

UGANDA / JUDGMENT

Binuge Mugisa v Karubanga (HCT-01-CV-MA 67 of 2024) [2024] UGHC 1121 (11 December 2024) [2024] UGHC 1121

COURT

High Court of Uganda

BEFORE

Wagona, J

CASE / FILE NUMBER

HCT-01-CV-MA 67 of 2024

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**THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT FORT PORTAL 3
HCT 01- CV – MA – 0067 – 2024 (ARISING FROM EXN. APPLICATION NO. 26 OF 2024
& CIVIL APPEAL NO. 0061 OF 2009) 6 (ORISIGINATING FROM EXN APPLICATION
NO. 008 OF 008 of 2018 & TRIBUNAL CASE NO. 49 OF 2003) BENEDICT BINUGE
MUGISA ::::::::::::::::::::::::::::::::::: APPLICANT 9 VERSUS FRANCIS
KARUBANGA ::::::::::::::::::::::::::::::::::: RESPONDENT BEFORE: HON. JUSTICE
VINCENT WAGONA 12 RULING**

Introduction:

This ruling is in respect of an application for review citing Section 82 of the Civil 15 Procedure Act, Order 46 rule 1 (a) of the Civil Procedure Rules, and Section 74 (b) of the Advocates Act Cap 267. The applicant seeks an order of court to review and set aside all proceedings to wit: Execution Application No. 36 of 2024; Civil

- 18 Appeal No. 61 of 2022; Civil Appeal No. 43 of 2018; Execution Application No. 08 of 2018; and Fort Portal Land Suit No. 64 of 2008 arising from Kabarole District Tribunal Claim No. 49 of 2003. The applicant also seeks an order to set
- 21 aside the alleged illegal process of sale of land at Myeri Village, Mugusu Sub County, Kabarole District and declare the same property of the applicant and for the dispute over the suit land to be heard afresh de-novo and costs of the 24 application.

Grounds of the Application:

The grounds of the application are outlined in the Notice of Motion and detailed in 3 the affidavit of Mr. Binuge, whose gist is as follows:

- 1. That the attachment of the applicant's land at Myeri Village, Mugusu Sub County, Kabarole District as an oppressed person by the oppressor Mr. 6 Bwiruka Richard of M/s Kaahwa, Kafuuzi, Bwiruka & Co. Advocates to recover a sum of shs23,390,500/= as the taxed costs amount to an illegality and should not be enforced by court.
- 9 2. That the applicant filed Civil Suit No. 49 of 2003 which was illegally closed by HW Sarah Langa, Magistrate Grade One at the time. He appealed to the High Court and His Lordship Simon Byabakama dismissed the appeal with 12 costs.
- 3. That the applicant later filed other claims which were dismissed with costs and subsequently Mr. Bwiruka filed bills of costs all amounting to shs 15 23,390,500/=.
- 4. That all the orders where the costs arise from should be reviewed and set aside and the case heard afresh.

18 Reply of the Respondent:

The application was opposed by the respondent whose detailed account is contained in the affidavit in reply on court record but in brief:

21 1. The applicant filed Tribunal Claim No. 49 of 2003 before Kabarole District Land Tribunal against the respondent and three other people. Following the abolition of the land tribunals, the case was registered in 24 the Chief Magistrate's Court as Civil Suit No. 49 of 2003. During the

course of the trial the applicant consented that the land belonged to the 3 rd defendant Patrick Nyakana. The applicant later filed an application to 3 have the consent set aside vide No. 49 of 2008 and the same, was dismissed with costs by His Worship Kawesa Godfrey. The applicant later lodged Civil Appeal No. 61 of 2009 against the said dismissal to the 6 High Court and His Lordship Justice Byabakama Mugenyi dismissed the appeal with costs.

9 2. The applicant also filed Civil Suit No. 64 of 2008 which was dismissed with costs. The applicant later filed Misc. Application No. 8 of 2018 for review of the judgment in Civil Suit No. 64 of 2008 which application 12 was dismissed with costs. The applicant subsequently filed Civil Appeal No. 43 of 2018 challenging the ruling in the review application which appeal was also dismissed for want of prosecution with costs.

15 3. The taxed costs in all suits amounting to shs 23,390,500/= were demanded from the applicant who did not comply. The respondent later filed an application for execution by way of attachment and sale of 18 property of the applicant as the judgment debtor.

> 4. That the application by the applicant has not merit and the same should be dismissed with costs.

21 Hearing and Representation:

The applicant was self-represented and filed submissions in support of his application which I have considered. The Respondent was represented by Mr.

24 Bwiruka Richard of M/s Kaahwa, Kafuuzi, Bwiruka & Co. Advocates. Mr. Bwiruka filed written submissions in opposition of the motion which I have duly considered but will not re-state the same herein.

Issues:

I find three issues at the heart of this application being:

- 3 (1) Whether this application is proper before court.
- (2) Whether the applicant has presented sufficient cause warranting review of the orders sought to be set aside.
- 6 (3) Remedies available to the parties.

Consideration by Court:

I will consider all issues concurrently. Review as a legal remedy connotes a re-9 consideration, a second view for purposes of correction or rectification of any defect in an earlier decision or finding. (See also: *Black's Law Dictionary 8th Edition*). It is a discretionary legal remedy where a trial court is vested with 12 powers to re-consider its decision for purposes of rectifying any defects or errors in an earlier decision which are apparent or due to presentation of evidence relevant to the decision which was not in the possession of the party at the time the decision 15 was made.

The power of review per section 82 of the Civil Procedure Act is granted to the 18 court and the judicial officer that made the decision. (See *also: Outa Levi v. Uganda Transport Corporation [1975] H. C. B 353*). The law however provides for exceptions for instance where the court was abolished by an enactment or where a 21 judge retired or was transferred or promoted then such a matter can be heard by a court of the same jurisdiction or assigned to a different judicial officer of the same rank. (See: *Farm Inputs Care Centre Ltd v Klein Karoo Seeds marketing (PTY)*

24 *Ltd HCMA No. 0861 of 2021*).

In the present case, some of the decisions that the applicant seeks to review were made by Fort Portal Magistrate's Court; for instance Civil Suit No. 49 of 2003,

- 3 Misc. Application No. 61 of 2009, Civil Suit No. 64 of 2008 and Misc. Application No. 8 of 2018. These decisions were made by the lower court and as such any application to review such decisions should be in the Chief Magistrate's Court. I
- 6 thus find the invitation by the application to have those decisions reviewed by this court, incompetent.
- 9 The decision in Civil Appeal No. 61 of 2009 was made by Justice Byabakama Mugenyi who was promoted to the Court of Appeal and as such, I am clothed with the power to handle the same. The orders in Civil Appeal No. 43 of 2018 were
- 12 made by Justice Vincent Mugabo who is still under the same circuit. He however allocated the case to me to handle, to avoid any perceived bias especially from the applicant. As such I believe I am vested with the jurisdiction to entertain the 15 application at hand.

The exercise of the right to review is limited to an aggrieved party. *(See: Section*

- 18 *82 of the Civil Procedure Act)*. This position was further re-emphasized in *Re Nakivubo Chemists (U) Ltd [1979] HCB 12* where court guided that for purpose of review, an aggrieved person is one who has suffered a legal grievance. He is one 21 whose interests are affected by the decision sought to be reviewed. (See:
- *Muhammed Bukenya Allibai Vs. W. E Bukenya & Anor, SCCA No. 56 of 1996)*.
- 24 In the current motion, the applicant averred that the decisions he seeks to be reviewed were made against him with costs. That as a consequence thereof, the Respondent filed bills of costs which he now seeks to recover by way of selling his
- 27 land at Myeri, Mugusu, Kabarole District. I find that the applicant qualifies as an aggrieved party.

Order 46 of the Civil Procedure Rules and section 82 of the Civil Procedure Act 3 read together limit exercise of review where the following grounds are proved:

> *(a*) **That there is some mistake or error apparent on the face of the record.**

- 6 **(b) Discovery of new and important evidence that could not be produced during the hearing and the making of the decision (c) Any other sufficient cause.**
- 9 Therefore, a party seeking review must be categorical as to the ground upon which his or her application is premised.

- 12 In the present motion, I have carefully studied the motion by the applicant and the written submissions filed. The motion does not specify the grounds for review sought to be relied upon. In particular, the applicant did not point to any mistake or
- 15 error apparent on face of the court record or new evidence which was discovered which could not be presented during the consideration of the said appeals or matters or any sufficient cause cited as the basis to warrant review of the orders of
- 18 this court in both appeals.

In the submissions, the applicant argued that his appeal was wrongly dismissed in 21 his absence and that that in itself was an error apparent on court record. The civil procedure rules however provide for a clear mechanism for re-instating an appeal that has been dismissed for want of prosecution. Civil Appeal No. 043 of 2018

24 which the applicant alleges was wrongly dismissed was dismissed under Order 43 rule 14 of the Civil Procedure Rules and in this regard, Order 43 rule 16 provides the re-admission of such appeal and provides as follows:

Re admission of appeal dismissed for default.

Where an appeal is dismissed under rule 14 or 15 of this Order, 3 the appellant may apply to the High Court for the readmission of the appeal; and, where it is proved that he or she was prevented by any sufficient cause from appearing when the appeal was 6 called on for hearing or from depositing the sum so required, the court shall readmit the appeal on such terms as to costs or otherwise as it thinks fit.

Therefore, where an appeal is dismissed for none attendance of the appellant under Order 43 rule 14, the remedy is to apply for a re-instatement of the said appeal 12 under Order 43 rule 16 and not to file an application for review. Further, a reinstatement should be granted upon the applicant proving sufficient cause that prevented him or her from appearing when the case was called for hearing. The 15 applicant ought to have filed an application for readmission of the appeal under the above order as opposed to filing for review. Notably, even then, in the affidavit in support of the application, the applicant did not state any ground that prevented 18 him from appearing when the appeal was cause listed for hearing.

Further to the above, this court determined Civil Appeal No. 061 of 2009 on merits and the judgment was delivered on 7 21 th December 2012 in the presence of the late Musana who was holding brief for Mr. Nyamutale who was counsel for the applicant. If the applicant was aggrieved by the said decision, he ought to have 24 appealed against the same to the Court of Appeal. This court is thus **functus officio** in as far as Civil Appeal No. 061 of 2009 is concerned. I therefore find the invitation by the applicant to review the same incompetent.

In the end, I find that this application does not raise any grounds for review. The application thus fails and it is hereby dismissed. Regarding costs, I have noted that

- 3 the applicant was self-represented and considers himself an oppressed person. He already has pending unpaid costs of 23,390,500/= looming over his head which drove him into the desperation of filing this application on his own, probably
- 6 because he could not afford legal guidance and representation. Granting costs against him in this application may push him into further hardship. I thus for these considerations make no order as to costs.

Vincent Wagona High Court Judge 12 FORT PORTAL DATE: 11/12/2024

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