

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

**MISCELLANEOUS APPLICATION NO.1819 OF 2020
(ARISING OUT OF CIVIL SUIT NO.570 OF 2012)**

MUSENDWA LIVINGSTONE:.....APPLICANT

VERSUS

NAMALWA JUSTINE:.....RESPONDENT

Before: Lady Justice Alexandra Nkonge Rugadya.

RULING:

Introduction:

The applicant brought this application under the provisions of **sections 82 and 98 of the Civil Procedure, Act Cap. 71 and Order 46 rules 1 & 8 of the Civil Procedure Rules S.I 71-1** seeking;

1. For a review of the judgement of this court which passed the decree or made the orders in favor of the Applicant/plaintiff on 19th August, 2020 on account of some mistake on the face of the record.

2. That costs of the application be provided for.

The brief background of this application is that the applicant successfully sued the respondent for a declaration that he was the lawful owner and beneficial owner of the suit property, and order directing the Commissioner for land registration to cancel the defendant's title for fraud and vest the same in the plaintiff as well as a permanent injunction; and in the alternative, compensation for wrongful deprivation of the suit property.

Court found that the defendant/respondent and her late husband had acted dishonestly which was an act fraud committed against the plaintiff and the estate of the late Musa Kiwanuka. It accordingly issued an order directing the Commissioner to take the necessary

corrective action as would enable the plaintiff to access the correct title for **Kibuga Block 6, plot 317 situate at Katwe**, (hereinafter referred to as the suit land), which he claims and occupies; and also awarded him general damages of **Ugx 100,000,000/=**.

Grounds for review:

5 The applicant now seeks a review of the said orders on the grounds as stated in the affidavit in support of Mr. Musendwa Livingstone, the applicant. He avers *inter alia* that this court in its judgement delivered on 16th September, 2020 rightly decided that he was the lawful owner of the suit property comprised in **Kibuga Block 6, plot 317 situate at Katwe** and made orders in his favor.

10 That based on the advice of his lawyers, there is an error on the face of the record to the effect that whereas he prayed that the title of the suit land be vested in him, the trial judge made the order to cancel the defendant's title to the suit land but omitted to order the Commissioner, Land Registration to transfer and vest the title in his names as the successful party and that the office has since interpreted the decision of this court as directing him to
15 only cancel the respondent's registration.

The applicant also submitted that the Commissioner did not effect the court order on grounds that the only corrective order as required of that office was to cancel the defendant's fraudulent registration, thus leaving the land in the names of Sepirya Sengo Kiruruta, the defendant's late husband.

20 This was contrary to the letter and spirit of the judgement of this court and that it is due to the foregoing reasoning that the second order of this court contains an error apparent on the face of the record and that it is just and equitable that the inadvertent error be reviewed and corrected and that the application is granted.

The respondent filed no reply to the motion despite the fact it was duly served with court
25 process as per the affidavit of service on record. The application therefore stands substantially unopposed.

Consideration of the issue:.

Section 82 of the Civil Procedure Act, provides that any person considering himself or herself aggrieved—

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

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**

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order, and the court may make such order on the decree or order as it thinks fit.

Order 46 rule 1 (1) (b) of the Civil Procedure Rules provides that any person considering himself or herself aggrieved by a decree or order from which no appeal is hereby allowed ...
5 on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him or her, may apply for a review of judgment to the court which passed the decree or made the order.

10 In the case of **Edison Kanyabwera versus Pastori Tumwebaze, Supreme Court Civil Appeal No. 6 Of 2004** court found that;

15 ***“In order that an error may be a ground for review, it must be one apparent on the face of the record, i.e. an evident error which does not require any extraneous matter to show its incorrectness. It must be an error so manifest and clear that no Court would permit such an error to remain on record. The error may be one of fact but it is not limited to matters of a fact and includes also error of law.*”**

In the instant case, the applicant contends that there is an error apparent on the face of the record owing to the fact that the wording of the order issued by this court in its judgement in **Civil Suit No.570 of 2012** does not reflect the exact wording of the order sought in the suit
20 and that it has made it difficult for the Commissioner, Land Registration to do what the judgement intended him to do.

That in his plaint, the applicant sought an order directing the Commissioner land registration to cancel the defendant's title to the suit land for fraud and vest the same in the plaintiff/applicant.

25 This court at *page 13* of the judgement in the head suit after declaring that the applicant is the lawful owner of the suit land, issued an order directing the Commissioner for land Registration to take the necessary corrective action as would enable the plaintiff/applicant to access the correct title for the suit land, which he rightly claims and occupies.

30 The expression “error apparent on face of the record” refers to clerical or typographical errors, or errors falling within that category. The decree in the view of this court does not show any “error apparent on face of the record”, as none exists in the order sought to be reviewed.

However this court is duly persuaded that the order complained of by the applicant may not give the desired effect or reflect the intention of this court. In such circumstances as these where an order is necessary to give effect to what clearly would have been its intention had
35 there not been an omission in relation to the particular matter, court may exercise its

jurisdiction and recall its judgment. (See: *Sir Charles Newbold P in Lakhamshi Brothers Ltd VS R. Raja and sons* [1966] EA 313 page 314).

In *UDB VS Oil Seeds (U) Ltd Civil Application No. 15 of 1977*, it was held thus;

5 ***"A slip order will only be made where the court is fully 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 reasonable doubt, as to the order which it would have made had the matter been brought to its attention".***

10 I find that this one of the cases where such discretion can be exercised and that it is in the interest of justice that the order/decreed be amended to reflect the true intention of this court.

In the result, orders 1, 3, 4 and 5 as issued in *Civil Suit No. 570 of 2012* are maintained while the 2nd order that reads:

15 ***"An order issues directing the Commissioner for Land Registration to take the necessary corrective action as would to enable the plaintiff to access the correct title for plot 317 which he rightly claims and occupies"***, is replaced by:

The following order therefore issues;

1. ***An order is hereby issued directing the Commissioner, Land Registration to cancel the defendant's title to the suit land comprised in Kibuga Block 6 plot 317 Land at Katwe for fraud and vest the same in the plaintiff.***

20 The application is therefore granted. No orders as to costs.

.....*Alexandra*.....
Alexandra Nkonge Rugadya
25 Judge
30th September 2021.

Delivered by email

Alexandra
✓ 1/10/2021