

The Republic of Uganda

In the High Court of Uganda at Soroti

Miscellaneous Application No. 0005 of 2024

(Arising from out of Civil Suit No. 0010 of 2016)

10 Omiat Moses Applicant

Versus

1. Serere District Local Government
2. Atingu Joseph
15 3. Ejanyu Stephen Respondents
4. Okoja Sostine
5. Olinga Calvin

Before: Hon. Justice Dr Henry Peter Adonyo

20 Ruling

1. Introduction:

This application was brought by way of Notice of motion under section 98 & 99 of the Civil Procedure Act and Order 52 rules 1 & 3 of the Civil Procedure Rules for orders that;

- 25 a) This honourable court's decree dated 13th July 2022 in **Civil Suit No. 0010 of 2016: Omiat Moses versus Serere District Local Government and 4 Others** be

5 amended to add the following order that was inadvertently omitted therefrom:

"An eviction order doth issue against all the defendants from the suit land comprised of over 150 acres of land"

b) Costs of the application be provided for.

10 2. Grounds:

The grounds of this application as set out in the application and further expounded in the affidavit in support of the applicant are that;

1. On page 37 of the judgement of this honourable court in Civil Suit No. 010 of 2016: **Omiat Moses versus Serere District Local Government and 4 Ors**,
15 delivered on 15th June 2022, it was ordered as follows:

"This honourable court having found that the suit land belongs to the Plaintiff doth issue an eviction order against all the defendants from the suit land comprised over 150 acres of land."

2. A decree was extracted from the judgment in **Civil Suit No. 010 of 2016: Omiat Moses versus Serere District Local Government** on the 13th July 2022,
20 but the eviction order was inadvertently omitted.

3. Owing to the omission of the express eviction order in the decree, there's an ambiguity as to whether this Honourable court intended in its judgement that the Defendants who are trespassers on the plaintiff's land
25 should be evicted therefrom.

4. That it is necessary to amend the court's decree in **Civil Suit No. 010 Of 2016: Omiat Moses versus Serere District Local Government & 4 Others** by addition of the eviction order, for purposes of giving effect to Court's judgment by enabling the eviction of the defendants, who have been
30 adjudged as trespassers by this honourable court from the plaintiff's land.

5 5. The interest of justice will be achieved if the order sought is granted.

The 1st respondent in their affidavit in reply sworn by Otiira Gabriel the principal secretary/Ag. Deputy CAO Serere District denied the contents of the affidavit in support of the application stating that the judgment and the decision in Soroti HCCS No. 010 of 2016 is very clear and there is nothing to review.

10 That the law provides for court/judicial officer reviewing the judgment when there are clerical or mathematical mistakes in the judgement but in **HCCS No. 010 of 2016**, the judgment has no clerical or mathematical mistakes warranting review.

That it is the applicant who extracted the decree in **HCCS No. 10 of 2016** and it
15 was it his problem to not include all orders in the decree extracted.

The 2nd respondent in his affidavit in reply stated that he received the judgment and decree in **Soroti HCCS No. 010 of 2016** and the same is clear with nothing to review.

That review is available where clerical or mathematical mistakes are in the
20 judgment and he has not seen any clerical mistakes in the judgment in **HCCS No. 10 of 2016**.

3. Representation:

The applicant was represented by M/s Kania & Alli Advocates and Solicitors, the
1st respondent was represented by Attorney General's Chambers Soroti and the
25 2nd to 5th respondents were represented by M/s Ogire and Co. Advocates.

The matter proceeded by way of written submissions and the same will be considered in its determination.

5 4. Determination:

Counsel for the applicant raised two issues for determination in his submissions that is;

1. Whether there is a clerical error in the decree of the Court?
2. What remedies are available to the parties?

10 5. Whether there is a clerical error in the decree of the Court?

Counsel for the applicant submitted that sections 98 and 99 of the Civil Procedure Act when read together vest the court that issues a decree with very wide discretionary powers to correct mistakes in decrees or orders or errors arising in them from an accidental slip or omission.

- 15 Counsel relied on ***Lakhamshi Brothers Limited Vs Raja & Sons [1966] 1 EA 313*** where the court when considering the slip rule found amongst others that the slip rule in which the inherent jurisdiction of the court to recall a judgement in order to give effect to its manifest intention has been held to exist.

Counsel further submitted that this court clearly intended that an eviction order
20 issues against the respondents from 150 acres of the applicant's land and this intention was clearly spelt out in **paragraph 2 on page 37 of the judgment.**

He added that this honourable court's intention that the respondents should be evicted from the Applicant's land was further buttressed by the wording of declaration "b" and order "f" of the judgement of the court on page 39 of the
25 judgement wherein this court declared the applicant the owner of the suit land and issued a permanent injunction against the respondents.

That it could not be this court's intention that the defendants who were all declared to be trespassers on the plaintiff's land under Issue No. 3 of the judgment and against whom a permanent injunction was issued in the same

5 judgement should continue trespassing on the suit land in violation of court's orders.

Counsel further submitted that, however, this honourable court's eviction order was not expressed in the decree extracted from the judgment, as a result of which the defendants continue to trespass on the suit land with reckless
10 abandon, upon the unfounded premises that this honourable court never issued any eviction order against them and had it done so the decree would expressly state so.

Counsel finally prayed that this court finds that there was a clerical error in the decree in which the eviction order was omitted.

15 Counsel for the 1st respondent in reply submitted that it is a general rule that a judicial officer becomes *functus officio* after passing judgment and cannot revisit the judgment or purport to exercise judicial power over the same.

However, that there were exceptions under section 99 and 100 of the Civil Procedure Act which allows court to rectify clerical or mathematical errors in
20 order to give effect to the judgement.

Counsel added that it is important to note that this exception does not allow or permit a court to give an order which alters the judgment or orders made earlier.

Counsel added that there is no clerical or mathematical error in the judgment in **HCCS No. 10 of 2016** warranting review, the judgement and decree are not
25 contradicting. Counsel added that if the decree extracted by the applicant does not include what is contained in the judgement then the applicant should extract another order rather than applying for review.

Counsel prayed this application be dismissed with costs as its misplaced and it was the applicant's mistake to not include all orders in the decree.

5 Counsel for the 2nd to 5th respondents reiterated the submissions of the 1st respondent and I will not reproduce the same here.

6. Decision of Court:

Having considered the submissions of the parties and analysed the judgment in HCCS No. 10 of 2016 as well as the decree extracted therefrom I find that it was
10 the intention of this court to issue an eviction order against the respondents for the following reasons.

First on **page 32 of the judgement** under the issue of remedies available to the parties, this court outlined remedies available to the applicant and **under “e” an eviction order is listed.**

15 Court then proceeded to justify these remedies in detail under on **page 37 of the judgment the 2nd paragraph** as it noted thus;

The plaintiff further prayed that an eviction order be issued against the defendants from the suit land henceforth. This Honourable court having found that the suit land belongs to the plaintiff doth issue an eviction order against all the defendants
20 from the suit land comprised of over 150 acres of land.

However, on **page 38 and 39 of the judgment where court proceeded to outline its orders it omitted to add the order on eviction** and when a decree was extracted it contained the orders as indicated **on page 38 and 39 of the judgment.** It is herein that the applicant's prayer for rectification arises.

25 In respect of this application I would agree with learned Counsel for the applicant that Section 99 of the Civil Procedure Act, caters for correction/rectification of errors or omissions by Court in any **Judgments, Orders, Decrees or error arising in them from accidental slip** to give effect to the true and express intention of the Court. That is the Slip Rule.

clarity and it provides;

Clerical or mathematical mistakes in judgments, decrees, or Orders or errors arising from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

- 10 The corrections envisaged under Section 99 of the Civil Procedure Act is where the decision or ruling of court does not correspond with the order or judgment it purports to embody.

In *Uganda Development Bank Ltd Vs Oil Sees (U) Ltd; MA 15 of 1997 (SC)*; The Supreme Court held thus;

- 15 *"In a situation like that, the Court has inherent jurisdiction to recall its judgments in order to give effect to its manifest intention or what clearly would have been the intention of the Court had some matter not been inadvertently omitted, but the Court will not sit on appeal against its own Judgment in the same proceedings.*

- 20 *A slip order will only be made where the Court is fully satisfied that it is giving effect to the intention of the Court at the time when Judgment was given or in the case of a matter which was overlooked, where it is satisfied beyond reasonable doubt, as to the order which it would have made had the matter been brought to its attention. The applicant*
- 25 *must therefore prove that there was a clerical or arithmetic mistake in the judgment or any error arising from an accidental slip or omission which did not give effect to the intention of the Court when it passed the judgment."*

5 In the instant case, it is clear to me that upon the perusal of this Hon. Courts judgments and orders, there was, indeed, a clerical error which resulted in the omission of the order of eviction in the **final orders of this court in its judgment under pages 38 and 39 of the judgment**, making the decree which was later extracted also omitting the same though the body of the judgment clearly in its
10 conclusion provided for an order of eviction after the respondents having been found to be trespassers on the suit land.

However, this court in its judgment on page 37 issued an eviction order against the respondents when determining the remedies available to the applicant and, therefore, it was its intention that this order be given.

15 The resultant omission to add it in the final orders listed in the conclusion of the judgment was a slip and a clerical error which this court is empowered to correct by virtue of section 99 of the Civil Procedure Act.

By doing so this Honourable Court would be giving the full effect to its judgment.

The position of the law above being so which allows under the slip rule for such
20 corrections so as to give full effect to a court judgment, I would disagree with the submissions of counsel for the 1st respondent that it is a general rule that a judicial officer becomes *functus officio* after passing judgment and cannot revisit the judgment or purport to exercise judicial power over the same.

This court is not functus officio in respect of this application for there are
25 exceptions under section 99 and 100 of the Civil Procedure Act as pointed above which allows court to rectify clerical or mathematical errors in order to give effect to a court's judgement.

This is because this application merely seeks to have inserted an order reflecting the court's remedies as concluded on page 37 as therein the court clearly issued

5 an eviction order against the respondents while determining the remedies available to the applicant.

This application merely seeks to have inserted in the final orders what was omitted but is part and parcel of the judgment of this court.

10 By allowing this application, clearly there will be no alteration of any aspect of the judgment of this Honourable Court as the insertion of the order to the final orders of the court would merely correct the clerical error in the part of Orders thus a clerical error in the judgment in HCCS No. 10 of 2016 which squarely warrants the review of the final orders issued and which do not contradict the judgment of this Honourable Court.

15 Accordingly, since the decree extracted by the applicant does not include what is contained in the judgement of this Honourable Court at its page 37 then I would agree with the submissions of learned counsel for the applicant that this Honourable Court must rectify its summary of the orders it gave so as to align it with the body of its judgment under the slip rule procedure which would then
20 allow the applicant to extract clear order of this court.

The above considerations being so, I would allow this application and accordingly correct the Summary of Orders in this Honourable Court's judgement in ***HCCS No. 10 of 2016 Omiat Moses vs Serere District Local Government and 4 Others*** to include the order of eviction as prayed herein as is clearly seen from this
25 Honourable Court's judgment found on page 37 wherein the court clearly issued an eviction order against the respondents when determining the remedies available to the applicant.

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7. Orders:

- This application succeeds.
- These orders herein are thus issued under the slip rule and form part and parcel of the judgment of this court in HCCS No. 10 of 2016 Omiat Moses vs Serere District Local Government and 4 Others:

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"Orders:

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- a. *This suit is found to have merits and as such it succeeds.*
- b. *The plaintiff is hereby declared as the customary owner of a block of land comprised of approximately 150 acres situated at Kasilo village, Kamod parish, Bugondo sub county, Serere district which was owned by the late George William Amolo, the late father of the plaintiff who inherited from one Edieku, both of whom are since deceased.*
- c. *The plaintiff is awarded UGX 200,000,000/= as general damages as against the defendants jointly to be paid in equal amounts.*
- d. *The plaintiff is awarded UGX 70,000,000/= as against the 1st defendant as compensation for the commercial value of trees cut down by the 1st defendant which converted the same to its use thus unlawfully enriching itself from proceeds of the cut trees which are of high value.*
- e. *The plaintiff is awarded as against the defendants UGX 50,000,000/= as exemplary damages to be paid in equal amounts.*
- f. *There is hereby issued a permanent injunction against the defendants jointly and severally restraining them and their agents from further interferences and disturbance of the plaintiff's quiet enjoyment of the suit land.*
- g. *There is hereby issued an eviction order against all the defendants from the suit land comprised of over 150 acres of land.*

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