

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
LAND DIVISION

MISCELLANEOUS APPLICATION NO 115 OF 2024

5 **(ARISING FROM MISCELLANEOUS APPLICATION NO 2687 OF 2023)**
(ALSO ARISING FROM MISCELLANEOUS APPLICATION NO. 1827 OF 2023)
(ARISING OUT OF CIVIL SUIT NO 528 OF 2021).

GRACE BAKUNDA & 3 OTHERS.....APPLICANTS

VERSUS

10 **MUTUMBA HUTHY DAT & OTHERS.....RESPONDENTS**

Before: Lady Justice Alexandra Nkonge Rugadya:

RULING

15 This application was filed under provisions of **sections 82 and 98 of the CPA, Cap. 71; section 33 of the Judicature Act, Cap. 13, article 28(1) and 44 of the Constitution and order 52 of the CPR.**

An affidavit in support was filed by the 1st applicant, Ms Grace Bakunda on her behalf and that of the 3rd and 4th respondents. (Copies of the authorization attached to the application). The 1st applicant is the registered owner of **plot 3345**, measuring 0.1010 hectares.

20 Another affidavit in support was filed by M/s Camilla Karungi Kaijuka, the 2nd applicant who is the registered owner of **plot 3336**, measuring 0.1010 hectares. The application seeks to have the interim injunction issued in **MA No. 2687 of 2023** reviewed and set aside; and for costs to be provided for.

Representation:



The applicants were represented by **M/s V. Agaba Advocates & Legal Consultants.**

I did not find any reply on record from the respondents.

5 **Consideration of the issue:**

I have carefully read the pleadings and submissions by counsel and I have taken all points raised into consideration.

It would appear that the plots affected by the order of court comprised in **block 192** following the subdivision included were **plots 3336, 3337, 3344 and 3345**
10 in dispute in this application were created from **Mengo Block 192 plot 124 and 181**, which is the subject of the main suit.

The prayers sought in this application are for:

- 15 1) *A review and setting aside of the interim injunction granted by court vide MA No. 2687 of 2023, in so far as it affects the properties of the applicants.*
- 20 2) *The properties comprised Mailo Register Kyadondo block 192 plot 3345 registered in the names of Grace Bakunda; Mailo Register in the names of Camilla Karungi Kaijuka; Mailo Register in the names of Sylvia Baguma; and Mailo Register in the names of Kisubi Michael Edward Nantamu be released from the injunction issued under MA No. 2687 of 2023*

25 The record indicates that the entire portion of land had been purchased in an auction conducted on the instruction of the liquidator of Greenland Bank, Bank of Uganda a transaction whose validity is being challenged by the plaintiff in the main suit.

It was the applicants' claim that a search carried out at the land registry revealed that the order was granted by this court under **MA No. 2687 of 2023**, to which



the applicants were never parties and which affected the land under whose names the applicants were registered.

Section 82 of the Civil Procedure Act states as follows:

5 “ **any person aggrieved by a decree or order from which an appeal is allowed, but from which no appeal has been preferred or by a decree or order which no appeal is allowed, may apply to the Court which passed the decree or order for a review of the judgment. The Court may make such order(s) as it thinks fit**”

10 **Order 46 r.1 Civil Procedure Rules** provides additional factors to be taken into account in applications for review:

15 “ **..... and who from 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 on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him or her,.....**”

20 The above provisions were re-stated in **Re-Nakivubo Chemist (U) Ltd (1979) HCB 12** where the three scenarios were considered by which a review of judgment or orders is allowed, that is:

1. **discovery of new and important matters of evidence previously overlooked by excusable misfortune;**
2. **some mistake apparent on the face of record;**
3. **for any other sufficient reasons.**

25 For a person to proceed under this section he/she must satisfy court that he or she is an aggrieved party; in other words, that person must have a legal grievance.



The instant application is premised on the ground that the applicants were not parties to the main suit or to the application under which the interim order was issued, which interfered with the enjoyment of their property.

5 The right to a fair a hearing is a guaranteed right under **article 28 of the Constitution** and is therefore inalienable.

The claim that the applicants were not parties to the suit and the offending application is not disputed. It constitutes sufficient cause and justifies the prayers sought in this application.

10 The applicants therefore have a legal grievance against the plaintiff who filed the application under which they were condemned unheard.

I would therefore allow this application, with costs payable by the plaintiff in the main suit.


Alexandra Nkonge Rugadya

15 **Judge**

4th March, 2024

*Delivered by email
4/3/2024*