

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**

**MISC. CAUSE NO. 0064 OF 2020**

**NATUNGA SARAH:.....:APPLICANT**

**VERSUS**

- 1. ERIVANIA SARAH**
- 2. RWEKIBIRA JANE KANOEL:.....:RESPONDENTS**

**BEFORE: HON. MR. JUSTICE HENRY I. KAWESA**

**RULING:**

The Applicant moved Court by a notice of motion under Section 82 & 89 of the Civil Procedure Act, Section 33 of the Judicature Act, O.46 r1, 2 & 4 and O.52 r1 & 3 for orders that;

The judgment of this Court under HCCS No.510 of 2012, Erivania Susan Nalwanga & Ors versus Nelson Serwano Sebinene Senkubuge of 7<sup>th</sup> September 2018 be reviewed.

The application is supported by the affidavit of Natunga Sarah. The matter proceeded *ex-parte* as respondents, through served, did not attend the trial.

The main ground for the application for review is that the Applicant was not a party to HCCS No.510 of 2012 and was not given an opportunity to be heard by the Court. That delivery of the judgment in respect of the suit which affects the rights of the

Applicant, who was never a party thereto is a glaring mistake apparent on the face of the record.

The affidavit shows that the Applicant is the registered proprietor of **land comprised in LRV 4092 folio 13 block 107 plot 2341 at Kyagwe Kawuga** and the judgment adversely affects her interest in the land. I have examined the said pleadings and the submissions in support and I do find as follows:

### **Issue 1**

#### Whether the Applicant is an aggrieved party

Following Section 82 of the Civil Procedure Act, O.46 r1(i) of the Civil Procedure Rules and *Muhammed Allibhai versus WE Bukonya & Anor; CA No. 56 of 1996*, it is trite that;

*“it’s trite that a third party may apply for review if he/she establishes that he/she is an aggrieved person, is one who has a legal grievance; per Yusuf versus Nokrach [19710 EA 104, in Re Nakivubo Chemists (U) Ltd (1971) HCB 12, - to the effect that a person suffers a legal grievance if the judgment given is against him or affects his interests”*

I have examined the pleadings and judgment. It is revealed that the Applicant is a registered proprietor for plot 2341 block 13; Kyagwe Kauga and this is one of the plots affected by the judgment in question.

I therefore find that the Applicant is an aggrieved party.

## Issue 2

Whether the judgment in HCCS No.10 of 2012 should be reviewed and set aside.

O.46 (1) of the Civil Procedure Rules provides that review is only granted on grounds of;

- a) 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 or,
- b) On account of some mistake or error apparent on the face of the record, or,
- c) For any other sufficient reason.

The Applicant pleads that there is a mistake or error apparent on the face of the record. Counsel argues that the failure of a Court to apply a provision of an enactment when on the face of it, would apply to a case amounts to a mistake apparent on the face of the record. He argues that Article 28 (1) of the 1995 Constitution requires a person to be accorded a fair speedy and public hearing before an independent and impartial Court or tribunal established by law.

He also referred to Article 44 on the prohibition of derogation from the enjoyment of the right to fair hearing. (Article 44(c)).

Following the averments in the affidavit in support, paragraph 7,9,11,12 and 13, the Applicant deponed that she was never given a right to be heard and yet the judgment affected her legal right to own the suit land; and the failure to give her a chance to be heard is a mistake of law apparent on the review of the judgment on that ground.

These averments were not rebutted. The judgment in issue was granted between Erivania Susan Nalwanga and Senkubuge Lukwago as against Nelson Serwano Sebinene Senkubuge. The Applicant was not made a party, yet in the evidence, the said title was referred to as part of the plots fraudulently plotted out of the original block 107 plot 341 LRV 2490 Folio 21. The mutated plots were shown as 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347 among others.

Of all the said plots it is only Applicant's plot that was specifically referred to in evidence as currently being registered in a known registered proprietor by the names of Natunga Sarah Natunga. This revelation is a glaring omission. This Applicant should have been added as a party. It is therefore true that her rights to a fair hearing were infringed.

In that regard, she qualifies to be an aggrieved party. The aggrieved party as argued is entitled to ask Court to review the judgment on account to review the judgment on account of the said omission which has been articulated herein. The issue however as brought request for a review of the entire judgment, yet what is apparent on the record as an omission or mistake, affects only her interests on plot 2341 block 107, which is separate and distinct from other plots listed under the judgment.

The review can only happen in respect of the rights and interests of the Applicant herein which were derogated. The issue only succeeds in part.

### **Issue 3**

#### **Whether the Applicant is entitled to the remedies sought**

The Applicant is only entitled to a review of the judgment in only is as far as it affects her rights in plot 2341 block 107. The rest of the judgment shall not be reviewed or set aside.

Since the Applicant has only succeeded in part, she is granted half of the taxed costs of this application to be met by the respondents.

I so order.

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Henry I. Kawesa

**JUDGE**

21/01/2021

21/01/2021:

Vicent Lukwanga holding brief for Nicholas for the Applicant.

Parties absent.

Court: Ruling delivered to the above party.

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Henry I. Kawesa

**JUDGE**

21/01/2021