

UGANDA / JUDGMENT

Rwegumisa & Another v Mulindwa (Miscellaneous Appeal 6 of 2024) [2024] UGHCLD 122 (24 May 2024) [2024] UGHCLD 122

COURT

HC: Land Division (Uganda)

BEFORE

Naluzze Aisha Batala, J

CASE / FILE NUMBER

Miscellaneous Appeal 6 of 2024

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISCELLANEOUS APPEAL NO. 06 OF 2024

**(ARISING OUT OF MISC APPLICATION NO.1177 OF
2023)**

(ARISING OUT OF CIVIL SUIT NO.481 OF 2023)

1. RWEGUMISA SEMEO

2. NAMBEYA ESTHER :::::::::::::::::::: APPLICANTS

VERSUS

ISAAC MULINDWA :::::::::::::::::::: RESPONDENT

BEFORE HON. LADY JUSTICE AISHA NALUZZE BATALA**RULING****Introduction**

- 1. This an application by Notice of Motion brought under Order 52 r1& 2 and 46 1-2 of the CPR, Section 82 of the CPA, Section 33 of the Judicature Act and all other enabling laws for orders that;
- i) The Applicant's be granted an order for review and to set aside the Ruling made on the 20th of October 2023.

Type text here

ii) That Miscellaneous Application 1179 of 2023 be determined with due consideration to the Applicant's Affidavit in Reply and submissions thereof.

iii) That the costs of this Application be provided for. *Background;*

- 2. The Respondents filed Miscellaneous Application No 1177 of 2023 against the Applicants for a temporary injunction. Court gave time lines for filing pleadings by which the Respondents (now Applicants) were supposed to have filed by 12th October, 2023.
- 3. However, they put in their Reply on the 19th day of October 2023 while ruling was slated for 20th October, 2023. Court made its ruling without considering the Reply and submissions of the Respondents.

Applicant's Evidence;

- 4. The Application is supported by the Affidavit in Support by Rwegumisa Semeo the 1st Applicant in which he states;
- i) That the Applicants are the Defendants and Respondents in Civil Suit No.481 and Misc Application No.1177 of 2023.
- ii) That the Respondents herein applied to this Honorable Court for a temporary injunction.
- iii) The Applicants further stated that they instructed their former advocates to represent them in Civil Suit No. 481 of 2023 and all applications thereunder but however the said advocates never replied to the chamber summons when the same was served on them.
- iv) That the Applicants were not aware that they did not reply to the chamber summons at the first instance of service.
- v) That they only learnt of the chamber summons after the second service as directed by court.

- vi) They further averred that whereas the directives were that the Applicants file their respective affidavits in reply by the 12th day of October 2023, service as per the directives of court was made onto the Applicants' former advocates by the 11th day of October 2023, one day to the filing date.
- vii) That following their former advocates failure to file an affidavit in reply upon the first service, they hurriedly instructed their current advocates to represent them.
- viii) That they have been informed by their current advocates that their joint affidavit in reply and submissions were filed on the 19th day of October 2023 before the Ruling that was delivered on the 20th day of October 2023.
- ix) That they have been informed that the Ruling in Misc. Application 1177 was made without consideration of their Affidavit in Reply and submissions.
- x) The Applicants aver that its not true that they didn't file a Reply and submissions and contend that they filed the same but they were not just considered in making a ruling.
- xi) They further aver that the order for a temporary injunction was granted to a wrong party who is not the owner and or Registered Proprietor to the suit land. xii) That if the Affidavit in Reply and submissions were considered, the findings of court would totally be

Respondent's Evidence;

different and likely to dispose off the entire suit.

- 5. The Application is responded to by an Affidavit in Reply deposed by Mr. Isaac Mulindwa the Respondent which states the following grounds;
 - i) That the Respondent has been advised by his lawyers that this Application ought to be dismissed on a point of law that the grounds for review have not been spelt out for the Application to seek such remedy and that this Application ought to be dismissed on a point of law that review, setting aside and appeal cannot be complied in an omnibus Application.
 - ii) That the Respondent filed an application for a temporary injunction on the 7th day of June, 2023 and an Affidavit in Reply was filed by the Applicants on the 19th day of October, 2023.
 - iii) That prior on the 11th day of October 2023, the Respondents wrote to the Applicants Advocate at the time informing them of the directions of Her Worship Rashida Batunula to file a reply and submissions on the same by the 12th of October 2023.
 - iv) That the Respondents nor their former or current Advocates ever attempted to make any appearance at court for any of the dates given considering that service had been effected.
 - v) That further, the Applicants' never appeared on the Ruling date to request the Registrar to consider their reply and submissions having filed late.

vi) That the Applicants instead opted to file this Application 3 month after the decision, having known the date of the ruling and never appeared for the same.

Representation;

- 6. The applicants were represented by Kiryowa Jonathan of M/s Mugoya & Co. Advocates whereas the respondent was represented by Elly Turyagenda of M/s Davis Wesley & Co. Advocates. Parties filed their affidavits only. Which I have considered in the determination of this application.
- 7. The Respondent raised two preliminary points and stated that this Application ought to be dismissed on a point of law that the grounds for review have not been spelt out for the Application to seek such remedy and this Application ought to be dismissed on a point of law that review, setting aside and appeal cannot be compiled in an omnibus

Application and therefore I shall determine this Application on these Points.

Issues for Determination;

i) Whether this matter is properly brought before this court?

ii) Whether this Application raises sufficient grounds for Review?

Resolution and Determination of Issues;

Whether this matter is properly brought before this court?

- 8. The Respondent raised two preliminary points and stated that this Application ought to be dismissed on a point of law that the grounds for review have not been spelt out for the Application to seek such remedy and this Application ought to be dismissed on a point of law that review, setting aside and appeal cannot be compiled in on omnibus Application.
- 9. **Section 82 of the Civil Procedure Act Cap. 71** provides that: Any person considering himself or herself aggrieved— (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or (b) by a decree or order from which no appeal is allowed by

this Act, may apply for a review of judgement 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 and 2 of the Civil Procedure Rules S. 171 also provides that:

10. Application for review of judgement. (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 the order made, or on account of some

mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him or her, may apply for a review of judgement to the court which passed the decree or made the order. (2) A party who is not appealing from a decree or order may apply for a review of judgement

notwithstanding the pendency of an appeal by some other party, except where the ground of the appeal is common to the applicant and the appellant, or when, being respondent, he or she can present to the appellate court the case on which he or she applies for the review. Section 82 and Order 46 rule 1 limits the locus standi for purposes of review to a person aggrieved by a decision of Court.

- 11. The Applicants in this Application intended to seek a remedy from this court for Review and setting aside the Ruling delivered in Misc Application 1177 of 2023. the mere fact that the Applicants named their application as "Miscellaneous Appeal" does not amount to the Application being an Appeal hence cannot be considered as an illegality that would call for Nullification.
- 12. In the case of **Francis Warzawahi Bwengye Vs Haki W Bonera Civil Appeal No. 0033 of 2009 Justice Yokoramu Bamwine cited Tarlol Singh Saggu Vs Roadmaster cycles (U) Ltd CACA No.46 of 2000 with approval of the decision of the former East African Court of Appeal in Nanjibhai Prabohusdas & Co. Ltd Vs Standard Bank Ltd [1968] EA 670** where it was stated

that; **"The court should not treat any incorrect act as a nullity with the consequence that everything founded thereon is itself a nullity unless the incorrect act is of a fundamental nature. Matters of procedure are not normally of a fundamental nature. Whether or not to correct the errors is in the course of the hearing and proceed to determination of the Application on merits is a matter within Court's discretion."**

- 13. In the instant Application, the Applicants ought to have named the Application as "Miscellaneous Application" not "Miscellaneous Appeal" given the circumstances that there's no pending appeal on record whatsoever.
- 14. The Respondent's adverbations that this is an Omnibus Application seeking for remedies of Appeal, Review and setting aside is misconceived. There's no Application for Appeal in this the instant matter. What I see is an Application for Review and setting aside a Ruling of court which orders can be sought in one Application.
- 15. Therefore, I proceed to determine that there's no Application of Appeal in the instant Application but rather

one for Review and setting aside the Ruling in Misc Application No. 1177 of 2023.

- 16. Therefore, since this Application is miscellaneous Application seeking for the Remedy of Review and setting aside the Ruling, it is a competent Application.

Whether this Application raises sufficient grounds for Review?

- 17. Review of court judgements, decrees and orders is provided for under Section 82 and 98 of the Civil Procedure Act and order 46 rules 1 & 2 of the Civil Procedure Rules. **Section 82 of the Civil Procedure Act Cap. 71** provides that: Any person considering himself or herself aggrieved— (a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or (b) by a decree or order from which no appeal is allowed by this Act, may apply for a review of judgement 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.
- 18. The Applicants in their Affidavit stated that on the 20th day of October, a Ruling in Misc Application 1177 was passed without consideration of their Affidavit in Reply

and submissions which they discovered had been filed on the 19th day of October, 2023.

- 19. The considerations of seeking for Review were stated in **Re- Nakivubo Chemists (U) Ltd (1979) HCB 12**, where Justice Manyindo as he was then, held that the three cases in which review of a judgement or orders is allowed are those of;

i) Discovery of new and important matters of evidence previously overlooked by excusable misfortune.

ii) Some mistake apparent on the face of record. iii) For any other sufficient reasons, but the expression "sufficient" should be read as meaning sufficiently analogous to (a) and (b)

- 20. Of the above grounds, it is not clear or spelt out under which ground this Application is brought.
- 21. This court has been left with the task to establish which ground if any this Application was intended to be brought under.
- 22. The first of Discovery of new Evidence. The Applicants do not state anywhere in their evidence that they

discovered any new evidence. They did not specify which new evidence they discovered and therefore this ground fails.

- 23. If they intended to bring this Application under the ground of Error apparent on the face of record then the Applicants should have stated which error was made but however, no evidence is adduced to that regard.
- 24. In the case of **Mushabe Apollo vs Mutumba Ismail HMA No.8 of 2020, Justice Musa Ssekaana** defined an error or mistake on the face of record to mean; *"A mistake or error apparent on the face of record refers to an evident error which does not require extraneous matter to show its incorrectness. It is an error so manifest and clear that no court would permit such an error to remain on record. It may be an error of law, but the law must be definite and capable of ascertainment. It must be such as can be seen by one who runs and*

reads, that is, an obvious and patent mistake". Averting that the suit land in on which Misc Application 1177 was granted does not belong to the

Respondent is an issue to be determined in the main suit and not this Application. This ground therefore fails.

- 25. I shall proceed to establish if it was brought under the ground of "sufficient reason".* However as stated in the case of Elias Kakooza and Others vs Ahaisibwe Stephen and Anor Civil Suit No.1 of 2022 it was stated that the expression "sufficient reason" should be read as meaning sufficiently analogous to the first two grounds of review.
- 26. I am inclined to the view that the Applicants intended to bring this Application giving the ground that their pleadings which they filed on 19th October 2023 were not considered while making the Ruling delivered on 20th October, 2023 in the Misc Application No.1177 of 2023.
- 27. But however, in my view this is not sufficient cause. Court has the discretion on how to proceed where a party has not made submissions as and when ordered to do so. *Order 17 r.4 of the Civil Procedure Rules gives guidance in this regard. It provides that, 'Where any party to a suit to whom time has been granted fails to produce his or her evidence, or to cause the attendance of his or her*

witnesses, or to perform any other necessary act to the further progress of the suit, for which time has been allowed, the court may, notwithstanding the default, proceed to decide the suit immediately.

28. Therefore, the Applicants' grievances cannot be remedied by this Application for they have not given court any grounds upon which they seek the remedies herein. Accordingly, this Application is dismissed with costs to the Respondent.

I SO ORDER.

.....

NALUZZE AISHA BATALA JUDGE 24th/05/2024

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughcld/2024/122/eng@2024-05-24>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/rwegumisa-v-mulindwa-miscellaneous-appeal-6-of-2024-2024-ughcld-122-24-may-2024-and-others-unknown-topic-unknown-court-2024--6a3ea4db3b1caa91297e84f6>

Prepared on 13 October 2026 · Esheria