.