THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA

AT MENGO

(COR: ODOKI J.S.C., ODER, J.S.C., & TSEKOOKO, J.S.C.)

CIVIL APPEAL 8/1995

LADAK ABDULLA MOHAMED HUSSEIN…….APPELANT

-VERSUS-

GRIFFITHS ISINGOMA KAKIIZA……1ST RESPONDENT

GRIFFIN KATO KAKIIZA……..2ND RESPONDENT

BATHLOMEW KAITA KAKIIZA……..3RD RESPONDENT

(Appeal from the Order of the High Court of Uganda (Ntabgoba P.J.) Dated 20th May, 1993 Civil suit No. 369 of 1991)

JUDGMENT OF ODOKI, J.S.C.

This is an appeal against the Ruling and Order of the High Court whereby a consent judgment entered by the Registrar of the High Court in a civil suit between the appellant as plaintiff and the Attorney General and the Departed Asians Property Custodian Board as Defendants, reviewed in favor of the respondents who were not party to the suit . The court ruled that the consent judgment should not apply to the respondents' property.

The appellant who is a Uganda Citizen of Asian extraction was the registered proprietor of Plot 4A Acacia Avenue Kampala, Plot 4B Acacia Avenue Kampala, and Plot 10 Younger Avenue Kampala. In 1972, following the expulsion of Asians by the Amin Regime, the appellant left the country. The property was taken over by the Government and managed by the Custodian Board.

In 1975, Plot 4B Acacia Avenue was allocated to one Khamis Wenn by the Custodian Board. Khamis Wenn obtained a loan from the Housing Finance Company by mortgaging the said property as security. He failed to repay the loan. Housing Finance Company sold the property by public auction to the respondents at Shs 11,600,000/= on 7th May, 1980. The respondents became the registered proprietors of the property in October 1980.

When the appellant returned to the country he made efforts to recover his property but failed. He then filed a civil Suit against the Attorney General and the Custodian Board in February 1991 claiming vacant possession of the three plots of land together with the mesne profits.

On 16.12.91, the Minister of State for Finance (Custodian Board) wrote a letter to the Appellant headed "Repossession of property situated at plot No 4B Acacia Avenue Kampala", which stated,

"Custodian Board has confirmed that documents you submitted regarding the above mentioned property (ies) appear to be in order. It is therefore in accordance with the law to inform you that you are free to repossess your property and the repossession is effective from the date of this letter."

On 29th January 1992, the parties drew up a consent judgment which was duly entered by the Registrar on 3rd February 1992, under 0.46 r.2 of the Civil procedure Rules. The consent judgment was in the following terms:-

"**CONSENT JUDGMENT"**

BY CONSENT of all parties to the above suit let judgment be entered as follows:—

(a) THAT the plaintiff is the lawful owner and registered proprietor of the property comprised in Plot 4A Acacia avenue .Kampala, plot 4 B Acacia Avenue Kampala and Plot 10 Younger Avenue.

(b) THAT the plaintiffs do repossess and take over vacant possession of the said property since as a citizen of Uganda the same was not subject to the Expropriation laws;

(c) THAT each party to this Suit bears its own costs."

After the consent judgment had been entered, the Minister of State for Finance wrote to the appellant another letter date 11th February 1992 revoking the letter of possession. The letter read,

"Re: PLOT 4 ACACIA AVENUE KAMPALA

Reference is made to your application to repossess the above mentioned property which belonged to you immediately before the Asian Exodus of 1972. In 1975, the Custodian Board properly possessed of the powers sold the property to Lt. Col. Yunus Khamis Wenn. Lt. Col Khamis Wenn mortgaged the property to Housing Finance company Ltd for a loan of 285,000/= (shillings two hundred and eighty five thousand). On default of payment of the loan Housing Finance Company advertised the property for sale to realize their mortgage. The property was consequently bought by Griffiths Isingoma Kakiiza, Griffiths Kato Kakiiza, and Bathlomew Kaita Kakiiza for 11,600,000/= (shillings eleven million six hundred thousand) in 1980. Griffiths Isingoma Kakiiza, Griffiths Kato Kakiiza and Bathlomew Kaita Kakiiza are bonafide purchasers of the property from Housing Finance company Ltd which sold it to realize their mortgage. Therefore there is no way one can deprive them of the property they acquired legally.

In light of the above information the property does not exist for repossession and you are therefore advised to apply for compensation from the Government. It was an oversight to issue you with a repossession document.

The purpose of this letter is to inform you that the repossession letter which was issued to you UC0024 is hereby revoked and should be returned to the source at the earliest. The Registrar of Titles has been notified appropriately and no legal transfer can be affected."

On 28th February 1992, the respondents filed a Notice of motion under **0.9 r.9 of the Civil Procedure Rules or Sections 83 and/or 101 of the Civil Procedure Act and 0.1 r. 10(2) of the Civil Procedure Rules,** for an order,

"(a) that the consent judgment and decree passed by the registrar on 3rd February 1992 herein to the extent they relate to plot No 4B Acacia Avenue Kampala, be set aside, ALTERNATIVELY

(b) that the said judgment and decree be reviewed.

AND

(c) that the applicants above named be joined in the Suit as defendants."

The respondents gave three grounds for the application. The first was that the judgment and decree declaring the plaintiff to be the owner of plot 4B Acacia Avenue Kampala and granting him repossession of the same property were passed without regard to or in ignorance of the fact that the respondents were the registered proprietors of the property and in lawful possession thereof.

The second ground was that the respondents were not made a party to the suit and were not given opportunity to defend the suit. The third ground was that the respondents as registered proprietors of the suit property ought to be joined in the suit as defendants to enable the court effectually and completely to adjudicate upon and settle all questions in the suit.

The appellant opposed the application on the ground that the respondents had no locus standi since they had no interest in the property as their purchase of the property had been nullified by the **Expropriated Properties Act 1982.** Counsel for the Attorney General admitted that he was not aware of the interest of the respondents at the time the consent judgment was entered as the file in the Land Office was lost. He had no objection to the setting aside of the judgment only in respect of Plot 4B. Counsel for the Custodian Board also conceded to the application as the consent judgment was entered into without knowing the correct position regarding the respondents' interest.

The learned Judge held that the respondents were bonafide purchasers for valuable consideration with regard to plot 4B acacia Avenue, and that the consent judgment should not have given the property to the appellant. He therefore reviewed the consent judgment so as not to apply to plot 4B Acacia Avenue. He held that the effect of the review was to declare that plot 4B Acacia Avenue vested in and belonged to the respondents.

Against that decision, the appellant has appealed on four grounds. The first ground is that the learned Judge erred in fact and law when he held that the respondents were bonafide purchasers of the suit premises for valuable consideration without notice, on the basis of an application to be joined as parties to the main suit. Mr. Mulira learned Counsel for the appellant submitted that by declaring the respondents owners of the suit property, the court denied the appellant a right to be heard and adduce evidence so that the real issues could be determined. He contended that by virtue of Section 1(2) (a) of the Expropriated Properties Act, all purchases of Expropriated Properties were nullified, and this affected the interest of the respondents. It was his submission that the proper order would have been to set aside the consent judgment and order the respondents to be joined as parties to the suit so that the rights of all concerned could be determined.

Mr. Mulenga for the respondents conceded that it appeared as if the learned Judge made a final decision that the respondents were bonafide purchasers but there was no specific holding on the issue. He merely held that the status quo be maintained.

The real decision, according to Mr. Mulenga was to exclude the respondents' property from the consent judgment. He also contended that the appellant was given a hearing in proceedings to set aside the consent judgment.

The reference to the respondents being bonafide purchasers is contained in the following passage in the ruling of the learned Judge:

"This is a case where it appears that the defendants (i.e. the Attorney General and the Custodian Board) if they had been aware of proprietary interest of the applicants, as bonafide purchasers for valuable consideration of plot 4B Acacia Avenue Kampala, would not have consented to be judgment whose effect would compromise the applicants such proprietary interest."

The learned judge appears to be accepting the view expressed by the Minister of Finance (Custodian Board) in his letter of 11th February 1992 that the respondents are "bonafide purchasers of the property from Housing Finance Company Ltd which sold to realize their

mortgage. Therefore there is no way one can deprive them of their property they acquired legally."

Indeed the learned Judge later concluded,
"In the circumstances I do review the consent judgment recorded by the Registrar on 3.2.92 so that it does not apply to plot 4B Acacia Avenue, Kampala and so as to give effect to the revocation letter reference MSF/DAPCB/5 dated 11th February 1992, addressed to the plaintiff by the Minister or state for Finance (C.B.). The effect of this review order is to declare that plot 4B Acacia Avenue, Kampala vests in and belongs to the applicants, namely Griffiths Isingoma Kakiiza, Griffiths Kato Kakiiza and Bathlomew Kaita Kakiiza."

It is not quite clear why the learned Judge thought that he was obliged to give effect to the revocation letter written subsequent to the consent judgment. But it is clear that he relied on the letter in coming to the conclusion that the respondents were bonafide purchasers. Of course there was also the affidavit sworn by the first respondent. But the appellant never submitted any affidavit in reply to contest the matter. Again it is not clear why this was not done, but may be he expected a fuller hearing to determine the rights of the respondents vis-à-vis his.

In my judgment, there was not enough material to enable the court to hold that the respondents were bonafide purchasers for value without notice. This does not mean that they may not be. But in my view this required evidence to be adduced by both parties in order to fairly determine it.

The same goes to the issue whether the suit property was governed under the Expropriated Properties Act and if so whether the purchase by the respondent was nullified by the Act and with what consequences. These matters could not have been fully dealt with under the application for review in lower court.
I would therefore hold that the learned Judge erred in making a definitive finding at that stage that the respondents were bonafide purchasers for value and in declaring the property to be vested in them. It is my view that such findings were premature and should have awaited the hearing of the suit property. I would therefore allow the first ground of appeal.

In the second ground of appeal, the appellant complains that the learned Judge erred in law when he purported to review the consent judgment between the appellant and the defendants in the suit, under 8.101 of the Civil Procedure Act and caused a miscarriage of justice when he gave judgment for the respondents who were not party to the suit. Mr. Mulira, for the appellant submitted that the learned Judge should not have reviewed the judgment and gone ahead to give effect to the Ministers letter. He contended that the Judge should have refused to review the judgment and gone ahead to give effect to the Minister's letter. He contended that the Judge should have refused to review the matter or in the alternative allowed the respondents to be joined as parties to the suit. His stand was that the respondents had no locus standi though they were free to bring an independent suit for a declaration that they were the rightful owners of the property in question.

Mr. Mulenga learned Counsel for the respondents submitted that the review was carried out under S.83 and not 101 of the Civil Procedure Act. He contented that the expression "any person aggrieved" in S.83 was not limited to the parties to the suit but included any person who was adversely affected by the decision; since the respondents were so affected, they were aggrieved persons and therefore had locus standi to bring the application for review, Counsel also argued that no judgment had been given in favor of the respondents, nor was property decreed in their favor as the learned Judge merely declared their interests.

It seems to me that the learned judge invoked both **Section 83 and 101 of the Civil Procedure Act,** as well as **Section 32 of the Judicature Act** in carrying out the review. This is borne out in his ruling where he stated,

"Alternatively this Court can, as said by Counsel for the applicant proceed under S.83 and S.101 of the Civil Procedure Act and the Court further has sufficient discretion and is also empowered by section 32 of the Judicature Act.

He immediately then went ahead to review the consent judgment. Section 32 of the Judicature Act provides,

“The High Court shall in the exercise of the jurisdiction ,vested in it by the Constitution, and written law or this enactment, grant absolutely or on such terms and conditions as it thinks just, all such remedies whatsoever as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined, and all multiplicities of legal proceedings concerning those matters avoided.”

This provision empowers the High Court to grant all necessary remedies to any party to a cause or matter provided the court is vested with jurisdiction to entertain the matter.

It seems to me that the jurisdiction to review is granted by section 83 of the Civil Procedure Act which provides.

“Any person considering himself aggrieved— (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been proposed; or (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of a judgment to the Court which passed the decree or made the order and the court may make such orders as it thinks fit.”

Section **101** of the Civil Procedure Act saves the inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court, it is only called in aid when there are no specific provisions governing or applying to the matter.

Order 42 of the Civil Procedure Rules lays down the procedure and grounds for making applications for review. Rule 1 of that Order provides,

“1. (1) Any person considering himself aggrieved:-
(a) by 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,
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 for any other sufficient reason desires to obtain a review of the decree passed or against him may apply for a review of a judgment of the court which passed the decree or made the order."

The learned Judge did not address himself to the above provision but I think it is relevant when considering applications for review. In both section 83 and 0.42 r.l, in order for a person to have locus standi to bring an application for review, he must be "a person considering himself aggrieved". It seems well settled that the expression "any person considering himself aggrieved" means a person who has suffered a legal grievance. **See Yusufu V. Nokrach (1971) E.A 104, and, In Re Nakivubo Chemists (U) Ltd (1971) H.C.B 12**

However it is not clear from those authorities whether the expression is limited to the parties to the suit, or includes third parties, like the present respondents whose interests may be affected by the judgment.
Manhar and Chitaley in their book entitled **The Code of Civil Procedure (1985 edn.) Vol. 5 P. 145,** commenting on the Indian Order 47 r.1. which is similar to our 0.43 r.1, state that a third party may not apply for review under that order. They observed,

"It is only a person aggrieved by a decree or order who can apply for review, A person aggrieved means a person 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 to something; it is not sufficient that he has lost something which he would have obtained it another order against a person who is not a party thereto is not on general principles of law binding on him. Such a person therefore cannot ordinarily have a legal grievance against the decree or order and consequently cannot apply for review of the decree or order under this rule."

It may be that in a suitable case a third party can apply for review under the inherent powers of the court. But he can bring objection proceedings against execution or bring a fresh suit, or file an application to set aside the decree or order. It is significant to note that in the notice of motion in the lower court, the first order sought was for setting aside the consent judgment to the extent that it related to plot 4B Acacia Avenue. The order for review was merely an alternative prayer. In my judgment this was not a suitable case for granting the order of review. The learned Judge should have considered the application to set aside the consent

judgment. This application had been brought under Order 9 rule 9 of the Civil Procedure Rules which provides,

“In uncontested cases and cases in which the parties consent to being entered in agreed terms, judgment may be entered by the Registrar.”

Order 9 r.9 is therefore not restricted to setting aside exparte judgments but covers consent judgment entered by the registrar. It gives the court unfettered discretion to set aside or vary such judgments upon such terms as may be just. **See Mbogo V. Shah (1968) E.A.** Nor is it restricted to parties to the Suit but includes any person who has a direct interest in the matter, who has been injuriously affected. **See Jacques V. Harrison (1883 — 4) 12A.C.165**, **Employers Liability Assurance Corporation Ltd V. Sedqwick Collins ad company Ltd (1927) AC 95**. **The Supreme Court Practice. 1988, P.129.**

In Jackques V. Harrison (supra) Bowen L.J. said,

“There are so far as we can see only• two modes open by which a stranger to an action who is injuriously affected through any judgment suffered by a defendant by default can set that judgment aside; and these two modes are amply sufficient to protect any stranger in all cases in all rights. He may, in the first place obtain the defendant’s leave to use the defendants, name, if the defendant has not already bound himself to allow use of his name to be made; and he may thereupon in the defendants name, apply for leave to have the judgment set aside on such terms as the judge may think reasonable. Or he may if he is entitled without further proceedings to use the defendants name take out a summons in his own name at chambers to be served on both the defendant and plaintiff asking, leave to have the judgment set aside and to be at liberty either to defend the action for the defendant on such terms of indemnifying the defendant as the judge may consider right or at all events to be at liberty to intervene in the action in the manner pointed out by the .Judicature act 1873 S.24 Subs.5.”

Although the above exposition was directly related to setting aside ex parte judgments I think the same principles apply to setting aside consent judgments as authorised under 0.9 r. 9.

In the present case the respondents took out the application for setting aside the consent judgment in the names of the original parties to the suit as well as in their own names. They also applied to be joined as defendants in order to defend the suit. The grounds for setting aside the consent judgment were that the judgment declaring the appellant to be the owner of plot 4B Acacia Avenue and granting him repossession thereof was passed in ignorance of the fact that the respondents were the registered proprietors and in lawful possession of the property. Therefore the respondents were dispossessed without an opportunity to defend the suit.

In my judgment the procedure adopted and the grounds supporting the application for setting aside the consent judgment gave the respondent sufficient locus standi to bring the said application, It is also my view that those grounds justified the setting aside or varying the consent judgment. Therefore the learned judge should have varied the consent judgment to exclude reference to plot 4B Acacia Avenue. It follows that the second ground of appeal must succeed.

The third ground of appeal is that the learned Judge erred in law when he held that the suit premises vests in and belongs to the respondents contrary to the provisions of the Expropriated Properties Act 1982 which nullified all transactions before the coming into force of the said Act to enable the repossession thereof by the former owners. Mr. Mulira for the appellant submitted that the Judge was wrong to review the consent judgment in favor of the respondents when the Minister’s revocation letter was contrary to the said Act.

In his submissions Mr. Mulenga for the respondents observed that Counsel for the appellant had taken the view in the lower court that the 1982 Act did not apply to the suit property, but he had now turned around and argued that it did apply. He pointed out that the consent judgment was obtained on the basis that the Act did not apply to the suit property.

However, Mr. Mulenga contended that the learned Judge did not address himself to the question whether the property was affected by the Act and there was no need for him to do so. He submitted that the title of the respondents was not adjudicated upon and therefore there was no error made by the learned judge.

On the apparent change of position by counsel for the appellant, Mr. Mulira pointed out that at the time of the consent judgment the legal position was that property of Ugandans was not expropriated by the military regime and therefore such property was not subject to the Expropriated Properties Act. However subsequent to the consent judgment, the decision of this court in **The Registered Trustees of Kampala Institute V. Departed Asians Property Custodian Board, Civil Appeal No 21 of 1993 (unreported)** changed the law by holding that even property of Uganda citizens which had been expropriated were subject to the Act. It should be noted that this judgment was delivered on 1st August 1994. Section 1 (2) (a) of the Expropriated properties Act provides,

"(2) For the avoidance of doubt, and not withstanding the provisions of any written law governing the conferring of title to land, property or business and the passing of such title it is hereby declared that,

(a) any purchases, transfers and grants of or any dealings of whatever kind in such property or business are hereby nullified."

It was submitted in the lower court and in this court that the respondents interest in the property was nullified under the above provision and therefore the learned Judge was wrong to declare that the property still vested in the respondents, It is not clear why the learned Judge did not deal with this issue or address himself to the provisions of the Act which were referred to him.

As I have pointed out, it seems the learned Judge relied heavily on the Ministers letter revoking the appellant's letter of repossession. It may well be that the letter was written under the mistaken view that the suit property was not subject to the Act.

Therefore that the learned Judge did not address himself to the legal position regarding the respondents interest under the Act, but was content to hold on the material available to him that at the time the consent judgment was entered, the respondents, were unknown to the appellant and the defendants, the registered proprietors of plot 4B Acacia Avenue, having acquired the title as bonafide purchasers for value without notice.

In my judgment the learned Judge went too far by holding that the suit premises vested and

belonged to the respondents. This appears to have been a definitive finding regarding the title of the respondents to the suit property arrived at without adequate material and proper consideration of the law. Ground three must therefore also succeed.

In the fourth and final ground of appeal, the appellant complains that having regard to the nature of the orders prayed for and the evidence before the court, the learned judge's findings and decisions were erroneous and speculative and not based on a fair appraisal of the facts before him.

Mr. Mulira for the appellant submitted that the learned Judge should have allowed the parties to adduce evidence in order to prove their claims. Mr. Mulenga for the respondents replied that evidence was adduced by affidavit and that the appellant was given opportunity to present his case before the consent judgment was reviewed. He pointed out that the learned Judge granted only one prayer, that of review, and submitted that ordering the joining of parties has problem when the suit is completed. It was his contention that the appellant can either apply for repossession or sue the right parties.

I have already held that the learned Judge was wrong to make definitive findings regarding the title of the respondents without sufficient material before him. I think that the procedure adopted of review was not adequate for determining such complex issues relating to Expropriated Properties. The procedure adopted was sufficient for setting aside the consent of judgment, or varying it so that issues relating to the merit of the claims of the parties could be determined in a fuller hearing. It seems to me that that, was the purpose of the application for setting aside or reviewing the consent judgment.

There was an additional prayer for joining the applicants in the suit as defendants under 0.1 r.10 (2) of the Civil Procedure rules which provides:

"The court may at any stage of the proceedings either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined whether as plaintiff or defendant be struck out and that the name of any person who ought to have been joined, whether as plaintiff or defendant or whose

presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit be added."

Although the learned Judge referred to this provision, he did not consider the prayer for joining the respondents as parties to the suit after he had reviewed the consent judgment. In my view, he ought to have considered it and given reasons why he was not granting it. I think it was a consequential prayer which should have been addressed because review is not and end in itself, but it is intended to correct a mistake and enable parties to settle their rights in a proper and conclusive manner. As **Manhar & Chitalely** state in **The code civil procedure (supra) pp.** 44,

"An application for review does not of necessity by the mere fact of its being filed reopen questions decided by the order or decision sought to be reviewed. Those matters are reopened only after the application for review is accepted. The question whether a review petition 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 a review is to vacate the decree passed. The decree that is subsequently passed on review whether it modifies, revises, reverses or confirms the decree originally passed is a new decree superceding the original decree."

In my judgment the learned Judge should have considered and granted the prayer for adding the respondents as defendants to the suit. Once the consent judgment was reviewed or set aside or varied to exclude Plot 4B Acacia Avenue, the proceedings in respect of that property would be reopened and continue to be pending, thus satisfying the requirements of 0.1 r.2 of the Civil Procedure Rules. Accordingly ground four also succeeds.

In the result, I would allow this appeal. I would set aside the order of the learned Judge reviewing the consent judgment. I would substitute an order varying the consent judgment to exclude a reference to Plot 4B Acacia Avenue and an order that the respondents be joined as defendants to the suit. I would award costs in this court and the court below to the appellant. As Oder, J .S.C. and Tsekooko, J.S.C. agree, there will. be an order in the terms set out in this judgment.

Dated at Mengo this 24th day of July . . . 1996.

B.J.ODOKI,
JUSTICE OF THE SUPREME COURT

I CERTIFY THAT THIS IS A
TRUE COPY OF THE ORIGINAL.

E.K.E. TURYAMUBONA,

DEPUTY REISTRAR. THE SUPREME COURT

JUDGMENT OF ODER, J. S.C.

I have had the benefit of reading in draft the Judgment of Odoki, J.S.C
I agree that the appeal should be allowed, and I have nothing useful to add.
Dated at Mengo this 24th day of July...1996.

A.H.O. ODER
JUSTICE O THE SUPREME COURT

I CERTIFY THAT THIS IS ATRUE COPY OF THE ORIGINAL.

E.K.E.TURYAMUBONA,
DEPUTY REGISTRAR THE SUPREME COURT.

JUDGMENT OF TSEKOOKO, J.S.C.

I have had the benefit of reading in draft the Judgment of Odoki, J.S.C. and I concur with it.

Dated at Mengo this 24th day of July...1996.

J.W.N. TSEKOOKO

JUSTICE OF THE SUPREME COURT

I CERTIFY THAT THIS IS A
TRUE COPY OF THE ORIGINAL.

E.K.E TURYAMUBONA,

DEPUTY REGISTRAR, THE SUPREME COURT