

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO.1979 OF 2022

5 ***(Arising Out of Miscellaneous Cause No.0078 Of 2022)***

(Arising Out of Civil Suit No.104 of 2017)

1. MUJWALA FRED

2. NABIWERE SARAH KIGONGO

(Administrators of the estate of the Late

10 **YOWERI**

NAKUBOOLA):.....APPLICANTS

VERSUS

COMMISSIONER LAND

15 **REGISTRATION:.....RESPONDENT**

Before: Lady Justice Alexandra Nkonge Rugadya.

Ruling.

Introduction:

20 The applicants through their lawyers, ***M/s Quest Advocates*** brought this application by way of notice of motion under ***Sections 82 & 98 of the Civil Act cap.71 and Order 51 of the Civil Procedure Rules SI 71-1*** seeking orders that the order of this court dismissing ***Miscellaneous Cause No.78 of 2022*** be reviewed.

25 The application is supported by the affidavit in support deposed by **Mr. Bwogi Timothy**, a legal assistant attached to ***M/s Quest Advocates*** in



which he deponed that sometime in June, 2022 the applicant filed **Miscellaneous Application No.78 of 2022** which was allocated to **Hon. Lady Justice Olive Kazarwe** and that although the same was served onto the respondent and had been fixed for hearing on 11th July, 2022, it did
5 not take off as court was indisposed.

That when the mother file was requested for by the trial judge **Miscellaneous Cause No.78 of 2022**, it was discovered that the mother file had been allocated to **Hon. Justice Asimwe Tadeo**, which led to the application being reallocated, and because the respondent had not filed a
10 response to the application by 11th July 2022, the matter was allowed *ex parte*.

That while the applicant's submissions in support of the application had been filed and served on the respondent, when the matter came up for hearing, the applicant was ordered to effect service on the officers of the
15 respondent which was done on 7th October 2022, and that Mr. Ssekabira Moses the Registrar of Titles acknowledged receipt thereof.

Additionally, that the respondent then filed an affidavit in reply, and a rejoinder thereto was filed by the applicants who through their counsel maintained that the respondent had ignored their requests to have the
20 decree of this court executed on the certificate of title.

That because this court did not consider the contents of the affidavit in rejoinder, **Miscellaneous Cause No.78 of 2022** was dismissed with costs to respondents and the applicant being aggrieved with the findings of this court filed the instant application for court to review its orders so that the
25 application can be heard and determined on its merits.

The application was unopposed by the respondent despite having been served with the same through counsel Moses Sekabira, who acknowledged service of the same on 12th December 2022.



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According to the case *of Samwiri Mussa versus Rose Achen (1978) HCB, 297* held that;

5 ***‘Where facts are sworn to in an affidavit and they are not denied or rebutted by the opposite party, the presumption is that such facts are accepted’.***

10 This application therefore binds the respondent. Her failure or refusal or/and neglect to file the affidavit in reply when she was duly served with the application is clear indication that she never intended to challenge the application. As a consequence, this court presumes that she admitted all facts contained in this application.

15 Submitting in support of the application, counsel for the applicants argued that the applicants had taken steps to cause the respondent to execute the orders of this court but the respondent ignored the same and that according to ***Miscellaneous Cause No.78 of 2022*** the applicant was in court seeking consequential orders to have the consent decree in ***Civil Suit No.104 of 2017*** executed after the respondent had ignored to execute the same.

20 A perusal of the order dismissing ***Miscellaneous Cause No.78 of 2022*** dated 2nd November 2022 reveals that this court presided over by ***Hon. Justice Asimwe Tadeo*** dismissed the said application on grounds that the same was not properly before this court because there was no evidence on record indicating that the applicants had applied to the Registrar, and that their application had been denied before coming before this court.

25 Court further noted that although this court has unlimited jurisdiction, it should be exercised judicially so as to allow the Commissioner Land Registration to perform its statutory duties before coming to courts, and that allowing applications of this nature will have the effect of denying the respondent its powers to perform its statutory duties.



Counsel for the applicant argues that the applications to the respondent were in form of letters made in August, 2016, and received by the respondent's office to wit the Registrar of Titles at Bukalasa on 9th and 18th August 2021, copies of which were attached to the affidavit in rejoinder and that this court which was informed of the said evidence wrongfully made the said orders.

Section 82 of the Civil Procedure Act Cap 71 and Order 46 rule 1 of the Civil Procedure Rules S.1 71-1 empowers court to review any judgment where a party has demonstrated that there is sufficient cause to do the same.

The rules are also clear that the judge who makes the order has the power to handle the application for the review of the order. In this instance however, the learned judge proceeded for his annual leave and the nature of the urgency was considered by court, based on the fact that the applicants were of advanced age and that this matter had been in court for close to six years.

This court also has the powers under **Section 98 of the Civil Procedure Act, Cap 71** to make such orders as may be necessary for the ends of justice as well as under **Order 9 Rule 23 of the Civil Procedure Rules**, to set aside dismissal on sufficient cause being shown.

Furthermore, in the case of **Re- Nakivubo Chemists (U) Ltd HCB 12**, it was held that the expression *sufficient* should be read as meaning sufficiently of a kind analogue to the discovery of new and important evidence previously overlooked by excusable misfortune and same mistake or error application on the face of the record.

It is not in dispute that the applicants prior to filing **Miscellaneous Cause No.78 of 2022** had by way of letter dated 2nd August, 2021 written to the respondent seeking to have the orders and decree of this court in **Civil Suit No.104 of 2017** executed so as to have the applicants registered as the proprietors of the land.



These were attached to the applicant's affidavit in rejoinder dated 17th October 2022, and which according to the Electronic Court Case Information Management System was filed on 18th August, 2022 before the application came up for hearing. The same was also unchallenged.

- 5 From the onset, it is clear that there was a mistake/ error by court in dismissing the order without due consideration of the requests made by the applicant to the respondent to execute the orders of court made under **Civil Suit No.104 of 2017**, orders which remain unchallenged and binding not only to the respondent but to this court as well.
- 10 Consequently, I find it would be a proper exercise of the discretion for court to grant this application.

The Commissioner, Land Registration shall upon presentation of a copy of the judgment under **Civil Suit No.104 of 2017**, duly certified by the court, execute the orders therein within a period of thirty days (30 days).

- 15 No orders as to costs.

I so order.

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Alexandra Nkonge Rugadya
Alexandra Nkonge Rugadya
Judge
14th February, 2023.

Delivered via
mail
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14/2/2023