

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT FORT PORTAL**  
**MISC. APPLICATION NO. 011 OF 2023**  
**(ARISING FROM MISC. APPLICATION NO. 107 OF 2021)**  
**(ARISING FROM HCT – 01 – LD – CV – CS – 0040 OF 2021)**  
**UGANDA RAILWAYS CORPORATION::::::::::::::::::::::::: APPLICANT**  
**VERSUS**

- 1. BALUKU MOSES**
- 2. MAATE JOSEPH**
- 3. MUHINDO MONDAY BENJAMIN**
- 4. MASIKA JULIET**
- 5. MUHAMBENE MARAHI LAZARO**
- 6. BWAMBALE GIRISON ::::::::::::::::::::::::::: RESPONDENTS**

**BEFORE: HON JUSTICE VINCENT WAGONA**  
**RULING**

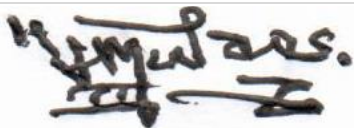
**Introduction:**

This is an application under Section 98 of the Civil Procedure Act and Order 1 rules 8, 9 and 12 and Order 52 rules 1 and 2 of the Civil Procedure Rules seeking orders that:

- 1. A representative order obtained by the Respondents be set aside.**
- 2. Costs of the application be provided for.**

**Grounds and Evidence of the Applicant:**

The application was supported by the affidavit of Mr. Stephen Wakasenza, the Applicant's Managing Director who averred as follows:



1. That on the 21<sup>st</sup> day of September 2021, 91 the respondents filed Civil Suit No. 040 of 2021 seeking orders that the applicants were adverse possessor and a temporary injunction restraining the applicants from interfering with their possession. That following the institution of the suit, the respondents later applied to court for a representative order to represent 91 plaintiffs in the suit and the application was heard ex-parte and granted.

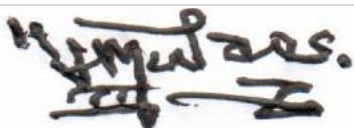
2. That the procedure followed by the responds in obtaining the said order was not proper and in contravention of the law. That the applicant was not given the opportunity to oppose the application which it had just cause to oppose.

3. That in an application for a representative order, the applicant must be having the same interests which was not the case in Civil Suit No. 040 of 2021. That it is in the interests of justice that the representative order issued be set aside since it was made in error, which makes the plaint defective. That it is in the interests of justice that the application is granted.

### **Reply of the Respondents:**

The application was opposed by the Respondents through an affidavit deposed by Mr. Muhindo Monday Benjamin, the 3<sup>rd</sup> Respondent as follows:

1. That the respondents filed Misc. Application No. 107 of 2021 and got an order to allow them represent all the plaintiffs in Land Case No. 0040 of 2021. That the Assistant Registrar heard the application inter-party on 16<sup>th</sup> February 2022 and the applicant was served on 31<sup>st</sup> January 2022.

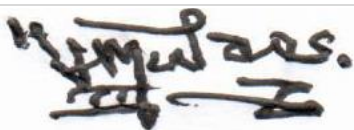


2. That the applicant never opposed the application and that on 17<sup>th</sup> February 2022, counsel who was representing the Respondents wrote a letter to the Assistant Registrar to allow the application since it was not opposed and the same was granted on 17<sup>th</sup> March 2022. That on 31<sup>st</sup> March 2022, the order was served upon the applicant. That the applicant never appealed and brought this application after a year.

3. That the application is belatedly brought in bad faith and the applicant has not explained the prejudice they will suffer if the application was granted. That the respondents applied for the representative order to ensure convenience during hearing and comply with the Chief Justice's directives to curb COVID-19.

4. That the plaint in the main suit was clear that all the plaintiffs had common interest to secure. That the main suit was not commenced in a representative capacity and it was brought in individual capacity. That at the time a representative order was secured, the suit was already in court and the applicant had filed their written statement of defense.

5. That if this application is allowed, the parties will represent themselves which will delay the hearing of this suit. That the law allows many plaintiffs to be represented by one among them. That the current application is a waste of time and serves no purpose other than complicating the prosecution of Civil Suit No. 0040 of 2021. That the application has no merit and should be dismissed with costs to the Respondents.

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### **Representation and hearing:**

*Okiror James of the Legal Department of Uganda Railways Corporation* appeared for the applicant and *Mr. Michele Geofrey of M/s Bagyenda & Co. Advocates* appeared for the Respondents. Both counsel proceeded by way of written submissions which I have duly considered in this ruling.

### **Issues:**

After due consideration of the parties' pleadings and the submissions of either party, I find the following issues pertinent for determination in this application:

- 1. Whether this application is proper before this court.**
- 2. Whether a representative order in Civil Misc. Application No. 107 of 2021 should be set aside.**
- 3. Remedies available to the parties.**

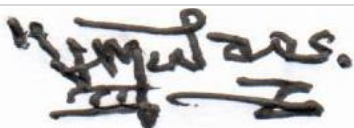
### **Submissions of the Parties:**

**Issue No. 1: Whether this application is proper before this court:**

#### **Submissions for the Respondent:**

Learned counsel for the Respondent raised a preliminary objection based on a point of law contending that this application is improper before this court. It was contended that the applicant ought to have appealed against the order of the registrar under Order 50 rule 8 as opposed to lodging an application for review.

Learned counsel further contended that the current application for review should have been filed before the registrar who issued the order and not to the judge. That

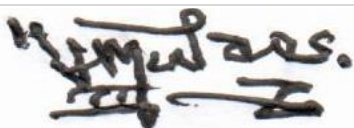


the same should have come to the judge in form of a reference and not in the current form as such the same is barred by law.

### CONSIDERATION BY COURT:

- 5 The question as to whether a registrar has powers to review his own decision was considered by *Murenga JSC in Attorney General & Anor Vs. AG v. James Mark Kamoga & Anor, SC CA. 8 of 2004[2008] UGSC 4* (6 March 2008) where he observed that:

10 *“I agree with submissions of counsel for the respondents to the effect that the powers of the registrar of the High Court are circumscribed. Unlike a judge of the High Court who exercises the entire jurisdiction vested in that court, a registrar of the High Court can only exercise such jurisdiction of that court as is delegated by or under legislation. The powers of registrars are set out in Order 50 of the CPR and enhanced in Practice Direction*  
15 *No.1 of 2002. I need not reproduce the detailed provisions here. It suffices to say that the former confers on the registrar powers to enter judgment in uncontested cases and consent judgments, to deal with formal steps preliminary to the trial and with interlocutory applications and to make formal orders in execution of decrees; and the latter empowers the*  
20 *registrar to handle matters governed by specified rules and Orders of the CPR, which do not include any rule of Order 46. Clearly, the power to review judgments or orders of the High Court, (including those entered by the registrar) is not among the powers delegated to the registrar. In the circumstances, the prohibition under rule 4 was not applicable since the*  
25 *registrar who passed the decree was not empowered to review it. I find, in*



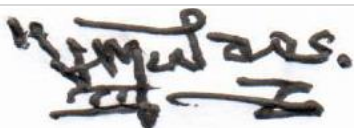
*respectful disagreement with the Court of Appeal, that by entertaining the application in the instant case the trial judge did not breach any rule.”*

It follows therefore that a registrar has no powers to review his or her own decisions. All decisions by the registrar are decisions of the High Court. It is only the judge who has the jurisdiction to review a decision of the High Court. This preliminary objection is overruled.

**Issue No. 2: Whether a representative order in Civil Misc. Application No. 107 of 2021 should be set aside.**

**Submissions for the Applicant:**

It was submitted for the applicant that the representative order issued by the registrar in Misc. Application No. 107 of 2021 was irregular and thus illegal and should be set aside. That the requirements of Order 1 rule 8 were not complied with which are mandatory in nature. That the order ought to have been secured before filing the suit and after securing the order, the same should have been advertised in the news papers of wide circulation which was not the case in the current suit. That the Respondents together with others who were 91 in number had filed a suit and the applicant had filed a defense and a suit was already competently before court. It was contended that in these circumstances, a representative order could not be issued. Learned counsel cited a number of authorities to support his submissions to wit; *Uganda Freight Forwarders Association & Anor Vs. A.G & Anor, C.S No. 22/2009, Paul Kayima Vs. R Ruhoora (1982) HCB 33 and*

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*Tarlogan Sing Vs. Jaspal Phaguda & others (1997-2001) 1 UCLR 308 at 410* and asked court to set aside the representative order and strike out the suit with costs.

**Submissions for the Respondent:**

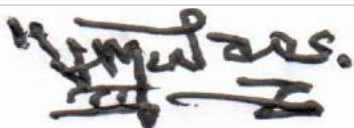
- 5 In Response Mr. Michele contended that this application is improper before this court since the applicant if he was aggrieved by the order of the registrar ought to have appealed against the same under Order 50 rule 8 instead of seeking a review.

He further contended that HCT – 01 – LD - CS – No. 0040 of 2021, Baluku Moses  
10 & others was not filed as a representative suit. That it was a suit where the 91 plaintiffs sued the applicant and when the case came up for directions, the plaintiff applied for a representative order for purposes of convenience to ensure a few keep attending court as representatives of the rest. It was contended that the application was served upon the applicant who never opposed the same.

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Learned counsel further contended that under Order 1 rule 12 of the Civil Procedure Rules, where there are more plaintiffs than one, the rest can authorize any one of them to represent them. It was submitted that the above Order was followed in determination of Misc. Application No. 107 of 2021. That if the Order  
20 is set aside, the case will still go back to the original position before the order was granted which will delay the hearing and disposal of the same. Learned counsel contended that the current application was thus misconceived and intended to waste court's time and thus should be rejected with costs.

25 **CONSIDERATION BY COURT:**

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This representative order herein was issued by the Assistant Registrar on 17<sup>th</sup> March 2022 and since then no action was taken by the Applicant to challenge the same. Order 50 rule 8 provides for the mechanism of challenging the decision of Registrar if a party is aggrieved, being an appeal within 7 days.

The alternative procedure is a review of the said order under Section 82 of the Civil Procedure Act and Order 46 of the Civil Procedure Rules. Although the applicant did not cite the appropriate law, a review of application shows that the substance sought to have the order of the Assistant Registrar in Misc. Application No. 107 of 2021 reviewed. I will thus for purposes of ensuring substantive justice treat this application as one for review.

Section 82 of the Civil Procedure Act is to the effect that:

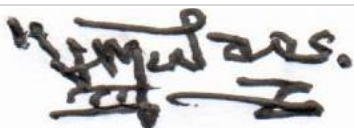
*Any person considering himself or herself aggrieved—*

*(a) by a decree or order from which an appeal 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 order, and the court may make such order on the decree or order as it thinks fit.*

Order 46 of the Civil Procedure Rules also states to the effect that a person to apply for review should be one that is aggrieved by the decision of court.

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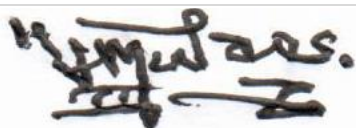


Section 82 of the Civil Procedure Act and Order 43 of the Civil Procedure Rules do not define who an aggrieved party is and the parameters of such. The terms have however been given considerable judicial consideration. In *Re Nakivubo Chemists (U) Ltd [1979] HCB 12* an aggrieved party for purpose of review was defined as a person who has suffered a legal grievance. Further guidance was given by Karokora JSC (as he then was) in *Muhammed Bukenya Allibai Vs. W.E Bukenya & Anor, SCCA No. 56 of 1996* observed that a person suffers a legal grievance if the judgment is given against him or his interest. Therefore, what clothes a person with locus standi to present an application for review is being an aggrieved party.

The Applicant in this case was the Respondent in Misc. Application no. 107 of 2021 which was determined in favour of the Respondent. The Applicant contends that the representative Order issued in Misc. Application No. 107 of 2021 was illegal and in contravention of the civil procedure rules and thus being aggrieved by the same seeks court to review the same and set it aside. The applicant is thus an aggrieved party.

O.46 (1) of the Civil Procedure Rules limits review upon proof of the following grounds:

*a) The discovery of new and important matter of evidence which after the 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,*

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- b) On account of some mistake or error apparent on the face of the record;  
or,  
c) For any other sufficient reason.*

5 Article 126 (2) (e) requires the court to administer substantive justice without undue regard to technicalities. Section 98 of the Civil Procedure Act gives this court power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. Section 33 of the Judicature Act also gives this court powers to grant all such remedies as any of the parties to a cause or  
10 matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided.

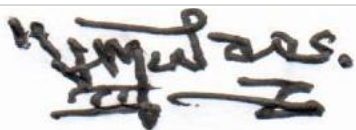
15 I shall be guided by the above considerations. In the current application, the applicant contends a representative order could not be issued when a suit is already filed in court. In response Mr. Mischele for the Respondent contended that the representative order was issued under Order 1 rule 12 of the Civil Procedure Rules which allows one of the parties to represent the rest.

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Order 1 rule 12 of the Civil Procedure Rules provides thus:

*Appearance of one of several plaintiffs or defendants for others.*

(1) *Where there are more plaintiffs than one, any one or more of them may be authorised by any other of them to appear, plead or act  
25 for that other in any proceeding, and in like manner, where there*

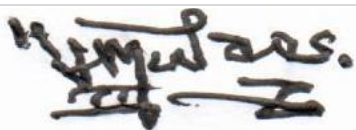
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*are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for that other in any proceeding.*

*(2) The authority shall be in writing signed by the party giving it and shall be filed in the case.*

Rule 12 covers a situation where there are more plaintiffs or defendants than one who instituted a suit and any one of them wants to authorize the other to prosecute or defend the suit on their behalf. In such circumstances the authorization must be in writing and filed in court as provided for under Rule 12 (2). Under Order 1 rule 12, a representative order is not required. What is required is authority in writing signed by the party giving such authority and filed with court.

Therefore, in the present suit, since a suit had been filed by the 91 plaintiffs as submitted by learned counsel for the Respondent and the rest wanted to authorize the Respondents to act, plead or represent them in Civil Suit No. 50 of 2021, they should have executed a written authorization as provided for under Order 1 rule 12 (2) of the Civil Procedure Rules. Therefore, I find that the representative order issued by the learned Assistant Registrar dated 18<sup>th</sup> March 2022 is erroneous, which in the circumstances of this case constitutes sufficient reason for this court to proceed under Section 33 of the Judicature Act, Section 98 and 82 of the Civil Procedure Act to review and set aside the same. The suit shall therefore proceed as filed by the 91 plaintiffs and if they so wish to authorize the Respondents, the proper procedure under Order 1 rule 12 (2) of the CPR should be followed.

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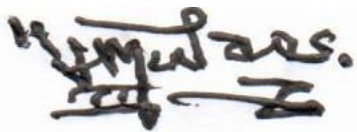
### **Remedies:**

The application therefore succeeds with no orders as to costs. The Applicant is denied costs as they had the opportunity to raise the matter during the hearing of the application for a representative order, in which case, the current application would have been avoided. I therefore grant this application with the following orders:

1. The representative order issued by the Assistant Registrar in HCT – 01 – LD – CV – CS – 0040 of 2021 is hereby reviewed and set aside.
2. The HCT – 01 – LD – CV – CS – 0040 of 2021 shall be heard and determined on the merits as presented by the 91 plaintiffs.
3. Those plaintiffs wish to authorize the others to represent them should follow the proper procedure under Order 1 rule 12 (2) of the CPR.
4. The HCT – 01 – LD – CV – CS – 0040 of 2021 is accordingly fixed for mention on the 10<sup>th</sup> day of July 2023.
5. Each party shall bear own costs.

It is so ordered.

Dated at High Court Fort-portal this 8<sup>th</sup> day of June 2023.



Vincent Wagana

High Court Judge

FORT-PORTAL

