THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPLICATION NO.14 OF 2022

[CORAM: MWONDHA, TIBATEMWA, CHIBITA, MUSOTA, MADRAMA, JJSC]

(ARISING OUT OF SUPREME COURT CONSOLIDATED CIVIL APPEALS NO. 12 AND 14 OF 2019)

CHINA ROAD & BRIDGE CORPORATION::::::::::::::::::APPLICANT

VERSUS

WELT MACHINEN ENGINEERING LTD:::::::::: RESPONDENT

AND

CHINA ROAD & BRIDGE CORPORATION ::::::::::::::APPLICANT

VERSUS

1. WELT MACHINEN ENGINEERING LTD

2. ATTORNEY-GENERAL :::::::::::::::::::::::::: RESPONDENTS

RULING OF COURT

This is an application filed by the applicant against the 1st and 2nd respondents herein. The application is by Notice of Motion filed in the registry of this court on 24th February, 2022. The application was brought under ***Section 82(b) of the Civil Procedure Act, Rule 2(2) and 35(1) of the Supreme Court Rules*** for orders that;

"1. This honorable court recalls and reviews its judgment and orders in the Supreme Court combined Civil Appeals No.13 and 14 of 2019, for correction of the errors on the face of the record arising from accidental slip and/or mistake in the said Judgment and Orders regarding the value of part of Kamusalaba Rock extracted by the Applicant.

2. This honorable Court recalls and reviews its Judgment and Orders in respect of its Order as to Costs since the appeal succeeded on almost all the grounds of Appeal, the Applicant should be awarded Costs of the Appeal and Costs in the Courts below.

3. A declaration be made by this honorable Court that the Nakapiripirit District Land Board is entitled to the value of the Rock of Ushs. 287,694,151/= and the balance of Ushs.20,457,017,339/=, from the funds sequestrated from the Applicant's funds held by Uganda National Roads Authority, and deposited into the High Court and received by the 1st Respondent and Okurut, Okalebo & Outuke & Co. Advocates, should be paid by the Respondents to the Applicant.

4. The Costs of this Application be provided for."

Background of the Application

Consolidated Supreme Court Civil Appeals No. 13 and 14 of 2019 from which this application arose was a second Appeal from the decisions of the Court of Appeal in Court of Appeal Civil Appeals No.52 of 2017 and No.88 of 2018 which in turn arose from a multiplicity of proceedings including 2 High Court Civil Suits and 8 High Court Miscellaneous Applications.

The facts that led to all these proceedings were clearly stated in the Judgment of this Court in Consolidated Supreme Court Civil Appeals No. 13 and 14 of 2019. I shall reproduce the facts for purposes of clarity.

In 2013, the Uganda National Roads Authority (UNRA) awarded a contract to the China Road & Bridge Corporation (hereinafter referred to as ***"the Applicant"***) to construct the Moroto-Nakapiripirit Road. The Applicant, on 13th May, 2013 subsequently entered into an agreement with Nakapiripirit District Local Government giving the Applicant authority to extract stones from a certain piece of land for a Consideration of Ushs. 50,000,000/=. The stones were to be used for the construction of the Moroto-Nakapiripirit Road.

The Applicant took possession of the land and started the process of extracting the stones from the Rock on the land as agreed. It is after this that Welt Machinen Engineering Ltd (The 1st Respondent) obtained, from the Ministry of Energy and Mineral Development, a

prospecting license within the same area for the mining of granite stones. On 16th August, 2013 the 1st Respodent also obtained location licenses No.1194 and 1195 from the Ministry of Energy and Mineral Development which were said to have conferred onto the 1st Respondent exclusive rights to excavate granite stones from the suit rock.

On the basis of the above stated licenses, the 1st Respondent sought to have the Applicant to stop their activities on the land claiming that the 1st Respondent had exclusive rights to excavate stones from the rock on the land. When the Applicant Company did not heed the 1st Respondent's demands, the 1st Respondent lodged High Court Civil Suit No.16 of 2014 at Soroti, against the Applicant for trespass to land and sought a permanent injunction, a declaration that the Applicant and Nakapiripirit District Local Government have no legally recognizable rights to extract/mine granite stones from the suit land; an order of eviction, general damages for trespass on the 1st Respondent's location license area; an order against the defendants to account for the proceeds of the Applicant's unlawful activities, aggravated and exemplary damages, special damages of Ushs. 8,582,022,000/=, interest and costs of the suit. The Applicant as 1st Defendant, the Ag. Chief Administrative Officer of Nakapiripirit District as 2nd Defendant and Nakapiripirit District Local Government as 3rd defendant denied the claim and filed Written Statements of Defence. The Applicant in her Written Statement of Defence accused the 1st Respondent of fraudulently obtaining the licenses. After hearing the case, on 14th April, 2016, J

Wolayo J. of the High Court of Uganda at Soroti delivered judgment and made the following findings;

1. *That the 1st Respondent was the lawful owner of location licenses 1194 and 1195 whose coverage area was limited to the area in Atumtoak Village and did not extend to the Kamusalaba Village where the Applicant was excavating.*

2. *That the Applicant company was not trespassing on the 1st Respondent's licensed area.*

3. *That the rock excavated from Kamusalaba contained granite mineral and that the applicant required a license from the Commissioner Surveys and Mines permitting it to mine and crush aggregate stones for road construction. That this meant that the Ag. CAO of Nakapiripirit District Local Government could not have capacity to enter into any agreement to mine on behalf of the 3rd defendant.*

4. *The 2nd defendant did not have reversionary interest in Kamusalaba rock.*

She then gave the following orders;

"1. The 1st defendant shall render an account of the quantity of aggregates procured from Kamusalaba rock to the Attorney General and pay the Government its monetary value within reasonable time and not later than 30 days from the date of this order

2. A permanent Injunction shall issue restraining the 1st defendant from mining Kamusalaba Rock

3.The Commissioner Geological Survey and Mines takes steps to investigate and prosecute future breaches of the Mining Act, 2003.

4. The order dated 9th September, 2015 attaching the 1st defendant's payment of 8.5 Billion held by UNRA is hereby vacated.

5. As the plaintiff was successful on three issues while the defendant was successful on two issues, and because it is the plaintiff who brought this action that exposed the irregularities by the 1st defendant, the 1st defendant shall pay ½ of the taxed costs to the plaintiff."

On 18th April, 2016 four days after the delivery of the Judgment, D.B Bireije for the Solicitor General wrote a letter to the Ministry of Energy and Mineral Development seeking technical advice and verification on whether Kamusalaba Rock fell within the Government controlled area or in the 1st Respondent's Licensed area. The Ministry of Energy responded through Dr. F.A Kabagambe Kaliisa, the Permanent Secretary and stated *inter alia* as follows;

"1. Part of the Kamusalaba rock falls within the area covered by LL1195 currently covered by the Welt Machinen Engineering Ltd.

2. The quarry that was used to mine granite/gneiss covered the area covered under location licence No.1194.

3. The location licence holder is, therefore, entitled to full compensation for the value of the granite/gneiss that was mined from its licensed area. This finding is derived from section 60(1) of the Mining Act, 2003 which provides for rights and duties of Location License holders..."

On the quantities mined from the suit rock, the verification process revealed that the total granite gneiss mined was 727,030.33 tonnes, of which 561,976.48 tonnes were mined from the quarry within Location License, LL1194 whereas 165,053.85 tonnes were mined from outside Location License Area LL1194.

Pursuant to this letter from the Ministry of Energy, the 1st Respondent filed a fresh High Court Civil Suit No.278 of 2016 at Kampala with the 1st Respondent (Welt Machinen Engineering Ltd) as plaintiff and against the Attorney General who was the decree holder and judgment debtor in HCCS No.16 of 2014. The claim of the Applicant in this fresh Civil Suit was for unjust enrichment, oppression and knowingly attempting to receive monies lawfully due to the 1st Respondent and a declaration for the full commercial/monetary value due and payable to the 1st Respondent as a result of illegal mining of granite on the 1st Respondent's mining area. The 2nd Respondent by way of no contest and denial, stated that in reliance upon the expert opinion of the staff of the department of Mines and Geological Surveys, relinquished all

interests in the suit property and conceded to the 1st Respondent's ownership and entitlement to the monies that had been decreed to it by the High Court at Soroti.

Following this, the 1st Respondent lodged Miscellaneous Application No.700 of 2016 Welt Machinen Engineering Ltd vs Attorney General, seeking orders that Judgment on admission be entered in its favour in accordance with the 1st Respondent's prayers and the unequivocal admissions of the 2nd Respondent and for the costs to be provided for. Pursuant to this application, the HCCS 278 of 2016 was settled, less than a month after it was filed and approximately four months after the delivery of the judgment of the High Court Soroti. A consent Judgment was on 11th August, 2016 filed in the following terms;

> ***"1. The Defendant/Respondent be paid the sum of Ushs. 10,505,296,659/= (Shillings Ten Billion, Five Hundred Five Million, Two Hundred Ninety-Six Thousand, Six Hundred Fifty-Nine Only) being the value of 165,053.85 tonnes of granite extracted outside location license Area LL1194.***
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> ***2. The Plaintiff/Applicant be paid the sum of Ushs. 35,768,678,999/= (Shillings Thirty-Five Billion, Seven Hundted Sixty-Eight Million, Six Hundred Seventy-Eight Thousand, nine Hundred Ninety-Nine Only) being the value of 561,974.48 tonnes of granite from location license Area LL.1194."***

On the basis of the foregoing, Alex Ajiji Deputy Registrar then entered judgment on admission under O.13 rule 6 & 52 of the Civil Procedure Rules on 15th August 2016. The Judgment on admission did not cater for the interests of the Attorney General for the payment of Ushs. 10,505,296,659/= (Shillings Ten billion, Five Hundred Five Million, Two Hundred Ninety-Six Thousand, Six Hundred Fifty-Nine Only) which was the value of 165,053.85 tonnes of granite extracted outside location license Area LL1194.

On 22nd September, 2016 the Attorney General, being dissatisfied with the Judgment on admission lodged Miscellaneous Application No.806 of 2016 Attorney General vs Welt Machinen Engineering Limited. Welt Machinen Engineering Limited conceded to the application and accordingly on 7th October, 2016 Alex Ajiji Deputy Registrar (as he then was) adjusted the orders to include the interests of the Attorney General (the 2nd Respondent herein). It was ordered that under clause 3 of the new orders that the quantity of 165,053.85 tonnes of granite mined outside the Location License Area of the 1st Respondent belonged to the 2nd Respondent, and that the sum of Ushs. 10,505,182,390/= be paid directly to the 2nd Respondent by the Uganda National Roads Authority out of the monies payable to the appellant company as directed in Soroti HCCS No.16 of 2014.

Dissatisfied with the proceedings between the 1st respondent and the 2nd Respondent the Applicant filed Miscellaneous Cause No.876 of 2016 China Road and Bridge Corporation vs Welt Machinen

Engineering Ltd & Attorney General. Wolayo J. entertained this application for review at the Civil Division of the High Court.

Before a decision could be rendered in Miscellaneous Cause No.876 of 2016 China Road and Bridge Corporation vs Welt Machinen Engineering Ltd & Attorney General, The Uganda National Roads Authority also lodged Miscellaneous Application No.886 of 2016 seeking court's direction on who of the 3 persons the Applicant, the 1st Respondent and the 2nd Respondent should be paid the money. Court on 20th December, 2016 ordered UNRA to deposit the money in court pending determination of the rights of the parties over the money in issue.

On 14th march 2017 Wolayo J. determined that payment of Ushs.16,298,000,000/= be made to the 1st Respondent for the 562,976 and Ushs.4,786,537,000/= to be paid to the 2nd Respondent for the 562,976 out of the money which had been deposited in court as per the court order and the rest of it would revert to UNRA. The orders which had previously placed sums due were varied accordingly.

On 9th March, 2017 the applicant lodged a Notice of Appeal and Court of Appeal Civil Appeal No.88 of 2019 challenging failure of the High Court to set aside the decisions of the Registrar in HCMA 700 of 2016 and HCMA No.806 of 2016 and the decision in HCCS 278 OF 2016. This appeal was dismissed.

During the pendency of the civil proceedings in High Court at Kampala the Appellant had also filed an Appeal vide Court of Appeal Civil Appeal No.52 of 2017 challenging the court's decision in Civil Suit No.16 of 2014 at Soroti. Meanwhile the 1st Respondent also filed a cross appeal. The Court of Appeal dismissed the appeal and allowed the Cross Appeal with Costs in favor of the 1st Respondent.

The Applicant was dissatisfied with the decisions of the Court of Appeal in both Court of Appeal Civil Appeal No.52 of 2017 and Court of Appeal Civil Appeal No.88 of 2019 and lodged two appeals in this court vide Supreme Court Civil Appeal No.13 of 2019 China Road & Bridge Corporation vs Welt Machinen Engineering Ltd and the Attorney General and Supreme Court Civil Appeal No.14 of 2019 China Road & Bridge Corporation vs Welt Machinen Engineering Ltd. At the hearing by this Court of the two Appeals, an order was made to have the two Appeals consolidated and a Judgment was given on 2nd February, 2022 with the following declarations and orders:

1. *Granite stone is not a mineral but a stone commonly used for building purposes.*

2. *The Mining Act does not apply to substances excluded from the definition of a mineral in the Constitution.*

3. *The location licenses No. LL1194 and LL1195 held by the 1st Respondent (Welt Machinen Engineering Limited) were null and void.*

4. *The rightful entity to hold and allocate land is not any person in Nakapiripirit District but Nakapiripirit District Land Board.*

5. *The 1st Respondent should pay a sum of Uganda Shillings 23,995,130,000/= (Twenty-three billion, nine hundred ninety-five million, one hundred thirty thousand) to Nakapiripirit District Land Board within 60 days from the date of this order, being the value of the granite stone that was wrongly exploited from Kamusalaba rock by the appellant company.*

6. *Parliament may pass a law to regulate the exploitation of any substance excluded from the definition of mineral when exploited for commercial purposes in accordance with Article 244(6).*

7. *Each party shall bear their own costs.*

It is this decision which the Applicants seek to be recalled and reviewed.

The Application

The grounds for this Application are contained in the Affidavit of Ding Jianming, the Deputy General Manager of the Applicant, which, *inter alia,* states that—

a) *The learned Justices of the Supreme Court erred to equate the cost of the raw rock extracted from Kamusalaba Rock by the Applicant with the price contained in the Bills of Quantities attached to the contract for the construction of Moroto-Napiripirit Road and that Nakapiripirit District Land Board is only entitled to the value of that part of Kamusalaba Rock which was removed but not the finished crushed aggregates value;*

b) *The difference in price between the cost of the crushed aggregate (that was priced in the Bills of Quantities, applied to the Contract Road and paid to the Applicant from the Interim Payment Certificates) and the value of the raw rock at Kamusalaba should be paid to the Applicant by the 1st and 2nd Respondents;*

c) *New evidence has come up from the High Court of Uganda to prove that a total of UShs. 20,457,017,339= was sequestrated from the Applicant's funds with Uganda National Roads Authority and UShs. 15,958,174,490= was paid to the 1st Respondent and UShs. 4,786,537,000= was paid to Okurut, Okalebo & Outuke & Co. Advocates who had no dealings whatsoever with the Applicant;*

d) *Since the Applicant succeeded on all but one out of six grounds of appeal, the Appeal substantially succeeded and the Applicant should be awarded Costs in the Supreme Court, Court of Appeal and High Court as well as in the instant Applicant; and*

e) *It is in the interest of Justice that the above Judgement and Orders be recalled and reviewed as stated above and that this Application be allowed with costs.*

The Respondents opposed the application. The 1st Respondent did not file an affidavit in reply to the application but opposed the application in its written submissions on the following grounds;

a) The application does not show an error apparent on the face of the record and

b) the applicant's claims require additional evidence which is not admissible at this stage.

c) The application be dismissed save for the prayer for the recall of Judgment to reduce the sums found to have been paid to the 1st Respondent from Ushs. 23,955,130,000/= to Ushs. 15,958,174,489/=.

The 2nd Respondent on 25th March 2022 filed an affidavit in reply to the application deposed by Wanyama Kodoli Principal State Attorney in the Attorney General's Chambers *inter alia* stating the following grounds of opposition to the application

a) That this application relates to matters that have already been conclusively determined by this court in the Judgment of this court in consolidated Supreme Court Civil Appeal No.13 of 2019 China Road & Bridge Corporation vs Welt Machinen Engineering Ltd and the Attorney General and Supreme Court

Civil Appeal No.14 of 2019 China Road & Bridge Corporation vs Welt Machinen Engineering Ltd.

b) That there are no clerical or arithmetic mistakes in the judgment of this court in consolidated Supreme Court Civil Appeal No.13 of 2019 China Road & Bridge Corporation vs Welt Machinen Engineering Ltd and the Attorney General and Supreme Court Civil Appeal No.14 of 2019 China Road & Bridge Corporation vs Welt Machinen Engineering Ltd.

c) The orders sought wittingly or unwittingly go beyond the confines of the rules under which the applications have been brought.

d) Whereas this court has inherent powers the applicants have not presented proper grounds of appeal.

e) The jurisdiction of this court is circumscribed and cannot be invoked to circumvent the principal of finality of Supreme Court decisions.

f) It is in the interest of justice, good conscience and equity that the orders sought herein against the respondents should not issue and should be dismissed with costs.

Representations/appearances

At the hearing of the application, Mr. Enos Tumusiime appeared for the applicant, Mr. Terrence Kavuma appeared for the 1st

Respondent and Ms. Imelda Adong Senior State Attorney, appeared for the 2nd Respondent.

The Applicant filed written submissions on 1st April, 2022. The 1st Respondent and 2nd Respondent each filed written submissions on 11th April 2022.

This court allowed the prayer by all parties to adopt their written submissions on court record in deciding this appeal.

Consideration of the Application.

Applicant's Submissions.

The applicant submitted that the error which this court committed is that it equated the cost of the aggregate as contained in the priced contract Bill of Quantities and Costs in the contract between the Applicant and UNRA for the construction of the Nakapiripirit-Moroto Road. That Ding Jianming in his affidavit in support of this application has proved that the cost of the rock per se in situ before extraction, crushing, transport, and application on the road surface is only Ushs. 287,694,151 and that this is the amount which is due to Nakapiripirit District Land Board. That this evidence has not been denied at all and should be accepted by the Court. The balance of the money taken from the applicant which is Ushs. 20,457,017,339/= rightfully belongs to the applicant. That the amount of Ushs. 23,995,130,000/= contained in the Bill of Quantities is a mere estimate of the cost of aggregate and does not show what the applicant was paid in the interim payment

Certificate by UNRA. That the actual payments made are contained in Annex "B" to Ding Jianming's Affidavit.

For this submission the applicant relies on the case of ***Supreme Court Civil Application No.16 of 2019 Mukwano Enterprises Ltd vs Shivabhai Patel & Another*** and ***Supreme Court Civil Application No.06 of 2009 Fang Ming vs Dr. Emmanuel Kaijuka***. The applicant further submits that this court recalls judgment in order to give effect to its intention or to what clearly would have been its intention has there not been an omission in relation to that particular matter. That it was never the intention of this court to give to Nakapiripirit the costs of installing and operating the stone crusher, fuel to run it, transport costs and delivery of the aggregate to the road and applying it on the surface. That the applicant believes the intention of Court was to give the Nakapiripirit District Land Board the value of the raw Kamusalaba Rock *in situ* before the applicant exploited it.6

The new evidence which has emerged and is stated in the affidavit in support of the application showing that new evidence has come from the High Court at the request of the Supreme Court showing how much of the applicant's funds deposited in court by UNRA that is Ushs. 20,744,711,490 has been taken and shared by the 1st Respondent and Okurut Okalebo Outuke & Co. Advocates. That court should recall and review the judgment to achieve the ends of Justice as keeping the judgment in its present state will lead to an

abuse of court process enrich Nakapiripirit District land Board at the expense of the applicant.

Since the applicant has proved that what is due to Napiripirit District Land Board is Ushs. 287,694,151/= and Ushs. 20,457,017,339/= to the applicant in paras 4-13 of the affidavit in support of the application, a declaration should be made as prayed. Further, that none of the Respondents has denied these facts and figures, particularly, the 2nd Respondent who represents UNRA, who contracted the Applicant. That following the applicant's submissions above since the applicant succeeded on five out of the six grounds of appeal and the sixth ground of paying to Nakapiripirit District Land Board Ushs. 23,995,135,000 can no longer be sustained and they pray that Court grants the applicant costs of the Appeal in the Supreme Court and all Courts below.

1st Respondent's Submissions.

The 1st Respondent submits that the applicant is presenting new evidence which was never presented to the trial Court, the 1st appellate court and to this Court prior to the decision in Consolidated Civil Appeals No.13 and 14 of 2019. That the application does not disclose any error apparent on the face of the record since it requires production of new evidence in order to sustain the same.

That Rule 2(2) of the Rules of the Rules of this Court was never intended for the purpose of review/recall of a judgment on the basis

of new evidence presented by the applicant. That the decision of Mukwano Enterprises Ltd v Rachobhai Shivabhai Patel & Henry Wambuga, which is cited by the applicant, elucidated circumstances that do not exist in this application. The intention of court referred to by the applicant is incapable of being discerned from the new evidence which the applicant seeks to smuggle onto the court record. That the intention of the court can only be discerned from the material that was presented at the time of the hearing.

Counsel further submitted that in the very unlikely event that it is legally possible that this court review its judgment premised on new evidence, production of such evidence would only be possible upon formal application where the Applicant would have to prove exceptional circumstances as per Supreme Court Civil Application No.16 of 2015 Michael Mabikke v Law Development Centre. The applicant has failed to prove any exceptional circumstances why this evidence which was available to the applicant was not adduced in court.

That this court's directive solicited a letter from the Applicant's lawyers to the Registrar of the High Court dated 12th August 2020. In response to the said letter, the Registrar of the High Court wrote to this court on the 18th May 2021showing that the 1st Respondent had only received a sum of Ushs. 9,068,023,115/= and 6,890,151,374 from the High Court. That this evidence was on court record before the Appeal was determined and Judgment

rendered. It was therefore an omission for the court not to consider the same. That the sum deposited by the applicant in Court, sum of Ushs. 4,786,537,000/= was paid to Okurut, Okalebo, Outeke & Co. Advocates for reasons that are unrelated to the 1st Respondent and for which the Registrar ought to explain because the said law firm was not acting on behalf of the 1st Respondent when they took that money.

That in the circumstances, this Court ought to recall its judgment and reduce the sum of money that the Court found to have been paid to the 1st Respondent by the Applicant because there is no evidence that the 1st Respondent was paid a sum of Ushs. 23,955,130,000/= by the applicant who only deposited Ushs. 20,744,711,490/= with the Registrar High Court.

That the order to pay Nakapiripirit District Land Board Ushs. 287,694,151/= and Ushs. 20,457,017,339/= should be denied. It has no basis.

Regarding costs, it was submitted that under section 27(1) of the Civil Procedure Act this court has discretion in awarding costs. That the applicant has not even attempted to show an error on the face of the record relating to the award of costs warranting a recall of the Judgment in Consolidated Civil Appeals no.13 and 14 of 2019. Therefore the prayer for costs has to be disallowed. The 1st respondent prays that the application be dismissed save for the prayer for recall of Judgment to reduce the sums found to have

been paid to the 1st Respondent from 23,955,130,000/= to 15,958,174,489/=. The 1st respondent prays for Costs.

2nd Respondent's Submissions.

The 2nd Respondent submits that there is nothing in the grounds raised by the applicant in this matter that shows any errors on the face of the record arising from accidental slip and/or mistake in the judgment for this court to invoke its inherent powers. It is however, very clear that the Applicant is requesting this Court to sit on appeal in its own decision.

That in the first ground the applicant states that the learned Justices of this Court erred to equate the costs of the raw rock extracted from Kamusalaba Rock by the applicant with the price contained in the Bills of Quantities attached to the contract for the construction of Moroto-Nakapirpirit Road and that Nakapiripirit District Land Board is only entitled to the value of that part of Kamusalaba Rock which was removed but not the finished crushed aggregate value but at page 55 of the Judgment it shows that the court considered the crushed aggregate and not the solid rock.

That a simple analysis of the grounds of the application shows that the applicant is attempting to use the inherent powers of the court and the slip rule to circumvent the principle of finality of the Court's decisions.

That the Judgment of this court in Consolidated Civil Appeals No.13 and 14 of 2019 fully reflects the intention of this court. That

appeals are a creature of statute and where there is no specific provision of the Statute allowing it this court ought not allow the applicant circumvent the law by bringing the appeal in a disguised way. That this application is a disguised appeal and ought to be rejected as such.

The 2nd Respondent prays that the application be dismissed with costs to the 2nd Respondent.

Determination of the application.

I have carefully considered the application, affidavit evidence, submissions of the parties, and the impugned Judgment of this court in combined Civil Appeal No.13 and 14 of 2019. The applicant in submissions identified the following issues for determination in this application;

1. ***Whether there were errors on the face of the record arising from the judgment and orders in SCCA No.13 and 14 of 2019 regarding the value of Kamusalaba rock payable to Nakapiripirit District Land Board?***
2. ***Whether new evidence has come up to show how much of the applicant's funds were taken from court by the 1st Respondent and Okurut, Okalebo, Outuke & Co.Advocates to necessitate the recall and review of the judgment?***
3. ***Whether this court makes a declaration that Nakapiripirit District Land Board is entitled to the***

Ushs. 287,694,151 as the value of the rock and the applicant is entitled to Ushs. 20,457,0178,399?

4. ***Whether the judgment and orders as to costs in SCCA No. 13 and 14 should be recalled and reviewed.?***

The 2nd Respondent stated the following issues for determination;

1. ***Whether there are sufficient grounds for this Court to exercise its inherent powers to recall and review its judgment in combined Civil Appeal No. 13 and 14 of 2019?***
2. ***Whether there are errors on the face of the record arising from accidental slip and/or mistake in Combined Civil Appeal No.13 and 14 of 2019?***

In my opinion the issues raised by the applicant appear to be issues for a court of first instance. I find the issues raised by the 2nd Respondent are the most appropriate for determining the application and I shall adopt them considering the nature of this application being for recall and review of the Judgment of this court on grounds of error or accidental slip. I shall determine the two issues together.

Determination of the issues

The Law

I find it necessary before determining the application to state the law and principles that govern applications of this nature. I shall,

for ease of reference, quote the provisions under which the application was lodged; ***Section 82(b)*** of ***the Civil Procedure Act*** provides;

> ***"82. Review***
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> ***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***
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> ***(b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order on the decree or order as it thinks fit." (Emphasis added)***

Rule 2(2) of ***the Supreme Court Rules*** provides;

> ***" 2. Application***
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> ***(1) The practice and procedure of the court in connection with appeals and intended appeals from the Court of Appeal and the practice and procedure of the Court of Appeal in connection with appeals to the court shall be as set out in these Rules.***
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> ***(2) Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the court, and the***

Court of Appeal, to make such orders as may be necessary for achieving the ends of justice or to prevent abuse of the process of any such court, and that power shall extend to setting aside judgments which have been proved null and void after they have been passed, and shall be exercised to prevent an abuse of the process of any court caused by delay.

(3) An appeal from the constitutional court to the court shall be heard as a civil appeal in accordance with these Rules." (Emphasis added)

Rule 35(1) of ***the Supreme Court Rules*** provides;

" 35. Correction of errors

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

(2) An order of the court may at any time be corrected by the court, either of its own motion or on the application of any interested person, if it does not correspond with

the order or judgment it purports to embody or, where the judgment has been corrected under subrule (1) of this rule, with the judgment as so corrected."

In ***Orient Bank Limited versus Fredrick Zzabwe and Mars Trading Limited Civil Application No. 1 of 2007*** it was stated *inter alia* that it is trite law that the decision of this Court on any issue of fact or law is final, so that the unsuccessful party cannot apply for its reversal. The only circumstances under which this Court may be asked to re-visit its decision are as set out in Rules 2(2) and 35(1) of the Rules of this Court. On the one hand, Rule 2(2) preserves the inherent power of the Court to make necessary orders for achieving the ends of justice.

On the other hand, under Rule 35(1), this Court may correct *inter alia* any error arising from accidental slip or omission in its judgment, in order to give effect to what was its intention at the time of giving judgment. The rule reads thus –

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

In order that an error may be a ground for review, it must be one apparent on the face of the record, that is 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 the record. The "error" may be one of fact, but it is not limited to matters of fact, and includes also error of law ***See Edison Kanyabwera versus Pastori Tumwebaze SCCA No. 6 of 2004***

In exercising its inherent powers and considering the slip rule, this Court's Jurisdiction is circumscribed and must not be invoked to circumvent the principle of finality of the Court's decisions ***Orient Bank Limited versus Fredrick Zzabwe and Mars Trading Limited Civil Application (supra)*** where Court also held that;

> *"Subject to the inherent powers and the slip rule we have referred to, the Court's decision in every proceeding is final. This was explained by Sir Charles Newbold P., in* ***Lakhamshi Brothers Ltd. vs. R. Raja and Sons*** *(1966) E.A. 313; at p. 314 where he said –*
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> ***"I would here refer to the words of this Court given in the Raniga case (1965) EA at p.703 as follows:***
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> ***'A Court will, of course, only apply the slip rule where it is 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 doubt, as to the order which it would have made had the matter been brought to its attention.'

These are the circumstances in which this Court will exercise its jurisdiction and recall its judgment, that is, only in order to give effect to its intention or to give effect to what clearly would have been its intention had there not been an omission in relation to the particular matter.

But this application, and the two or three others to which I have referred, go far beyond that. It asks, as I have said, this Court in the same proceedings to sit in judgment on its own previous judgment. There is a principle which is of the very greatest importance in the administration of justice and that principle is this: it is in the interest of all persons that there should be an end to litigation. This Court is now the final Court of appeal and when this Court delivers its judgment, that judgment is, so far as the particular proceedings are concerned, the end of the litigation. It determines in respect of the parties to the particular proceedings their final legal position, subject, as I have said, to the limited application of the slip rule." *(Emphasis is added)*

Issue 1: Whether there are sufficient grounds for this Court to exercise its inherent powers to recall and review its judgment in combined Civil Appeal No. 13 and 14 of 2019? And Issue 2: Whether there are errors on the face of the record arising from accidental slip and/or mistake in Combined Civil Appeal No.13 and 14 of 2019?

Section 82(b) of the Civil Procedure Act Cap 71 allows any person considering himself or herself aggrieved by a decree or order from which no appeal is allowed by this Act to apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order on the decree or order as it thinks fit. ***Rule 2(2)*** of ***the Rules of this Court*** saves the inherent powers of this court to make such orders as may be necessary for achieving the ends of justice or to prevent abuse of the process of any such court. Further it extends that power to the setting aside of judgments which have been proved null and void after they have been passed, and to preventing an abuse of the process of any court caused by delay. The Rule states as follows;

> ***" 2. Application***
>
> ***(1)...***
>
> ***(2) Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the court, and the Court of Appeal, to make such orders as may be necessary for achieving the ends of justice or to prevent***

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

(3)..."

My interpretation of this rule, is that the inherent powers saved therein are not to the extent of the unlimited Jurisdiction of the High Court but is to a limited extent as the rule itself has expressly stated. From my experience as a judicial officer, I can state with confidence that to conclude otherwise will eventually lead this court to fall into a bottomless pit of endless litigation. The signs of this undesirable situation are already upon us if the increasing number of applications in this court for review and recall of judgment is considered.

Based on my interpretation of ***Rule 2(2)*** of ***the Rules of this Court*** it is my finding that the inherent powers saved therein were not intended to turn the Supreme Court into a *"high-courtish-supreme-court"*. I further find that the inherent powers saved in that rule are principally for procedural expediency and can only be exercised;

1. ***To make such orders as may be necessary for achieving the ends of justice or to prevent abuse of the process of this court,***

2. ***To set aside judgments which have been proved null and void after they have been passed***
3. ***To prevent an abuse of the process of any court caused by delay***

As we all can see from the text of the rule it is clear that setting aside judgments can only happen upon proof that the Judgment is Null and Void. All this presentation of new evidence or other valuations and the like is not envisaged by the laws and the Rules under which this application has been brought before this court neither are they envisaged by other laws.

Rule 35(1) of ***the Supreme Court Rules*** empowers this court to correct a clerical or arithmetical mistake in any judgment of the court or any error arising in it from an accidental slip or omission at any time, whether before or after the judgment has been embodied in an order. This can be done by the court, either of its own motion or on the application of any interested person. The purpose of this procedure must always be to give effect to what was the intention of the court when judgment was given.

In ***Orient Bank Limited versus Fredrick Zzabwe and Mars Trading Limited Civil Application No. 1 of 2007*** it was stated that it is trite law that the decision of this Court on any issue of fact or law is final, so that the unsuccessful party cannot apply for its reversal. The only circumstances under which this Court may be asked to re-visit its decision are as set out in Rules 2(2) and 35(1) of the Rules of this Court.

In exercising its inherent powers and considering the slip rule, this Court's Jurisdiction is circumscribed and must not be invoked to circumvent the principle of finality of this Court's decisions. In ***Orient Bank Limited versus Fredrick Zzabwe and Mars Trading Limited Civil Application (supra)*** it was held that;

> ***"Subject to the inherent powers and the slip rule we have referred to, the Court's decision in every proceeding is final. This was explained by Sir Charles Newbold P., in Lakhamshi Brothers Ltd. vs. R. Raja and Sons (1966) E.A. 313; at p. 314 where he said – "I would here refer to the words of this Court given in the Raniga case (1965) EA at p.703 as follows:***
>
> > ***'A Court will, of course, only apply the slip rule where it is 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 doubt, as to the order which it would have made had the matter been brought to its attention.'***
>
> ***These are the circumstances in which this Court will exercise its jurisdiction and recall its judgment, that is, only in order to give effect to its intention or to give effect to what clearly would have been its intention had there not been an omission in relation to the particular matter."***

But this instant application, goes far beyond that. It appears to ask this Court to sit in judgment on its own previous judgment. It is asking this court go back and reevaluate the evidence in the court record or allow new evidence and on the basis of this make a different decision from the one it had previously made. If that is not an appeal then I don't know what it is.

There is a principle which is of greatest importance in the administration of justice and that principle is this: it is in the interest of all persons that there should be an end to litigation. This Court is the final Appellate court in Uganda and when this Court delivers its judgment, that judgment is, so far as the particular proceedings are concerned, the end of the litigation. It determines in respect of the parties to the particular proceedings their final legal position, subject, as I have said, to the limited application of the rules which I have hereinbefore interpreted and assessed.

I agree with the submission of the 2nd Respondent that this court clearly expressed its intention in this case. The values it stated in its judgment are exactly what it intended. The applicant wants their intention to be the intention of the court but it is not. I am trying my best not to go into the trap of reopening the appeal which trap the applicant has set for this court. However, if I may refer to the Judgment, the intention of this court is clear by the words of this court at **page 55 of the impugned Judgement**, where this Court, upon analyzing whether the suit rock granite is a mineral found and held that;

"I am therefore, inclined to find that since the rocks or granite excavated from Kamusalaba rock fall within the threshold of "commonly used for building or similar purpose" and in this case construction of the road, a reality to which all the parties agree, the granite stone therefrom was not a mineral."

This shows that this Court did not intend to refer to the value of the unexploited rock but intended it to refer to the rocks or granite excavated from the rock. It is a misconception for the applicant and their counsel to conclude otherwise. There is no basis whatsoever on which we can come to the conclusion that the intention of the court was different. The claim that the values stated in the quantities presented to UNRA were, mere estimates is not relevant to this application and the applicant does not say so in the court record of appeal. The applicant cannot seek to rely on it to enter a contract or get a tender and thereafter claim it to be unreliable or not credible information.

If the letter stating different sums of money from the ones which the applicant would like to be included in the Judgment were already on court record at the time of Judgment the parties should take it that the court decided not to rely on them and gave its decision aware of it. Therefore, the parties cannot assume that this court did not see it or was oblivious of its existence.

As for the matter relating to the new evidence discovered after the Judgment, this cannot be a basis for this court to reopen a

concluded appeal. There are so many remedies available to the applicant at High court which has unlimited jurisdiction. They did not need to come back to this court for redress on the newly discovered facts.

I find no errors on the face of the record arising from accidental slip and/or mistake in combined Civil Appeal No.13 and 14 of 2019.

Conclusion

For the reasons given in this ruling I am inclined to dismiss this application.

For the reasons I have given in this ruling this application wholly fails and is dismissed with costs.

I so order

Dated this 7th day of November 2023

MWONDHA
JUSTICE OF THE SUPREME COURT

Delivered by the registrar 7/11/23

MIKE CHIBITA
JUSTICE OF THE SUPREME COURT

STEPHEN MUSOTA
JUSTICE OF THE SUPREME COURT

Delivered by the registrar 7/11/23

Reg

THE REPUBLIC OF UGANDA,

IN THE SUPREME COURT OF UGANDA AT KAMPALA

(CORAM: MWONDHA, TIBATEMWA, CHIBITA, MUSOTA & MADRAMA, JJSC)

MISCELLANEOUS CAUSE NO 14 OF 2022

(ARISING FROM COMBINED SUPREME COURT CIVIL APPEALS NOS 13 AND 14 OF 2019)

CHINA ROAD BRIDGE CORPORATION} ..... APPLICANT

VERSUS

WELT MACHINEN ENGINEERING LTD} .....RESPONDENT

AND

CHINA ROAD BRIDGE CORPORATION} ..... APPLICANT

VERSUS

1. WELT MACHINEN ENGINEERING LTD}
2. ATTORNEY GENERAL} .....RESPONDENTS

RULING OF CHRISTOPHER MADRAMA IZAMA, JSC

The Applicant lodged this application and cited section 82 (b) of the Civil Procedure Act, Rule 2 (2) and 35 (1) of the Judicature (Supreme Court Rules) Directions as the enabling laws and for orders that;

(a) This court recalls and reviews its judgment and Orders in combined **Civil Appeals Nos 13 and 14 of 2019, China Road Bridge Corporation Vs Welt Machinen Engineering Ltd** and **the Attorney General**, and **China Road and Bridge Corporation Vs Welt Machinen Engineering Ltd**, for correction of errors on the face of the record arising from an accidental slip and/or mistake in the said judgment and orders regarding the value of part of the Kamusalaba Rock extracted by the Applicant.

(b) That this Honourable Court recalls and reviews its Judgment and Orders in respect of its Order as to Costs since the appeal succeeded on almost all the grounds of Appeal, the Applicant should be awarded Costs of the Appeal and Costs in the court below.

(c) That a Declaration be made by this Honourable Court that the Nakapiritpirit District Land Board is entitled to the value of the Rock of Uganda shillings 287,694,151/= and the balance of Ushs. 20,457,017,339/=, from the funds sequestrated from the Applicants Funds held by Uganda National Roads Authority and deposited into the High Court and received by the 1st Respondent and Okurut, Okalebo and Otuke & Co. Advocates, should be paid by the Respondents to the Applicant.

(d) The Costs of this Application be provided for.

The grounds of the application are set out in the Notice of Motion and supported by the affidavit of Mr. Ding Jianming, the Deputy General Manager of the Applicant. The grounds averred in the Notice of Motion are that:

1. The learned Justices of the Supreme Court erred to equate costs of raw rock extracted from Kamusalaba by the Applicant with the price contained in the Bill of Quantities attached to the contract for the construction of Moroto – Nakapiritpirit Road and that the Nakapiritpirit District Land Board is only entitled to the value of the part of the Kamusalaba Rock which was removed but not the finished crushed aggregate value;
2. The difference in price between the cost of the crushed aggregate and the value of the raw rock at Kamusabala be paid to the Applicant by the first and second Respondents.
3. New evidence has come up from the High Court of Uganda to prove that a total of Uganda shillings 20,744,711,490/= was sequestrated from the Applicant's funds with Uganda National Roads Authority and Uganda shillings 15,958,174,490/= was paid to the first Respondent and

Uganda shillings 4,786,537,000/= was paid to Okurut, Okalebo, Outuke & Co. Advocates who had no dealings whatsoever with the Applicant;

4. Since the Applicant succeeded on all but one of the 6 grounds of appeal, the appeal substantially succeeded and the Applicant should be awarded costs in the Supreme Court, Court of Appeal and High Court as well as in the instant application; and,
5. That it is in the interest of justice that the above Judgment and orders be recalled and reviewed as stated above and that the application be allowed with costs.

The facts in support of the application are deposed to by the Deputy General Manager of the Applicant Mr. Ding Jianming while the affidavit in opposition is that of the second Respondent and deposed to by the Principal State Attorney Mr Wanyama Kodoli.

The facts disclosed in the affidavit of the Deputy General Manager of the Applicant Mr. Ding Jianming are set out below.

On the 2nd February 2022 the Supreme Court of Uganda delivered Judgment in combined Civil Appeals Nos 13 and 14 of 2022 between China Road Bridge Corporation and the first Respondent and between China Road Bridge Corporation and the first Respondent and the Attorney General respectively. In that Judgment the Supreme Court decided the quantum of compensation due to Nakapiritpirit District Land Board after holding that Kamusalaba Rock from which the Applicant quarried some of the Rock it used to make aggregate belonged to Nakapiritpirit District Land Board and not the District Local Government. The Supreme Court further found that the valuation of the excavated aggregate can be established from the procurement Ref. UNRA/WORKS/09/10/00001/18/01/UNRA ID NO. 142 volume 5 priced Bills of Quantities which formed part of the Contracts for Moroto – Nakapiritpirit Road and was UShs 23,995,130,000=.

Jiaming asserted that what is priced in the Bills of Quantities, is higher than the value of natural rock such as Kamusalaba Rock, which is a granite outcrop protruding from the earth. That in processing rock to produce

crushed aggregate granite stones, there are several processes involved which include: identification of the granite outcrop, collecting samples, testing them in the laboratory and where they are found suitable for road construction, the samples were submitted to the Ministry of Works Materials Testing Laboratory at Kireka, Kampala for approval. Upon approval the Applicant paid the Nakapiritpirit District Local Government UShs. 50,000,000= for the quantity of rock that was later quarried.

Thereafter the Applicant installed a· Store Crusher, built offices, accommodation and support services such as for water supply, generators for power supply and employed several staff to operate and maintain the Stone Crusher at a cost. Further the Applicant had to import and did import explosives to blast the granite rock, imported and employed several Front Wheel Loaders, heavy Tipper Trucks and fuelled them to move the blasted stone from the quarry site to the Crusher at a cost. After crushing the granite, into the right sizes for road construction, they are transported to the construction site where they are pre-mixed in tar and spread on the road surface.

Mr. Jianming stated that the priced Bills of Quantities included the cost of the cost of the process stated above and according to the Bills of Quantities, they are priced at UShs 165,484= per Cubic Metre.

In total the cost of Labour, Finance, transport, crushing, maintenance, costs of Crusher, truck etc. to the Contractor was Ushs 163,722= per Cubic Metre. The cost of the part of Kamusalaba Rock in its natural state was valued at UShs 1,762 per Cubic Metre since the quantity removed from Kamusalaba Rock was Ushs 167,210.33 per Cubic Metre, the value of the Rock from Kamusalaba was UShs 287,694,151=, but not UShs 23,995,130,000= as ordered by the Supreme Court in the Judgment.

Mr. Jianming stated that he believes that the sum of UShs 23,995,000= was arrived at by the Supreme Court in error and that the Nakapiritpirit District Land Board is only entitled to the cost of the natural rock which is UShs 287,694,151=

Unless the stated errors in the judgment are reviewed and corrected, Applicant will suffer serious financial loss that will cause it ruin and bankruptcy on the basis of information from his lawyers M/s Tumusiime, Kabenga & Co. Advocates, stated that on 18th May 2021, a letter from the Registrar of the High Court of Uganda was written to the Registrar of Supreme Court, confirming that a total of UShs 20,744,711,490= was sequestrated from the amount owed the Applicant under the Interim of payment Certificates from Uganda National Roads Authority and paid to the 1st Respondent, in sums of UShs. 15,58,174,490= and to Okurut, Okalebo Outuke & Co. Advocates, in the sums of UShs. 4,786,537,00=, who are total strangers to the Applicant, as the Applicant has never dealt with the said Advocates at all.

Therefore, the Applicant seeks a declaration from this Honourable Court that the first and second Respondents should account to the Applicant for the balance of Uganda shillings 20,457,017,339/= difference between the value of crushed stone aggregates as stated in the Applicant's interim payment certificate number 41 and the value of the natural rock extracted from Kamusalaba rock in situ. That, but for the second Respondents uncalled for intervention in this case, as the Supreme Court held at page 67 of the Judgment, the second Respondent should be held liable as well.

The Applicant succeeded in 5 out of 6 grounds of appeal and even the 6th ground could not be blamed on the Applicant as she was misled by the Nakapiritpirit District Local Government to pay the sum of Uganda shillings 50,000,000/= to it for the rock, the Applicant should be paid costs of all proceedings in the Supreme Court, Court of Appeal and High Court. Finally, that it is fair and just to the Applicant and that the Judgment and orders in SCCA Nos 13 and 14 of 2019 record be reviewed and that the application should be allowed with costs.

In reply, the second Respondent opposed the application and Mr. Wanyama Kodoli a Principal State Attorney in the Attorney General's Chambers, Ministry of Justice & Constitutional Affairs deposed to the contents of an affidavit where he states that the application raises matters that have

already been conclusively determined by this Honourable Court. That there are no clerical or arithmetic mistakes in the judgment of this Honourable Court in consolidated Supreme Court Civil Appeals Nos. 13 and 14 of 2019 or any error arising in it from an accidental slip or omission. Further the prayers sought by the Applicants wittingly or unwittingly seek to go beyond the confines of the rules under which the applications have been brought. In that regard he stated that the Applicant is inviting this Honourable Court to sit in appeal against its own decision. Further that whereas this Honourable Court has inherent powers, the Applicants have not presented proper grounds on which this Court can exercise its powers. That this Honourable Court's jurisdiction is circumscribed and cannot be invoked to circumvent the principle of finality of the court's decisions.

The majority Justices of the Supreme Court of Uganda entered judgment on 2nd February 2022 in S.C.C.A. Nos. 13 and 14 of 2019 and held that none of the parties to the suit/appeal are entitled to compensation for the excavated aggregates and they found that the rightful entity to receive the compensation pursuant to Article 241 and sections 59 and 60 of the Land Act is the Nakapiritpirit District Land Board. The court ordered that the 1st Respondent should pay a sum of Uganda Shillings 23,995,130,000= (Twenty-three billion, nine hundred ninety-five million, one hundred thirty thousand) to Nakapiritpirit District Land Board within 60 days from the date of the order, being the value of the granite stone that was wrongfully exploited from the Kamusalaba rock by the Appellant company. The Nakapiritpirit District Land Board is a body corporate established under the Land Act, Cap 227 Laws of Uganda with perpetual succession, a common seal and may sue or be sued in its own name. Finally, Mr. Kodoli Wanyama deposed that it is in the interest of justice, good conscience and equity that the orders sought herein against the Respondent should not issue and should be dismissed with costs.

Representation.

At the hearing of the appeal learned counsel Mr. Enos Tumusiime, appeared for the Respondent. Learned Counsel Mr. Terrence Kavuma represented the

first Respondent and the learned Senior State Attorney Ms Imelda Adong represented the Attorney General. The court was addressed by way of written submissions and ruling reserved on notice.

Written Submissions of the Parties.

Ground 1

Whether there were errors on the face of the record arising from the judgment and orders in SCCA No. 14 and 14 of 2019 regarding the value of Kamusalaba Rock payable to Nakapiritpirit District Land Board

The Applicant's counsel submitted that the Supreme Court erred in equating the cost of the rock to the cost of the aggregates as contained in the priced contract Bill of Quantities and costs in the contract between the Applicant and UNRA for the construction of the Nakapiritpirit – Moroto Road. That Ding Jianming, in the Affidavit in support of the Application proved that the cost of the rock per se in situ before extraction, crushing, transport and application on the road surface is only UGX 287,694,151 and this is the amount due to Nakapiritpirit District Land Board. This evidence has not been challenged and should be accepted by court. The balance of the money taken from the Applicant i.e. 20,457,017,339 which amount rightfully belongs to the Applicant.

Further, the amount of UGX 23,995,130,000=contained in the Bills of Quantities is a mere estimate of the cost of aggregates and does not show what the Applicant was paid in interim Payment Certificate by UNRA.

The Applicant's Counsel relied on **Mukwano Enterprises Ltd Vs. Patel & another; Supreme Court Civil Application No. 16 of 2019**, at page 23, and **Fang Ming Vs. Kaijuka Supreme Court Civil Application No. 06 of 2009**, for the proposition that this court will recall its judgment in order to give effect to its intention or to what clearly would have been its intention had there not been an omission in relation to that particular matter. He submitted that it was never the intention of this Honourable Court to give to Nakapiritpirit the costs of installing and operating the stone crusher, fuel to run it, transport

costs and delivery of the aggregate to the road and applying it on the surface. The intention of court was to give the Nakapiritpirit District Land Board the value of the raw Kamusalaba Rock in situ before the Applicant exploited it.

In reply the first Respondent's counsel submitted that the evidence provided by the Applicant in the affidavit of Ding Jianming is new evidence that was never presented to the Trial Court, the 1st Appellate Court and to this Court prior to the decision in consolidated Civil Appeals No. 13 and 14 of 2019. He contended that the application, in respect of this ground, does not show an error apparent on the face of the record since it requires production of new evidence in order to sustain it.

The first Appellant's counsel submitted that he did not know of any precedent of this court where a review/recall of a judgment based on discovery of new evidence has been granted. He contended that this is because Rule 2(2) of the Judicature Supreme Court Rules was not designed for that purpose. That the decision of this court in **Mukwano Enterprise Ltd V Ranchobhai Shivabhai Patel & Henry Wambuga**, (supra) elucidated the circumstance under which this court would recall its judgment but those circumstances do exist in this ground of the application.

The "intention of Court" that is referred to by the Applicant in their submissions is incapable of being discerned from new evidence that the Applicant seeks to smuggle into the court record. The intention of the court can only be discerned from the material that was presented to it at the time of the hearing.

The first Respondent's counsel submitted that in the unlikely event that it is lawful for the court to review its judgment premised on new evidence, production of such evidence would only be possible upon a formal application where the Applicant would have to prove exceptional circumstance (See **Supreme Court Civil Application No. 16 of 2015 Michael Mabikke V Law Development Centre**).

That there is no formal application to adduce new evidence and there are no exceptional circumstances highlighting why this evidence, which was available to the Applicant, was not adduced in the Trial Court, 1st appellate court or in this court during the hearing. The first Respondent's counsel submitted that the Applicant is abusing court process by trying to re-litigate its case under the guise of a review and invited the court to disallow the application.

Ground 2

Whether new evidence has come up to show how much of the Applicant's funds were taken from court by the 1st Respondent and Okurut, Okalebo, Outuke & Oc. Advocates to necessitate the recall and review of the judgment.

The Applicant's counsel relied on the affidavit of Mr. Ding Jianming in support which adduces the new evidence from the High Court, at the request of Supreme Court, which shows how much of the Applicant's funds was deposited in Court by UNRA i.e. UGX 20,744,711,490 and had been taken and shared by the 1st Respondent and Okurut, Okalebo, Outuke & Co. Advocates.

He submitted that under Rule 2 (2) of the Judicature (Supreme Court) Rules, the Court has powers to make orders (i) to achieve the ends of justice and (ii) to prevent abuse of court process. In **Mukwano Enterprises Ltd vs Patel** (supra) it was held that this court will recall and review its Judgment to achieve the ends of a justice and to prevent abuse of court process. That since the new evidence has been brought to the court's attention, the court should recall and review this judgment to achieve the ends of justice. This is because keeping the judgment in its present state will lead to abuse of court process and enrich Nakapiritpirit District Land Board at the expense of the Applicant.

In reply, the first Respondents counsel submitted that at the conclusion of the hearing in consolidate Civil Appeals No. 13 and 14 of 2019, this court directed that the Applicant and 1st Respondent to harmonize their respective

positions on the amount of money taken from Registrar's account at the High Court by the 1st Respondent from the funds deposited by the Applicant.

This Court's directive solicited a letter from the Applicant's lawyers to the Registrar High Court dated 12th August 2020. In response to the said letter, the Registrar of the High Court wrote to this court on The 18th of May 2021 (see Annexure C to this Application) showing that the 1st Respondent had only received a sum of 9,068,023,115 and 6,890,151,374 from the High Court. This evidence was on the court record way before the decision in this appeal was rendered; it was therefore an omission for the court not to consider the same.

Out of the sum deposited by Applicant in court, Shillings 4,786,537,000 was paid to Okurut, Okalebo, Outuke & Co. Advocates for reasons that are unrelated to the 1st Respondent and for which the Registrar ought to explain because the said law firm was not acting on behalf of the 1st Respondent when they took that money.

In the circumstances, this court ought to recall its judgment and reduce the sum of money that the court found to have been paid to the 1st Respondent by the Applicant because there is no evidence whatsoever that the 1st Respondent was ever paid a sum of 23,995,130,000=by the Applicant who only deposited 20,744,711,490= with the Registrar High Court. Similar prayers are also sought by the 1st Respondent in Misc. Application No. 7 of 2022 between the same parties.

Ground 3

Whether this court should make a declaration that Nakapiritpirit District Land Board is entitled to UGX 287,694,151 as the value of the rock and the Applicant is entitled to 20,457,017,339

The Applicant's counsel reiterated arguments in Grounds 1 and 2 of the Notice of Motion and prayed that since the Applicant has proved that what is due to Nakapiritpirit District Land Board is UGX 287,694,151= and UGX 20,457,017,339= is owed to the Applicant, a declaration should be made as

prayed. Further than none of the Respondents has denied the facts and figures and particularly, the 2nd Respondent who represents the Government and owns UNRA, which contracted the Applicant.

In reply, the first Respondents counsel reiterated his submissions in ground 1 of the motion and invited the court to disallow this ground.

Ground 4

Whether the judgment and orders as to costs in SCCA Nos 13 and 14 2019 should be recalled and reviewed.

The Applicant's counsel submitted that, since the Applicant succeeded on five out of six grounds of appeal and the sixth ground of paying to the Nakapiritpirit District Land Board UGX 23,995,130,000= can no longer be sustained, the court should award the Applicant costs of the appeal in the Supreme Court and all courts below.

In reply, the first Respondent's counsel submitted that this court had discretion in awarding costs under Section 27 (1) of the Civil Procedure Act and further that the Applicant has not even attempted to show an error on the face of the record relating to the award of costs warranting a recall of the judgment in Consolidated Civil Appeals 13 and 14 of 2019. That being the case, this ground ought to be disallowed as well.

In the premises, he prayed that this application is dismissed save for the prayer for recall of the judgment to reduce the sums found to have been paid to the 1st Respondent from 23,995,130,000= to 15,958,174,489=

In a general reply the second Respondents counsel raised two issues for consideration namely:

1. **Whether there are sufficient grounds for this honourable court to exercise its inherent powers to recall and review its Judgment in combined Civil Appeals Numbers 13 and 14 of 2019.**

2. Whether there are errors on the face of the record arising from accidental slip and/or mistake in combined Civil Appeals Number 13 and 14 of 2019.

The second Respondent's counsel submitted that the application was brought under section 82 (b) of the Civil Procedure Act, 2 (2) and 35 (1) of the Judicature Supreme Court Rules. That section 82 (2) of the Civil Procedure Act is to the effect that a person considering himself or herself aggrieved by a decree or order from which no appeal is allowed may apply for review of the Judgment of this court which passed the decree or made the order and the court may make such order on the decree or order as it thinks fit.

Counsel contended that on the other hand, rule 2 (2) of the Judicature Supreme Court Rules gives the court powers to make such orders as may be necessary for achieving the ends of justice or to prevent abuse of the process of any such court and this power extends to setting aside judgments which have been proved null and void after being passed and shall be exercised to prevent an abuse of the process of any court caused by delay. Further rule 35 (1) of the Judicature Supreme Court Rules deals with the correction of clerical or arithmetical mistakes in any Judgment of the court or any error arising in it from an accidental slip or omission and the intention of the rule is to give effect to the intention of the court when the judgment was given.

The Respondent relied on **Orient Bank Ltd vs Frederick Zaabwe and Mars Trading Ltd; Civil Application No 1 of 2007** where the Supreme Court held that the decision of the court on any issue of fact or law is final so that the unsuccessful party cannot apply for its reversal. The only circumstances under which the court may be asked to revisit its decision as set out in rules 2 (2) and 35 (1) of the Rules of this court. Further that rule 2 (2) preserves the inherent power of the court to make necessary orders for achieving the ends of justice. Further it was held that rule 35 (1) allows the court to correct inter alia any error arising from any accidental slip or omission in a

judgment in order to give effect to what was the courts intention at the time of delivering judgment.

Respondent's counsel submitted that in order that an error may be a ground for review, it must be one that is 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 the record. The "error" may be one of fact, but it is not limited to matters of fact, and also includes errors of law (see **Edison Kanyabwera vs Pastori Tumwebaze; SCCA No 6 of 2004**).

The second Respondent's counsel submitted that the inherent powers under the slip rule gives the court jurisdiction that is circumscribed and which was not be invoked to circumvent the principle of finality of court's decision (see **Orient Bank Ltd vs Frederick Zaabwe and Mars Trading Ltd** (supra)). With reference to the decision of this court in **Orient Bank Ltd vs Frederick Zaabwe and Mars Trading Ltd**, the court held that subject to the inherent powers under slip the rule, the court's decision in every proceedings is final. This was explained by Sir Charles Newbold P in **Lakhamshi brothers Ltd Vs R. Raja and Sons (1966) EA 313** at 314.

Further that there is nothing in the grounds raised by the Applicant in this matter that shows any errors on the face of the record arising from accidental slip and/or mistake in the Judgment for this honourable court to invoke its inherent powers. Further that it is very clear that the Applicant's request this court to sit on appeal in its own decision.

The second Respondent's counsel submitted that on the first ground; the Applicant states that the learned justices of the Supreme Court erred to equate the cost of the raw rock extracted by the Applicant with the price contained in the Bills of Quantities attached to the contract for road construction. That the District Land Board is only entitled to the value of the rock which was removed but not the value of the finished crushed aggregate. The second Respondent's counsel submitted that the court found

that since the granite falls within the threshold of stones "commonly used for building or similar purposes" it was not a mineral.

The second Respondent's counsel further submitted that the second ground was that the difference in price between the aggregate and raw material should be paid to the Applicant and not the first and second Respondents. That the Applicant avers that since it succeeded on all but one out of the six grounds of appeal, the appeal substantially succeeded and the Applicant should be awarded costs of the Supreme Court, Court of Appeal and High Court as well as in the instant application.

The second Respondent's counsel submitted that a simple analysis of the grounds show that the Applicant is attempting to use the inherent powers of this court and the slip rule to circumvent the principle of finality of the court's decisions. On that basis he submitted that the Judgment in consolidated Civil Appeals Nos 13 and 14 of 2019 fully reflects the intention of this court. Further that an appeal is a creature of statute and where there is no specific provision of a statute allowing it, this court has no jurisdiction to grant the Applicants application which seeks to circumvent the law by bringing an appeal in a disguised way. He contended that the application is a disguised appeal which ought to be rejected as such.

In the premises, the second Respondent's counsel prayed that the Applicant's application be dismissed with costs to the second Respondent.

Consideration of the Application

I have considered the ruling of this court refusing the application for review and I dissent from the majority decision for the reasons I state below. I have carefully considered the Applicant's application, the affidavit in reply as well as the submissions of counsel from either side. The core issue in this application is that that the amount of Uganda shillings 23,995,130,000/- was erroneously ordered to be paid to the Nakapiritpirit District Land Board and this reflects the order of Court sought to be reviewed.

Secondly that new evidence has emerged showing that some money has been sequestrated from the Applicants entitlements from URNA by the 1st Respondent.

The second Respondent raised a point of law of a preliminary nature as to whether this court has inherent powers to recall and review its judgments in Civil Appeal Nos 13 and 14 of 2019. The second Respondents counsel also adopted the second ground in the Notice of Motion of whether there are any errors apparent on the face of the record.

The issue of Jurisdiction of this Court to recall and review its judgment is a fundamental issue and will be handled first.

This court in **Orient Bank Ltd and Fredrick Zaabwe and Mars Trading Company Ltd; Civil Appeal No. 17 of 2007** addressed the issue of jurisdiction to recall and review a judgment. The Applicant had applied for the court to recall its judgment in Civil Appeal No. 4 of 2006 dated 10th July 2007 so as to set it aside or to alter it or correct errors in it. The Court considered the scope of the inherent powers of Court and the slip rule. The inherent powers of Court are founded on rule 2 (2) of the Rules of this Court while rule 35 (1) is the slip rule under which the Court can correct any errors arising from an accidental slip or omission of the nature of a clerical or arithmetical mistake. The Supreme Court considered the wording of the slip rule under rule 35 (1) of the Rules of this Court and also rule 2 (2) and held inter alia that subject to the inherent powers and the slip rule, the Court's decision in every proceeding is final. After considering several precedents, the Supreme Court also concluded that that the nature of the Court's inherent powers under rule 2 (2) of the Rules of this Court is wide. That rule 35 (1) of the Rules does not exhaust the Court's inherent powers which can be applied to meet the ends of justice. Nonetheless, the Supreme Court also held that both under the slip rule and the inherent powers, the Court's jurisdiction is circumscribed and must not be invoked to circumvent the principle of finality of Court's decisions.

The question remains as to under what exceptional circumstances, the court will invoke its residual jurisdiction to recall and review its judgment. This question has been left to the discretion of the court.

I find that its settled from precedents that such an application for recall and review of a judgment can be made under rule 2 (2) of the Judicature (Supreme Court Rules) Directions. This rule enables the court to make such orders as may be necessary for achieving the ends of justice or to prevent abuse of the process of such court and the power extends to setting aside judgments which have been proved null and void after they have been passed.

In some earlier judgments of the East African Court of Appeal it had been held that the Court of Appeal had no jurisdiction to review its own judgment but this holding was based on the strict interpretation of the slip rule found in the current rule 35 (1) of the Judicature (Supreme Court Rules) Directions which provides that:

> 35. Correction of errors.
>
> (1) A clerical or arithmetical mistake in any judgment of the court or any error arising in it from an accidental slip or omission may, at any time, whether before or after the judgment has been embodied in an order, be corrected by the court, either of its own motion or on the application of any interested person so as to give effect to what was the intention of the court when judgment was given.

The strict interpretation of rule 35 (1) (supra) was relaxed somewhat in a later case by the same court to take into account the residual inherent jurisdiction of court under the equivalent of rule 2 (1) of the Rules of this court.

In **Lakhamshi Brothers Ltd V R Raja & Sons [1966] 1 EA 313** the East African Court of Appeal sitting at Nairobi considered an application from the Applicants, who were Respondents in the appeal, to recall, review and set aside a final judgment of the court. A preliminary objection was taken on the ground that the court had no jurisdiction to entertain the application and the

objection was sustained. Sir Charles Newbold P who delivered the lead judgment of court held that the only basis for review is the slip rule for correction of errors and there was no jurisdiction for a court to sit in review of its own judgment. He stated that:

> Indeed, there has been a multitude of decisions by this court, on what is known generally as the slip rule, in which the inherent jurisdiction of the court to recall a judgment in order to give effect to its manifest intention has been held to exist. The circumstances, however, of the exercise of any such jurisdiction are very clearly circumscribed. Broadly these circumstances are where the court is asked in the application subsequent to judgment to give effect to the intention of the court when it gave its judgment or to give effect to what clearly would have been the intention of the court had the matter not inadvertently been omitted.

Further at page 316 he held that the appeal judgment is conclusive in respect of the parties and the court has no jurisdiction to entertain an application for review of the judgment.

> This court is now the final Court of Appeal and when this court delivers its judgment, that judgment is, so far as the particular proceedings are concerned, the end of the litigation. It determines in respect of the parties to the particular proceedings their final legal position, subject, as I have said, to the limited application of the slip rule.
>
> ···For these reasons, in my view, this application should be struck out on the ground that this court has no jurisdiction to entertain it.

However, in a later judgment of the East African Court of Appeal, the strict application of rule 35 (1) of the Rules was relaxed to accommodate the residual jurisdiction for review in exceptional circumstances. This was in **Somani's v Shirinkhanu (No 2) [1971] 1 EA 79**, where the East African Court of Appeal sitting at Mombasa per Law Ag V-P agreed with the lead judgment and stated that:

> The only circumstances in which this court will alter the text of a judgment which it has pronounced is where it is necessary to do so to give effect to the intention of the court at the time when judgment was given. We are now asked to review

> our judgment and to alter it in such a way as to give effect to what was not the intention of the court at the time when judgment was given. Sir Charles Newbold has laid down in the clearest of terms in Lakhamshi Bros. Ltd. v. R. Raja & Sons (2) that this court has no such jurisdiction, which would in effect involve this court sitting in appeal on its own decision. To allow this application would be to open the doors to all and sundry to challenge the correctness of the decisions of this court on the basis of arguments thought of long after the judgment was delivered. There would be no finality to litigation.

He further stated the exception to the general rule as:

> The only exception I can envisage is where the Applicant has been wrongly deprived of the opportunity of presenting his argument on any particular point, which might lead to the proceedings being held to be null and void, a consideration which is absent in this case.

The Court recognised the deprivation of a party's right to address it on a particular point as a possible ground of review. This exception was applied by the Court of Appeal of Kenya in **Musiara Ltd v Ntimama [2005] 1 EA 317**. The matter in issue was whether the Court of Appeal can recall and revise or set aside its own order and secondly whether a claim of bias may found an application to re-open an order by the appellate Court. At the hearing of the application, the Respondent objected to the application on the ground inter alia of want of jurisdiction of the Court of Appeal to entertain an application to review its own decision and that a decision by the Court of Appeal was final and cannot be reconsidered by another bench of the same Court.

Tunoi, O'kubasu JJA and Onyango Otieno AGJA reiterated the decisions in **Lakhamshi Brothers Ltd v R Raja & Sons [1966] 1 EA 313** and **Somani's v Shirinkhanu (No 2) [1971] 1 EA 79** that the court can apply the slip rules but has no jurisdiction to review its own judgments on appeal. At pages 322 and 323 they stated that:

We reiterate that the Court has always refused invitations to review, vary or rescind its own decisions except so as to give effect to its intention at the time the decision was made for to depart from this rule would be a most dangerous course in that it would open the doors to all and sundry to challenge the correctness of the decisions of this Court on the basis of arguments thought of long after the judgment or decision was delivered or made. It matters not whether the judgment or ruling has been perfected or not.

The court however gave room for exceptional circumstances to the general rule where the court would review its decision in the interest of justice. The reasons they gave were that:

At the moment this Court is the final Court on the land. Where an issue has been determined by a decision of the Court, that decision should definitively determine the issue as between those who were party to the litigation. The reason for this general approach is that public policy demands that the outcome of litigation should be final and that litigation should not unnecessarily be prolonged. This is the reason why limits have been placed on the rights of citizens to open or reopen disputes. The law also recognises that any determination of disputable fact may be imperfect well knowing that humans err.

…The Court of Appeal held that it had a residual jurisdiction to reopen an appeal which it had already determined in order to avoid real injustice in exceptional circumstances. The Court had implicit powers to do that which was necessary to achieve the dual objectives of an appellate Court, namely to correct wrong decisions so as to ensure justice between the litigants involved, and to ensure public confidence in the administration of justice, not only by remedying wrong decisions, but also by clarifying and developing the law setting precedents. A Court had to have such powers in order to enforce its rules of practice, suppress any abuses of its process and defeat any attempted thwarting of its process. The residual jurisdiction to reopen appeals was linked to a discretion which enabled the Court of Appeal to confine its use to the cases in which it was appropriate for the jurisdiction to be exercised. There was a tension between a Court having such a residual jurisdiction and the need to have finality in litigation, such that it was necessary to have a procedure which would ensure that proceedings would only be reopened when there was a real requirement for that to happen. The need to maintain confidence in the administration of justice made it imperative that there

should be a remedy in a case where bias had been established and that might justify the Court of Appeal in taking the exceptional course of reopening proceedings which it had already heard and determined. It should, however, be clearly established that a significant injustice had probably occurred and that there was no alternative effective remedy. The effect of reopening the appeal on others and the extent to which the complaining party was the author of his own misfortune would also be relevant considerations.

In our view, this is the correct approach for this Court to take into consideration whether it should recall, review or rescind its decision once judgment or ruling had been given.

The Court of Appeal set out the limited residual jurisdiction's objective for reopening an appeal which has been determined to include:

- The court as the final Court of Appeal should finally determine matters between the parties.
- It has the mandate to correct a wrong (an injustice), clarify the law and develop the law.
- The court should maintain confidence in the judiciary.

The residual powers of the appellate court to review its own judgment has also been the subject matter of the decision of the House of Lords in two cases referred to by the Kenyan Court of Appeal. In **R V Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (No 2) [1999] 1 All ER 577**, the House of Lords Per Lord Browne – Wilkinson stated at page 585 - 6 that:

As I have said, the Respondents to the petition do not dispute that your Lordships have jurisdiction in appropriate cases to rescind or vary an earlier order of this House. In my judgment, that concession was rightly made both in principle and on authority.

In principle it must be that your Lordships, as the ultimate court of appeal, have power to correct any injustice caused by an earlier order of this House. There is no relevant statutory limitation on the jurisdiction of the House in this regard and therefore its inherent jurisdiction remains unfettered. In **Cassell & Co Ltd v**

Broome (No 2) [1972] 2 All ER 849, [1972] AC 1136 your Lordships varied an order for costs already made by the House in circumstances where the parties had not had a fair opportunity to address argument on the point.

However, it should be made clear that the House will not reopen any appeal save in circumstances where, through no fault of a party, he or she has been subjected to an unfair procedure. Where an order has been made by the House in a particular case there can be no question of that decision being varied or rescinded by a later order made in the same case just because it is thought that the first order is wrong.

The House of Lords found that a concluded judgment can be reviewed where the parties did not have an opportunity to address the court on a particular point and where without the fault of a party he or she was subjected to an unfair procedure. Further the jurisdiction is used to resolve injustice as a last court when a party has no order remedy.

This jurisdiction was discussed by the House of Lords in **Taylor and another v Lawrence and another [2002] 2 All ER 353** where the House of Lords stated the objective of a Court of Appeal being set up to correct errors as a basis for review. In paragraph 26 of the judgment they stated that:

Before turning to Mr. Eder's argument, it is desirable to note that, while, if a fraud has taken place a remedy can be obtained, even if the Court of Appeal has no 'jurisdiction', it does not necessarily follow that there are no other situations where serious injustice may occur if there is no power to reopen an appeal. We stress this point because this court was established with two principal objectives. The first is a private objective of correcting wrong decisions so as to ensure justice between the litigants involved. The second is a public objective, to ensure public confidence in the administration of justice not only by remedying wrong decisions but also by clarifying and developing the law and setting precedents.

These two objectives to correct errors of the lower court as a primary objective and a duty to rectify injustice to instil confidence in the Judiciary at an appellate level are also relevant to the Supreme Court. In fact, article 132 (1) and (4) of the Uganda Constitution embodies these two public interest objectives by stating that:

132. Jurisdiction of the Supreme Court.

(1) The Supreme Court shall be the final court of appeal.

(4) The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears to it right to do so; and all other courts shall be bound to follow the decisions of the Supreme Court on questions of law.

The objectives are to correct wrong decisions after they have been passed and to ensure finality of judgments. The court as a final appellate court should ensure confidence in the administration of justice and therefore and in appropriate cases reopen an appeal to remedy wrong decisions and also to clarify and develop law setting precedents. There is a conflict or tension between the objective of finality of decisions and the residual jurisdiction to reopen an appeal to meet the objectives of justice. The court can reopen a case in exceptional circumstances such as when there is a breach of the right to a hearing to the prejudice or injustice of a party. This amounts to breach of the principles of fundamental justice of the right to a fair hearing.

In **Taylor and another v Lawrence and another** (supra) at pp 367 – 368 paragraphs 50 – 55 the House of Lords also considered the scope of the inherent jurisdiction of court to foster the aims of justice and stated that:

> If, as we believe it is necessary to do, we go back to first principles, we start with the fact which is uncontroversial, that the Court of Appeal was established with a broad jurisdiction to hear appeals. Equally it was not established to exercise an originating as opposed to an appellate jurisdiction. It is therefore appropriate to state that in that sense it has no inherent jurisdiction. It is, however, wrong to say that it has no implicit or implied jurisdiction arising out of the fact that it is an appellate court. As an appellate court it has the implicit powers to do that which is necessary to achieve the dual objectives of an appellate court to which we have referred already ... As to these powers, Lord Diplock, who perhaps speaks on a subject of this nature with the greatest authority of any judge, has dealt with the inherent power conferred on a court, whether appellate or not, to control its own procedure so as to prevent it being used to achieve injustice.
>
> ...

In our judgment the final words of Lord Diplock, 'the doing by the courts of acts which it needs must have power to do in order to maintain its character as a court of justice' express the situation here under consideration exactly. If more authority is required, reference may be made in a very different context to the speech of Lord Morris of Borth-Y-Gest in **Connelly v DPP [1964] 2 All ER 401 at 409, [1964] AC 1254** at 1301 where Lord Morris said:

> 'There can be no doubt that a court which is endowed with particular jurisdiction has powers which are necessary to enable it to act effectively within such jurisdiction. I would regard them as powers which are inherent in its jurisdiction. A court must enjoy such powers in order to enforce its rules of practice and to suppress any abuses of its process and to defeat any attempted thwarting of its process.'

Earlier judgments referring to limits on the jurisdiction of this court must be read subject to this qualification. It is very easy to confuse questions as to what is the jurisdiction of a court and how that jurisdiction should be exercised. The residual jurisdiction which we are satisfied is vested in a court of appeal to avoid real injustice in exceptional circumstances is linked to a discretion which enables the court to confine the use of that jurisdiction to the cases in which it is appropriate for it to be exercised. There is a tension between a court having a residual jurisdiction of the type to which we are here referring and the need to have finality in litigation. The ability to reopen proceedings after the ordinary appeal process has been concluded can also create injustice. There therefore needs to be a procedure which will ensure that proceedings will only be reopened when there is a real requirement for this to happen....

In the circumstances of this application, the Applicant's grievance is addressed in the application for review and our task is to establish whether there are any grounds for which the court may exercise its residual inherent jurisdiction encapsulated in rule 2 (2) of the Rules of this Court to review a concluded appeal. The question is whether this is an appropriate case where the finality of the decision may be waived to achieve the dictates of justice. Was there a breach of the principles of fundamental justice on the particular concern of the Appellant in that it did not have an opportunity to address the court on the issue?

The Applicant seeks review of the order of the court awarding the District Land Board of Nakapiritpirit a sum of Uganda shillings 23,995,130,000/=. It does not challenge the order awarding something but asserts that what was awarded include its money as paid by UNRA and that the District Land Board of Nakapiritpirit is entitled to about 287 million shillings only. The award of the court is at page 76 of the Judgment of the Supreme Court where Chibita, JSC in the lead Judgment of court stated as follows:

> I would proceed to determine the quantum of compensation due to Nakapiritpirit District Land Board.
>
> The monetary value of the aggregate that was presented to the High Court of Uganda in a valuation report made by the Chief Government Valuer cannot be relied upon because it was ordered by a court that lacked jurisdiction and therefore the proceedings thereunder were of no consequence.
>
> The evaluation of the excavated aggregate can only be found in the Procurement Ref No: UNRA/Works/09/10/00001/18/01 UNRA ID No 142 Volume 5: Priced Bill of Quantities which formed part of the contract for works for Moroto Nakapiritpirit Road. The Priced Bill of Quantities placed the cost of granite stones to be used in the construction at Ugx. 23,995,130,000/=.
>
> This evidence was presented in the proceedings of HCCS No. 16 2014. All these monies were paid to the first Respondent pursuant to the decision of the Court of Appeal.
>
> That money ought to be paid to Nakapiritpirit District Land Board, the constitutionally sanctioned entity to hold, allocate, sell as well as lease the suit rock. Conceding to the first Respondent's holding the money would amount to unjust enrichment.
>
> The appeal succeeds in part.

Following the above finding of the court, an order was issued to pay the said sum to the Nakapiritpirit District Land Board. The decision recognises that the quantum of the award was derived from the Bill of Quantifies for the supply of granite stones needed in road construction.

The contention of the Applicant is that the above sum includes its labour and the cost of processing the rock and that the cost of the rock before

processing is, in actual fact, Uganda shillings 287,694,151/= which is what ought to be paid to the District Land Board. The rest of the amount includes the costs of processing such as the explosives for blasting the rock, the costs of equipment and all the processes involved in getting the permit, acquiring a right, assembling necessary personnel, infrastructure and equipment and crushing and processing the rock to the level of aggregates fit for spreading on the road to form the tarmac road in the road construction.

Clearly the central issue was whether there was any controversy on which the court was addressed relating to the appropriate quantum of compensation to the District Land Board. Such a controversy ought to have been a ground of appeal or at least a derivative issue from a ground or grounds of appeal in the Supreme Court or lower courts.

I have carefully considered the judgment of the Supreme Court and particularly the issues for trial before the High Court, the Court of Appeal and the Supreme Court which was summarised in the Judgment. The court considered the monetary value of rock for purposes of compensation of the first Respondent to this appeal. It also considered the valuation report dated 3rd of March 2017 by the Chief Government Valuer which placed the value of the raw rock at Uganda shillings 20,744,711,490 and the cost of processing at Uganda shillings 25,354,647,711.85/=. This was the monetary value assessed for 723,030 tons of aggregate quarried by the Appellant company with due regard to the bill of quantities and other relevant factors. The Supreme Court noted that this translated into Uganda shillings 16,298,000,000/= for the 562,976 tons due to the first Respondent and Uganda shillings 4,786,537,000/= for the 165,053 tons owned by the second Respondent. Wolayo J determined that the compensation due to the 1st Respondent would be assessed and paid from money that had been deposited in court by UNRA pursuant to a court order in HCCS No 16 of 2014.

Subsequently, the Applicant appealed to the Court of Appeal.

Other questions on appeal arose from other proceedings pursuant to a consent judgment I refer to in passing. The questions on appeal included whether the learned trial judge erred in law and fact when she failed to set aside the consent judgment/orders entered by the registrar of the High Court in HCMA No 700 of 2016 between the first Respondent and the Attorney General and in HCMA No 806 of 2016 between Attorney General and the first Respondent. This arose from another suit; HCCS No 278 of 2016 between the first Respondent and the Attorney General. The cases rested on the proposition that the rock, the subject matter of the suit, was quarried from an area which had a location licence issued to the first Respondent. The Appellant/Applicant to this application in the appeal arising from HCCS No 278 of 2016 Welt Engineering Vs Attorney General alleged illegality of the agreement on the ground that the mining licences granted by the Ministry of Energy and Mineral Development to the first Respondent to this application in respect of the rocks was erroneous because the rock was not a mineral under the Constitution of Uganda. The Court of Appeal dismissed that appeal and the Appellant appealed to the Supreme Court.

The Appellant also filed an appeal in the Court of Appeal in Civil Appeal No 52 of 2017 challenging the orders of the court in HCCS No 16 of 2014 the matters in that appeal in the summary were that the first Respondent was not the lawful owner of the location licences for exclusive/sole quarrying of granite rock. That the second defendant and a third party (the local government) did not have capacity to enter into an agreement with the Applicant to enter, access and use the suit rock. Other grounds of appeal are corollary to the main issue of the right to use the rock in the location where the Applicant blasted and quarried rock for processing into aggregates for purposes of road construction. The first Respondent cross appealed. While the Applicant's appeal was dismissed, the cross appeal was allowed. The Applicant appealed to the Supreme Court in Civil Appeal No 13 of 2019 and Supreme Court Civil Appeal No 14 of 2019. Suffice it to state that the two appeals were consolidated and the following grounds of appeal were resolved by the Supreme Court.

1. The learned Justices of the Court of Appeal erred in law when they held that the Respondent's location licences were not procured and held fraudulently and illegally.
2. The Justices of the Court of Appeal erred in law when they held that the Nakapiritpirit District Local Government did not have power to enter into a contract with the Appellant to extract the granite stones from the Kamusalaba of rock to build the Nakapiritpirit Moroto Road.
3. The learned Justices of Appeal erred in law when they held that the Appellant required a mining licences to quarry and extract aggregates from Kamusalaba Rock to build the Nakapiritpirit – Moroto Road.
4. The learned Justices of Appeal erred in law when they held that the Registrar had power to enter the impugned judgments on admission in HCCS No. 278 of 2016 and Misc. Apps. 700 of 2016 and 806 of 2016.
5. The learned justices of appeal erred in law when they held that the learned judge in Miscellaneous Application Number 876 of 2016 had power to review and very her Judgment in HCCS (Soroti) No 16 of 2015 and dismissed the appeals with costs, and allowed the first Respondents cross appeal with costs and issued a permanent injunction against the Appellant.
6. The Justices of Appeal erred in law when they held that the Appellant had to pay compensation of shillings 23,995,130,000/-

It can be said that the last ground of appeal is the ground that deals with the quantum, that is the subject matter of the application. However, the way the issue was framed and the way the ground of appeal was phrased is that the issue was whether the Appellant had to pay compensation to the first Respondent. The court reached the conclusion that the Appellant was not obliged to pay compensation to the first Respondent because the basis of its claim was a licence for mining when granite was not a mineral under the Constitution of the Republic of Uganda. It follows that the first Respondent was not entitled to compensation. The court was not addressed on the issue of quantum of damages but only on the question of who was entitled. In fact, it is clearly indicated at page 35 of the Judgment of this court that the Appellant relied on the evidence of one Ronald Olaki an official of the

Uganda National Roads Authority that the Appellant was paid the sum in issue for the granite rock referred to as aggregate used to construct the road in question. He submitted that the rock was extracted from Kamusalaba Rock. Also considered were the submissions of the second Respondents counsel which refers to the same evidence of the official from UNRA. The amount was meant for contract estimates in the bills of quantities. It was submitted inter alia that the amount of money included the cost of processing the aggregates and transporting it to the site and other expenses.

The court determined that the granite was not a mineral and therefore the Respondent (the first Respondent was not entitled). The court found that the Nakapiritpirit District Local Government had no capacity to enter into an agreement on behalf of the district and there was no need for acquisition of a mining licence and it follows that none of the parties to the suit were entitled to compensation for the excavated aggregates. That the right entity to receive compensation is the District Land Board.

With regard to the quantum of compensation, the court clearly referred to valuation of the excavated aggregate and found it to be Uganda shillings 23,995,130,000/-.

On the question of whether new evidence can be considered, I need to emphasise that no new evidence ought to be taken by the Supreme Court in the circumstances. Particularly relevant is rule 30 (1) of the Judicature (Supreme Court Rules) Directions which provides that:

> 30. Power to reappraise evidence.
>
> (1) Where the Court of Appeal has reversed, affirmed or varied a decision of the High Court acting in its original jurisdiction, the court may decide matters of law or mixed law and fact, but shall not have discretion to take additional evidence.

The Supreme Court has no discretionary powers to take additional evidence and the issue raised by the parties on additional evidence cannot be allowed. The controversy in this application is whether the order of compensation of the district land board includes, sums of money which are

due to the Applicant. Secondly whether the Applicant had an opportunity to address the court on the issue and whether the Applicant suffered significant injustice as the result of this order. Further, I emphasise that the Applicant is not questioning the order to compensate the Nakapiritpirit District Land Board but only asserts that the said Land Board is entitled to Uganda shillings 287,694,151/-and not the entire sum awarded by the court.

The issue of entitlement of the Nakapiritpirit District Land Board was a consequential issue and determined by the Supreme Court after reaching the conclusion about who is entitled to the sum of money originally awarded to the first Respondent Messrs Welt Machinen Engineering Ltd. The court however reviewed the record in HCCS No. 16 of 2014. This is available on the record and therefore it is not a new fact but what may be considered from the evidence on record.

I have accordingly read the record of appeal in this Court in Civil Appeal No. 14 of 2019 China Road & Bridge Construction Vs Welt Machinen Engineering Ltd and was able to establish some facts about the sum of money in issue.

The action originally arose from High Court Civil Suit No 0016 of 2015 wherein Welt Machinen Engineering Ltd filed an action against the Applicant in this application, UNRA and the Nakapiritpirit District Local Government (a third party). The action was inter alia for injunction restraining the defendants from trespassing upon the suit land. The plaintiff wanted a finding that the defendants had no right to quarry granite stones from the suit land. They also sought special damages of Uganda shillings 8,582,022,000/=, aggravated and exemplary damages, interests and costs of the suit. The plaint disclosed that the defendants were carrying out quarrying activities on the "Kamusalaba Rock" where the plaintiff had a prospecting licence or a location licence for purposes of mining. However, the record shows in exhibit P 17 the contract bill of quantities wherein the Applicant was quoting for purposes of the contract what it would charge for crushed aggregate CRR (see page 171 of the record). The sum of money quoted is Uganda shillings 23,993,130,000/=. Further I have examined the Judgment of the High Court (which appears at page 969 of the record). The

court awarded shillings 500,000,000/= as general damages. Secondly the court made an order that the Applicant to this application was to render an account of the quantity of aggregates extracted from the suit property. Thirdly at page 23 of the Judgment of the High Court, the cost of the crushed aggregate was awarded on the basis of the testimony of PW4 Mr Ronald Olaki from UNRA who had presented the approved Bill of Quantities from UNRA. The trial judge stated that she would peg the award of special damages on the sum of Uganda shillings 23,000,000,000/= for loss on account of excavations on the suit property. This is what the learned trial judge stated:

> Dr. Kyalimpa, and other defence witnesses were emphatic that it is not the monetary cost of making a road that matters but the immense economic and social benefits that would accrue to the community.
>
> PW4 Ronal Olaki from UNRA then did approve bill of quantities that put cost of crushed aggregate at 23 billion. This being the case, I would rather peg my assessment of special damages to this cost than on projections of experts.
>
> The plaintiff succeeded in their claim, I would have awarded the sum of 4 billion as special damages bearing in mind the budget for crushed aggregate is 23 billion and bearing in mind that the plaintiff has not mitigated its loss by excavating Atumtoak rock.

This was clearly based on the value of the crushed aggregate which she translated into a sum on which to peg the award of special damages for the loss suffered by the plaintiff. Clearly, the Appellant, who is the Applicant to this application did not have an opportunity to address the court on what the appropriate quantum of compensation to the District Land Board of Nakapiritpirit should be. It was not an issue. In fact, the district local government dropped out of the controversy and proceedings and it had been paid Uganda shillings 50,000,000/=. The record conclusively shows that the principle of fundamental justice had been breached because Applicant did not have an opportunity to address the Supreme Court on the question of entitlement of the district land board in terms of the quantum. It is the Applicant which processed rock into aggregates and the sum of about Uganda shillings 23,000,000,000 was based on the aggregates quarried by

the Applicant. Principles of fundamental justice include the right of hearing and the rights to address the court and to adduce the necessary materials. In any case the record clearly demonstrates that there is no need to adduce additional material and the Supreme Court does not have to use or consider any fresh evidence. The evidence is clear that this money was earned by the Applicant after it blasted and processed rock by crashing and incurring numerous costs. Even if the contract to quarry is declared illegal, there was no objection to the use of the services of the applicant by the Employer UNRA which paid for the services. To whom does the money earned by the applicant belong? Under doctrines of equity, the applicant rendered services which were billed and paid for some of which were deposited in the High Court pending resolution of dispute but the applicant had not yet received the sum in issue. The money was paid for services and goods supplied by the applicant which services and goods were appreciated by Uganda National Roads Authority. According to **Osborn's Concise Law Dictionary Eleventh Edition** *quantum meruit* is a remedy in quasi contract *inter alia* where work was done and accepted under a void contract which was believed to be valid. Further according to **Halsbury's Laws of England Volume 9 (1) Fourth Edition Reissue in paragraph 1156** 'claims for a quantum meruit in respect of work voluntarily done under a contract terminated for breach or under an unenforceable, void or illegal contract are properly regarded as restitutionary. The Plaintiff may recover on quantum meruit in respect of work done under a contract which is unenforceable, void or illegal (See para paragraph 1158 Halsbury's Laws of England (supra)).

The remaining question is what should be the quantum of compensation to the district land board. I further wish to emphasise that the valuation of the Chief Government Valuer was of processed raw materials. The materials were also referred to as aggregates. By referring to the valued aggregates as "raw materials", the Chief Government Valuer did not take out the fact that it refers to processed material to the state at which it was fit for use on the road for construction of a tarmac road under the relevant road construction contract.

In the premises, I would allow this application and set aside the order awarding the Nakapiritpirit District Land Board (a third Party), shillings 23,995,130,000/= and substitute therefore a declaration that the Nakapiritpirit District Land Board is entitled to compensation and the quantum of compensation includes what is admitted by the Applicant being a sum of Uganda shillings 287,694,151/=.

Any sum over and above this figure has to be established by the High Court after hearing the affected parties namely the applicant and Nakapiritpirit district Land Board only if Nakapiritpirit District Land Board disputes the sum of Uganda shillings 287,694,151/-. Otherwise I would make an order that the rest of the money, less what is owed to Nakapiritpirit District Land Board, is awarded to the Applicant.

Further, I would make an order that the costs of this application is awarded to the Applicant.

The Applicant also prayed that this court reviews its decision in terms of the costs ordered in the appeal. The applicant having succeeded to recover its money pursuant to the review, the costs should follow the event. I would therefore review the order for costs to be borne by each party by setting it aside and making an order that the applicants appeal succeeds with costs in the Supreme Court and the lower courts

Dated at Kampala the 7th day of Nov 2023

Christopher Madrama Izama

Justice of the Supreme Court

Delivered by the registrar 7/11/23

THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

MISCELLANEOUS CAUSE NO.14 OF 2022

(*Arising from consolidated Supreme Court Civil Appeals No. 13 & 14 of 2019)*

[CORAM: MWONDHA; TIBATEMWA-EKIRIKUBINZA, CHIBITA, MUSOTA, MADRAMA, JJSC.]

BETWEEN

CHINA ROAD BRIDGE CORPORATION :::::::::::::::::: APPLICANT

AND

WELT MACHINEN ENGINEERING LTD :::::::::::::::::: RESPONDENT

AND

BETWEEN

CHINA ROAD BRIDGE CORPORATION:::::::::::::::::: APPLICANT

AND

1.WELT MACHINEN ENGINEERING LTD
2. ATTORNEY GENERAL :::::::::::::::::: RESPONDENTS

RULING OF PROF. TIBATEMWA-EKIRIKUBINZA, JSC. (Dissent)

I have had the opportunity to read in advance the decision of the majority Justices.

I have also read the decision prepared by my learned brother Hon. Justice Christopher Madrama Izama, JSC which is a dissent from the majority decision.

I respectfully differ from the Ruling of the majority and I agree with the reasoning of Hon. Justice Madrama, JSC that the application for

recall and review of this Court's judgment in consolidated Civil Appeals No.13 and 14 of 2019 *vide China Road Bridge Construction vs. Welt Machinen Enginnering Ltd* should succeed.

I also agree with the orders that my learned brother proposed in his decision.

I find it prudent to emphasize that the disputed sum of Uganda Shillings 23,995,130,000/= awarded to the District Land Board of Nakapiritpirit was a consequential order. It was never a live issue before this Court in consolidated Civil Appeals No.13 and 14 of 2019. Neither was it a live issue in the lower courts.

Therefore, for this Court to have made an order that affected the parties when they did not have an opportunity to submit on the issue at hand flouted the fundamental legal principle of *audi alteram partem* which entitles each party to a fair hearing and the right to respond to any evidence brought against them.

Dated at Kampala this ....7th.... day of ....Nov..... 2023.

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PROF. LILLIAN TIBATEMWA-EKIRIKUBINZA
JUSTICE OF THE SUPREME COURT.

Delivered by the registrar 7/11/23