

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
HCT-03-CV-MA-0205-2023
(ARISING FROM MISCELLANEOUS APPLICATION No.133 of 2022)
(ARISING FROM HCCS NO.006 OF 2022)

**CENTENARY RURAL DEVELOPMENT BANK:.....
APPLICANT**

VERSUS

- 1. BLUE CUP COMPANY LIMITED**
- 2. ORYEM PETER**
- 3. ATTO FLORENCE**
- 4. JANE AKWERO**
- 5. AZIZ**

MAWEJJE:.....RESPONDENT

Application for Review-

Held: Application is DENIED.

The Applicants are directed to return the Respondents Certificates of Title which they are still unfairly holding onto immediately after the delivery of this Ruling.

Each party to bear its own costs herein.

BEFORE: HON. JUSTICE DR. WINIFRED N NABISINDE

RULING

This Ruling follows an Application brought under **Section 82 & 98 of the Civil Procedure Act Cap 71 (CPA), Order 46 rule 1(1) (a) and 8 of the Civil Procedure Rules SI 71-1 (CPR)** seeking for Orders that:-

1. The Ruling and/or Orders in **Misc. Application No. 133 of 2022** be reviewed and set aside.
2. Costs of this Application are provided for.

This Application is supported by the applicants' affidavits and briefly the grounds are:

1. The Applicant is aggrieved by the Ruling and extracted Orders of the Learned Trial Judge in **Misc. Application No. 133 of 2022**.
2. This Honourable Court erroneously made an Order neither prayed for nor proved that the Applicant immediately releases the three Certificates of Title mortgaged by the Respondents to the Applicant.
3. The above Orders were made based on the Respondent's letter of 22nd May 2023, which erroneously stated that the monies payable under the Consent Decree dated 28th January 2022 were fully paid, whereas they are not.
4. The Order extracted in **Misc. Application No. 133 of 2023**, which purported to direct the release of the Certificates of Title, was not part of the Orders made by the Court and was surreptitiously inserted into the extracted Orders. This is an error apparent on the face of the record.
5. It is necessary for this Honourable Court to set aside the extracted Orders insofar as they mandate the handing over of the three Certificates of Title mortgaged by the Respondents to the Applicant.
6. The enforcement of the extracted Orders in **Misc. Application No. 133 of 2023** will have the consequence of depriving the Applicant of the security to guarantee repayment of the sums still outstanding under the Consent Decree.
7. There is sufficient cause warranting the grant of this Application as the Ruling and the Orders made prejudice the Applicant.
8. It is in the interests of justice that this Application is allowed.

The above stated grounds are reiterated in the Affidavit in support of the Application deponed by **RUTH BIRUNGI**, the Applicant, the gist of which are that:-

1. The Respondents filed **Civil Suit No. 006 of 2022** to stop the sale of mortgaged properties owing from default of loan obligations to the Applicant. This Suit was settled by a Consent Judgment on 28th January 2022 in which the Respondents acknowledged the debt of UGX 1,456,607,997 and undertook to repay the whole sum in accordance with the payment schedule set out in the Consent Judgment. **(A copy of the Consent Decree dated 28th January 2022 is annexed as "A"]**
2. By Clause 2 of the Consent Decree, the parties agreed that the Decretal sum UGX. 1,456,607,997 would not attract interest if the Applicants paid the Confidential External - Centenary Bank

3. The Respondents filed **Misc. Application No. 133 of 2023** seeks to vary the Consent Decree and extend the agreed-upon time to pay back the **(A copy of the Application to vary the Consent Decree in Civil Suit No. 006 of 2022 is attached as "B")**.
4. Before the Ruling in the said Application could be delivered. The Respondents' Counsel wrote to this Honourable Court by letter dated 2nd May 2023, in which he claimed that his clients had paid the Decretal sum of UGX 1,456,607,997 under the Consent Judgment to the Applicant, falsely asserting that the entire outstanding sum had been paid, and asked the court to release the Respondents' mortgaged Certificates of Title. **(A copy of the Respondents' Letter to Court dated 22nd May 2023 is attached as "C")**.
5. In response to the Respondents' letter, the Applicant, through its Counsel informed the Court in a letter dated 8th June 2023 that only the amount of UGX 1,352,000,000 had been remitted and the amount of UGX 104, 607,997 was still owed on the Decretal sum. Additionally, because the Respondents did not pay the Decretal Sum within the time frame set in the Consent Decree, interest continued to accrue at the contractual rate, increasing the total amount owing as of 18th April 2023 to UGX. 338,500,576. **[A copy of the Applicant's Letter to Court dated 8th June 2023 is attached as "D" and the Copy of the account statement indicating the monies paid and those still outstanding is attached as "E")**.
6. That he is aware that the Ruling dismissing the said Application was entered against the Respondents on 15th August 2023 by Her Lordship Justice Dr Winifred N Nabisinde. **(A copy of the Ruling in Misc. Application No. 133 of 2022 is attached as "F")**.
7. In her Ruling dismissing the Application, the Honourable Judge found that it was incompetent and cited the Respondents' letter of 22nd May 2023 to hold that because the sums due under the Consent Decree had been paid in full and the terms of the Consent had been met, the Application had been overtaken by events disregarding the Respondent's letter of 8th June 2023 in so doing.
8. The Applicant's Letter dated 8th June 2023, setting the record straight as to the continuing indebtedness of the Respondents, was not considered, yet it was Ruling was delivered on 15th August 2023.
9. The Respondents extracted the Order from the Ruling of the Learned Judge this and served a copy of this Order on the Applicant on the 22nd August, 2023. Paragraph 2 of the extracted Order purports to compel the Applicant to immediately release the three Certificates of Title

belonging to the Respondents since the Decretal sum has been fully paid, whereas they are not **(A copy of the Order extracted from the Court is attached and marked "G7".)**

10. That he is fully aware that the Respondents neither pleaded for the return of their Certificates of Title in the Application nor did the Ruling of the Court make that Order. Consequently, the Order above is an error apparent on the face of the record justifying a review; and enforcing the Order in **Misc. Application No. 133 of 2023** will deprive the Applicant of the security to guarantee repayment of the sums still outstanding under the Consent Decree.
11. That this Application has been brought without undue delay and thus shall not Occasion a miscarriage of justice upon the Respondents; and should be allowed in the interests of justice.

In reply, the Respondent depone an Affidavit in Reply in opposition to the Application by **Atto Florence**, the 3rd Respondent in which he deponed that:-

1. In specific reply to paragraphs 3, 5 and 6 of the Affidavit in support, she denied them and further stated that the Consent Judgment decretal sum of Ugx.1,457,000,000/= has been fully settled to the Applicant and thus the mortgaged properties should be released. **(See a copy of the bank statement dated from 01/01/2022 to 19/9/2023 hereto attached Marked 'A').**
2. In specific reply to paragraph 6 of the Affidavit in Support, the Respondent denies any outstanding balance whatsoever and therefore the Applicant is barred from claiming any outstanding balance.
3. In specific reply to paragraphs 7 and 8 of the Affidavit in Support of the Application, that she was informed by her Lawyers M/S. Muzuusa & Co Advocates which information she verily believe to be true that this Honourable Court dismissed the Application because it was overtaken by events since the decretal sum had been paid and not because it was incompetent as alleged in paragraph 8. **(See a copy of the ruling vide HCT-03-CV-MC-133 of 2022 marked "B")**
4. In reply to paragraphs 9, 10, 11, 12 and 13 of the Affidavit in Support, she maintained that the decretal sum has been duly cleared in total and mortgage charge on the three certificates of title should be released immediately otherwise further holding unto of the said title is unlawful.

5. That the Respondent shall state that this Application is instead a calculative move by the applicant to deny the Respondents their right to own their Certificates of Title, unjust enrichment of themselves as this Application is incompetent, misconceived and devoid of merit; and should be dismissed with costs

BRIEF FACTS

The 1st applicant applied for and was granted a credit facility on 1st December 2020 of UGX 1,130,000,000 to finance its short term working capital needs in the supply of Barley to Agro Ways (U) Ltd. This facility was secured by legal mortgages on various pieces of land belonging to the 2nd to 5th Applicants. The 1st Applicant thereafter defaulted on its loan repayment obligations. On the 14th of January 2022 the applicants herein instituted **Civil Suit No. 006 of 2022** against the Respondent for breach of agreement, trespass and fraud.

The main suit was settled by a Consent Decree dated 28th January 2022 wherein the applicants acknowledge the debt of UGX 1,456,607,997 and undertook to pay the whole sum in five instalments by the end of 28th February 2023 as per the consent decree.

On the 30th of March 2022, the consent decree was unilaterally varied by the court at the request of the applicants to extend the time within which to complete the first instalment of UGX. 200,000,000 to 30th May 2022 which was granted.

On 30th May 2022 the applicants then brought this application to vary the terms in the consent decree in which this court was to deliver its ruling on the July 2022. By a letter dated 22nd May 2023, the applicants herein wrote to court stating that they have been able to pay the full amount of UGX 1,456,607,997 to the Respondent.

REPRESENTATION

When this application was presented before me for hearing, the Applicants were represented by learned counsel Mr. Stephen Muzuusa of M/S. Muzuusa & Co. Advocates while learned counsel Mr. Ssekatawa Mathias and Alex. S Ntale of M/S MMAKS Advocates appeared for the Respondent.

THE LAW

Section 82 of the Civil Procedure Act (CPA) Cap 71 provides that

“Review

“Any person considering himself or herself aggrieved—

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

(b) by a decree or order from which no appeal is allowed by this Act,

may apply for a review of 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”.

Section 98 of the Civil Procedure Act (CPA) Cap 71 provides that

“Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court”.

This section empowers the court to grant any orders in all cases in which it appears to the court to be just and convenient to do so to ensure that justice is not only done, but seen to be done.

And

Order 46 r.1 (1) (a) of the CPR provides that:-

“Application for review of judgment.

(1) Any person considering himself or herself aggrieved—

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

...

8. Procedure under this Order.

Applications under this Order shall be by Motion on Notice”.

RESOLUTION OF THE APPLICATION

I have carefully analyzed this Application and taken into account the submissions of both sides. The following are the main issues for determination as follows: -

1. Whether the Applicant has sufficient grounds for review?
2. Whether there is still any money owing to the Applicant after the payment of the sums indicated in the terms of the Consent

Judgement/Decree signed by the parties and sealed by court on 28th January 2022 **in Civil Suit No. 006 of 2022.**

3. What Remedies are available to the parties?

In resolving the above issues, it is not in dispute that the 1st Applicant applied for and was granted a credit facility on 1st December 2020 of UGX 1,130,000,000 to finance its short term working capital needs in the supply of Barley to Agro Ways (U) Ltd. This facility was secured by legal mortgages on various pieces of land belonging to the 2nd to 5th Applicants.

The 1st Applicant thereafter defaulted on its loan repayment obligations. On the 14th of January 2022 the Applicants herein instituted **Civil Suit No. 006 of 2022** against the Respondents for breach of agreement, trespass and fraud.

The main suit was settled by a Consent Judgement/ Decree dated 28th January 2022 wherein the Respondents acknowledge the debt of UGX. 1,456,607,997/= and undertook to pay the whole sum in five instalments by the end of 28th February 2023.

It is therefore not in dispute that a Consent Judgement/Decree was entered into by both sides and it is also not disputed that the applicants failed to meet the terms of the Consent Judgement/Decree on the terms that had been agreed upon.

It is also on record that the Respondents still failed to meet this and only managed to pay UGX. 100,000,000/= before the 30th May 2022; and on the 30th of March 2022, this Honourable Court on Application of the Respondents had administratively allowed a relaxation of payment of the 1st instalment to extend the time within which to complete the first instalment of UGX. 200,000,000/= to 30th May 2022 and to maintain the other instalments, however, the Respondents still failed to meet this.

Following the concerns raised by learned counsel for the Applicants and in the presence of both sides, the variation in the terms of the Consent Judgement/Decree was vacated by court and the Consent Judgement/ Decree remained valid.

It is clear that while initially Respondents were unable to meet the terms of the Consent Judgement due to financial constraints at the time, it is also on record that this Honourable Court received a letter dated 22nd May 2023, whereby learned counsel for the Respondents herein wrote to court stating that they have been able to pay the full amount of UGX 1,456,607,997 to the

Applicant. They also attached proof of payment and final settlement of the loan facility as indicated in the Consent Judgement.

After the said payment was made, the Applicants filed the current Application, now seeking an amount of UGX 104, 607,997 as still owed on the Decretal sum for reasons that because the Respondents did not pay the decretal sum within the time frame set in the Consent Decree, interest continued to accrue at the contractual rate, increasing the total amount owing as of 18th April 2023 to UGX. 338,500,576.

The gist of the first Applicant's Application is that they are seeking to review the terms of Consent judgement/decree above.

The law on review of a consent judgment was clearly settled in the case of **Mohammed Allibhai vs W. E Bukenya Mukasa and Departed Asians Property Custodian Board SCCA No. 56/1996** which held that a Consent Judgement may be set aside for fraud, collusion or for any other reason which would enable the court to set aside the judgement.

Further, in the case of **Brooke Bond and Liebig (T) Ltd vs Malya (1975) EA 265**, it was stated that:-

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

I have carefully examined and analysed the submissions of both sides in this Application, and I see no need to repeat all of them in this Ruling; suffice it to confirm that I have not found any fraud, collusion or other justifiable reason which would enable the court to believe that the Consent Judgement/ Decree was not entered into with the full understanding and consent of both sides.

I have also critically analyzed the initial Loan facility Agreement on which the loan was extended to the Respondents; a fact not denied by the Respondents. The Consent Judgement/Decree that resolved the main suit put the decretal amount due at UGX 1,456,607,997/=; and it is clear that by the time this was arrived at by both parties, it included the loan facility extended, penalties and interest that had accrued as of that date.

For avoidance of doubt, at Page 1 of the Consent Judgement/Decree in **Civil Suit No.006 of 2022** before the trial Learned Deputy Registrar, reads that;-

“This Suit coming up the Respondents acknowledged in clause 1 being indebted to the Applicant to a tune 1,456.607, 997/= which the Respondents undertook to pay as follows:-

Ug. Shs.200, 000,000/= by 30th March 2022

Ug. Shs.100, 000,000/= by 30th May 2022

Ug. Shs.200, 000,000/= by 30th September 2022

Ug. Shs.200, 000,000/= by 30th December 2022; and

The balance of Ug. Shs.756, 607,997/= by 28th February 2023.

Further ahead in the Consent Decree, the parties agreed that:-

“2.The parties have mutually agreed, that the acknowledged sum in (1) above, shall not attract interest is the Plaintiff’s pay the installments as agreed.’

3. There shall be no sale of the mortgage properties or security by the Defendant if the Plaintiff pay the installments as agreed

4.In the even the Plaintiff fail to pay any of the instalments above as agreed , the entire acknowledged debt sum in (1) above together with interest thereon at the contractual rate shall become due and the Defendant shall be at liberty to sell the mortgaged properties comprised in LRV 2698, Folio 8, Plot 19 Kakindu Road West Jinja Municipality, FRV MKO and LRV 2477,Folio 7, Plot 7, Nalubale Road, Njeru to recover this sum and execute against the personal guarantors and borrower to recover any amount that remains outstanding” [Emphasis Mine]

The above means that the terms of the Consent Judgement/Decree settled the amount still owing in final conclusion of the case. It is also undisputed that there was failure of the Respondents meeting the terms of the Consent Judgement/Decree fully as per the Consent Judgement/ Decree; and a result, this Honourable Court allowed a change in the terms of payment, however as already noted above, on 25th May 2022 in the presence of both parties, after agreeing that this Order was made in error, Court vacated the Order.

In paragraph 1 of its Ruling, advised the Plaintiffs/Judgement Debtors to communicate whatever efforts they were making to clear the debt to counsel for the Judgment creditors.

Following up on that, the Respondents then filed **Miscellaneous Cause No.133 of 2023** applying to formally vary the Orders in the Consent Judgement/ Decree, however, this matter took some time in Court and by the time the Hon. Judge was ready to deliver her Ruling on the same, it was proved that the Respondents had fully cleared the whole decretal amount on 22nd March 2023, less than a month before the whole decretal amount would have been completed.

Court in its Ruling of 15th August 2023, ordered that **Miscellaneous Cause No.133 of 2023** had been overtaken by events as the Respondents had repaid their loan outstanding to the Applicants; and the Application was dismissed with each party bearing its own costs. An order was granted releasing the three Certificates of Title mortgaged by the Respondents since the decretal sum had been fully paid.

It is therefore apparent from the foregoing that the learned Judge was alive to the terms of the Consent Judgement/ Decree and also established that all the outstanding loan amounts were paid as per the documents that were filed in Court. It is also clear that the Applicants never disputed the fact that full payment to the tune of UGX. 1,456,607,997.

Bearing in mind the above, and in view of the fact that the Respondents had a pending Application before this Honorable Court, I have found that the Applicants were estopped from further invoking the provisions of paragraph 4 of the Consent Judgement/ Decree for the period that **Miscellaneous Application No.133 of 2023** was pending.

The delay in disposing off this Application cannot therefore be visited upon the Respondents who were also awaiting a ruling of Court to determine their fate. This means that all the provisions of the Consent Judgement/ Decree including but not limited to paragraph 4 that talked of interest accruing and sell of the Respondent's properties remained in suspense and could not be executed until the final decision of Court in **Miscellaneous Application No.133 of 2023**.

It is also clear to me that for reasons best known to the Applicant, also being well aware of the above Application by the Respondents could not act not take any action upon the Respondents until the final disposal of **Miscellaneous Application No.133 of 2023**.

This means that from the date when the Respondents filed their Application, Applicants were estopped from claiming further interest on the decretal amount until the final disposal of that Application.

In line with the above, the Respondents cannot be penalized with interest for matters that were well beyond their control as they awaited the disposal of their Application.

As to whether there was a mistake or error on the record, it is on record that the Respondents extracted the Order from the Ruling of the Learned Judge and served a copy of this Order on the Applicant on the 22nd August, 2023. In paragraph 2 of the extracted Order, the Applicant was compelled to immediately release the three Certificates of Title belonging to the Respondents since the Decretal sum has been fully paid, whereas they are not **(A copy of the Order extracted from the Court is attached and marked "G7")**.

From the above, it is therefore clear that the trial Judge considered all the circumstances surrounding this case and the amount due in the Consent Judgement /Decree between both parties in drawing her final conclusions.

My decision is that there were therefore no mathematical errors, miscalculations or mistakes that this court could identify, apparent on the face of the record, in light of the foregoing to warrant a review of the same.

Secondly, I agree with learned counsel for the Respondents that the Orders issued were not issued in vacuum since it is the Mortgagee's obligation to release the properties of the Mortgagor upon discharge of the obligations under the Mortgage, a release of Mortgage has to be effected; and I find no other provision or Agreement or Mortgage Instrument which deprives the Mortgagor of that right.

Thirdly, it is my finding that taking into account all the circumstances of this case to which the Applicants were also privy, claiming further interest from the Respondents is not only unfair, but would amount to unjust enrichment especially as the Applicant does not deny receiving the whole decretal amount of UGX 1,456,607,997 in full.

My decision is that this Application has no merit as it is based misconceived facts. The Applicant has failed to show sufficient grounds for review of the Judgment and Orders of the Court in **Miscellaneous Application No.133 of 2022**.

The Application for review and setting aside of the Orders of **Miscellaneous Application No.133 of 2023** is denied.

The Applicants are directed to return the Respondents Certificates of Title which they are still unfairly holding onto immediately after the delivery of this Ruling.

As regards costs, considering the peculiarities of this case, each party to bear its own costs herein.

I SO ORDER.

JUSTICE DR. WINIFRED N NABISINDE
JUDGE
05/03/2024

This Ruling shall be delivered by the Honorable Magistrate Grade 1 attached to the Chambers of the Senior Resident Judge Jinja who shall also explain the right to seek leave of appeal against this Ruling to the Court of Appeal of Uganda.

JUSTICE DR. WINIFRED N NABISINDE
JUDGE
05/03/2024