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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA KAMPALA LAND DIVISION

MISCELLEANOUS APPLICATION NO. 279 OF 2015

(ARISING OUT OF H.C MISC. CAUSE NO.07 OF 2011)

DR. TWINOBUHUNGIRO ASKA:..... APPLICANT

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VERSUS

THE ADMINISTRATOR OF THE ESTATE OF

THE LATE GEORGE WILLIAM KABUGO:..... RESPONDENT

CONSOLIDATED WITH

CIVIL APPLICATION NO 809 OF 2012

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(ARISING OUT OF HCMC NO 07 2011)

1. CHRISTOPHER KYANKU

2. JANE KYANKU :..... APPLICANTS

VERSUS

THE ADMISTRATOR OF THE ESTATE OF

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THE LATE GEORGE WILLIAM KABUGO:..... RESPONDENT

BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW

RULING

The Applicants herein filed this application under *Section 82 of the Civil Procedure Act (Cap 71)(CPA)* and *Order 46 of the Civil Procedure Rules (SI 71 -1) (CPR)* seeking for orders that

25 the vesting order dated 27.06.2011 issued in **HCMC No.07 of 2011** be reviewed and varied, that
the registration of the said vesting order vide *Instrument No KLA 549957* be cancelled, and costs
of this application be provided for. The grounds for the application are set out in the motion but
are briefly that;

1. ***That the Applicant acquired part of land situate at Buddo Block 351 Plot 604 by way of
30 exchange with Betty Byamugisha who had acquired the same from her father Mukiibi
Emmanuel Nsalabwa before the Respondent acquired an interest on the subject land.***
2. ***That the vesting orders in Miscellaneous Cause No. 07 of 2011 was abused and
misused to lay claim on the Applicant's land.***
3. ***That the Respondent did not disclose to court all the interests on Block 351 Plot 604
35 before the vesting order was granted***
4. ***That the Respondent deliberately applied for a vesting order on Block 351 Plot 604
which plot was curved out of Block 351 Plot 36 which is completely differently from
Block 351 Plot 14 that her late husband bought.***
5. ***That the Respondent did not disclose to the Honourable Court that the land that her
40 deceased husband bought was near the gate of Buddo whereas the land that she
purported to apply for vesting order is quite far from Buddo gate and fully occupied by
other people namely the Applicant, Mr. Mujima, Peter Mugwanya, Mrs. Jane Kyanku
and Emmanuel Mukiibi Nsalabwa, and as such could not be subject of a vesting order.***
6. ***It is just and equitable that the application be granted as prayed.***

45 Initially only **HCMA NO 279 of 2015** was fixed for hearing. However, it was later consolidated
and heard together with **HCMA No 809 of 2012** which was filed earlier in time after it emerged

that both applications have a common Respondent as a party, the subject matter, issues of law and fact, and the reliefs sought in both applications are the same.

The applications are supported by the respective affidavits in support sworn by Dr. Twinobuhungiro and Jane Kyanku the Applicants, which mainly amplify the grounds of the application stated above. I will therefore not reproduce the affidavits in detail in this ruling.

Background:

The Respondent, as the Administratrix of estate the late George William Kabugo her deceased husband, in 2011 applied vide ***HCMC No. 07 of 2011*** for a vesting order which was granted by this court. The order vested in her land comprised in ***Block 351 Plot 604*** land at Buddo (*hereinafter referred to as the suit land*). The late George William Kabugo in 1990 purchased 3 acres of land from Emmanuel Mukiibi Nsalabwa the administrator of the Estate of late Gideon Mukiibi Nsalabwa. The late George William Kabugo several times before his death asked for a certificate of title from Emmanuel Mukiibi Nsalabwa but all to no avail.

After she became the Administratrix of her late husband's Estate on 04.10 2009, the Respondent commenced the process of searching for the land her late husband had bought from Emmanuel Mukiibi Nsalabwa, but all her efforts proved futile. The Respondent, however, found out from the Land Registry that there was land comprised in ***Block 351 Plot 36*** which was registered in the names of Emmanuel Mukiibi Nsalabwa as the Administrator of the Estate of late Gideon Mukiibi Nsalabwa. She also learnt that the land was being subdivided and the residue of the subdivision was ***Block 315 Plot 604***, upon which she lodged a caveat. Thereafter, the Respondent filed ***HCMC No.07 of 2011*** for a vesting order vesting the suit land into her names

as the Administratrix of the Estate of her late husband, which was granted and is now the subject of this application for review.

70 The Applicants premised their application mainly on three grounds. The first one is that the land the subject of the sale between late George William Kabugo and late Emmanuel Mukiibi Nsalabwa was **Block 351 Plot 14** and not **Block 351 Plot 604** for which the Respondent was granted a vesting order. The Applicants contend that the land which the Respondent's late husband purchased was specifically described as being located near the entrance of King's
75 College Buddo, whereas **Plot 604** is far from the said entrance. To back up their contention, the Applicants adduced in evidence *Annexature "C"* to the affidavit of Dr. Twinobuhungiro Aska, which is a copy of a sale agreement dated 15.05.1992 between late George William Kabugo and late Emmanuel Mukiibi Nsalabwa, showing that the land in issue was **Plot 14**. In addition, adduced in evidence *Annexature "E"*, dated 16.06.1998 which is a copy of an
80 acknowledgement of the sale transaction in respect to **Plot 14** by Emmanuel Mukiibi Nsalabwa.

Furthermore, the Applicants relied on *Annexature "F"*, which a copy of a letter dated 09.05.2002 from the current lawyers of the Respondent to Nsalabwa Mukiibi in which the said lawyers was indicated that the subject matter of the sale was cordoned off with a barbed wire fence and had eucalyptus trees planted on it, yet **Plot 604** does not have the trees and is neither fenced off.

85 Based on the above facts the Applicants contend that that there was an error apparent on face of the record because whereas the Respondent attached to her application a copy of a sale agreement between her late husband and late Emmanuel Mukiibi Nsalabwa in respect of **Plot 14**, the vesting order was issued in respect of **Plot 604** which is occupied by the Applicants without according them a hearing at all.

90 The other contention of the Applicants is that that they have been in possession and occupation of the suit land prior to the Respondent obtaining the vesting order, while the Respondent has never been. The Applicants argue that these particular facts were never brought to the attention of the court by the Respondent when she applied for a vesting order, which if she had done so the court would not have granted the vesting order.

95 Counsel for the Applicants based on the above facts and submitted that **Section 166 RTA** requires that before a vesting order is granted, the party must have interest in the land, he/she must be in possession of the same land, and that the entry must have been acquiesced by the vendor of his representative. That in the instant application the Applicants had acquired their respective interests way back and they are in full possession of the suit land, and that the
100 Respondent who has never been in occupation of the suit land did not qualify for a vesting order.

The Respondent opposed the application essentially stating that she is the widow of the late George William Kabugo and the Administratrix of his estate. That by the order of the High Court, part of the suit land comprised in **Block 351 Plot 604**, was vested in her as Administratrix of the said Estate.

105 Further, she contended that she made known her interest to the whole world by lodging a caveat on the suit land, and that any purported transactions made by the Applicants during the subsistence of the caveat are unlawful. Based on these facts, the Respondent contended that the Applicants do not qualify as aggrieved parties within the meaning of the law since they were aware of her interest at the time they purchased the land, but went ahead and disregarded the law
110 on caveats.

The Respondent also stated that she carried out surveys in the presence of so many people and the Police and sometimes the Applicants were present, and that the grant of the vesting order to her did not in any way affect their occupancy rights. She further stated that she has no problem with the Applicants freely negotiating with her to purchase a mailo interest from her, and that
115 they will not suffer any injustice if the relief requested is not granted.

The Applicants were represented by *M/s. Asiiimwe, Naweje, & Co Advocates* together with *M/s. Jambo & Co. Advocates*, while the Respondent was represented by *M/s. Godfrey S. Lule Law Chambers*. Counsel filed written submissions and supplied copies of authorities on which they relied, and I am thankful to them for that. The following are the major issues for determination;

- 120
1. ***Whether the application discloses grounds for review of the court order in HCMC No. 07 of 2011.***
 2. ***Whether the Respondent will suffer any injustice if the court order in HCMC No. 07 of 2011 is reviewed.***
 3. ***What are the available remedies to the parties?***

125 ***Resolution of the issues:***

Issue No.1: Whether the application discloses grounds for review of the court order in HCMC 07 No. of 2011.

Section 83 CPA (supra) which provides for review of court decrees/ orders states as follows;

“Any person considering himself or herself aggrieved –

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

*(b) by a decree or order from which no appeal is allowed by this Act,
may apply for a review of the judgment to the court
which passed the decree or made the order....”* (emphasis added)

135 **Order 46 r.1 (a) and (b) CPR** more or less restate the provisions in similar terms, but make
added conditions to the effect that;

140 *“....and from the discovery of new and important matter or evidence, which after
the exercise of due diligence, was not within his or her knowledge or could not be
produced....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
sufficient cause.”*

It is quite apparent that for a person to competently bring an application for review, he or she
must first show that he or she is aggrieved and / or affected by the decree or order of court sought
to be reviewed. The phrase “any person considering himself aggrieved” was held in
145 **Re: Nakivubo Chemists [1979] HCB 12**, to mean a person who has suffered a “legal grievance”.
“Legal grievance” was defined in **Ex parte Side Botham in Re Side Botham (1880) 14 Ch. D
458 at 465** per James L.J as follows;

150 *“But the words “person aggrieved” do not really mean a man who is disappointed by a
benefit which he must have received if no other order had been made: A person
aggrieved must be a man who has suffered a legal grievance, a man against whom a
decision has been pronounced which has wrongfully deprived him of something, or
wrongfully affected his title.”*

From the above authorities it is obvious that that the phrase “person aggrieved” is of a wide import. In *Attorney General of Gambia vs. N’jie [1961] AC p 617 at page 634*, Lord Denning
155 aptly elucidated that;

*“The definition of James L.J. is not to be regarded as exhaustive. Lord Esher M.R. pointed out in ex parte..... Official Receiver in Re Reed Bowen & Company that the words “person aggrieved” are of wide import and not subject to a restrictive interpretation. They do not include of course a mere busy body who is interfering in
160 things, which do not concern him, but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests.”*

Applying the principles in the cases cited above to facts of the instant application, it is in no doubt that the Applicants have uncontrovertibly demonstrated that they are; and have been in occupation of **Plot 604**, and were in the process of obtaining their certificates of title when the
165 Respondent served them with a court order vesting the same land into her names.

It is also evident from the unrebutted facts that the Applicants were never heard in the application that culminated into the order that vested the land they occupied into the Respondent’s names. The Applicants were never made parties to that application. Clearly, the decision to issue the vesting order was arrived at contrary to the principles of natural justice. It
170 would ordinarily require that the Applicants as persons to be affected by the order be given opportunity to be heard. That was not done despite the Respondent being aware that the Applicants were in occupation of the suit land. The Applicants were condemned unheard. It is now settled that a decision of a court or tribunal exercising judicial or quasi judicial power which is arrived at contrary to the principles of natural justice cannot be left to stand. See: **Musinguzi**

175 ***Geoffrey vs. Kiruhura District Local Administratio, HCMA No. 193 of 2011; Re: Interdiction of Bukeni Fred, HCMA No.139 of 1991 per Musoke – Kibuuka; Kasoro William & 5 O’rs vs. Bundibugyo District Local Administration, HCMA No.98 of 2007.***

At any rate, the fact of the Applicants’ occupation of the suit land has never been disputed by the Respondent; even in the instant application. It is premised on these facts that this court finds that
180 the Applicants have amply demonstrated that they are “aggrieved persons” within the meaning of the law.

Other criteria under ***Order 46 CPR (supra)*** that the Applicants are required to demonstrate for a decree or order of court to be reviewed is that there has been;

185 ***“...discovery of new important matter or 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.”***

I will begin with the phrase “error apparent on the face of the record”. In ***Kanyabwera vs. Tumwebaze [2005] 2 E.A. 87***, the court relied on the ***AIR Commentaries: The Code of Civil Procedure by Mohar and Chitaley Vol. 5, (1998)*** and held as follows;
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“In order that error may be a ground for review, it must be one apparent on the face of the record, i.e. an evident error which does not require any extraneous matter to show its incorrectness. It must be an error so manifest and clear that no court would permit such an error to remain on record. The error may be one of fact, but it is not limited to matters of fact and includes error of law.”
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In the instant application, the Applicants adduced evidence showing that that land the subject of the sale between late George William Kabugo and Emmanuel Mukiibi Nsalabwa is **Plot 14** and not **Plot 604**; the latter of which the Respondent obtained the impugned vesting order. Indeed, Counsel for the Respondent acknowledged that much in the submissions that the Respondent
200 knew that the land that her late husband bought was **Plot 14**. That she searched for it only to find out that it was not there. Therefore, the vesting into the Respondent's names of land in **Plot 604** which is different from that described in the sale agreement, a copy of which was attached to her application, amounts to error apparent on face of the record and it calls for a review of the said order.

205 Most importantly, the fact that the land that the Respondent's late husband bought was **Plot 14** and not **Plot 604** was never brought home to court by the Respondent when the application a vesting order was being considered. Under normal circumstances the court would not have proceeded to issue the order vesting land in **Plot 604** to the Respondent. My finding in this regard is further fortified by the fact that in matters concerning registered land, courts are usually
210 highly guided by the description of the land. In the application the evidence attached of sale agreement clearly related to and described the land as **Plot 14**. That ought to have been properly construed as the intention of the vendor and purchaser in the absence of evidence to contrary evidence showing that the parties' intention was different. The description of the subject matter of the sale in the agreement (*Annextures "A"*) as **Plot 14**, and not **Plot 604**, is a clear pointer to
215 an error apparent on the face of the record. It is also a clear pointer to the parties' intention of having transacted in **Plot 14** and not **Plot 604**. This affords sufficient ground for a review of the impugned order.

On basis of the same facts, I find that there is new and important evidence, which after the exercise of due diligence, was not within the knowledge of court, which could not be produced at
220 the time when the vesting order was issued. This in some way is another aspect of and a consequence on account of some mistake or error apparent on the face of the record as already found above.

The Applicants were not parties to **HCMC No. 07 of 2011**, and hence could not bring out the particular facts as they relate to their occupation and interest before court. The Respondent who
225 was the Applicant in the earlier application also never brought these facts to the attention of the court. These crucial facts would inevitably have affected the outcome of the orders sought if they had been availed to the court at the time. Without doubt such facts constitute new discovery before the court which renders the impugned order a subject of a review.

Before taking leave of this particular point, it is called for to comment on **Section 167 RTA**
230 (**supra**) which was cited by Counsel for the Applicants under which applications for vesting orders are usually brought. Counsel argued that an applicant must meet certain criteria under the provisions, and that the Applicant in **HCMC No. 07 of 2011** (now the Respondent) did not meet the set criteria since she has never occupied the suit land.

With great respect to Counsel, the submissions on that point raise substantive issues which are
235 not within the domain of the instant application. I must emphasise that the purpose of a review is to guard against injustice and abuse of court process because the court did not have the correct evidence before at the time of the hearing due to no culpable fault of an aggrieved person. An application for a review does not of necessity by mere fact of its being filed re-open questions decided by the order or decision sought to be reviewed. Those matters are only re-opened after

240 the application for review is accepted. The question whether a review application should be
accepted or rejected has to be decided with reference to the grounds on which review is
permissible, and not on the merits of the claim. The effect of the review is only to vacate,
reverse, or vary the impugned decree or order. As I have already stated above the purpose for
review is to guard against injustice and abuse of court process, and not to review the merits of
245 the case

***Issue No.2: Whether the Respondent will suffer any injustice if the court order in HCMC No.
07 of 2011 is reviewed.***

The other criterion in the application for review is whether the Applicants would suffer any
injustice if the order is not reviewed. The answer would be in the affirmative given the findings I
250 have already made above. The Applicants were not accorded opportunity to be heard as regards
to their interest and or rights to the suit land, yet they were, and still are, in physical occupation
and possession. It is my considered view that it would occasion an injustice to the Applicants if
the vesting order is not vacated.

Issue No 3: What are the available remedies to the parties?

255 Having found as above the following are the remedies available to the parties;

1. ***The vesting order dated the 27.06.2011 issued in HCMC No.07 of 2011 is hereby
reviewed and set aside.***
2. ***The registration of the vesting order vide Instrument No KLA 549957 is hereby
cancelled.***
- 260 3. ***The Applicants are awarded costs of this application.***



BASHAIJA K. ANDREW
JUDGE
30/11/2015