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THE REPUBLIC OF UGANDA
IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPLICATION NO.29 OF 2017.

10 [CORAM: KATUREEBE, C.J, ARACH-AMOKO, MWANGUSYA, BUTEERA, JJSC,
NSHIMYE, Ag.JSC]

BETWEEN

15 ELIZABETH NALUMANSI WAMALA:..... APPLICANT

AND

20 1. JOLLY KASANDE
2. NABUKKERA ESTHER
3. RONNIE M. LUTAAYA } RESPONDENTS

[An application from the judgment of this Court in Civil appeal No.10 of 2015.]

Representation:

At the hearing of the application, Mr. John Paul Baingana represented the applicant. The first respondent was represented by Mr. Gilbert
25 Nuwagaba while Mr. Hakeem Muwonge represented the 2nd and 3rd respondents.

RULING OF THE COURT

This is a ruling for the application for review of the judgment of this Court delivered on 10th July 2017 in *Civil Appeal No.10 of 2015*,
30 *Nalumansi Wamala vs. Jolly Kasande and others*. The application was

5 brought under Rules 35, 42 (1), (2) and 2 (2) of this court, seeking to rectify alleged errors in the said judgment and for orders that:

1. *The final orders of the Court be amended to include:*

(a) *That Elizabeth Nalumansi Wamala is the lawful widow.*

10 (b) *That the alleged customary marriage between Jolly Kasande and the deceased was null and void abinitio.*

2. *The findings that the applicant (widow) is not supposed to share in the estate of her late husband on account of separation was a slip in the following aspects:*

15 (a) *The issue of the alleged separation was never pleaded or argued at all.*

(b) *There is no evidence that the appellant separated as members of the same household at the time of the deceased's death. As such, Section 30 of the Succession Act was*
20 *inapplicable*

3. *The costs of the application be provided.*

The grounds supporting the application for review as contained in the affidavit of Elizabeth Nalumansi Wamala are that:

25 1. *The applicant had sought a declaration that she was a lawful widow in Civil Appeal No.10 of 2015.*

30 2. *The judgment of the Court declared that the applicant was the lawful widow and that the deceased - Wilberforce Noah Wamala - did not have capacity to contract a customary marriage with the 1st respondent.*

- 5 3. *The Court in its judgment, made a finding that the widow would not benefit from the estate as a result of an alleged separation, which was never pleaded nor litigated upon.*
- 10 4. *Had the Court been addressed on the issue of the alleged separation, the evidence available on record does not lead to a finding that the appellant was separated from the deceased as a member of the same household.*
- 15 5. *It is in the interest of justice that court amends its judgment and orders to give effect to its true intention.*

Brief Background to the Application:

20 Prior to this application, the applicant was an appellant in this Court vide *Civil Appeal No.10 of 2015* (supra) wherein she *inter alia* faulted the Court of Appeal for holding that she was not the lawful widow and therefore not fit to administer the estate of her deceased husband. She also faulted the Court of Appeal for upholding the grant of Letters of Administration to the Administrator General even though the right procedure following the grant was not complied with.

25 On 10th July 2017, the Supreme Court delivered its judgment in the appeal. The Court *inter alia* held that the applicant was a wife to the deceased and the lawful widow. Nevertheless, the Court found that the applicant was not entitled to take an interest in the deceased's estate
30 because at the time the deceased passed away, they were not living as

5 members of the same household. Furthermore, the Court upheld the grant of the Letters of Administration to the Administrator General.

The applicant was aggrieved by the judgment for declaring her a wife and lawful widow of the late Wamala but denied her the right to
10 administer the deceased's estate and a right to have a share in the estate. Hence, the applicant invoking the slip rule, brought the present application to rectify the errors in the judgment.

Applicant's submissions:

In support of the application, counsel for the applicant submitted that a
15 final judgment of a court can be revisited where there are apparent errors, so as to give effect to what was the intention of Court. For this submission, counsel relied on the provisions of *Rules 2 (2) and 35 of the Rules of this Court* as well as the authorities of *Orient Bank vs. Fredrick Zaabwe & ano (Civil Appeal No.17 of 2007)*, *Lakharmishi Brothers Ltd*
20 *vs. R.Raja & Sons (1966) E.A 313* and *Fangmin vs. Dr. Kaijuka Mutabaazi Emmanuel (Supreme Court Civil Application No.006 of 2009)*.

Rules 2 (2) and 35 of the Rules of this Court provide as follows:

Rule 2(2):

25 *Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the court, and the Court of Appeal, to make such orders as may be necessary for achieving the ends of justice or to prevent abuse of the process of any such court, and that power shall extend to*

5 *setting aside judgments which have been proved null and void after they have been passed, and shall be exercised to prevent an abuse of the process of any court caused by delay.*

Rule 35:

10 *(1) A clerical or arithmetical mistake in any judgment of the court or any error arising in it from an accidental slip or omission may, at any time, whether before or after the judgment has been embodied in an order, be corrected by the court, either of its own motion or on the*
15 *application of any interested person so as to give effect to what was the intention of the court when judgment was given.*

20 *(2) An order of the court may at any time be corrected by the court, either of its own motion or on the application of any interested person, if it does not correspond with the order or judgment it purports to embody or, where the judgment has been corrected under sub rule (1) of this rule, with the judgment as so corrected.*

25 The first error pointed out by the applicant's counsel was that the Court in its judgment held that she was a lawful widow. However, the Court did not go ahead and include the same in its final orders.

Another error was that the Court did not clearly bring out its intention in the holding on ground 2. The said ground stated as

30 follows:

5 *The learned justices of Appeal erred in law when they found that there existed a customary marriage between the deceased and the 1st respondent without proof of any such a marriage, let alone it being registered, at the material time the appellant celebrated marriage with the deceased.*

10 The Court held as follows:

It is not on record that the marriage between the appellant and the deceased was dissolved prior to the deceased contracting a customary marriage with the 1st respondent. It therefore follows that the deceased did not have the capacity to enter a valid customary
15 *marriage with the 1st respondent. In the circumstances, I find that the High Court and Court of Appeal were erroneous in law. Therefore ground 2 succeeds.*

It was submitted for the applicant that the above holding was not clear. Counsel thus prayed that this Court amends the order of the
20 judgment as follows:

“The alleged customary marriage between Jolly Kasande, the 1st respondent herein and the deceased was null and void abinitio”.

Furthermore, counsel submitted that the holding of Court to the
25 effect that even if the applicant was the legal wife to the deceased, she could not take an interest in the estate because she was separated from the deceased as a member of the same household, was erroneous. That the error arises from the fact that Court considered the fact that she resided in the UK to mean she was not

5 living in same household [as provided for in Section 30 of the
Succession Act] with the deceased and had therefore separated
with the deceased. Counsel submitted that this was not pleaded in
the court below. To support his argument, counsel relied on the
case of *National Social Security Funds and anor vs. Alcon*
10 *International Ltd (Supreme Court Civil Appeal No.015 of 2009)*
wherein, it was held that, a court decision or relief on un-pleaded
matters or on an issue not properly pleaded before it for
determination is an error of law.

The applicant therefore prayed that the judgment be recalled so
15 that the above errors are rectified. The applicant also prayed for
costs of the application.

RESPONDENTS' REPLY:

1st Respondent.

The 1st respondent opposed the application and submitted that
20 there were neither clerical nor arithmetical errors in the judgment.

Counsel contended that the Court denied the applicant an interest
in the estate on ground that she had separated from the deceased.
He submitted that the court's finding was based on the evidence
given by the applicant herself. The evidence reveals that the
25 applicant on her own admission stated that although there was a
renewal of marriage vows between her and the deceased in 2010,
she had a casual relationship with Kasumba with whom she sired a
child (Sic). Furthermore, that she ordinarily lives in the UK where
she works as a nurse. On this premise, counsel submitted that the

5 Court was correct in holding that although the applicant was the legal wife, she could not take an interest in the estate and appropriately administer it.

In conclusion, counsel for the 1st respondent submitted that the applicant was calling upon this Court to sit in appeal of its own
10 judgment which is not permissible. In support of this submission, counsel relied on the authority of *Orient Bank Ltd (supra)* wherein it was held that the inherent powers of court under the slip rule must not be invoked to circumvent the principle of finality of a Court's decision.

15 **For the 2nd and 3rd respondents:**

Counsel submitted that the present application does not fall under the category of cases to which the slip rule applies. Counsel also relied on the authorities of *Orient Bank Ltd (supra)* and *Kwizera Eddie vs. AG (Constitutional Appeal No. 01 of 2008)* for the
20 submission that the slip rule cannot be used to correct errors of substance or attempt to add or detract from the original order. In addition, counsel submitted that the applicant's prayers were in fact addressed in the judgment. Therefore, the applicant's prayer to have the orders of court amended is untenable.

25 With regard to the submission that the Court denied the applicant an interest in the estate, counsel submitted that, the fact that the applicant left for the UK immediately after renewal of vows and only returned for the burial showed that there was separation. Therefore, there was no error or slip or mistake to warrant the

5 instant application. Counsel prayed that the application be dismissed with costs to the 2nd and 3rd respondents.

Applicant's rejoinder to the respondents' reply:

1st respondent

10 In rejoinder, counsel for the applicant submitted that the 1st respondent did not object to the first part of the application which seeks to amend the orders of Court. Therefore, this court should find that the applicant's prayers were not contested.

15 Counsel further submitted that the applicant was never separated from the deceased because she renewed her vows with the deceased in 2010 and agreed to return from the UK in 2012 to live with him. Furthermore, that it is a fact on record the applicant had at the time of renewing vows separated from Wilberforce N. Kasumba with whom she had sired a child. On this basis, counsel submitted that the Court erred in holding that the applicant had
20 separated from the deceased as members of the same household.

Counsel reiterated his earlier prayers that this Court allows her application and awards her costs.

Regarding the 2nd and 3rd respondents:

25 The applicant's counsel raised a preliminary objection to the 2nd and 3rd respondents' reply for having been filed out of time. However, without prejudice to the objection raised, counsel submitted that the 2nd and 3rd respondents counsel failed to

5 appreciate that the slip rule is an exception to the finality of court's orders.

That the slip rule serves to correct errors and mistakes in the judgment which if not corrected may cause injustice. Therefore, counsel submitted that it was in the interest of justice that the
10 judgment be recalled for rectification of errors.

Consideration of Court:

The law regarding the recall of a judgment by a court to be rectified is well known. Counsel for the applicant correctly cited
15 **Rules 2 (2) and 35 of the Rules of this Court** which allows a judgment to be recalled and any errors apparent on the face of the record rectified.

Indeed this Court, in its Ruling in *Obote William vs. Uganda (Supreme Court Criminal Application No.1 of 2017* while referring to the decision in *NPART vs. General Parts (U) Ltd*
20 *(Miscellaneous Application No.8 of 2000)* noted that recalling a judgment for rectification is not limited to the slip rule in Rule 35, but extends to the Court's inherent powers in Rule 2 (2) of the rules of this court.

What is left for our determination is whether the circumstances of
25 the present application warrant a recall of the judgment in Civil Appeal No. 10 of 2015.

5 From the submissions made, it can be deduced that the purported errors pointed out arose from the Court's interpretation of **Section 30 of the Succession Act.**

The applicant argues that the Court erred in its interpretation and application of Section 30 of the Act and thereby came to the wrong
10 conclusion that there was a separation and that the applicant would not take interest in the Estate of her deceased husband.

Section 30 of the Succession Act provides as follows:

Separation of husband and wife.

- 15 **1. No wife or husband of an intestate shall take any interest in the estate of an intestate if, at the death of the intestate, he or she was separated from the intestate as a member of the same household.**
- 20 **2. This Section shall not apply where such wife or husband has been absent on an approved course of study in an educational institution.**
- 25 **3. Notwithstanding subsection (1), a court may, on application by or on behalf of such husband or wife, whether during the life or within six months after the death of the other party to the marriage, declare that subsection (1) shall not apply to the applicant.**
- 30 **4. Section 38 (5) shall apply mutatis mutandis to an application made under Subsection 3 in determining whether a declaration under this Section should be made.**

We have carefully read the judgment which is the subject of the present application and the Court record from the Court of Appeal
35 which formed part of this court's record of appeal. We have found

5 it necessary to reproduce the following portions of the Court's
interpretation of **Section 30 of the Succession Act** from the lead
judgment:

10 *"My understanding of Section 30 is that it deals with cases
where although the legal relationship between an intestate
deceased and his/her partner was that of wife and husband at
the time of death, the parties were not living as members of
the same household. I also opine that the Section deals with
separation as a factual issue and does not limit its application
to legal separation resulting from a court order i.e. judicial
15 separation ...*

20 *I must also state that my interpretation of Section 30 is that
subsection 1 creates a general rule that a spouse who is
prima facie separated from the other as a member of the same
household is not entitled to any interest in the estate in case
the other spouse dies intestate ... It is on record that the
appellant resided in the UK where she was employed as a
psychiatric nurse. She therefore does not fall under the first
exception to the general rule. Furthermore, she did not apply
to court for a declaration that she be exempted from the
25 consequences of not living in the same household with the
husband at the time of his death. Consequently, by virtue of
the provisions of Section 30, I am in agreement with the Court
of Appeal decision that the appellant cannot take any interest
in the estate of her deceased husband ... I hold that she cannot
30 be granted Letters of Administration".*

5 The Court reached its decision and orders based on its interpretation of Section 30 of the Act. In *Kwizera Eddie vs. AG* (supra), Court cited with approval the case of *Ahmed Kawooya Kauga vs. Bangu Aggrey Fred CACA No.3 of 2007* wherein it was held as follows:

10 *Under the slip rule, court cannot correct a mistake or error arising from its own misunderstanding/ misinterpretation of the law even where such misunderstanding/misinterpretation is apparent on the face of the record.* (Emphasis of Court)

15 On further perusal of the record we found on page 113 of the record of appeal out of which the applicant appealed to this court under (*Civil Appeal No.10/2015*), in her evidence to the High Court, she stated:

20 "After marriage, my husband, the late Wamala was deported from U.K.in 1993. As for me I remained in the United Kingdom. My husband had joined me and was found working without a permi, hence the deportation I have one child with the deceased called Abigail Wamala. The deceased then engaged in another relationship with Jolly Kasande the 3rd defendant. I also engaged in another relationship with Mr. Wilson Kasumba and we produced two children.....

25 When I met the deceased in 2006 , he told me he had sold the home in Seguku and built another home in Mutungo. He requested that I come back to him and he was not happy

5 *without me. At that time, I refused to return to Uganda. But
in 2008, I agreed to return. In December 2010 (9th) we
renewed our marriage vows at Namirembe Cathedral. I
have the marriage.”*

10 The above evidence was neither challenged in the said Court nor in
the Court of Appeal. For purposes of the application before us, we
are unable to say that this court was not alive to the whole
evidence on record and issues involved.

15 While considering the import of section 30(I) of the Succession Act,
the court record clearly shows that the marriage between the
applicant and the deceased that was upheld by this court was
celebrated in UK. Their residence and the matrimonial home were
in U.K. The deceased husband of the applicant was unwillingly and
through the operation of the immigration laws of the UK was
deported and forced out of the country. It appears to us that the
20 physical separation of the two was a forced act of the operation of
the United Kingdom Law. Later the applicant came to Uganda and
she and the deceased renewed their vows at Namirembe Cathedral

25 In our view, legally, the marriage that was concluded and
celebrated in the UK remained the same marriage that was upheld
by this court. Be it as it may, even if this court could have made an
error in the interpretation of section 30(1) of the Succession Act, it
would not be corrected under the slip rule under rule 35(1) of the
rules of this court (*Kwizera Eddie vs AG*) Supra.

5 All the 3 orders that were made, were deliberately arising from the
decision and were extracted with the approval and under the
signature among others, of counsel for the applicant (See Annexure
E) to the affidavit in support of the application. In the
circumstances, the 1st leg of the application for our intervention
10 under the slip rule would fail.

The 2nd leg of the application is for this court to intervene under its
wide inherent powers under rule 2(2) of this court to make such
orders as may be necessary for achieving ends of justice. This
court found that the applicant was the lawful wife of the deceased,
15 but that she should not take benefit from her diseased husband's
estate for the reasons which were given.

Notwithstanding our above holding, that we may not intervene
under the slip rule' this court, may nevertheless under its
unlimited inherent powers review its final order in order to achieve
20 the ends of justice and logic. We should however, caution that this
court being the final court in the country, where the rule of finality
should strictly be observed, exercise of our inherent powers should
be invoked in the rarest of the rare circumstances.

In this application, we bear in mind the legal status and protection
25 of spouses in marriage and thereafter under article 31(1) and (2) of
the constitution.

In the circumstances of the case, we think that this is a proper case
where we should invoke our inherent powers under Rule 2(2) of the
Rules of this Court and order that the final order of this court

5 dated 30th August 2017 in Civil Appeal No.10 of 2015 be reviewed and amended to include a new paragraph 1 (b) reading as follows
“Elizabeth Nalumansi Wamala is the lawful widow and has interest in the estate of her late husband Wilberforce Noah Wamala.”

10 **Conclusion:**

1. The 1st part of the application under the slip rule (R.35) fails.

15 2. The 2nd part of the application under inherent powers of court (R.2 (2)) succeeds. We review and amend the order of this court in *civil appeal No. 10 of 2015*, to include an order that
Elizabeth Nalumansi Wamala is the widow and has interest in the estate of her deceased husband Wilberforce Noah Wamala.

We order that each party bears their own costs of this application.

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Dated at Kampala this 17th day of January.....2019.



25 BART KATUREEBE
CHIEF JUSTICE

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Arach

.....
STELLA ARACH-AMOKO
JUSTICE OF THE SUPREME COURT.

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Mwangusya

.....
ELDAD MWANGUSYA
JUSTICE OF THE SUPREME COURT.

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Buteera

.....
RICHARD BUTEERA
JUSTICE OF THE SUPREME COURT.

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Nshimye

.....
A.S. NSHIMYE
AG. JUSTICE OF THE SUPREME COURT.

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