

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**  
**MISCELLANEOUS APPLICATION NO 94 OF 2024**  
**(ARISING FROM HIGH COURT CIVIL APPEAL NO 70 OF**  
**2010)**

**JOHN MATOVU MULINDWA & 19 OTHERS;;;APPLICANTS**  
**VERSUS**

**1. NAIGA ROSEMARY**

**2. MASENGERE STEPHEN**

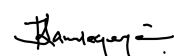
**3. MAGANDAZI LUBEGA ALOYSIOUS :::::::RESPONDENTS**

**BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA**

**RULING.**

**Introduction**

1. John Matovu Mulindwa and Others herein after referred to as the applicants brought this application against Naiga Rosemary, Masengere Stephen and Magandazi Lubega Aloysius hereinafter referred to as the respondents under Section 82 (a) and Section 98 of the Civil Procedure Act Cap 71, Section 33 of the Judicature Act Cap 13, Order 46



rules 1 and 8 of the Civil Procedure Rules for orders that;

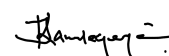
- i) The judgment and decree entered in the High Court Civil Appeal No.70 of 2010 be reviewed and/or set aside.
- ii) Costs of this application be provided for.

**Background;**

2. The 1st and 2nd respondents instituted an action against the 3rd respondent at the Chief Magistrates Court of Mengo. The Chief Magistrates Court determined the matter in favour of the 3rd respondent. The 1st and 2nd respondents were aggrieved and appealed the decision in the High Court which ruled in their favour. The 3rd respondent being aggrieved by the decision of the High Court appealed to the Court of Appeal which dismissed the appeal and upheld the decision of the High Court. The applicants now seek to review the decision on various grounds stated in their application. It is against this background that the applicants bring this application.

**Applicants' evidence;**

3. The application is supported by the affidavit of John Matovu which sets out the grounds for the application but



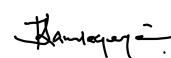
briefly are as follows;

- i) The Applicants are customary sub-clan heads (Ab'amasiga) in the Ngabi clan in Buganda Kingdom.
- ii) The Applicants are aggrieved by the Decision and orders of the Trial Judge in High Court Civil Appeal No. 70 of 2010.
- iii) There is a grave mistake and error apparent on the face of the record in High Court Civil Appeal No 70 of 2010.
- iv) That there is sufficient reason to review and/or set aside the Decree and orders of Court in High Court Civil Appeal No. 70 of 2010.
- v) It is only fair, equitable and in the interest of Natural Justice that this Application be granted by this Honorable Court.

**Respondents' evidence;**

**4.** The application is replied to by an affidavit in reply deposed by Nabukalu Rita which briefly states as follows;

- i) The 1st and 2nd respondents in this application filed Civil Suit No 671 of 2007 against the 3rd respondent in the Chief Magistrates Court of Mengo for recovery of 2



rolls of barbed wires and poles or their monetary value and an injunction restraining the 3rd respondent from trespassing on land belonging to the Late Edward Kasozi.

- ii) That the trial Magistrate delivered his judgment in favor of the 3rd respondent and held that the 3rd respondent was entitled to stay on the suit land.
- iii) That the 1st and 2nd respondent appealed to the High Court which ruled in their favor and ordered the 3rd respondent to vacate the suit land.
- iv) The 3rd respondent appealed to the Court of Appeal in Civil Appeal No 110 of 2013 which dismissed the appeal and upheld the decision of the High court.
- v) That there is no mistake apparent on the face of the record of the High Court Civil Appeal No 70 of 2010.
- vi) That the applicants were not party to the proceedings in the Magistrate Court, High Court and Court of Appeal.
- vii) That it is in the interest of justice that the application is dismissed with costs to the 1st and 2nd respondent.

**Representation;**

5. The applicants were represented by Mr. Matovu Ronald and Mugaga Everisto of MBS Advocates whereas there was no representation from the respondents. Both parties filed their affidavits which I have considered in the determination of this application.

**Issues for determination;**

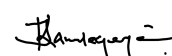
**Whether the applicants are entitled to the orders sought for in this application?**

**Resolution and determination of the issue;**

6. Applications for review are governed by Section 82 (a) of the Civil Procedure Act and Order 46 of the Civil Procedure Rules. **Section 82 of the Civil Procedure Act** which governs applications for review of court orders/judgments provides as follows; Any person considering himself or herself aggrieved–

***i) By a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or***

***ii) 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.***

7. Order 46 of the Civil Procedure Rules complements the above section by providing for the considerations when granting an application for review. It provides as follows; Any person considering himself or herself aggrieved–

- i) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or**
- ii) by a decree of court from which no appeal is hereby allowed, and who from the discovery of new and important matters of evidence which, after the exercise of due diligence, was not within his or her knowledge could not be produced by him or her at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desire to obtain a review of the decree passed or order made against him or her, may apply for review of judgment to the court which passed the decree or made the order.”** The above considerations were



reiterated in the case of ***Re Nakivubo Chemists (U) Ltd (1979) HCB 12.***

8. In the instant case, the basis of the applicant's case is that there is an error apparent on the face of the record in High Court Civil Appeal No.70 of 2010. In other words, the applicants seek this court to review its decision where it was sitting as an appellate Court.
9. In the present case, the pivotal question arises, Can the High Court, when acting as an appellate court, review its decision under any circumstances?
10. To begin with, there is no express provision that bars such a mechanism being set in motion in the High Court however from a mosaic of provisions read together a conclusive answer to the question can be deduced.
11. Section 82 (a) of the Civil Procedure Act states that any person considering himself or herself aggrieved by a decree or order from **which an appeal is allowed by this Act but from which no appeal has been preferred.**
12. The underlined statement is a clear indication that the framers anticipated an appeal would serve as a bar to a subsequent application for review and restricted allowance for such application during the pendency of an appeal was

*Handwritten signature*

provided for under **Order 46 rule (1) sub rule 2.**

**13.** Order 46 rule (1) sub rule (2) provides thereof that ***A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except where the ground of the appeal is common to the applicant and the appellant, or when, being respondent, he or she can present to the appellate court the case on which he or she applies for the review.***

**14.** The statement “appellate court” speaks to the fact that the provision makes a clear distinction between proceedings in the court to which an application for review is made and the appellate court with the pending appeal. It does not in any way make an allowance for an application for review to be made to the appellate Court.

**15.** Furthermore Section 82 of the Civil Procedure Act at the end is couched with the words ***“may apply for a review of judgment to the court which passed the decree or made the order”***. The provision is reproduced in **Order 46 rule 1 of the Civil Procedure Rules.**

**16.** The court referred to in the section and the rules as the

*Bamigboye*

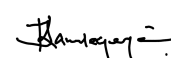


“court which passed the decree or made the order” is the court of first instance and not the appellate Court.

**17.** Therefore, a person is not expected to make an application for review elsewhere other than to the court which passed the decree or made the order.

**18. Order 46 rule 2** of the Civil Procedure Rules provides that ***An application for review of a decree or order of a court, upon some ground other than the discovery of the new and important matter or evidence as is referred to in rule 1 of this Order, or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the judge who passed the decree or made the order sought to be reviewed.***

**19.** The aforementioned order maintains that where a person relies on other grounds other than the discovery of new evidence and an error apparent on the face of the record for their application for review, such application shall only be made to the judge who passed the decree or made the order. This provision however does not bar such judge from hearing an application for review premised on other grounds other than the discovery of new evidence



and an error apparent on the face of the record. The condition is that the same judge should still be attached to the same court and where the Judge is not attached to the court or ceases to be a member of the bench the provisions of Order 46 rule 4 then apply.

**20.** Order 46 rule 4 provided that ***Where the judge or judges, or any one of the judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, the judge or judges or any of them shall hear the application, and no other judge or judges of the court shall hear the application.***

**21.** In the case of ***Outa Levi v Uganda Transport Corporation [1975] HCB 353*** it was observed that an application for review ought to be made to the judge who made it except where the said judge is no longer a member of the bench.

**22.** In ***Re Dr John Chrizestom Kiyimba Kato Misc Cause***



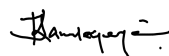
**No 29 of 1989** it was the court's observation that the applications for review should be filed in the same court that made the decision.

**23.** In the case of ***Erimiya Serunkuma v Elizabeth Nandyose [1959] EA 127*** it was held that High Court has no power to review its decision given on appeal under any special jurisdiction.

**24.** Based on the aforementioned legal provisions and authorities, it is evident that an application for review can exclusively be directed to the court that issued the decree or rendered the order. An appellate court does not align with this description, thus rendering any review application made before it legally inappropriate.

**25.** In the premises, it is the finding of this court that the application lacks merit and procedurally improper, and accordingly, the same is dismissed with costs of the application awarded to the 1st and 2nd respondents.

**I SO ORDER.**



**NALUZZE AISHA BATALA**

**JUDGE**

**19/02/2024**