THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MBARARA
HCT-05-CV-MA-0118-2021
(Arising from HCT-05-CV-CS-0055-2020)

CHINA CHANGQUING INTERNATIONAL CONSTRUCTION CORPORATION LIMITED :::::::::::::::::::::::::::::::::::: APPLICANT

VERSUS

EVA KARONGO (THROUGH HER LAWFUL ATTORNEY FLAVIA MBABAZI VIDE POA DATED 30TH OCTOBER 2014) :::::::::::::::::::::::::::::::::::: RESPONDENT

BEFORE: HON LADY JUSTICE JOYCE KAVUMA

RULING

Introduction.

[1] By a notice of motion dated **29th April 2021**, China Changquing International Construction Corporation Ltd (hereinafter referred to as CCICC or the Applicant), sought for orders that;

1. this court reviews the consent agreement entered into by the aforementioned parties on **4th May 2020** in HCT-05-CV-CS-0055-2020 and set it aside or adjust it accordingly or appropriately in the interests of justice and or equity;
2. damages suffered by the Respondent (if any) as a result of the stone quarrying/blasting by the Applicant, be valued by a licensed government valuer/engineer to enable the Applicant compensate the true and or exact damages

suffered by the Respondent (if any) as a result of the Applicant's stone blasting works;

3. execution of the consent judgment/decree be stayed pending the final conclusion of the instant application; and,
4. costs of this application be provided for.

[2] The application is premised on grounds stated in the body of the motion and supporting affidavits which briefly are that;

1. the consent pending performance by the Applicant has either out lived its intended purpose or has since been overtaken by events and or rendered nugatory by new evidence to the effect that the Respondent's house or premises which were the subject matter of the consent were never damaged by the Applicant's activities of stone blasting.
2. the Applicant's counsel negligently failed to qualify or to phrase a clause in the consent to the effect that any repairs required regarding the Respondent's premises as a result of any damages thereto would be valued by a licensed government valuer and paid accordingly by the Applicant to the Respondent at the end of the blasting.
3. that the haphazardly decided or guessed figure of UGX 250,000,000/= allegedly to cater for reconstruction or repair of the Respondent's house per the terms of the consent was unreasonable, unfair and unjustified and injurious to the Applicant and the mistake or professional

negligence by their counsel should not be visited on them, and;

4. the Applicant acted under panic, stress, pressure and fear at the time of signing or executing the consent as injunction orders had suddenly been slammed on the Applicant's stone blasting works which was the most essential component of its road construction contract with UNRA which road had to be completed within a limited time frame.

[3] On their part, the Respondent in an affidavit deposed to by **Ms Flavia Mbabazi** it was stated that the instant application was frivolous, vexatious and without merit. According to the Respondent there was no justifiable ground for this court to review the consent judgment since the same was entered into after numerous meetings and deliberations with the Applicant. That during the mediation sessions, the parties agreed that the Respondent commissions a valuer to asses the cost of reconstruction of the suit property. A valuer by the names of Stanfield Property Partners was commissioned and returned a valuation report of UGX 311,085,578/=. That the Applicant also commissioned their own valuer by the name Engineer Kizito Nathan Musisi who returned a report to the effect that the suit property would need to be overhauled after the Applicant's stone blasting. That with the two reports, both parties discussed and reached a compromise figure of UGX 250,000,000/= as replacement cost for the Respondent's residential premises. That the application was brought to inconvenience the Respondent's family more who were forced to move to temporary structures owing to the Applicant's activities.

Representation.

[4] The Applicant was represented by Mr. Prince Haji Munulo while the Respondent was represented by Mr. Kenneth Munugu. Both counsel addressed this court viva voce and I considered their submissions in making this ruling.

Analysis and decision of court.

[5] The instant application as can be deduced from the pleadings, evidence and submissions of counsel for the Applicant in this matter, this application is premised on the remedy of review.

The jurisdiction to review consent decrees is derived from **Section 82** of the Civil Procedure Act and **Order 46 Rule 1** of the Civil Procedure Rules. (**See Attorney General and Anor vs Mark Kamoga and Anor (supra)**).

Section 82 of the Civil Procedure Act provides;

> *"Any person considering himself or herself aggrieved –*
> *(a) by a decree or order from which an appeal is allowed this Act but from which no appeal has been preferred; or*
> *(b) by a decree or order from which no appeal is allowed...may apply for a review of the judgment to the court which passed the decree or made the order...."*
> (Emphasis is added)

Order 46 Rule 1 of the Civil Procedure Rules in so far as it applies to the instant application provides that:

> **"1. 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

(b) by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within his or her knowledge or could not be produced by him or her at the time when the decree was passed or the order made..."[Emphasis Added]

From the above provisions of the law, it follows that for an applicant to succeed on an application for review, they ought to prove to court any of the following grounds. First, that there is discovery of a new and important matter of evidence previously overlooked by excusable misfortune. (**See Re Nakivubo Chemists (U) Ltd [1979] HCB 12**) Secondly, that there was a discovery of some error or mistake apparent on the face of the record. (**See Independent Medico Legal Unit vs The Attorney General of The Republic of Kenya (Application no. 2 of 2012) (EACJ)**. Thirdly and lastly, that there exists any other sufficient reason of a kind analogous to the first two aforementioned grounds. (**See Yusuf vs Nokorach [1971] EA 104**).

[6] The facts from which the instant application emanates as this court understands them from the materials before it, are these;

The Respondent in the instant application owned a house near or close to a site where the Applicant in the instant application intended to carry out activities of stone blasting. Before the Applicant could commence stone blasting, the Respondent sued them vide **HCT-05-CV-CS-0055-**

2020 inter alia to stop them from proceeding with the activities owing to the damage it would cause to her house. The materials further show that the Respondent further obtained an injunctive order against the Applicant in this regard.

To amicably settle the matter, and it was not disputed by the Applicant, a series of meetings were held by the two parties to get a solution to this impasse. The unchallenged evidence of the Respondent indicates that as a result of these meetings, the parties agreed to engage in a fact-finding mission. They sought the services of professional valuers and engineers. On the part of the Respondent, she commissioned Stanfield Property Partners while the Applicant engaged a one Engineer Kizito Nathan Musisi. According to the Respondent, Stanfield Property Partners valued her property and returned a report indicating that a replacement value of UGX 311,085,578/= would be adequate to compensate the Respondent.

The Respondent indicates that the parties again had a meeting in which a final figure of compensation of UGX 250,000,000/= as replacement costs for her premises.

To avert further litigation in the matter, the parties entered into a consent agreement. The key parts of the said agreement are reproduced hereunder;

> *"1. That CS 55 of 2020 be settled among the parties...*
>
> *2. That the Defendant shall carry out stone blasting/stone quarrying activities at the Kakyika stone quarry, Kyarwabuganda village, Mbarara District that is*

approximately 50 meters from the Plaintiff's home for a period of 18 months.

3. *That the 18 months shall begin to run from the date of signing this consent judgment.*

4. *That during the blasting period of 18 months the Plaintiff shall seek temporary accommodation in the temporary structures left behind by China Seventh group and the Defendant shall compensate the Plaintiff with Uganda Shillings seventeen million ten thousand shillings as approved by the chief government valuer for relocation.*

*...**8.*** *Within a period of 12 months from the date of signing this consent judgment, the defendant shall pay to the Plaintiff Uganda Shillings two hundred fifty million being payment to repair and or rebuild her residential premises inclusive of a house, an outside kitchen, milk pot house, boys quarters and graves etc."*

The consent agreement was endorsed by the learned Deputy Registrar of this court on **4th May 2020** and it became a judgment of this court.

I note from the evidence, pleadings and submissions of counsel in this matter, litigation was averted by settling **HCT-05-CV-CS-0055-2020**. The Respondent shifted her family and livestock from the premises and the Applicant commenced stone quarrying in the area.

After the Applicant had finished carrying out the activities, from the affidavits deposed to by **Mr. Ochaka Stephen, Mr. Nyanjige Hamidu**

and Mr. Mungati Paul, another survey and or valuation was done on the Respondent's house and it was found that the house only required minor repairs.

It was from the reports of **Mr. Ochaka Stephen, Mr. Nyanjige Hamidu and Mr. Mungati Paul** that the Applicant based to file the instant application. This is what the Applicant referred to in this case as new and important matters of evidence that were not available to them at the time that the consent agreement was entered into.

[7] A consent agreement is in its nature a contract interparties. (**See Brooke Bond Liebig (T) Ltd vs Mallya (1975) EA 266 and Mohamed Allibhai vs W.E. Bukenya & Anor, Supreme Court Civil Appeal No. 56 of 1996.**)

With it are the basic tenets of offer and consideration.

In the instant matter, on the evidence before me, under **item 1** of the consent agreement as laid out above, the Respondent herein offered to end litigation in **HCT-05-CV-CS-0055-2020** against the Applicant herein at a consideration of being compensated UGX 250,000,000/=. As a condition precedent to accepting the said offer, the Applicant herein requested of the Respondent to perform **item 4** of the consent agreement. The Respondent put into effect **item 4** of the consent. From the submissions of counsel for the Applicant this was done even without compensation on the part of the Applicant and they were willing to compensate this sum only when **HCT-05-CV-CS-0055-2020** is heard on its merit. The Applicant commenced and performed **item 2** of the

consent agreement to its completion and now sought from this court an order avoiding **item 8** of the consent agreement.

According to counsel for the Applicant, owing to the fact that a valuation and survey was done on the Respondent's house after the stone blasting and it was found that it only suffered minor damage and required minor repairs, the sum under **item 8** amounted to unjust enrichment on the part of the Respondent. That the Respondent sought to become rich at the expense of the Applicant.

[8] It is an accepted principle of contract law that consideration must only be sufficient but not adequate and not have economic value. The court's concern is in enforcing people's bargains rather than regulating the fairness of their bargains. (**See Thomas vs Thomas (1842) 2 QB 851 and Chappell and Co. Ltd.; vs Nestle and Co. Ltd [1960] AC 97**).

Consideration connotes some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other. (**See Currie vs Misa 1874) LR 10 Ex 153**).

The Applicant and Respondent in the instant case bargained for and agreed that a consideration of UGX 250,000,000/ would be compensated to the Respondent at a forbearance, detriment and inconvenience of leaving her home so that stone blasting would be done. This was done after a series of engagements between the parties as shown above.

The Respondent, having acted upon the promise of the Applicant and the Applicant having derived the full benefit of the consent agreement by acting on **item 2** thereof, in agreement with the submissions of counsel for the Respondent, the Respondent is estopped from going back on his promise to compensate the Respondent. (**See Section 114 of the Evidence Act, Betuco (U) Ltd & Anor v Barclays Bank of Uganda Ltd & 3 Ors (Supreme Court Civil Appeal No. 01 of 2017), DFCU Bank Limited vs Magezi (High Court Civil Suit no. 547 of 2017 and generally Central London Property Trust Ltd vs High Trees House Ltd [1947] KB 130)**).

[9] It is a general rule that after judgment has been passed and entered by a court of law, even though taken by consent and under a mistake, it cannot be set aside unless either where there has been a clerical mistake or an error arising from an accidental slip or omission or the judgment as drawn up does not correctly state what the court actually decided or intended to decide. (**See Daniel on Chancery Practice, 7th Edition, Vol. 1585**).

[10] A consent judgment or order is meant to be the formal result and expression of an agreement already arrived at between the parties to proceedings embodied in an order of the court. (**See N Wilding vs Sanderson (1897) 2 Ch. 534**). Such decrees or orders derive their foundation from the agreement of the parties

It therefore follows that in a judgment based upon consent of the parties, it is generally accepted that there can be no error in a decree founded on it (*consensus tollit errorem*) and there can equally be no injustice in such a decree (*volenti non fit injuria*). (**See Webb vs Webb 3 Swantson 658 per Lord Nottingham**).

A party affected by a consent agreement cannot, if he or she so conceives, he or she is entitled to relief from its operation, simply wait until it is sought to be enforced against him or her, and then raise by way of defence the matters in respect of which he or she desires to be relieved. He or she must when once it has been completed, obey it, unless and until he or she can get it set aside in proceedings duly constituted for the purpose. (**See N Wilding vs Sanderson (supra)**).

The court, upon proper action by one of the parties has jurisdiction to set aside judgment upon proper evidence that no consent was ever given, or if the parties had not been consensus as idem, or if consent of one was procured by misrepresentation, under influence or coercion or any other ground on which an agreement in the terms would be set aside. A party against whom a consent decree is passed may, notwithstanding the consent, be wrongfully deprived of its legal interest if, for example, the consent was induced through illegality, fraud or mistake. (**See Hudderfield Banking Co. vs Henry Loster & Sons, Ltd. (1895) 2 Ch. 273, and; Attorney General and Anor vs Mark Kamoga and Anor SCCA no. 08 of 2004**).

[11] Counsel for the Applicant in the instant application submitted that the Applicant, and indeed from their affidavit in support of the instant application considered themselves aggrieved by the consent judgment entered into by the aforementioned parties on **4th May 2020** in **HCT-05-CV-CS-0055-2020** owing to the fact that there was new and fresh evidence obtained after the consent was made to the effect that the Respondent's premises were never damaged as a result of the blasting activities of the Applicant.

[12] Mere discovery of new or important matter or evidence is not a sufficient ground for review *ex debito justitiae*. New and important matters of evidence are those which after the exercise of due diligence were not within the knowledge of, or could not have been produced at the time of the suit by the party seeking to adduce the evidence.

In the instant matter, I was unable to find any new and important matters of evidence that could not have been produced at the time of making the consent agreement between the parties.
Rather though, the evidence being relied upon by the Applicant as new, was only obtained after the Applicant had commenced and concluded the activities that the Respondent sought to stop by **HCT-05-CV-CS-0055-2020**.
It therefore follows that the instant application cannot pass the test for review.

[13] It is well-settled that a party is not entitled to seek a review of a judgment delivered by a court merely for the purpose of a rehearing or to obtain a fresh decision of the case.

Review is not a tool to be used by litigants to reargue their case and fix mistakes or overlooked points of argument. **(See Ssali vs Musoke and three others (High Court Miscellaneous Application no. 766 of 2022).**

The normal principle of law is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so.

In the upshot, I have not found any evidence whether on principle or otherwise which would vitiate the consent agreement or judgment entered into by the parties to the instant application.

This application is therefore dismissed with costs.

I so order.

Dated, delivered and signed at Mbarara this **12th** day of **April** 2024.

Joyce Kavuma

Judge