

**Edith Muyinza Mukasa v Luwanga Chaitids and
Nakini-U M I I D I F (Miscellaneous Application
No. 3066 of 2024) [2025] UGHC 330 (9 May 2025)**
[2025] UGHC 330

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This Application is brought under Sections 82 and 98 of the Civil Procedure Act, Cap 282 and Order 46 Rule 1(a) and 8 of the Civil Procedure Rules for orders that the conditional Order in Miscellaneous Application 1319 of 2024, that the applicant deposit a sum of thirty million shillings (30,000,000/=) as security for costs be reviewed and subsequently set aside, the same having been entered in error apparent on the face of the judgement and /or decree in HCCS No. 551 of 2017 and the costs of the application be provided for.

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Background.

The background and grounds of the Application are premised in the affidavit in support of the application deposited by Edith Muyinza Mukasa and briefly are;

- ¹. That on the 31st day of July 2017, the 1st respondent vide HCCS NO. 55 I of 2017 sued both Eric Mukasa and the 2nd respondent for cancellation of Eric Mukasa's registration as the proprietor of land comprised in Kibuga Block 17 Plot 229 at Rubaga.
- 2. That Eric Mukasa passed away and the applicant was appointed administrator ad litem of the estate of the late Eric Mukasa for purposes of the said suit.
- 3. That in its judgement in HCCS 551 of 2017 dated 11th April 2024, Court ordered that the late Eric Mukasa's registration as registered proprietor of the suit land be cancelled but she was never condemned to any payment and /or costs of the suit.
- 4. That as administrator ad litem of the late Eric Mukasa, she was aggrieved with the judgement and decision made in HCCS NO. 551 of 2017 and, appealed the whole judgement vide Civil Appeal No. 329 of 2024 which is pending hearing in the Court of Appeal.
- 5. That having appealed the said judgement, she applied for a stay of execution vide Miscellaneous Application No. 1319 of 2024 pending the appeal.
- 6. That a ruling was delivered via ECCMIS on the 30th of October, 2024 wherein an order for stay of execution of the decree in HCCS No. 55 I of 2011 given on condition that the applicant pays 30,000,000/= as security for costs, payable within 30 days from the date of the delivery of the said ruling.

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- 7. That the applicant is aggrieved by the court's said conditional order in its ruling to pay 30,000,000/= as a condition for stay of execution which is an error apparent on the face of the decree in HCCS No. 551 of 2017, wherein she was never condemned to payment of costs.

- 8. That in the circumstance, justice demands that the conditional order that she deposit a sum of Shs. \$30,00,000/= as security for costs for the stay of execution of the decree in HCCS NO. 551 of 2017 be reviewed and the same be set aside.

1st Respondent's Reply.

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The 1st respondent in his Reply states that in the making of her ruling, the Honorable Judge was alive to the fact that no costs had been ordered against the applicant in HCCS NO. 551 of 2017 but used her discretion to make a conditional order for security for costs as any further action such as an appeal, would be costly and cause unjust delay against his enjoyment and access to fruits of the judgement and that denial of the fruits of judgement is prejudicial to him by the very system under which he had sought justice.

That there is no error apparent on record as the Learned Trial Judge gave reasons and exercised her discretion judiciously in determining the security for costs as a condition for grant of an order for stay of execution.

That the ruling was delivered on the 18th October, 2024 though dated 17th October, 2024 and therefore it was not true that the same was delivered on 30th October 2024 as stated by the applicant in her affidavit.

That upon realizing that the 30 days given in the ruling, within which to deposit the security for costs, had lapsed or was about to elapse, the applicant conjured an idea of review of the decision with a view of buying more time.

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The 2nd Respondent did not file an affidavit in reply.

Representation and hearing

The applicant was represented by IWS. Kabega, Bogezi & Bukenya Advocates while the 1st respondent was represented by M/S KGN Advocates.

Both parties filed written submission which I have taken into consideration before arriving at this decision.

Issue for determination.

Whether there is sufficient cause to review and set aside the conditional Order in Miscellaneous Application No. 1319 of 2024, that the applicant deposit 30,000,000/- as security for costs.

Submissions of the parties.

Counsel for the applicant submitted that there is a mistake apparent on the face of the record in Miscellaneous Application No. ¹³ 9 of 2024 viz aviz I{CCS No. 551 of 2017 which needs to be reviewed and corrected.

That the grant an order of stay of execution on condition that the applicant deposits 30,000,000/: as security for costs was a mistake and an error on the face of the record of the judgement in HCCS No. 551 of 2017 since the applicant was never condemned to any payment or costs of the suit which mistake and/error ought to be reviewed.

Counsel for the applicant also cited the case East African tlding Ltd vs Madhivani where it was stated that "an order for deposit of money as a condition for stay of exectdion is meant to cater for costs incurred in the past and not for costs likely to be incurued in the future. "

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Counsel for the respondent argued that it is clear that the applicant does not wish to pay the security for costs as ordered by the court. He opined that the effect of setting aside the order of a conditional stay of execution would be to let execution of the decree to proceed unabated.

Counsel further submitted that the 1't respondent in his affidavit in reply does state that the trial judge did exercise her discretion to grant a conditional stay of execution which has displeased the applicant.

Additionally, counsel argued that the applicant was a defendant in HCCS NO. 551 of 2017 which was determined against the said defendant with a consequence that the certificate of title is to be cancelled. That with this decree in mind, the Leamed Trial Judge was alive to the fact that the intended appeal was devoid of merit and is likely not to succeed. She was cognizant of the fact that the 1" respondent is in possession of the suit land and that the applicant was never condemned to any payment of costs and no award was made against the applicant.

That there is therefore no mistake or error apparent on the face of the record to warant this court to review the decision requiring the applicant to pay security for costs within 30 days.

Determination.

Section 82 of the Civil Procedure Act, (CPA) provides that-

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 by this Act, may apply for a review ofjudgement to the court which passed the decree or

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

Order 46 Rule 1 of the Civil Procedure Rules , (CPR) provides that;

(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 order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reasons, desires to obtain a review of the decree passed or order made against him or her may apply for review of the judgement to the court which passed the decree or made the order.

In this case, it is clear that the Applicant considers herself aggrieved. An Aggrieved person is a person who has a genuine legal grievance because an order or decision has been made that affects his or her interests in a prejudicial manner. see *Attorney-General of the Gambia v. N'Jie* 1196112 All. E. R 504.

An error apparent on the face of record was defined in the case of *Edison Kanyabwera v Pastori Tumwebaze* SCCA No. 06 of 2004 to be one that is apparent on the face of the record. It must be an error which does not require any extraneous matter to show its incorrectness. It must be so manifest and clear that no court would permit such an error to remain on the record.

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In the instant application, the Applicant seeks to review the Order dated 17th October 2024 on the sole ground that there was an error apparent on the face of the record. In that application the court allowed the stay of execution on condition that security for costs be paid within 30 days from the date of the Ruling.

In the instant case, the grievous of the applicant is that the court made ^a conditional order in its ruling in MA No. 1319 of 2024 for a deposit of Thirty Miltion shilling as a condition for stay of execution. She claims that this is an error apparent on the face of the record as the Applicant was not condemned to costs in HCCS 551 of 2017.

In the afore mentioned application, the court in deciding to order security of costs reasoned that the case where the appeal arose was filed in 201'l ,, and any further action would not only be costly, but also cause unjust delay to the 1't respondent, affect his timely access to the fruits of the judgement and would also be prejudicial to him by the system under which he sought justice.

In so doing, the court also acknowledged that the applicant was never condemned to any payment of costs and no award was made against her.

Discretion was defined in *Yahaya Kariisa vs Attorney General* SCCA NO. 07 of 1994 by Justice Mayindo, as he then was, to mean the faculty of deciding or determining in accordance with circumstances and what seems just, fair, right, equitable, and reasonable in those circumstances.

As earlier opined an error apparent on the face of the record, is an error that is apparent and does not require any extraneous matter to show its incorrectness. An exercise of discretion in my view does not fall under mistake or error apparent on the face of the record.

I find that the court in ordering a conditional stay of execution is not an error apparent on the face of the record. This application therefore fails.

Dated at Kampala thisday of May 2025.

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