

Kasule v Attorney General
(Miscellaneous Application 1140 of 2020)
[2024] UGCommC 142 (13 May 2024)
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20 measuring 1,281 acres. In 2008, the Applicant/Plaintiff received a judgment in his favor in Civil Suit No. 508 of 2003 for payment of UGX 90,080,000/- from the Respondent at an interest rate of 16% per annum from 1st February 1991 till payment in full.

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5 A dispute later arose as to the computation of interest to be paid to the Plaintiff/Applicant. The Applicant filed Miscellaneous Application No. 688 of 2014 for court's guidance on the computation of the awarded interest.

The Honorable Court rejected the methods of computation of interest advanced by both parties and then guided that interest should be calculated up

10 to the date of payment, added to the principal amount, and subsequently deducted the total due after subtracting the amount already paid.

The Applicant being dissatisfied with the Ruling of the court, now seeks to have the judgment of **Hon. Justice Madrama Christopher Izama, J** (as then he was) in Miscellaneous Application No. 688 of 2014 delivered on 5th May 2015 to be reviewed and set aside.

The Application

This Application is brought under **Sections 82 and 98 of the Civil Procedure Act cap. 71 and Order 46 Rules 1,2,3,4 and Order 52 Rules 1,2, and 3 of the Civil Procedure Rules S. I 71-1 as amended.**

20 The Application seeks orders that the Judgment, Orders and Decree entered and delivered on 5th May 2015 in High Court Miscellaneous Application No. 688 of 2014 by **Justice Christopher Madrama Izama** be reviewed and set aside, and provision be made for the costs of this Application in favor of the Applicant.

This Application is premised on grounds that:

25 a) The Applicant is dissatisfied with Judgment, Orders and Decree of the Court in High Court Miscellaneous Application No. 688 of 2014, delivered on 5th May 2015.

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- 5 b) There is an error apparent on the face of the record which arises from the fact that the Court in computation of interest, subjected the Court award to simple interest as opposed to compound interest, thereby prejudicing the Applicant on sums payable and interest due.
- c) There was a misconception when the Court took the approach of adding 10 interest that has so far accrued at the time of payment to the principal amount and then subtracting the part payment from the total without basis in law whatsoever.

- d) There was an omission to try a material issue in the case and a decision on a matter not in issue.
- 15 e) The Applicant is aggrieved by part of the said Decision and Orders which are manifestly wrong and undermine its soundness.
- f) The Applicant seeks that the matter be reconsidered by the same court otherwise his interests will have been prejudiced.
- g) It is in the interest of Justice and equity that the Judgment, Orders and
- 20 Decree and costs in Miscellaneous Application No. 688 of 2014 be reviewed and set aside.

The Application is supported by the Affidavit of Esero Kasule, the Applicant. He swore that:

- a) He filed Miscellaneous Application No. 688 of 2014 seeking to refer the 25 method of computing interest accruing from the Judgment in main suit be referred to a reputable chartered accountant or such other expert as the court would consider fit but court, on computation of interest subjected the award to simple interest.
- b) It is now apparent that pursuant to the said Ruling, that the government 30 department responsible has to calculate interest up to the date which
- 5 payment is made and add that interest to the principal amount, subsequent to which it subtracts the amount paid from the total due.
- c) The Court held that interest would continue to accumulate at a simple rate of 16% per annum with effect from 1st February 1991, on the principal amount until sufficient payment would be made to start 10 offsetting the principal amount.
- d) There is an error apparent on the face of the record and in the Judgment, which arises from the fact that the Court in computation of interest, subjected the Court Award to simple interest as opposed to compound interest, thereby prejudicing him on sums payable and interest due.
- 15 e) The decision to compute the Court Award at a simple interest rate was manifestly erroneous, unfair and had no basis whatsoever in law and he is aggrieved by part of the said decision which is manifestly wrong.
- f) This Honorable Court is vested with powers under the law to review and set aside the Judgment where a party strongly believes there has been
- 20 an error or mistake and for any sufficient cause such as the Judgment which was entered in HCMA No. 688 of 2014 on account of gross error.
- g) It is equitable and in interest of justice that the decision of this Honorable court is reviewed and set aside.

The Application was further supported by a supplementary affidavit of Stephen 25 Kasenge, an accountant and he stated that:

- a) M/s KSK Associates was engaged by the Applicant to compute the sum due to him arising from HCMA No. 688 of 2014 filed in the High court and a report was furnished.
- b) They obtained and reviewed both the Court Order in Civil Suit No. 508 of 30 2003 and the Ruling in HCMA No. 688 of 2014 and using their

5 knowledge, skills and expertise, they qualified the interest due to the Applicant over a period ranging from 01st February 1991 to 01st February 2022 and came up with a figure of Ugx. 7,556,428,072/-, as showed in Annexure C to the affidavit.

The Respondent objected to this Application and Mr. Ocol Ambrose swore the 10 Affidavit in reply and deposed that:

- a) The Government of Uganda compulsorily acquired the Applicant's land by virtue of **S. I No. 32 of 1991** and in 1992 he received Ugx. 26,450,000/=. In 1999 he received Ugx. 151,162,963/- and in 1992 he received Ugx. 50,000,000/- as part payment of compensation of the 15 land.
- b) In 2003, the Applicant filed Civil Suit No. 508 of 2003 seeking the balance of Ugx. 90,080,000/- plus interest and obtained judgment for sum and interest of at a rate of 16% per annum with effect from 1st February 1991.
- 20 c) The Respondent made several payments, but a dispute arose as to the method of computation of the debt. The Applicant presented a debt of UGX 355,266,553/- basing on his accountant's computation of interest, and this was rejected by the Respondent's accountant and applied interest to the principal to reduce escalation on interest accrual and this 25 was disputed by the Applicant which resulted in the filing of HCMA No. 688 of 2014 for court to determine the correct method of computing interest.
- d) The Court rejected the computations advanced by both parties, that is the Applicant's method was rejected because it led to compound interest

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- 5 and the Respondent's led to nil liability, and the court rightly guided on the computation of interest.
- e) The trial judge expressly disagreed with the formula as advised by the Applicant's experts and a mere error or wrong view or difference of the trial judge is certainly not a ground for review though it may be a matter 10 for appeal.
- f) No law specifies how interest is computed on a judgment debt and specifically on the question of whether part payment reduces interest first or is used to reduce the principal debt first.

- g) The alleged error of computation of interest is an extraneous matter and
- 15 in the absence of an established practice, the matter is neither obvious nor automatic. The instant Application is misconceived, incompetent and amounts to an abuse of court process.

Hearing and Representation.

When the matter came up for hearing on the 2nd day of October 2023, the

- 20 Applicant was represented by Mr. Paul Rutisya of M/s Kasirye, Byaruhanga & Co. Advocates. The Respondent was represented by Mr. Mark Muwonge, a state attorney from the Attorney General's Chambers. The Court directed the parties to file their written submissions and both parties complied. This Court has duly considered the submissions of both parties in this Ruling.
- 25 **Applicant's submissions**

For the Applicant, it was submitted that **Section 82 of the Civil Procedure Act and Order 46 of the Civil Procedure Rules** provide for an application to review a decision of the court. Counsel relied on the case of **FX Mubuke Versus UEB High Court Miscellaneous Application No. 98 of 2005** where the court set out

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- 5 the grounds for review as; that there is a mistake or manifest mistake or error apparent on the face of the record, that there is new and important evidence which after exercise of due diligence was not within the applicant's knowledge or could not be produced by him or her at the time when the decree was passed or the order made, and that any other sufficient reason exists.
- 10 Further submission was made that an error must be one apparent on the face of the record. That is the error must be evident that it does not require any extraneous matter to show its incorrectness. It must be an error so manifest and clear that no court would permit such an error to remain on record. The error may be one of fact but it is not limited to matters of fact and includes also
- 15 error of law. This is the position in **Edison Kanyabwera Versus Pastori Tumwebaze SSCA No. 6 of 2004**.

Counsel for the Applicant then argued that the Learned Trial Judge's view in Misc. Application No. 688 of 2014 was problematic and amounted to a glaring mistake apparent on the record because it did not foster the preservation of

20 the value of the principal amount or subject matter; yet this was the object of compensation. Therefore, the Applicant was not adequately and fairly compensated for his interest in the land in accordance with **Article 26 of the Constitution** of the Republic of Uganda. It was unjust for the learned judge to further suggest an approach that did not make commercial sense and was 25 unable to remedy the injustice he suffered.

Hence it is imperative that the miscalculation and mathematical error occasioned by the Judge is rectified in the interest of justice.

Counsel for the Applicant further submitted that the findings of the learned judge were from the onset not meant to be conclusive but rather suggestive

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5 and thus erroneous since simple interest cannot accrue on a yearly basis. That the correct computation is for compound interest and the amount according to the Auditor's report is Ugx. 7,556,428,072/- and there is no evidence to challenge this evidence and thus should be accepted.

Respondent's Submissions

- 10 Counsel for the Respondent retaliated the principles of review of a court decision laid out in **FX Mubuke V UEB (supra)** and submitted that this Application did not meet this criterion. That a mere error, wrong view, or difference in opinion of the trial judge does not constitute grounds of review, although it may be a valid ground for appeal. There is no specific legal provision
- 15 governing the computation of interest on a judgment debt, particularly concerning the order in which partial payments should be allocated to reduce the interest or the principal debt.

It was the submission for the Respondent that the miscalculation of interest was not prima facie evidence and required extrinsic evidence for its disproof 20 and this was fortified by the Applicant's actions of enlisting services of an independent auditor who furnished an audit report aimed at presenting an alternative perspective on the appropriate methodology for interest calculation. Counsel for the Respondent relied on the case of **Nyamogo** **Advocates Versus Kago* [2001] 2 EA 173* where an "error apparent on the face 25 of record" requires no reasonable alternative interpretation. But an error that requires lengthy process of reasoning or involves points where two opinions are plausible cannot be deemed an error apparent on the face of the record.

He concluded that the alleged error in the Court's computation of interest was not apparent and necessitated elaborate calculations to establish and

30 involvement of a certified public accountant would be required.

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- 5 On whether the Applicant was entitled to compound interest as opposed to simple interest, counsel argued that the Respondent agrees to the mode of computation determined by the Court. Counsel relied on the case of **Attorney General Versus Virchand Mithalal and sons Ltd SCCA No. 20 of 2007** where Court set the considerations for award of compound interest to be based on
- 10 nature of the transaction, agreements and contract, trade customs; and intentions and consequences.

That there was no evidence to suggest that compound interest was intended, implied, or anticipated by the parties or implied by law. Therefore, the Applicant is not entitled to compound interest.

15 Determination**Section 82 of the Civil Procedure Act cap. 71 provides that:**

"Any person considering himself or herself aggrieved by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or by a decree or order from which no appeal is* 20 *allowed by this Act, may apply for a review of judgment to the court which passed the decree or 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 S. I 71-1 as amended is to the effect that an application for review can be made on discovery of new and 25 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 on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.

5 This position has been fortified by the case of **F. X Mubuke V UEB (supra)**

It was the argument of the Applicant that there is an error apparent on the face of record which arises from the fact that the court in computation of interest, subjected the Court award to simple interest as opposed to compound interest.

A review may be granted whenever the court considers that it is necessary to

10 correct an apparent error or omission on the part of the Court. **See. Farm Inputs Care Centre Ltd Versus Klein Karoo Seeds Marketing (PTY) Ltd HCMA N0. 0861 of 2021.** The error on the face of record must be self evident and should not require an elaborate argument to be established. There must not be two opinions or requirement of a long drawn process of reasoning for the error 15 to be established. **See. Nyamogo & Nyamogo Advocates Versus Kago (2001) 2**

E. A 173.

The current contest between the parties is about the computation of interest in respect of the Applicant's claim and whether this is something that can be resolved by way of reviewing the decision of the learned trial judge or 20 appealing against it.

The learned trial Judge, in his Ruling considered two arguments advanced by both parties on the mode of computation of interest to compensate the Plaintiff/Applicant, but he rejected both arguments with reasons stated in the Ruling. The Honorable judge then considered the essence of the award of

25 interest under the principal of **restitutio integrum** and concluded that the words of the Decree should be strictly construed to preserve the intention of the court and the parties to award the Plaintiff interest on the money award. He noted that:

- 5 *"The calculations that I have made above in this ruling are not meant to be conclusive but only demonstrate how calculations ought to be made. In the premises I do not agree with the formula advised by the Plaintiff's expert which amounts to the charging of compound interest leading to a colossal amount. Neither do I agree with the formula advanced by the**
10 **Accountant General which leads to nil liability and advances a technicality to avoid accrual of interest. The formula I have advanced reflects the payment of simple interest per annum and treats the principal as capital."*
- My understanding of the Ruling is that the opinion of the Learned Trial Judge as 15 he then was, was guided by **Section 26 (2) of the Civil Procedure Act**. It was the argument of the Applicant that the finding of the Trial Judge was wrong and misconceived. The Applicant was dissatisfied with the Ruling in HCMA No.688 of 2014 and has disguised this as an application for review yet in actual sense the Applicant is appealing the decision of the Court. The Ruling in
- Miscellaneous Application No. 0688 of 2014 was delivered on the 5 20 th May 2015 and this Application was filed on the 3rd December 2020. Needles to mention that the contention of the Applicant is not obvious or self evident to pass the test of applications for review of a court judgment, order or decree. Review should not be used as a backdoor method, through which unsuccessful litigants
- 25 can seek to reargue their cases. The Applicant had to go through the trouble of hiring the services of M/s KSK Associates CPA, an independent accountant to compute what is due and owing to the Applicant following the decision of this Court in HCMA 0688 of 2014. The Accountant's Report was produced on the 9 th March 2022. This a Report that the Applicant seeks to rely on and neither the
- 30 court nor the Respondent have tested its veracity. The author of this report would have been required to take oath and cross examined on his findings.

5 Going through this process would not in my opinion make this matter fit for review.

The power of review is to be exercised with discretion. In the case of **Aribam Tuleshwar Sharma v Ariban Pishak Sharma* (1979) 45CC 389, 1979(11) UJ 300 SC,* it was noted that:

- 10 *"But it may not be exercised on the ground that the decision was erroneous on merits. That would be the* province *of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court."* (Emphasis is mine)
- 15 In the case of **Kalokola Kaloli V Nduga Robert HCMA No. 497 of 2014**, **Honorable Justice Musota (as he then was)** observed that:

*"Therefore, a misdirection by a judicial officer on a matter of law cannot be said to be an error apparent on the face of the record. An error apparent on the face of the record was defined in Batuk K. Vyas Vs Surat**

20 **Municipality AIR (1953) Bom 133 as:**

*"No error can be said to be apparent on the face of the record if it is not manifest or self-evident and requires an examination or argument to establish it..."**

The East African Court of Justice in **Independent Medico Legal Unit Versus* 25 *Attorney General of the Republic of Kenya Application No. 2 of 2012**, elaborately observed what an **error apparent on record"* is and set the principles to be followed. I will quote at length, their observations:

- 5 *"(a) As the expression "error apparent on the record" has not been definitively defined by statute, etc, it must be determined by the Court's sparingly and with great caution. (b) The "error apparent" must be selfevident; not one that has to be detected by a process of reasoning. (c) No error can be said to be an error apparent where one has to "travel* 10 *beyond the record" to see the correctness of the judgment – see paragraph 2 of the Document on "REVIEW OF JURISDICTION OF THE SUPREME COURT OF INDIA" (supra) (d) It must be an error which strikes one on mere looking at the record, and would not require any long drawn process of reasoning on points where there may conceivably be two* 15 *opinions – see Smti Meera Bhanja v. Smti Nirmala Kumari (Choudry) 1995 SC 455. (e) A clear case of "error apparent on the face of the record" is made out where, without elaborate argument, one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained* 20 *about it – see Thugabhadra Industries Ltd v. The Government of Andra Pradesh 1964 AIR 1372; 1164 SCR (5) 174; also quoted in Haridas Das v. Smt. Usha Rani Banik & Ors, Appeal (civil) 7948 of 2004. (f) In summary, it must be a patent, manifest and self-evident error which does not require elaborate discussion of evidence or argument to establish – see* 25 *Sarala Mudgal v. Union of India M. P. Jain, page 382, Vol. I (g) Review of a judgment will not be considered except where a glaring omission or a patent mistake or like grave error has crept into that judgment through judicial fallibility – see Document: "REVIEW JURISDICTION OF*

SUPREME COURT OF INDIA" (supra)." (Emphasis added)

- 30 The Court further observed that:

5 "This power of review has been allowed if the order sought to be reviewed is based on: a decision per incuriam; or an incorrect set of facts or assumption of law; or non-consideration of a contention made; or if a judgment is inconsistent with the operative portion or an interim order which was granted subject to the outcome of the appeal to clarify an* 10 *ambiguity."*

In the Application before court, the Applicant requires this court to consider arguments of the parties afresh and call in expert evidence of an accountant or auditor. The court needs to go beyond the record of the trial court to make a finding. Therefore, the argument that this matter is a good case for review is not tenable. The Applicant intends that this court freshly

15 reevaluates the evidence of the trial court and considers his argument on computation of interest which is a preserve of the Appellate Court. That being the case, I will not dwell on the issue of what mode of computation of interest ought to be considered to compensate the Applicant.

For the reasons given above, this Application is dismissed with costs to the Respondent.

Signed and dated at Kampala this 13th 20 day of February 2024.

Harriet Grace MAGALA

Judge

Delivered online (ECCMIS) this 27 th 25 day of May 2024.

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