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THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCILLINOUS APPLICATION NO. 1165 OF 2016
(ARISING OUT OF HCT-00-CC-CS -855-1999)

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MUHAMMAD KATAMBA & ANOR ::::::::::::::::::::::::::::::::::: APPLICANT
VERSUS
HAJI KIRAMBA KISALLITA & ORS ::::::::::::::::::::::::::::::::::: DEFENDANTS

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BEFORE: HON. MR. JUSTICE GODFREY NAMUNDI

RULING

This application is brought under **Sections 82, 98, 99** of the **Civil Procedure Act** and **Section 33** of the **Judicature Act**, and **Order 52 Rules 1 and 3** of the **Civil Procedure Rules**.

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It seeks Orders to recall the Judgment in the Head Suit – Civil Suit No. 855/1999 for purposes of reviewing, altering, amending or varying the same. It also seeks consequential Orders for purposes of Implementing the Judgement in the Head Suit by ordering the removal of the caveat lodged by the 3rd Respondent Habiba Najjuko.

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The application is premised on nine grounds but in summary they are that:-

- There was an error apparent on the face of the record arising from the obvious and inadvertent inconsistency in the findings, Judgment and final Orders of the court, which do not effectuate the intention of the court in its Judgment, thereby warranting the orders sought.
- That there was an accidental slip or omission wherein the court inadvertently in its findings held that the Applicants were bona fide purchasers, and instead ordered a conditional removal of the caveat.
- That the orders sought are not subject of any pending appeal between the parties and does not constitute the subject matter for determination in the Appeal filed by Muhamed Kayondo – who is only challenging the orders made against him.
- That the Judgement by the court will be rendered meaningless if it cannot be effectuated due to the incumbence of the caveat.

The affidavit of the Applicant Muhamed Katamba largely lays out the position summarised above.

- The 4th Respondent Badru Kisalita deponed an affidavit in reply and avers that there is no error apparent on the face of the record and the application is therefore misconceived and wrong in law. Further that there is an appeal and a cross appeal that have not been heard and concluded.

- That the application has been brought long after the appeal and cross appeal were filed and that allowing the application will render the Appeal and cross Appeal nugatory to the prejudice of the Respondents.

The affidavit in rejoinder raises some interesting scenarios.

Firstly, the Applicant avers that the caveat was lodged by the 3rd Respondent who has not sworn an affidavit in reply.

Secondly, the 4th Respondent who filed the affidavit in reply never lodged any caveat in respect of the suit land and cannot therefore purport to act on behalf of the 3rd Respondent without her authority.

Thirdly, the 1st, 3rd, 6th and 8th Respondents have no affidavits in reply so the application against them stands unopposed.

Fourthly, that there is no order for stay of execution in respect of plot 1820 and 1821 in respect of which the Judgment in the main suit decreed to the Applicants.

In the head suit 855/1999, the Respondents sued the Applicants and Kayondo Muhamed seeking orders for specific performance, damages for breach of contract and an Injunction restraining them from carrying out any activity on the suit land.

Kayondo Muhamed had previously sold the suit land to the Respondents/Plaintiffs of which the said Kayondo only acknowledges the payment but that it was for a different piece of land.

The Plaintiffs/Respondents sued and also lodged a caveat against the suit land. The Judge in his Judgment found that the Applicants were bona fide purchasers for value without Notice and that they were rightfully in occupation of the said suit land. He ordered Muhamed Kayondo to refund whatever he had received from the Plaintiffs and also ordered him to pay them General damages.

What is being contested by the Applicants is the order that the Plaintiffs remove caveats against Plots 1820 and 1821 only after Kayondo has complied with orders for refund and general damages. That this order is at variance with the finding that the Applicants are Bona fide purchasers and lawful owners of Plot 1820. That this is an obvious error on the face of the record that needs rectification.

In the meantime, Kayondo filed an appeal contesting the orders for refund and damages but the Applicants are not parties to the Appeal. He also filed a Notice of Cross Appeal this time including the Applicants. I cannot comment on those appeals but only wonder how an Appellant can file both an appeal and a cross appeal at the same time.

The Law

The general rule is that a court becomes **Functus Officio** after passing a Judgment. Under **Section 82** of the **CPA**, a court which passed the Judgment may however review it. It provides that:

95 *(a) any person aggrieved by a Decree or Order from which an Appeal is allowed but from which no appeal has been preferred or*

100 *(b) By a Decree or order from which no appeal is 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/her at the time when the Decree was passed or the Order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason,*
105 *desires to obtain a review of the Judgment may apply to the court which passed the decree or order for review thereof.*

The key aspects here are:

- **Aggrieved person.**

110 This is the person who has suffered a legal grievance. **Ref. Re Nakivubo Chemists (U) LTD (1979) HCB 12.**

- **The other aspect is filing of appeal.**

An appeal would only be lodged by an aggrieved party. Such party would have no right to file an application for review.

115 In the instant case it is not the Applicant who has appealed against the Judgment and decree of the trial court.

- **Other important aspects** are that a decree was passed or order made in **error**, or **some mistake** or **error is apparent** on the face of the record, or for **any sufficient cause**.

120 This application was also brought under **Section 99 of the CPA**. In **Villabhoas Karsandas Raninga Vs Mansuklal Ilvray and Others (1965) EA 700**, It was held that:

1. *The High court has powers under Section 99 of the CPA to amend its decision whether before or after issuance of formal orders.*
- 125 2. *The Court in correcting or rectifying the errors in the Judgment will be giving effect to the intention of the court at the time when the Judgment was given or satisfied that it is proper and equitable to order a rectification.*
3. *That in correcting mistakes in Judgments, the court is not functus Officio.*

130 The Respondents are raising the argument that there is an appeal and hence the application is misconceived. Further that it was brought after undue delay.

I have already observed that the appeal was not filed by the Applicant in the instant matter. I also observe that the court clearly
135 decreed the suit land to the Applicants who must benefit from the results of their sweat in the litigation.

The court am sure did not intend that they be victims of the sanctions passed against the vendor Muhamed Kayondo. Recovery of the special and general damages against him can be by way of
140 ordinary execution proceedings provided for under **Order 22 of the CPR.**

In that respect, I accordingly find that under Section 82(a) and (b) of the CPA, there is an apparent error on the face of the record, and that there is sufficient cause for review of the Orders by the court.

145 Section 99 CPA is also applicable in so far as it will enable the effectuation of the Judgement and Decree of the Court.

I allow the application and grant the orders applied for in the Notice of Motion.

I order each party to meet its own costs for the reason that neither
150 party is responsible for the errors in the Decree.

GODFREY NAMUNDI
JUDGE.

Date:.....

155 **30/11/2016**

Evelyn Tumuhairwe and Joseph Kyazze for the Applicants

3rd and 4th Respondents present.

Applicants present.

Respondents lawyers absent.

160 Court: Ruling read in court.

Godfrey Namundi

Judge.