

UGANDA (RESPONDENT) on the 9th March 2020 be reviewed and set aside.

2. A Declaration that **SSENKUBUGE RAJAB** and his lawyers **MUYIZZI SAMUEL** of *M/s Alaka & Co. Advocates* commenced the Proceedings in **MISC. CAUSE NO. 89 OF 2019** entered into between **SSENKUBUGE RAJAB (APPLICANT) vs DEMOCRATIC PARTY UGANDA (RESPONDENT)** without instructions from The Democratic Party a Corporate Body and had no powers to enter into said consent that are clearly opposed by DP and have affected its activities and undermined The Legally set and Known Principles and Orders of Judicial Review contrary to Rule 2 The Advocates (Professional Conduct) Regulations and The Advocates Act.
3. An Injunction that **MUYIZZI SAMUEL** of *M/s Alaka & Co. Advocates* be restrained from further appearing in the Proceedings in **MISC. CAUSE NO. 89 OF 2019** between **SSENKUBUGE RAJAB (APPLICANT) vs DEMOCRATIC PARTY UGANDA (RESPONDENT)** without instructions from The Democratic Party a Corporate Body when they have no powers to commence and enter into said consent on matters contrary to Rule 2 The Advocates (Professional Conduct) Regulations and The Advocates Act that are clearly opposed by DP and have an effect on its activities and undermine the legally set and known Principles and Orders of Judicial Review.
4. An Order that the Proceedings and Consent Judgment/Order in **MISC. CAUSE NO. 89 OF 2019** between **SSENKUBUGE RAJAB (APPLICANT) vs DEMOCRATIC PARTY UGANDA (RESPONDENT)** does not bind The Democratic Party.
5. A Consequential Order dismissing the Application and Declaring and/or nullifying all Actions/Resolutions reached thereafter as a result of the impugned Consent Judgment and Order in **MISC. CAUSE NO. 89 OF 2019** entered into between **SSENKUBUGE RAJAB (APPLICANT) vs DEMOCRATIC PARTY UGANDA (RESPONDENT)**.
6. An order that **MISC. Application No. 89 OF 2019** be dismissed.

7. Costs of this Application be provided for.

The grounds supporting this Application are set out in the affidavit of **HON.NOBERT MAO-THE PRESIDENT OF THE DEMOCRATIC PARTY** the Applicant hereof and others that may be filed by the other Applicants thereafter but briefly are that;

1. The 1st Respondent instituted Misc. Cause No.89 of 2019 in this Honourable court seeking for Judicial Review prerogatives against Democratic Party Uganda.
2. The Consent Judgment and Order in MISC. CAUSE NO. 89 OF 2019 entered into between **SSENKUBUGE RAJAB (APPLICANT) vs DEMOCRATIC PARTY UGANDA (RESPONDENT)** on the 9th March 2020 was entered into and/or obtained by fraud, collusion, misrepresentation, contrary to Court policy and without sufficient material facts and based on an illegality which has now caused the applicant an injustice and has adversely affected the legal interests of The Democratic Party (DP) the Applicant.
3. The matters over which the High Court registered a Consent Judgment/Order were grossly misconceived, bad in law, frivolous and vexatious, an abuse of Court Process were brought in bad faith by **SSENKUBUGE RAJAB** and the entire Application ought to be dismissed.
4. The matters over which The High Court registered a Consent Judgment/Order were overtaken by events as the appropriate bodies in the Democratic Party duly convened and decided on a Party Road Map to resolve all the issues raised by SSENKUBUGE RAJAB were resolved are to be performed and done in The National Executive Committee and The National Council of the Democratic Party in a Resolution issued Over the 2019/2020 Party Road Map which caters for the Applicant's issues raised in his Application as issues of holding the National Council Delegates Conference, amending the Party Constitution and holding elections for party structures are progressively being performed.

5. The SSENKUBUGE RAJAB is a Member of the National Executive Committee and the National Council of the Democratic Party and is bound by the Resolution issued Over the 2019/2020 Party Road Map which caters for the Applicant's issues raised in his Application as issues of holding the National Council Delegates Conference, amending the Party Constitution and holding elections for party structures are progressively being performed and had no locus standi to file this case which was filed against a wrong and non-existent party **DEMOCRATIC PARTY UGANDA (RESPONDENT)**.

6. SULAIMAN KIDANDALA the then Organising Secretary of the Democratic Party in charge of supervision, co-ordination and ensuring organisation of all Party branches and organs for the DP swore affidavits opposing the reliefs then being sought by the Applicant in the above stated Application but *SSENKUBUGE RAJAB APPLICANT VS DEMOCRATIC PARTY UGANDA (RESPONDENT)* out of their own volition and without the authority of The Democratic Party entered into The said Consent Judgment and Order in **MISC. CAUSE NO. 89 OF 2019** entered into between **SSENKUBUGE RAJAB (APPLICANT) vs DEMOCRATIC PARTY UGANDA (RESPONDENT)** on the 9th March 2020 and obtained it by fraud, collusion, misrepresentation, contrary to Court policy and without sufficient material facts and based on an illegality which has now caused the applicant an injustice and has adversely affected the legal interests of The Democratic Party (DP) the Applicant.

7. SSENKUBUGE RAJAB and several people who are not registered Members of the National Executive Committee and the National Council of the Democratic Party connived to hold an illegal meeting usurping powers of the National Executive Committee and the National Council of the Democratic Party on the 13th March 2020 and indirect contempt of the impugned Consent Judgment and Order in **MISC. CAUSE NO. 89 OF 2019** entered into between **SSENKUBUGE RAJAB (APPLICANT) vs DEMOCRATIC PARTY UGANDA (RESPONDENT)** on the 9th March 2020 there by misrepresenting and hiding information about the said order from the recognised leadership of The Democratic Party and carried out illegal

elections to change the status quo in the Democratic Party and this was in error of the very Consent Judgment and Order.

8. The purported actions of **SSENKUBUGE RAJAB** were further contempt of the Court Orders of Judicial Review in **MISC. CAUSE NO. 89 OF 2019** entered into between **SSENKUBUGE RAJAB (APPLICANT) VERSUS DEMOCRATIC PARTY UGANDA (RESPONDENT)** on the 9th March 2020 and purported to implement and follow the DP Constitution in the Election of the National Chairman and the Secretary General and other office bearers.
9. The abovementioned actions went ahead to derail, cause confusion in DP and flouted the DP Constitution that must be obeyed by every Member and have adversely affected the legal interests of the Democratic Party.
10. It is the National Executive Committee to direct the National Council which are the Directorate and Administrative Organ of DP and therefore the appropriate organ of the DP to take such decision about internal elections of the Democratic Party which was not consulted at all and therefore was not a party to the purported Consent Judgment and Order in **MISC. CAUSE NO. 89 OF 2019** entered into between **SSENKUBUGE RAJAB (APPLICANT) vs DEMOCRATIC PARTY UGANDA (RESPONDENT)** on the 9th March 2020.
11. **SSENKUBUGE RAJAB** filed **MISC. CAUSE NO. 89 OF 2019** against **DEMOCRATIC PARTY UGANDA** a non-existent party and totally different from **DEMOCRATIC PARTY** a corporate organ duly registered under The Political Parties and Organisation Act and Regulations.
12. **SSENKUBUGE RAJAB** and his lawyers **MUYIZZI SAMUEL** of *M/s Alaka & Co. Advocates* commenced these proceedings without instructions from The Democratic Party a corporate body and had no powers to enter into said consents that are clearly opposed by DP and have undermined the legally set Principles and Orders of Judicial Review contrary to The Advocates (Professional Conduct) Regulations and The Advocates Act.

13. The said consent judgment and/or order are clearly opposed by DP and have affected its activities and undermined the legally set and Known Principles and Orders of Judicial Review.
14. When the Applicant learnt of the purported consent via social media and various Press Reports it immediately lodged a complaint with The Electoral Commission and has promptly filed this Application.
15. The proceedings in **MISC. CAUSE NO. 89 OF 2019** and the Consent Judgment and Order entered into between ***SSENKUBUGE RAJAB (APPLICANT) VS DEMOCRATIC PARTY UGANDA (RESPONDENT)*** on the 9th March were commenced and entered into in error on the face of the record as they did not follow the PRACTICE DIRECTION which prescribes how Consent Judgments/Orders are signed and The Court cannot grant a Relief Orders of Judicial Review like Mandamus against DEMOCRATIC PARTY a corporate organ duly registered under The Political Parties and Organisation Act and Regulations which is a purely Private Legal Person exercising purely private duties.
16. The Consent Judgment and Order entered into in *MISC. CAUSE NO. 89 OF 2019* and the between ***SSENKUBUGE RAJAB (APPLICANT) vs DEMOCRATIC PARTY UGANDA (RESPONDENT)*** on the 9th March were never served upon the Applicant and/or on its appointed Advocates as required by law.
17. **SSENKUBUGE RAJAB** who is supposed to have allegiance to The Democratic Party and respect all decisions and resolutions passed by the lawful party organs went ahead and he concealed his fraud and illegalities from Court which proceeded to issue and sign the Consent Judgment and Order on the false premises that there was consent by DP as an entity.
18. The Applicant-**DEMOCRATIC PARTY** and indeed all its Members are therefore grossly aggrieved by the purported Consent Judgment and Order and subsequent actions which are an illegality and a fragrant contempt of Court.

19. That it is fair and in the interest of Justice that this Honourable Court grants the orders sought in the Application.
20. The impugned consent has been used by the respondents to unlawfully convene the Applicant (Party's) National Council on 13th March 2020 at TAL Cottages which has purportedly appointed certain individuals to party positions contrary to the Democratic Party Constitution.
21. That the respondents have proceeded to serve the Electoral Commission with the impugned Consent and they have gone ahead to file a wrong return of the purported appointments requiring Electoral Commission to register the same in the Party Register.
22. That Medard Lubega Ssegona the purported Secretary General of the Democratic Party has written several letters to several officials purporting to be a duly elected Secretary General of Democratic Party

The respondents' collectively opposed the application for review and they swore different affidavits in support of the case.

The 1st respondent contended that his lawyers were different and it is not true that Samuel Muyizzi was his lawyer in this matter. The consent settlement was signed on behalf of Democratic Party by Mr. Kidandala Sulaiman who is the Organising Secretary and Mr. Muyizzi Samuel the National Legal Advisor who are both authorized officials of the applicant.

The 3rd respondent opposed this application and contended that the Applicant (DP) through Mr. Sulaiman Kidandala the National Organising Secretary filed an affidavit in reply challenging the application in the main application and also signed on the consent judgment.

That in compliance with the consent order; on 13th March 2020 the National Council of the Democratic Party convened a meeting and he was appointed as the Interim Secretary General, Mr Mathias Lwanga Bwanika was elected Interim Chairman of the Party, Mr. Patrick Katuramu was elected Deputy Treasurer while Ms. Racheal Kagoye was elected representative of Busoga Region and Hon. Mary

Babirye Kabanda was promoted from Acting National Treasurer to National Treasurer and that they have all assumed office.

The 4th respondent in her affidavit contended that; she is aware of some other parties called democratic Party in other Countries and they often refer to the applicant as Democratic Party of Uganda to distinguish it from other such parties like the Democratic Party of the US, Democratic Party of Kenya and that by mere reference to the applicant as Democratic Party Uganda, it would not ordinarily confuse any reasonable person.

That the consent Judgment was communicated by all party organs by the national Legal Adviser and it was premised on the Roadmap of Democratic Party by the National Executive Committee which was scheduled for 13th March of 2020.

The 7th respondent in his affidavit contended that he is National Organising Secretary on the National Executive Council in his affidavit contended that the National Legal Adviser briefed the Legal Sub-Committee of NEC and made a report to the National Council about the matters in court.

That he swore the affidavit as the responsible officer and entered a consent judgment in the same way and it was within his mandate as a compromise by the applicant (Ssenkubuge). That he consented within the realms of party road map and in equal measure Hon. Nobert Mao is bound by the resolutions of National Council of 13th March 2020.

Preliminary Considerations

Before the matter could be heard, Hon. Medard Ssegona Lubega applied to be joined as party as Respondent vide HCMA No.256 of 2020, and his application was allowed. Similarly, Hon. Namayanja Florence, Hon. Mary Babirye Kabanda, Hon. Betty Namboze Bakireke, Godwin Angalia Kasigwa, Kakande Kenneth Paul, Sulaiman Kidandala S. Waisswa Alex Mufumbiro, Kijjambu Deogratius, Mugambwa Robert, H/W Kasirye Ali Nganda M.; also jointly applied to be joined as parties as Respondents and their application was allowed.

All the three applications were consolidated pursuant to Order 11 which states as follows;

“ Where two or more suits are pending in the same court in which the same or similar questions of law or fact are involved, the court may, either upon the application of one of the parties or of its own motion, at its discretion, and upon such terms as may seem fit-(a) order a consolidation of those suits”

The court added them as parties and they became co-respondents conditionally subject to court’s determination of whether they were properly added as respondents and have a right to be heard.

Background:

On 8/4/2019, Ssenkubuge Rajab brought an action against Democratic Party Uganda under judicial review seeking prerogative orders against the Respondent therein vide HCMC No. 89 of 2019.

Specifically the Applicant sought orders of mandamus compelling the Respondent therein to call for a meeting of National Delegates Conference, National Executive Committee and National Council to hear and consider the Applicant’s proposal; for election of vacant on the National Executive Committee to wit Chairman, Secretary General, Finance Secretary and Vice Chairperson Women League, declaration that the performance of constitutional functions of National Chairman, Secretary General and Finance Secretary by non-elected individuals is null and void and ultra vires and unconstitutional of the DP Constitution and illegal, an order of prohibition prohibiting the Respondent and the mandated organs from allowing the performance of constitutional functions of National Chairman, Secretary General and Finance Secretary by non-elected individuals; and any other consequential relief.

Subsequently, the parties entered into a consent judgment in which they agreed that;

- 1). An order of mandamus be issued to the Respondent to convene the Respondents’ National Council Scheduled for 13/3/2020 or any date not exceeding one month, and thereafter set a date and venue for the Respondents’ National Delegates Conference.
- 2). The said National Council shall first elect one of its members to chair it and another to act as Secretary for that meeting to avoid conflict of interest on the issue of electing new substantive office bearers.

3). The said National Council sitting shall fill the current vacant position of the NEC, being National Chairman, the Secretary the National Treasurer and Vice Chairperson of Women's League for proper running of the Respondents' roadmap.

4). The party was restrained from carrying out its restructuring programmes on its road map until the convening and resolutions of the said National Council.

5). The Electoral Commission of Uganda being the Regulator of the Respondent shall be served with this order and all resolutions arising out the said National Council as a record of the Respondent.

6.) That the mater having been filed by the Respondent's member, there are no orders as to costs.

The consent was signed by Mpiima Jamil Ssenoga Counsel for the Applicant, Ssenkubuge Rajab the Applicant, Sulaiman K. Serwadda National Organising Secretary for the Respondent, and Samuel Muyizzi Mulindwa, National Legal Advisor and Counsel for the Respondent.

It is the above consent judgment which the Applicant in the present application is challenging as having been entered into and/or obtained by fraud, collusion, misrepresentation, contrary to court policy and without sufficient material facts and based on illegality which has now cause the Applicant an injustice and has adversely affected the legal interest of the democratic party the Applicant, for the reasons stated in the grounds of the application above.

After entering into the now impugned consent judgment, the parties thereto used the said consent judgment to implement its terms by, inter alia, electing office bearers for the vacant positions as stated in the consent and regarding the outcomes of their actions with the Regulator the Electoral Commission.

Representation

At the hearing, the Applicant was jointly represented by Mr. Justin Semuyaba with Hon. Mukasa Mbidde and Erick Sengendo. The 1st and 2nd Respondents were represented by Mr. Jamil Mpiima, the 3rd to 11th Respondents were represented by Mr. Kato Fred Lukwago and Hon. M. Sseggona Lubega the 8th Respondent was

self-representing. Counsel filed their respective submissions which have been considered, and supplied authorities, for which court thanks them and is grateful.

Agreed Issues

The following issues were framed for determination:

- 1. *Whether the Respondents have locus standi to be heard in this matter?***
- 2. *Whether Mr. Justin Semuyaba & Hon. Mukasa Mbidde have the locus to represent the Applicant?***
- 3. *Whether HCMA No. 167 of 2020 is competent before court?***
- 4. *Whether HCMA No. 167 of 2020 makes a case for review?***
- 5. *What remedies are available to the parties?***

The issues will be resolved in the order they were framed:

Resolution:

Issue No. 1:

The applicant's counsel contended that the 3rd -13th respondents were added subject to court's determination whether they were properly added as respondents. His main contention is that they were added to an application for review of a consent order to which they were not party. According to counsel consent judgments derive their legal effect from the agreement of the parties and this therefore means that they are governed by the law relating to contracts.

The respondents in their submissions contended that they are leaders on the DP NEC, Members of national Council and they have high interest in the case in their own right. They are all privy to the consent agreement, orders and results therefrom. They further submitted that there is no legal bar in the circumstances for the respondents joining this application in order to determine all matters in controversy.

Determination

The arguments put forward by the applicants counsel are self-defeating even to their own case, if this court would agree with the argument that nonparties to a consent cannot seek to review a consent judgment. The applicant was equally a

nonparty to the said consent but as a person aggrieved by the consent, they have applied to have it set aside.

This court does not agree with the submission of the applicant's counsel that the law of contract governs the application for review entirely. The authorities that import application of principles of contract only alluded to grounds for setting aside a consent judgment and not adding any aggrieved party to an application to set aside a consent Judgment. This is why the law allows any person aggrieved by a decree passed or order to apply for review of the judgment and this therefore implies that issues of privity of contract cannot be raised in an application for review of a consent judgment.

His Lordship Justice Mulenga (as he then was) in the case of **Attorney General and Another v James Mark Kamoga and Another, S.C. Civil Appeal No.8 of 2004** concluded that *"... I have already held, in disagreement with the Court of Appeal, that the trial judge had power, and did not err, to entertain the application for review of the consent judgment under Order 46. Secondly, I also respectfully disagree with the notion that a party who consents to a decree cannot be aggrieved by it. A party against whom a consent decree is passed may, notwithstanding the consent, be wrongfully deprived of its legal interest if, for example, the consent was induced through illegality, fraud or mistake."*

In this case the 3rd-13th respondents are interested in the outcome of the consent and some of them have derived benefit of the impugned consent and are now directly interested in the same. They would be directly aggrieved with its outcome and yet they are nonparties to the proceedings. The addition of the respondents as parties was in the interest of court determining all matters in controversy and avoids multiplicity of proceedings as provided under section 33 of the Judicature Act.

A person who is a necessary party to the suit and yet not joined and the order passed in such suit affects him, may seek review thereof or may be joined as a necessary party. Similarly, a third party who is affected or prejudiced by a judgment or order, may seek review of such order or may be joined to proceedings of review. However, a person not directly and immediately affected cannot be considered, otherwise an interpretation of person aggrieved may be extended to several members and may be considered as such.

This issue is resolved in the affirmative.

Whether Mr. Justin Semuyaba & Hon. Mukasa Mbidde have the locus to represent the Applicant?

The respondents submitted that the application is incompetent for having been filed without proper instructions. The President of the party has no mandate to unilaterally instruct lawyers to represent the applicant in courts of law.

The applicant's counsel contended that all pleadings in this application were drawn in the name of M/s Semuyaba, Iga & Co Advocates as per the instructions of the applicant. That counsel Mukasa Fred Mbidde was just assisting counsel Justine Semuyaba the lead counsel. The President of the party in his evidence stated that as the Chief Executive Democratic Party he is seized with the authority to instruct any lawyers to pursue to pursue the Interests of the party and it is this authority that the President exercised and directed the applicant's Acting Secretary General to instruct M/s Ssemuyaba, Iga & Co Advocates to defend the applicant's interests.

Determination

According to the Constitution of Democratic Party; The National Executive Committee is the Directorate of the Party and in particular its functions include;

b) to supervise the administrative machinery of the Party at all levels and take such measures as it deems fit to enforce decisions and programs of the Party.

h) to do all other acts and things as it shall deem necessary for the efficient functioning of the Party....

The President shall be the Chief Executive as well as the Chief Spokesman of the party;

According to ***Black's Law Dictionary 11th edition 2019 page 715; Chief Executive*** means;

The head of Executive branch of a government, such as the President of the United States.

A corporate officer at the upper levels of management.

It would appear that the President is vested with more powers than other officers on matters of management of the party in the day-to-day affairs of the party. This gives such officer leverage over other officers in binding the Party.

The National Executive Committee is supposed to be the overall organ of the party that would take any binding decisions on the Party. Therefore, actions of the President when executed in the course of his duties would bind the party or the Party's National Executive Committee would have to ratify such actions or decisions.

Therefore, the President's power in directing the appointment of the lawyers M/s Semuyaba, Iga & Co Advocates was within his mandate and the same would have been subject to approval or ratification by the National Executive Committee. The President is the best person to act as an agent of the party as a Chief Executive.

Regulation 2(i) of ***the Advocates (Professional Conduct) Regulations*** provides that;

No advocate shall act for any person unless he/she has received instructions from that person or her authorized agent.

In the circumstances of this case, the said law firm was properly instructed by the agent of the Party-President through the Ag Secretary General.

The appearance of Fred Mukasa Mbidde is pegged on the appointment of Semuyaba, Iga & Co Advocates. The law firm is at liberty to identify lawyers to assist them in execution of their instructions and the Party is not responsible for his appearance before court as co-counsel.

The respondents in their rejoinder also seemed to introduce another ground for objecting to Fred Mukasa Mbidde appearance as co-counsel since he is conflicted as Vice President of the Party.

Under regulation 9 of ***the Advocates (Professional Conduct) Regulations*** provides that; *No advocate may appear before any court or tribunal in any matter in which he or she has reason to believe that he or she will be required as a witness to give evidence, whether verbally or by affidavit; and if , while appearing in any matter, it becomes apparent that he or she will be required as a witness to give evidence....*

It would appear some of the office bearers and respondents in this application are lawyers or practicing advocates. This would mean that in most of the party matters they would be potential witnesses. It would be improper for them to appear in court matters involving the party since they would be highly conflicted and would lose objectivity in handling the party matters both as advocates, interested parties and also potential witnesses.

Any dispute within the party may end up being a contestation of legal minds which will end up in courts of law as an 'appeal' due to difference of opinions on any party matter. The court would discourage the party members from continuing to appear as advocates in all the matters where the Party is involved, especially the office bearers.

There is no evidence adduced to show that Fred Mukasa Mbidde was a potential witness or would have been a potential witness in this matter. I decline to make any such finding.

Whether HCMA No. 167 of 2020 is competent before court?

The applicant contended that the application is competently and properly brought under section 82 and Order 46 for setting aside consent judgments.

The respondents submitted that the application is incompetent because;

1. The affidavits in support were sworn by the Hon. Norbert Mao as the President General of the Democratic Party and Democratic Party does not have a President General.
2. Affidavit in Rejoinder is defective for being commissioned with Photocopy signature.
3. Application is premature in view of the alternative remedies.
4. The application is incompetent for having been overtaken by events.

Determination.

This court has not found any merit in these objections as to competency of the application and this issue had not basis.

This application was competently and properly before court for review.

Whether HCMA No. 167 of 2020 makes a case for review?

The applicant cited the laws governing review of a judgment of court under section 82 of the civil Procedure Act and Order 46 of the Civil Procedure rules. The applicant's counsel submitted that a consent judgment may be reviewed and set aside if obtained by fraud or collusion, or by an agreement contrary to the policy of the court.

The applicant contended that the impugned consent order was entered into between the 1st respondent and Democratic Party Uganda a non-existing party. The applicant's deponent has attached a Certificate of registration issued under The Political Parties and Organisations Act in the name of "**Democratic Party**"

The applicant further contended that the said consent was procured fraudulently. When the applicant realized that a one Muyizzi Samuel was not defending the best interests of the applicant party appointed M/s Semuyaba, Iga & Co. Advocates to represent the Applicant. The said new lawyer was not present on the day the impugned consent was signed and therefore according to him, they had no input. The person who signed on the consent has since been suspended and the suspension has never been lifted.

The impugned consent was not signed by the parties as directed by court but the parties only extracted an order and presented it before the registrar for endorsement.

The respondent contended that the consent was not procured by fraud or collusion and it was with full authority, knowledge, consent and in the best interests of the Applicant. According to the respondent, the National Legal Advisor had had instructions as counsel and that no change or withdraw of instructions were ever made.

They further contend that Democratic Party is not aggrieved since they were at all material times aware and participated in the negotiations.

The respondent submitted that the characterization of the applicant as Democratic Party Uganda instead of Democratic Party is a misnomer or misdescription that would not vitiate or invalidate the purpose served by the impugned consent.

The 1st respondent also submitted that erroneously writing the name of Democratic Party as 'Democratic Party Uganda' was a technicality which cannot be relied upon to disregard the real issue before court.

Determination

The law on review is set out in Section 82 of the Civil Procedure Act and Order 46 rule of the Civil Procedure Rules. The applicant has premised his application on “***Mistake or error apparent on the face of the record***”

Review means re-consideration of order or decree by a court which passed the order or decree.

If there is an error due to human failing, it cannot be permitted to perpetuate and to defeat justice. Such Mistakes or errors must be corrected to prevent miscarriage of justice. The rectification of a judgment stems from the fundamental principle that justice is above all. It is exercised to remove an error and not to disturb finality.

Reviewing a judgment/ruling based on mistake or error apparent on the face of the record can only be done if it is self-evident and does not require an examination or argument to establish it.

Further, His Lordship Justice Stephen Mubiru in the **case of Koboko District Local Government vs Okujjo Swali Miscellaneous application number 1 of 2016** while dealing with a matter of setting aside a consent judgment referred to the well established principles which were outlined by the Court of Appeal for East Africa in ***Hirani v Kassam [1952] EA 131***, in which it approved and adopted the following passage from *Seton on Judgments and Orders*, 7th Ed., Vol. 1 p. 124:

Prima facie, any order made in the presence and with consent of counsel is binding on all parties to the proceedings or action, and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the court ... or if the consent was given without sufficient material facts, or in misapprehension or in ignorance of material facts, or in general for a reason which would enable a court to set aside an agreement.”

The applicant and the 3rd -12th respondents seem to agree that the party dragged to court was erroneous since the Party is registered in the names of Democratic

Party and not 'Democratic Party Uganda'. But they seem to argue that 'Uganda' is added in order to distinguish it from other Democratic Parties around the world like United States or Kenya. Therefore this is a misnomer according to them.

The 1st respondent who came to court and filed an application described himself as a Member of the Democratic Party.

A plaint in the names of a wrong defendant cannot be amended but can only be rejected. See ***Joseph Mpamya v Attorney General HCCS No. 21 of 1995***. A nonentity cannot be an aggrieved person who could move the Minister for administrative review. See ***The Attorney General v East African Gold Sniffing Company Ltd CACA No. 155 of 2013***(decided on 12th June 2020)

The court may exercise its discretion to allow errors in naming of parties in pleading if commenced by a person who may not be conversant with internal workings and operations of the body corporate. But the court should be very reluctant to allow a person who claims to be trying to correct wrongs within a political party to mis-describe the party since this would be interpreted to have been deliberate to cause confusion or mislead a specific group of society.

Indeed, this is not a simple matter that would be equated to a misnomer, it has dire consequences and may create obligations which may not be performed due to such mis-naming and a party may rightly refuse to be bound. An improperly named defendant or respondent will not be substituted after judgment. Such error if it existed should be addressed before the conclusion of a matter. It would be wrong and would create an injustice if court corrected wrongly described defendant/respondent after judgment. The final orders of court should reflect the proper names of the parties against whom the orders have been made at least for execution purposes otherwise the order will remain unexecuted for wrongful description of a party.

In the circumstances of this case, a wrong party was sued and therefore the entire application was a nullity.

For completeness, this court would proceed to determine the other issue of whether the consent would be set aside incase I'm wrong.

The applicant contends that they instructed another Law firm of *Semuyaba,Iga & Co Advocates* to represent them in this matter when they discovered that Samuel Muyizzi was not representing the interests of the party.

The above is not disputed or controverted in the evidence of the respondents. The said law firm filed a notice of Instructions on 24th February 2020 and the same was served on the 1st respondent on the same day.

The 1st respondent wrote 2 letters dated 27th February 2020 and 4th March 2020 seeking a nearer date in order to avoid the application being overtaken by events. The said letters were copied in to the respondent; they appear not to have been served them.

The court in response fixed the matter for 9th March 2020. According to the court record *Mr Samuel Muyizzi Mulindwa* appeared for the 2nd respondent and *Mr Kenneth Paul Kakande* the Publicity Secretary of the respondent and Legal Adviser of Kampala City Branch(8th respondent) was present in court. Later, they were joined by *Mr. Sulaiman Kidandala* (7th respondent).

It clear that *Samuel Muyizzi* was appearing as counsel from the law firm of *Alaka & Co Advocates* and it is not clear whether the firm was instructed to represent the Party or Counsel was appearing as the National Legal Advisor of the party.

The same objection that was being raised for *Fred Mukasa Mbidde* of appearing in a matter where an advocate would be a potential witness in a matter contrary to ***Regulation 9 of the Advocates (Professional Conduct) regulations or without instructions contrary to regulation 2(1) appearing in a matter without instructions*** applies with equal force on the appearance of Counsel *Samuel Muyizzi* in this matter. *What is good for the goose is good for the gander?*

According to the Constitution of the party, the National Legal Advisor; shall be the Chief Legal Advisor to the National Delegates Conference, the National Council, the National Executive Committee and the Party as a whole. Does the Constitution of party authorize the National Legal Advisor to represent the party in courts of law? I think it does not since such office bearer may actually not be a practicing advocate with a right of audience in court.

Therefore, Counsel Samuel Muyizzi should have been properly instructed as counsel through his law firm of *M/s Alaka & Co. Advocates* before appearing in

the matter instead of assuming that as a National Legal Advisor he can represent the party in any matter. The powers of National Executive Committee should be only exercisable by the organ with clear resolutions and any person who purports to be an agent of the National Executive Committee should be other than the President of the party (who is the **Chief Executive**) should be personally responsible for their actions.

The party should legally be bound by actions of an advocate duly instructed but not members who assume the unassigned responsibilities. The party is bigger than any individual and this is the justification of the Constitution vesting the decision making powers not in any individual but the National Executive Committee in the day to day activities of the party. Otherwise it will be chaos in party administration if any office bearer takes decisions on behalf of the party as its agent.

Similarly, the actions of the *Sulaiman Kidandala* to execute a consent that binds the entire Democratic Party as the Organising Secretary was illegal, since his role under the Constitution did not include signing documents or binding the party in court matters. It could have been done in good faith and in the best interest of the party, but the final decision in such circumstances should have been made by the National Executive Committee.

The National Executive Committee is like the Board of Directors of a company. The decisions must be made at such a meeting by resolution or consensus in order to bring about an orderly way of management and running of the party. This is the governing body of the party responsible for setting the overall strategic direction of the party and policy development.

Individual party members should never hijack that mandate otherwise there will be 'organizational disarray' which would be sowing seeds of confusion in the Party. Decision making should be a preserve of the high command headed by the National Chairman.

Therefore, this court is satisfied to review the consent judgment for being executed by persons not authorized by the party and or without authority. The court would have set aside the Consent judgment on those grounds.

Since this court had earlier found that the main application was brought against a non-existing party,(Democratic Party Uganda) the consent judgment is set aside and Miscellaneous Application No. 89 of 2019 is dismissed with no order as to costs since it was brought against a non-existing party.

It is so ordered.

Dated, signed and delivered be email at Kampala this 15th day of June 2020

***SSEKAANA MUSA
JUDGE***