

KTA Advocates v Colline House Limited
(Miscellaneous Application No. 2158 of
2023) [2025] UGCommC 124 (22 May 2025)
 [2025] UGCommC 124

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The Respondent filed HCMA No. 1481 of 2022 for a temporary injunction. The Ruling in the said application was delivered by this honorable court on the 21st December 2022. The temporary injunction was granted to the applicant on

- 20 condition that the Applicant deposits with court 30% of the forced sale value of the suit property within 30 days of delivering the Ruling. The forced sale value of the property would be obtained from the valuation report of the suit property that was presented and accepted by the Lender at the time the mortgage was executed.
- 25 The Applicant seeks for orders that:
 - a) The Ruling in HCMA No. 1481 of 2022 be recalled and reviewed;
 - b) The 30% of the forced sale value of the suit property comprised in LRV 3945 Folio 11, Plot 4B Pilkington Road-Kampala be deposited in the bank

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- 5 account of the Applicant for the use and benefit of M/s Grofin (U) Limited, the Mortgagee;
- c) The Court issues an order directing the Registrar of the Court to transfer Ugx. 1,660,024,000/= being 30% of the forced sale value of the mortgaged property from the Court bank account to that of the Applicant; and
- 10 d) Costs of the application be provided for.

The affidavit in support of the Application was deposed by Edwin Tabaro, a partner at the Applicant Law Firm. The summation of his affidavit evidence was that the Court erred when it directed the Respondent to deposit the 30% of the forced sale value of the suit property in court contrary to Regulation 13(4) of the 15 Mortgage Regulations. That court in its ruling underscored the importance of paying the 30% to stop a sale and also found that the Applicant by virtue of having taken over instructions of representing the Mortgagee from M/s S & L Advocates (*formerly Sebalu & Lule Advocates)* was an agent of the M/s Grofin (U) Limited. That to that extent, ordering the Respondent to deposit the 30% in Court 20 was error apparent on the face of the record.

The affidavit in reply to the Application was deposed by Augustine Kasozi, a director of the Respondent and it briefly stated that: The Applicant's claim requiring the funds to be deposited with it was a belated one; the application does not meet the requirement for the grant of an application for review; the

Respondent will be prejudiced if the earlier order is reviewed; the Applicant is not an agent of the M/s Grofin (U) Limited and it acted as an auctioneer which is being challenged by the Respondent; the application is brought in bad faith; and there was inordinate delay in filing it.

Further to the background to this Application, I found it prudent to remind the Parties that after the Ruling in HCMA 1481 of 2022 was delivered, the Respondent filed HCMA No. 1141 of 2023 seeking the following orders:

- a) An order reviewing and varying order No. 2 of its orders of 21/12/2022 to allow 30% of the forced sale value of the Respondent's unilateral valuation

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5 report of the suit property from that of 2015 to the most current valuation report of 2018.

- b) An order that the orders of this court issued in MA 0277 of 2023 and MA No. 1481 of 2022 requiring the Applicant to pay 30% of the forced sale of the first valuation conducted at the time of execution of the mortgage 10 within 30 days of the order be reviewed, varied to allow for the latter valuation of 2018 being the most current one be the one considered in place of the first valuations which are confusing.
- c) An order that the Respondent having made two separate valuation reports in 2015 and 2018 presenting different forced sale values is

15 estopped under the contra-proferentum rule from denying the most current forced sale value.

- d) An order validating and allowing the already paid 30% of the forced sale value of the Respondent's second valuation report of 2018 of UGX 5,535,000,000/- which translates to the UGX 1,660,024,000/- that the 20 Applicant compliantly paid to the court on 4.8.2023 as having fully satisfied the Court Order.
- e) A declaration that the reckoning of the computation of time of the 30 days ordered by the court excludes the court vacation period.
- f) Alternatively, the court extends the time within which to pay court the 25 balance between the forced sale value of the valuation report of 2015 and that of 2018 which is UGX 355,500,000/-.
- g) The Respondent's further execution of court orders in MA No. 0277 of 2023 and MA No. 1481 of 2022 be stayed pending the hearing of this Application.
- 30 h) Costs of this Application be provided for.

The decision in the said application was delivered on the 23rd September 2024. The Application partially succeeded and court made orders in the following terms:

- 5 1. That Order No. 2 of this Honorable court dated 21/12/2022 is varied to allow 30% of the forced sale value of the Respondent's unilateral valuation report of the suit property from 2015 to their most recent valuation report of 2018.
- 2. That the already paid 30% of the forced sale value of the Respondent's 10 second valuation report of 2018, amounting to 1,660,024,000/-, which was paid to the Court on 4/8/2023 is hereby admitted as satisfaction of the Order.
- 3. That the reckoning of thirty days' time does not exclude court vacation.
- 4. That the rest of the orders sought are overtaken by events.
- 15 5. That costs shall abide the main cause.

It was also by consent of both parties that this application (HCMA 2158 of 2023) would be determined after HCMA No. 1141 of 2023 was heard and determined.

Representation and Hearing

The Applicant was represented by Kenneth Kipaalu, an advocate with the
20 Applicant while the Respondent was represented by M/s Akampumuza & Co. Advocates.

Issues

- 1. Whether the decision of this court in HCMA 1481 of 2022 should be reviewed
- 25 2. What remedies are available to the Parties?

Determination

Issue 1: Whether the decision of this court in HCMA 1481 of 2022 should be reviewed

The Respondent's advocate in his submissions raised preliminary points of law.

30 I have looked at the raised points and duly considered them. The objections raised lack merit and do not affect the competence of this Application. The objections are hereby overruled.

5 This Application was brought under **section 82 of the Civil Procedure Act Cap. 282**, that provides for review of court's decision.

The case of **FX Mubuke Vs UEB High Court Misc. Application No.98 of 2005** explained the grounds for Review as:

- *a) That there is a mistake or manifest mistake or error apparent on the face* 10 *of the record.*
- *b) That there is discovery of 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.*
- 15 *c) That any other sufficient reason exists.*

According to counsel for the Applicant, there is an error or mistake apparent on the face of the record as the order of the court directed the 30% to be deposited to the court's account not on the Applicant's account. In the case of

Edison Kanyabwera Versus Pastori Tumwebaze, SCCA No. 6 of 2004 the

20 court observed that:

"In order that an error may be a ground for review, it must be one apparent on the face of the record, i.e. an evident error which 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 a fact and includes also error of law." (Emphasis is mine)

According to Regulation 13(4) of the Mortgage Regulations, 2012:

"Where a sale is stopped or adjourned at the request of the mortgagor, an agent of the mortgagor, the spouse of the mortgagor or any other interested party, the mortgagor, agent or spouse of the mortgagor or that

interested party shall, at the time of stopping or adjourning the sale, pay to the person conducting the sale, a security deposit of 30% of the forced sale value of the mortgaged property or the outstanding amount, whichever is higher." (Emphasis added)

From the reading of the above provision, it is very clear that the payment of the 30% deposit is made to the person conducting the sale, which in this case is, the Applicant. The Court in its ruling in HCMA 1481 of 2023 also underscored the spirit of regulation 13 of the Mortgage Regulations. This court at page 9 of its decision observed that:

"Regulation 13 is designed to restrict the ability of the mortgagor to use litigation or the courts, to annoyingly delay the realization of money due to the mortgagee. In the matter before court, a default notice on the loan was issued to the borrower, more than one year ago. The court shall not condone conduct of litigants who want to use and abuse the court process as a way of running away from or delaying to meet their obligations."

Regulation 13 is also intended to reduce the number of frivolous objections to sales by mortgagees and guarantee that the mortgagee will not be unnecessarily prejudiced by a delay in payments that has been inevitably occasioned by litigation."

The court in this case is not the person conducting the sale. This court concedes that it was indeed an error or mistake to order deposit of the 30% of the forced sale value of the suit property herein in court.

Regulation 13(4) (supra) is intended to gate keep the use of unnecessary litigation and adjournments by defaulters to prevent realization of money by the mortgagee, owed by the defaulters to the mortgagee. It is a commercial tool used to enable commercial and business continuity within the economy, especially in credit institutions and money lending businesses.

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There is therefore sufficient cause to review the order in HCMA No. 1481 of 2022 and the Respondent shall not be prejudiced in any way. In any event, the Respondent complied by depositing the said funds in Court.

Issue 2: What remedies are available to the Parties?

In the premises, the order in HCMA No. 1481 of 2022 directing the Respondent 10 to deposit 30% of the forced sale value of the suit property with the court, is hereby reviewed and substituted with an order directing the Court to deposit the said 30% i.e. UGX 1,660,024,000/- into the bank account of the Applicant within fourteen days from date of delivering this Ruling.

Each party shall bear its costs.

15 Dated and signed at Arua this 21st day of May 2025.

Harriet Grace MAGALA

Jugde

Delivered online via ECCMIS this 22nd day of May 2025.

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