THE REPUBLIC OF UGANDA

IN THE SUPREME COURT

AT MENGO

(CORAM: WAMBUZI, C.J., ODOKI. J.S.C., & KAROKORA J.S.C)

CIVIL APPEAL NO. 56 OF 1996

MOHAMED ALLIBHAI……APPELLANT

AND

1. W.E. BUKENYA MUKASA)
2. DEPARTED ASIANS PROPERTY)……RESPONDENTS
   CUSTODIAN BOARD)

(Appeal from High Court Order of (Kityo J) dated 6th July, 1995

in

Civil Suit No. 522 of 1993)

JUDGEMET OF KAROKORA, J.S.C

The appellant in this appeal was nor a party to the original proceedings before the High Court where the consent judgment was entered. The suit before the High Court was between Wycliff Edmond Bukenya Mukasa now the present 1st Respondent and the Departed Asians Property Custodian Board now the 2nd Respondents.

The facts of the case before the High Court were that the Plaintiff was he registered Proprietor of the land comprised in Kibuga Block 10 Plot No. 175 at Namirembe.

The Plaintiff's predecessor in Title leased the Plot to Fazal Visram, an Asian, on the 25th day of May 1955 for a term of 49 years, with among others, a development covenant which the Asian fully satisfied.

After the expulsion of Asians in 1972, the building on the Plot in dispute fell under the Management of the 2nd Respondent/Defendant by virtue of the Assets of the Departed Asians Decree NO. 27/1973. In the exercise of its Managerial powers, the Defandant/2nd Respondent allocated the said Plot to persons without his knowledge or acquiescence.

During the subsistence of the occupancy of the Board s tenants of the premises on the land, which was in breach of express terms of the lease, the 2ndRespondent/Defendant failed, refused and/or neglected to keep the premises in good and tenantable repair to such an extent that the premises were in an extremely sorry state of disrepair to the extent of being unfit and dangerous for human habitation and were in an uninsurable state. And the Boards failure to keep the premises in good, tenantable condition and repair was a fundamental breach of lease Agreement which entitled the Plaintiff/1st Respondent to terminate the lease and take the property free from encumbrances and, to treat any occupants thereon as trespassers.

The Plaintiff/1st respondent in his suit for reentry prayed for inter-alia:

(a) An Order terminating the lease Agreement between the Plaintiff and the Defendant Corporation for fundamental breach of the terms of the lease;

(b) An Order for vacant possession of the premises for fundamental breach of the covenants of lease;

(c) General damages for breach of contract; and.

(d) Costs of the Suit.

In their written statement of defence, the defendant denied the contents of paragraphs 3, 4,5,7,8 and 9 of the plaint and prayed for dismissal of the suit with costs. However, on 24th February, 1994, by consent of both parties, judgment was entered in the following terms:

(i) Plot No.175 Kibuga Block 10 Hoima Road, LRV 340 Folio 11 which was leased to Fazal Visram, a Ugandan Citizen, did not become expropriated

property so as to fall under the Expropriated Properties Act of 1982;

(ii) The Defendant DAPCB did not acquire any legal or equitable right, claim or interest in the property and could therefore not offer any valid and legal right of occupancy or tenancy to any tenant;

(iii) Since the said Fazal Visram did not apply and had not applied for repossession of the above property, the Plaintiff being the proprietor of the property is free to re-entry or seek re-entry to the property.

On 15th March, 1995 Mohamed Allibhai/Attorney of Visram Sherali Fazal son and Executor of the deceased's /Fazal Visram's) Will, filed an application by Notice of motion under Order 42 rr 1 (b) & 8 of Civil Procedure Rules and Section 83 and 101 of the Civil Procedure Act (C.P.A.) for review of the High Court consent judgment dated 24th February, 1994 and for all the orders and decrees arising from and/or incidental to the afore-said consent judgment to be reversed and/or set aside.

When the application came up for hearing, the learned trial Judge dismissed it with costs as the applicant had neither made a clear and specific complaint of what actually happened and what injuries he had suffered as a result nor indicated as a claim what common non-disclosure and by who and why the mandatory requirement of provisions of Order 42 of CPR should be waived.

The appellant was not satisfied with the Ruling/Decision of the Learned trial Judge and hence this appeal. Two grounds of appeal were filed in the Memorandum of Appeal:

1. That the learned trial judge erred in holding that there was no sufficient evidence in support of the application for review of the consent judgment dated 24th February, 1994 and the consequential decree dated 7th March, 1994;

2. That the learned trial judge erred in fact and in law in n holding that:

a) The appellant being the legal representative of the deceased lessee of the suit property, the late Fazal Visram, was a person aggrieved by the said consent Judgement dated 24th February, 1994 and consent decree dated 7th March, 1994;

b) That the evidence on record was sufficient to prove to the appellants claim that the aforesaid consent judgment and decree were made under a misrepresentation of the true state of the material facts and the laws.

It was proposed to ask for the following Orders:

(a) That the appeal be allowed with costs here and below;

(b) That the consent decree and all the Orders arising out of and/or consequential upon the aforesaid consent judgment be reversed and/or vacated:

(c) That the 1st respondent does account for all the rent received from the suit property for the period effective from the month of November 1994.

When the appeal came up for hearing, Mr. Muzambi Kibedi submitted the appeal was based on two grounds but the question that was to be determined first was whether the appellant was an aggrieved party. There is no doubt that there is no statutory definition of legal grievance. We were referred to Section and 101 of CPA and Order 42 r.1 (b) of CPR as relevant provisions where any person who considers himself/herself aggrieved by at decision of the court can seek review of that decision and instances under review can be sought.

Review can be sought where-

(a) a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is hereby allowed.

It was submitted by Mr. Kibedi for appellant that any person considering himself aggrieved in Section 83 of CPA and Order 42 r.1 (b) include a third party who was not a party to the original proceedings. We were referred to the Code of Civil Procedure 10th Ed. Volume 5, 1908, as an authority for the proposition that under the powers conferred by Section 101 of CPA, where a third party is affected by an Order of the Court, the Court, can under it inherent powers review its decision if it is found necessary for ends of justice or to prevent abuse of the process of the Court.

It must be noted that the decree sought to be reviewed has been entered by consent of both parties, now respondents. There is a wealth of authorities to the effect that a consent Judgement may be set aside for fraud, collusion or for any reason which would enable the Court to set aside an agreement. The above view was expressed in the Case of Hirani v Kassam (1952) 19 EACA 131 Similar views were expressed by the Court of Appeal for Easter Africa where an appeal against the review of consent judgment was allowed with costs in Brooke bond and Liebag (T) Ltd v Maliya (1975) EA 266. In that case the Court quoted the following passage from Seaton of judgments and Orders 7th Ed. Volume 1 at page 124 with approval:

> "Prima facie, any Order made in the presence and with the consent of Counsel is binding on all parties to the proceedings or action and on those claiming under them……. and cannot be varied or discharged unless obtained by fraud or collusion or by an agreement contrary to the policy of the Court……or if consent was given without sufficient material facts, or in misapprehension or in ignorance of material facts or in general for a reason which would enable the Court to set aside an agreement."

There is no doubt that a judgment based on fraud must set aside under the inherent powers of the Court under powers conferred upon this court by Rule 1 (3) of the Rules of this Court. See Livingstone Sewanyana v Martin Liker C.A. No.4/1991 SC (unreported). However, in the instant case there was no fraud or collusion alleged and no evidence of the same was called to prove them. It appears there was evidence of common mistake as to the effect that the suit property did not fall under Act 9/82. They relied upon the decision of Lutaya v Gandesha HCCS No.860/1982 (unreported) when there was already a Supreme Court decision which had over-ruled Lutaya's case. See The Registered Trustees of Kampala Institute v Departed Asians Properties Custodian Board C.A. No. 21/1993 (SC) where the S.C held that such property as the suit property fell under the ambit of Section 1 (1) (c) of the Expropriated Properties Act 9/82.

Therefore in view of the above, the consent judgment must have been entered per incuriam as to the law that applied to the facts of the case. Both the plaintiff and the defendant, who are now both respondents, must have been labouring under Common mistake when they entered consent judgment and therefore a judgment of such a nature would be void as between the parties. See Bell V lever Bros Ltd (1952) AC 161. In the circumstances and bearing in mind

the case of Hirani V Kassam (1952) 19 EACA 131 AND Brooke bond and Liebig (T) Ltd v Mallya (1975) EA 266, such consent judgment would be set aside as between both the respondents. But then, that would not solve the appellant's grievance as he was not a party to the
consent judgment.

I must now deal with the question of whether or not the appellant not having been a party in the original proceedings which resulted in the consent judgment sought to be reviewed had no right to present the application for review under Section 83 and 101 of CPA and Order 42 r 1 of CPR. In other words, the question is whether or not the appellant was an aggrieved party so as to be able to bring the application.

In Re: Nakivubo Chemists (U) Ltd and in the matter of the Companies Act (1979) HCB 12, where Yusuf Nokrah (1971) EA 104 was cited with approval that an aggrieved party includes any party who has been deprived of his property. I do agree that an aggrieved person within the meaning of Section 83 of CPA and Order 42 r 1 means a person who has suffered legal grievance.

It must, be noted that in this case, the appellant was not involved in the litigation which resulted in the consent judgment sought to be reviewed/set aside. In my view, despite the consent judgment, he was and he is still free to pursue his legal rights in the Court of Law. Otherwise he is a stranger, as it were, to those proceedings which resulted into the consent judgment. Mr. Kibedi, Counsel for appellant referred to 10th Ed. of Commentaries on Civil Procedure Code 1908 Volume 5 page 449 as an authority for the proposition that where a third party was affected by an Order of the Court, the Court can, under its inherent powers, review the Order passed.

I would agree that the above principle applies, depending upon the peculiar circumstances of each case, but not the present case. For instance, in Kawdu v Berar Ginning Co. Ltd., Akot and Others 1929 AIR Nagpur 185, Narayan was not a party to tile proceedings. He applied to be joined as a respondent and his application was allowed. He contested the appeal on merit and succeeded in getting it dismissed.

In order to have ex-parte order, which had been made in Misc. Jud. Case of 46 of 1927 dated 30/7/1927 set aside, Narayan presented an application to the District Judge, praying for

review of the said order. Kawdu resisted the application on the ground that the application lacked Locus Standi as he was not a party to the proceedings which resulted in the Order sought to be reviewed. The District Judge allowed the application for review and set aside the Order dated 30/7/1927 although it had been too late for one day.

On appeal by Kawdu, It was half by the Court of Appeal inter-alia:-

> "Narayan was undoubtedly entitled to move the lower Court for a review of its Order under Section 151 of CPC (equivalent to our Section 101 of CPA). Narayan was known to appellant as a director of the Company during its existence and subsequently as a purchaser of its assets after its extinction and as the person who had successfully opposed the winding up proceedings started by the appellant. With the object of avoiding all possible objections which he might have raise, the appellant deliberately omitted to make Narayan a party either to the first appeal or to the proceedings in Misc. Jud. Case No. 46 of 1927 and secured an Order in the latter case behind his back, highly prejudicial to his vested interest."

The Court went on and stated:

> "I cannot therefore, conceive of a more flagrant example of an abuse of the process of the Court than the one taken advantage of by the appellant in securing an Order from the Court ex-parte, the very necessary opponent in the case. This was therefore pre-eminently a case in which the inherent powers of the court could be legitimately exercised by it in removing the apparent injustice done to Narayan in order to prevent an abuse of its process……..
>
> The next question was whether Narayan not having been made a party to the original proceedings which resulted in the passing of the Order sought to be reviewed, had no right to present the application for review under Order 47 r 1 of CPC, It is admitted that the Company must be deemed to have been a party to the previous proceedings because the Registrar of the Company represented it. But under Order 29 rr 1 & 2 read together with Section 141 of the Companies Act the Company could not be said to have been properly represented through the Registrar, because under the same provisions the only person who could legally put in appearance on its behalf would either be its secretary or one of the directors.

> It is not denied that Narayan was a director of the Company and I therefore hold that under the circumstance, Narayan should be deemed to have been a person considering himself aggrieved within the meaning Order 47 r 1 so as to clothe himself with a right to present an application for review. The learned District Judge has, in my opinion stated the proposition too widely……. when he held that any person aggrieved though not a party to the original proceedings could apply for review under order 47 r 1…….”

I have very carefully considered the facts of the above case vis-a-vis, the facts of the instant case before this court, but with respect, I have not been able to find anything in the instant case similar to the case in Kawdu v Berer Ginning Co. Ltd., Akot and Others (supra). For instance, there is nothing in the instant case where the appellant could, in the circumstances of the facts presented be deemed as a person. considering himself aggrieved within the meaning of Election 83 of CPA and Order 42 r 1 so as to clothe himself with a right to present an application for review as it was in Kawdus6ase (supra), In the instant case, apart from the grant of the Letters of Administration of deceased’s estate to Mohamed Allibhai (Attorney of Visram Sherali Fazal, son and Executor of deceased’s Will) dated 28th June, 1994, there was nothing from which either the defendant or plaintiff (new both respondents) could have known of the appellant, the third to the consent judgment. know there is an affidavit by Mohammed Allibhai the applicant paragraph 3 where he averred that by the time of the consent judgment he had already applied paragraph 3 where he averred that by the time of the consent judgment he had already applied for repossession of the suit property and that the DAPCB had received and acknowledged receipt of his application on 30/10/93.

If the above is the true position, then the application by the applicant for repossession on 30/l0/93 was made before the applicant became a legal representative, because, he obtained letters of administration to administer the estate of deceased on 28/6/94. It cannot therefore be true that the applicant, as administrator of the estate of the deceased, pursuant to the grant of the letters of Administrator of the estate of the deceased, pursuant to the grant of the letters of Administration dated 28th June, 1994, ever applied for repossession of the suit property. It would seem that an application made by the applicant for the repossession on 30/10/93 long before the applicant was granted letters of administration by the Court on 28/6/94 to administer the estate of deceased would be ineffective as the applicant had no legal status to administer the estate at that time. There was nothing from which an inference could be drawn

that the respondents knew of the applicant's interest in the Suit property which they attempted to defraud or defeat. In fact if he had been given repossession of the Suit property, there could be no reason why he never filed an independent suit against either of the respondents or both without any due regard to the consent judgment which did not concern him.

Finally, in my considered opinion the appellant, not having been a party to the proceedings which resulted in the consent judgment, sought to be reviewed, and there being no facts at the material time from which he could be considered as an aggrieved party within the meaning of Section 83 of CPA and Order 42 r 1 so as to clothe himself with a right to present an application for review, I would think, in all circumstances of the case, that he had no locus Standi to present the application for review. In my view after he had obtained letters of Administration to administer the estate of the deceased (Visram Fazal) he was and still is, free to file an independent suit against whoever is on the land irrespective of the consent judgment.

In the circumstance, since he had no locus standi to apply for review, the application for review was rightly dismissed.

Accordingly I would dismiss with costs to respondents.

Dated at Mengo this 15th day of August, 1996.

A.N KAROKORA,

JUSTICE OF TH SUPREME COURT

I agree with the conclusion reached by the learned Karokora J.S.C in his Judgement that this appeal must fail.

The appellant was not a party to the proceedings in the lower Court and the issue both in the lower Court and this Court is whether the appellant a stranger to the proceedings would successfully apply for review of the consent Judgement between the parties to the suit in the lower Court. The application was made under 0.42 rules 1 (1) (b) & 8 of the Civil Procedure Rules and Section 83 & 101 of the Civil Procedure Act.

Rule 1. (1) (h) of the Civil Procedure Rules provides:

> "Any person considering himself aggrieved-
>
> (a) ....
>
> (b) By a decree or order from which no appeal is hereby allowed,

and who from the discovery of new and important matter of evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him 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 f or any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of Judgement to the court which passed the decree or made the order."

On the wording of this rule the grounds upon which a review may be sought by an aggrieved person are:

(a) discovery of new and important evidence which was not within his knowledge and could, therefore, not be produced by him, or

(b) Some mistake or error apparent on the face of the record, or

(c) any other sufficient reason.

In any of these three situations an aggrieved party may apply for review of the judgement only if the decree or order was made against him. The words used are: "desires to obtain a review of the decree passed or Judgement made against him." Was the appellant an aggrieved party within the provisions of this rule?

The consent decree, the subject matter of the application for view in the lower court, was as follows:

CONSENT DECREE

By consent of both the plaintiff and the defendant It is decreed as follows:-

i. Plot No. 175 Kibuga Block 10 Hoima road LRV 340 Folio 11 which was leased to FAZAL VISRAM, a Ugandan citizen, did not become expropriated property so as to fall under the Expropriated Properties Act 1982.

ii. The defendant, DAPCB did not acquire any legal or equitable right, claim, or interest in the property and could therefore not offer any Valid and legal right of occupancy or tenancy to any tenant

iii. Since the said FAZAL VISRAM did not apply and has not applied for repossession of the above property, the plaintiff being the registered proprietor of the property is free to re-enter or seek re-entry to the property.

iv. Each party to bear its own costs.

The consent judgment, however, is coached in the following terms:

"CONSENT JUDGMENT

BY CONSENT of both the plaintiff and the defendant let judgement be entered in the following terms:-

1. Plot No, 175 Kibuga Block 10 Hoima Road, LRV 360 Folio 11 was leased to FAZAL VISRAM, a Ugandan citizen, therefore, did not become expropriated property so as to fall under the Expropriated Properties Act, 1982.

2. The defendant, therefore, has no legal interest or claim in the property and could not; offer any right of occupancy to any tenant.

3. Since the said FAZAL VISRAM did no apply for repossession the plaintiff is free to seek re-entry to the suit premises.

4. Each party shall bear its own costs.

It is to be noted that part from paragraphs 1 & 4 of the consent judgement and consent decree which are coached in more or less the same terms the remaining paragraphs 2 & 3 are coached in different terms and a different meaning is given. Whereas paragraph 2 of the consent judgement merely states:

> "The defendant, therefore, has no legal interest or claim in the property and could not offer any right of occupancy to any tenant,"

Paragraph 2 of the consent decree says:

> "The defendant DAPCB did not acquire any legal or equitable right, claim or interest in the property and could therefore, not offer any valid and legal right of occupancy or tenancy to any tenant."

Whereas similarly paragraph 3 of the consent judgment simply says:

> "Since the said FAZAL VISRAM did not apply for repossession the plaintiff is free to seek reentry to the suit premises",

The consent decree says:

> "Since the said FAZAL VISRAM did not apply and has not applied for repossession of the above property, the plaintiff being the registered proprietor of the property is free to re-enter or seek re-entry to the property."

No explanation was given for the disparity between the judgement and the decree in these paragraphs nor was any complaint raised. However, I find the position unsatisfactory and my suspicion at that in respect of paragraph 3 of the consent decree is that the insertion of the reference to the plaintiff "being the registered proprietor of the property is free to re-enter" which is missing the corresponding paragraph of the consent judgement Was in preparation for execution proceedings which followed.

It appears that if the decree maintained the wording of the judgement which was that, "The plaintiff is free to seek re-entry", I doubt whether execution proceedings could have been issued as the plaintiff was only entitled to seek re-entry and not to re-enter. Be that as it may I

have doubts in my mind as to whether to appellant is an aggrieved party within the meaning of rule 1 (1) (b) of the Civil Procedure Rules. The Notice of motion seeking review of the judgement was worded as follows;

"NOTICE OF MOTION

(Order 42 RR. 1 (B) (Sic) & 8 CPR & 8/83 & 101 CPA)

.

TAKE NOTICE that this honourable Court will on the 19th day of April 1995 at 9.00 o'clock in the fore afternoon or soon there after be moved by Counsel of the applicant above named in an application for the following orders namely:

1. That the consent Judgement entered by this honourable court in this suit on the 24th of February 1994 be reviewed;

2. That of the orders and decrees arising from and/or incidental to the aforesaid consent judgment he reversed and/or set aside;

3. That the suit may at once be heard and determined on its merits;

4. That the plaintiff does account for all the rent received from the suit property for the period effective from the month of November 1994.

5. That the costs of this application be granted to the applicant……"

No reason is given in these paragraphs for the review to bring the case within rule 1 (1) (b) of the Civil Procedure Rules. The notice however goes on to say:

"THIS APPLICATION is made under the provisions of the law aforesaid and based upon the reasons and grounds set out in the affidavit of Mohamed Allibhai, the applicant above named, filed herewith and upon the reasons and grounds set herein below and as shall be read and relied upon at the hearing of this application, namely:

1. That the consent judgment was based upon fundamental misrepresentation of both facts and law;

2. That it is just and equitable in the circumstances that the consent judgment be reviewed."

In his affidavit affirmed on 16th March 1995 the appellant alleged that the suit property falls within the ambit of the Expropriated Properties Act 1982 and that, therefore, the consent Judgment was based on a mistake of law or gross misrepresentation of the facts.

In the same affidavit, however, the appellant states that his interest in the suit property arose out of a grant to him of letters of administration on the 28th day of June 1994. The certificate of repossession of the suit premises was issued on 8th day of November 1994. The Judgement in question was given on the 24th day of February 1994 about four months before the appellant obtained his letters of administration to enable the appellant have any say in the affairs of the deceased and about seven months before the certificate of repossession was issued to enable the appellant have any interest in the suit property. In these circumstances the appellant could not have been an aggrieved party.

Learned counsel submitted at length about an application for repossession out I am unable to see how this could affect the re1ationhip between the two respondents. The issue was whether or not the second respondent controlled the suit property. Whether or not the appellant had applied for repossession could not alter the legal position between the respondents.

Further, the appellant did not apply nor express any intention to apply to be joined as a party to the action. How then were the parties expected to alter their positions if review were granted?

In Adonia vs. Mutekanga 1970 EA 429 the facts were briefly that the respondent, Mutekanga, obtained registration as proprietor of some land in 1950 as heir to Daudi Mutekanga under a schedule of distribution of the deceased's property. The appellant, Adonia, was to receive the land, the subject of these proceedings, under the same distribution. Adonia applied to the High Court for a vesting order under the Registration of Titles Act in order to obtain registration in the mailo register. The application was heard ex parte and an order was made as prayed. The order treated the registered

proprietor, Mutekanga, as having held the land as trustee for the appellant, Adonia. Later the appellant subdivided the land arid sold eleven acres to one George William Bakibinga and the sale was perfected by registration.

In 1966 the respondent, Mutekanga, filed a Notice of Motion t set aside the vesting order granted to the appellant, Adonia. The application was granted and the appeal was against that order.

In granting the application to set aside the vesting order the learned Ag. Chief Justice referred in his ruling to registration of the land, the sub division and subsequent sale of part of the land and said:

> "It seems that these transactions will be nullified, in the inherent jurisdiction of the court, as I react do, I set aside the vesting order."

It was submitted by Counsel for the appellant, Adonia, that inherent jurisdiction was not available as the respondent, Mutekanga, had a specific procedure available to him under the Civil Procedure Rules, but had not availed himself of it. The procedure was provided by 0.42 r.1 which permits application for review.

For the respondent it was argued that the Notice of Motion did not state what power was sought to he invoked and that it was really immaterial whether the Ag. Chief Justice exercised his inherent powers or the powers conferred by O.42 r.1 and suggested that the inherent powers had been preferred as it was doubtful if O.42 r.l was appropriate.

In his judgement Spry J.A. said:

> "In my view 0.42 r.1 was appropriately invoked, because the right to apply is not restricted to parties but is available to any person considering himself aggrieved, there was, I think, a 'mistake or error apparent on the face of the record in the fact that the application was heard ex parte and the vesting order though not expressed to be made against anyone, undoubtedly operated against the respondent, Mutekanga.
>
> On the other hand, there is no rule of law, as Mr. Kazoora implied, that inherent powers cannot be invoked where another remedy is available. The position, as I understand it, is that courts will not normally exercise their inherent powers where a

specific remedy is available and will rarely if ever do so where a specific remedy existed hut, for some reason, such as limitations, is no longer available."

In the instant case the judgement was not made against the appellant nor did it operate against him.

On the other hand any orders made against the second respondent pursuant to the judgment could not bind the appellant who was not a party to the action. If there was execution of the judgment by removing tenants, on the evidence these were the tenants of the second respondent not those of the appellant who was not in possession of the premises at the material time. The title of the appellant to the property is not affected by the consent judgment. The lease between the appellant and the first respondent is not affected by the consent judgment.

I would uphold the learned Judge in the lower Court that the appellant has not made out a case for review of the consent judgment.

As Odoki JSC also agrees with the judgment of Karokora, JSC there will be orders in the terms proposed by the learned Karokora, JSC,

Given under my hand at Mengo this 15th day of August 1996

S .W.W. WAMBUZI
CHIEF JUSTICE

I CERTIFY THAT THIS IS A
TRUE COPY OF THE ORIGINAL

MASALU MUSENE
REGISTRAR_SUPREME COURT.

JUDGMENT OF ODOKI J.S.C

I have had the benefit of reading in draft the judgment of Karokora JSC and I agree with him that this appeal must be dismissed.

The main complaint in this appeal is that the learned judge erred in holding that the appellant had failed to show that he was entitled to a review of the consent judgment entered between the first and second respondents in a suit of which he was not a party. It was argued for the respondents that the appellants did not have locus standi to apply for review under S.83 of the Civil Procedure Act and O.42 r.1 of the Civil Procedure Rules.

It is I think well established that while a third party may apply for review under the above provisions, the party must establish that he is an aggrieved person.

A person considers himself aggrieved if he has suffered a legal grievance. See Yusufu v. Nokrach (1971) EA 104, and In Re. Nakivubo Chemists (U) Ltd (1971) HCB 12, Ladak Adulla Mohamed Hussein v. Griffiths Isingoma Kakiiza and others Civil Appeal No. 8 of 1995 (unreported). A person suffers a legal grievance if the judgment given is against him or affects his interest.

In the present case, the appellant was not a party to the suit. He was a lessee of the first respondent who owns a mailo estate. The second respondent was a successor in title to the appellants' predecessor, Fazal Visram, when the latter was expelled from the country, until at the time of the consent judgment when it surrendered its claim to the suit property. The consent judgment recognized this position that the second respondent had no interest in the

property. It can be assumed that the property therefore reverted to the appellant as the former owner, irrespective of the application or otherwise of the Expropriated Properties Act 1982.

The consent judgment gave power to the first respondent to seek re-entry to the property. Although it is stated in the consent judgment that the second respondent for to re-enter since the appellants predecessor did not apply for repossession, I do not think that this makes the appellant an aggrieved party.

The appellant's rights against the second respondent existed independently, of those of the second respondent and were not affected by the Consent judgment. The appellant was still the registered proprietor of the lease. Therefore the second respondent could not re-enter the property except in strict compliance with the terms of the lease and the provisions of Section 102 and 113 of the Registration of Titles Act.

Under clause 4 of the lease agreement, the first respondent had power to re-enter the land or take possession of the premise if rent was in arrears for 30 days or on breach or non-performance of any covenant or condition expressly reserved in the lease. This clause gave the same powers as those given under S. 102 of the Registration of Titles Act.

In my opinion, the consent judgment merely stated the obvious. The power of re-entry was already there in the lease and therefore the consent judgment did not prejudice the appellant. Tb exercise of the power of re-entry is regulated by Section 113 o the Registration of Titles Act which provides-

> "In the case of a lease or sub-lease of land under this Act, if it is proved to the satisfaction of the registrar that the lessor or sub-lessor has re-entered upon the premises in strict conformity with the provisions for re-entry contained in the lease or sub-lease, or under the power of paragraph (b) of Section 102 of this Act, where the lease or sub-lease is under this Act, or that the lessee or sub- lessee has abandoned the leased premises and the lease, and that the lessor or his transfer has thereupon re-entered upon and occupied the said premises by himself or the tenants undisturbed by the lessee or sub-lessee, the Registrar may make an entry of such re-entry in the Record Book or in the sub-lease Register as the case may be, and the term for which the land was leased or sub-leased shall upon such entry being made, determine and may be removed as an incumbrance and may be removed as an incumbrance from a

certificate

but without prejudice to any action or cause of action which previously has commenced or has accrued in respect of any breach or nonobservance of any covenant expressed in the lease or sub-lease or any law declared to as implied therein."

Therefore in order to re-enter the property the firs respondent will have to comply with the lease and the procedure laid down in Section 113. It was not established that the consent judgment affected the appellant's rights and therefore I do not see now he could consider himself aggrieved within the above provisions of the Civil Procedure Act and Rules.

Secondly, the appellant did not have Locus standi to bring the application for review in his name since he was merely an attorney for Fazes visram and made the application before obtaining Letters of Administration. A person holding a power a power of Attorney can only bring proceeding in the name of the donor. See Kajubi v. Kayanja (1967) EA. The appellant only obtained a locus standi after being granted fetters of Administration. This was after he had made the application for review. As he had no locus standi in the matter, he could not consider himself an aggrieved party.

It follows that this appeal must he dismissed with costs.

Delivered at Mengo this 15th day of August, 1996.

B.J.ODOKI
JUSTICE OF THE SUPREME COURT

I CERTIFY THAT THIS IS A
TRUE COPY OF THE ORIGINAL

MASALU MUSENE
REGISTRAR SUPREME COURT.