

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[CIVIL DIVISION]

MISC. APPLICATION NO . 888 OF 2021

[ARISING FROM CIVIL SUIT NO. 26 OF 2014]

KAKOOZA YASIN.....APPLICANT

VERSES

KAWEESA NICHOLAS.....RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The Applicant brought this application by Notice of Motion under section 82 and 98 of the Civil Procedure Act Cap 71, Orders 46 and 52 Rules 1 and 3 of the Civil Procedure Rules, S.I. 71- 1 for orders that;

- a. This Honorable Court doth review and vary the consent Decree/ Judgment in Civil Suit No. 26 of 2014 entered by the Deputy Registrar His Worship Karemani Jameson Karemera dated 24th November, 2020 particularly paragraph 2 thereof to exclude High Court Civil Suit No. 0657 of 2013 (Commercial Court).
- b. Paragraph 2 of the said impugned Consent Decree/Judgment be varied or set aside.
- c. Costs for this Application be provided for.

The grounds of this Application are contained in the affidavit of Kakooza Yasin the Applicant, but briefly they are that:

- a) The Applicant is aggrieved by paragraph 2 of the impugned Consent Decree/Judgment in Civil Suit No. 26 of 2014 entered by the deputy registrar His Worship Karemani Jameson Karemera dated 24th November,2020.
- b) Paragraph 2 of the said impugned consent decree/judgment was obtained by mistake, misapprehension, misrepresentation, it bears an error apparent on the face of it and it is contrary to the practice, policy and procedure of court in as far as it seeks to settle costs in High Court Civil Suit No. 0657 of 2013 which matter was filed and heard by the Commercial Division of the High Court of Uganda.
- c) The deputy registrar by entering the said impugned consent, in the terms under paragraph 2 thereof, acted without jurisdiction by exercising powers not vested or delegated in him since, being the Deputy Registrar at the Civil Division of the High Court, he was by implication entertaining a matter filed and contested in the Commercial Division of the High Court.
- d) The applicant has a direct interest in the matter and has been injuriously affected by the said impugned consent.
- e) That there is sufficient cause to warrant the grant and that the application has been made without unreasonable delay.
- f) It is just and equitable that this Application be granted.

The respondent opposed the application and filed an affidavit in reply and briefly stated as follows;

- a) That he read and understood the application and the affidavit in support sworn by the Applicant and found the same to contain material misrepresentations and falsehoods and wished to reply to the contents therein.

- b) That in specific response to contents of paragraph 5 of the Applicants Affidavit in Support, the respondent avers that the Consent Judgment was made in the presence of the Applicant and with the consent of his counsel and all allegations that the Applicant did not envisage inclusion of costs in civil Suit No. 0657 of 2013(Commercial Division) are malicious and contain untrue material misrepresentations facts and or falsehood all intended to achieve an untrue purpose.
- c) That the consent judgment was entered in terms and conditions agreed upon by both parties and their respective counsel and was signed, sealed and endorsed before the learned Deputy Registrar of the High Court Land Division.
- d) That the Applicant has not indicated anywhere in his application to set aside the consent judgment that he has returned the money he received as part of his costs arising out of HCCS No: 0657/2013 (Commercial Division) in order to have Taxation Application No: 370/2021 arising in HCCS No: 0657/2013 (Commercial Division) which is still pending determination of court at Commercial Division be heard and determined.
- e) That the respondent was advised by his lawyer which information he verily believes to be true that it is in the interest of justice and equity that the Applicants Application is dismissed for lack of merit, being an abuse of court process, frivolous and vexatious.

The applicant was represented by counsel Milton Ocen of M/s Milton Advocates while respondent was represented by Lawrence Banadda of M/s Birungi & Co. Advocate.

The court directed the parties to file their written submissions which were duly filed and have been considered by this court in the determination of this application.

Issues

1. Whether the application has merits for Review and or Setting Aside of the Consent Decree/ Judgment dated 23rd day of November, 2020?
2. What are the available remedies to the Parties?

Whether the application has merits for Review and or Setting Aside of the Consent Decree/ Judgment dated 23rd day of November, 2020?

Counsel for the Applicant set down the grounds of the Application wherein he stated that;

The principle upon which the court may interfere with a consent judgment/decree was outlined by the Supreme Court of Uganda in the case of **Attorney General & Anor. vs James Mark Kamoga & Anor, SCCA No. 8 of 2004.**

Counsel for the Applicant proceeded to address each of the grounds upon which this application is premised.

Abuse of Court process and being contrary to the policy of the Court:

Counsel relied on **Black's Law Dictionary [6th Ed.]** to define abuse of court process as reproduced at page 8 in the case of **AG & Anor. v. James Mark Kamoga & Anor.** (supra), states –

“A malicious abuse of legal process occurs when a party employs it for some unlawful object, not the purpose which it is intended by the law to effect; in other words, a perversion of it.”

Counsel for the Applicant stated that, the Applicant pleads under paragraph b) of his application and paragraphs 14 and 17 of his affidavit in support to the effect that paragraph 2 of the impugned consent decree/judgment is contrary to the practice, policy and procedure of court in as far as it seeks to settle costs in HCCS No. 0657 of 2013 which matter was filed and heard by

the Commercial Division of the High Court, in absence of an Order of Consolidating the 2 suits.

That the foundation of the practice, policy and procedure of court of the 2 different divisions of the High Court to wit; civil and commercial court can be traced under section 39 of the Judicature Act that provides to the effect that the Jurisdiction vested in the High Court by the Constitution (Art. 139), this Act, or by any other enactment shall be exercised in accordance with the practice and procedure provided by this or any other enactment or by such rules and orders of the High Court as may be made or existing under this Act or any other enactment.

Counsel further submitted that it is upon this legal backdrop that the Rules Committee designated the several divisions of the High Court, just like the designation of the different circuits of the High Court, giving them equal and parallel administrative structures.

That to purport to include and consent to costs in HCCS No. 0657 of 2013 (Commercial Court) in a different matter in the Civil Division, without any formal or administrative order consolidating the 2 suits, is a malicious abuse of legal process, it is contrary to the policy of Court, employed against an illiterate applicant to deny him costs in the Commercial Court as evidenced in the Respondent's objection in Taxation Application No.370 of 2021 arising out of Civil Suit No. 0657 of 2013, in the Commercial Court.

In response, respondent counsel submitted that under paragraph 5 of the Affidavit in Reply and under Paragraph 2 of the said Consent Decree attached to the Affidavit in Reply which was marked "A", Kakooza Yasin the Applicant and Kaweesa Nicholas the Respondent agreed that "*The Respondent shall pay Ug Shs 120,000,000/= (One Hundred and Twenty Million Shillings Only) to the Applicant in full and final settlement of his claims in HCCS 26/2014 and costs in HCCS 0657/2013 (Commercial Court)*".

That under paragraphs 10 and 11 of the Affidavit in Reply and under annexure marked "A" and "B", the Respondent clearly averred that he paid the entire agreed sum under the Consent Judgment in 2 installment payments of Ug. Shs. 10,000,000 (Ten Million shillings only) to the Applicant at the signing of the Consent Decree on the 23rd day of November 2020 and the balance of Ug. Shs. 110,000,000 (One Hundred and Ten Million Shillings Only) which was paid to the Applicant on the 27th day of November 2020 which sums of money were dully acknowledged by the Applicant as his full and final claim of costs in both HCCS 26/2014 and costs in HCCS 0657/2013 (Commercial Court) and under Paragraph 5 of the Consent Decree both Parties agreed that *"By this settlement both parties shall have no further claim against each other"*.

Respondent's Counsel cited decision of Justice Boniface Wamala in the case of **Krone Uganda Limited vs. Kerilee Investments Limited Miscellaneous Application No. 306 of 2019 arising from HCCS NO. 365 OF 2015** where it was held that;

"Parties to civil proceedings are free to amicably settle a dispute and consent to a judgment being entered. The parties may do so orally before a judicial officer who then records the consent or they may do so in writing, affix their signatures and place the same for endorsement by the court. See: Order 25 Rule 6 of the CPR and the case of Betuco (U) Ltd & Another vs. Barclays Bank & Others, HC M.A No. 243 of 2009 (Commercial Court)".

The second ground was mistake, misrepresentation and misapprehension: in addition to the arguments in above, relating to abuse of court process, the impugned consent being contrary to the policy of Court, want of jurisdiction by the deputy registrar, mistake, misrepresentation and misapprehension are pleaded under paragraphs b) of the application and 6, 7, 12, 13, and 18 of the affidavit in support of the application.

Applicant Counsel submitted, that the applicant payment of the sums he received were for strictly settling Civil Suit No. 26/2014 being compensation of lost income and revenues arising from his motor vehicles that were illegally impounded by the respondent (refer to the Plaint in HCCS

No.26/2014 Civil Division annexed in support as annexure "A") and no discussion covered payment of costs in HCCS No.0657/2013 in the Commercial Court. He attached annexure "D" which is an acknowledgement of receipt of UGX. 110,000,000/= (being the bulk payment of UGX. 120,000,000=), subsequently dated 26th November, 2020, strictly for Civil Suit No.26 of 2014 in Civil Division as a true reflection of the negotiations they had, accordingly, including costs in HCCS No.0657/2013 (Commercial Court) in the impugned consent was/is a mistake, a misrepresentation of the actual position!

That, for avoidance of any doubt, if it were not a case of mistake, misrepresentation or misapprehension, that costs in the Commercial Court were covered in Civil Division in November 2020, **why was the Respondent through instructions to his lawyers offered UGX 64,701,997/= subsequently on 21st April, 2021, towards settlement of costs in Taxation Application No.370/2021 (Arising from HCCS No.0657/2013) in the Commercial court by letter annexed in affidavit of support marked "G"?**

In response respondent counsel submitted that , the Respondent believed that payment of the agreed sums in paragraph 2 of the Consent Judgment would be settlement of all costs in both suits. The Consent Order between the Applicant and the Respondent operates as estoppel against the Applicant in trying to assert a different position from that stipulated in the agreement of the Parties. For the Applicant to assert that he was not paid his costs in HCCS No. 0657 of 2013 and/or the costs that were paid under the Consent Judgment was in respect of loss of earnings, is a different position not envisaged under the Consent Judgment. Thus, the doctrine of estoppel would operate against Applicant by denying his baseless and/or unfounded allegations as against the Respondent.

Respondent's counsel submitted that by the Applicant appending his signature on the Consent Judgment acknowledged the fact that both Parties had no further claims against each other in respects of costs in HCCS 26/2014 and costs in HCCS 0657/2013 (Commercial Court). The Respondent believed

the Applicants assurance that the Applicant would not bring any further claims in respect of costs in both suits. Thus the Applicant ought to be estopped from claiming the costs in the same suit twice as the same would amount to an illegality and/or irregularity would not condone

Counsel for the Respondent stated, **Section 114 of the Evidence Act Cap 6** which provides that *“when one person has, by his or her declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon that belief, neither he or she nor his or her representative shall be allowed, in any suit or proceeding between himself or herself and that person or his or her representative, to deny the truth of that thing”*.

The third ground was that the Learned Deputy Registrar acted without jurisdiction;

Counsel for the Applicant stated that, this ground is pleaded in the applicant’s application paragraph c) and paragraphs 14 & 16 of his affidavit in support of the application.

Counsel cited the case of **Attorney General & Anor. v James Mark Kamoga & Anor.** (supra) at pages 16 and 17, that a Registrar of the High Court can only exercise such jurisdiction of that Court as delegated by or under legislation. It suffices to say that Order 50 of the Civil Procedure Rules and Practice Directions granting powers of registrar confers on the registrar powers to enter judgment in **uncontested cases** and consent judgments. Clearly the power to enter consents in contested matters is not among the powers delegated to the Registrar. We humbly submit that in the circumstances, the deputy registrar in the Civil Division by entering the impugned consent (particularly paragraph 2) in relation to HCCS No.0657 of 2013 that was vehemently contested in the Commercial Court leading to the Judgment attached as Annexure B to the applicant’s affidavit in support, exceeded his jurisdiction/powers, as such, this warrants the said Consent to be varied by this Court.

The other ground is an error apparent on the face of it: this ground is an extension and rests on the grounds argued herein above, the impugned consent being an abuse of court process, being contrary to the policy of

Court, and in so entering it, the deputy registrar acted without jurisdiction. This ground is pleaded under paragraph b) of the application and paragraph 13 of the applicant's affidavit in support. Applicant's counsel cited the Supreme Court case of **Edison Kanyabwera vs Pastori, SCCA No.6/2014**, cited with approval in the case of **Prince Charles Matovu Ssimbwa & Anor. vs Kamy Samule & 3 Ors. HCMA No.463 of 2014, arising from Civil Suit No.26 of 2018 (Family Division)** at page 5 para 15, that;

"An error may be a ground of review and must be apparent on the face of the record which does not require any extraneous matter to show its correctness. 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 a fact or law."

It is was counsel's submission that for the reasons advanced under paragraphs hereinabove, by including under paragraph 2, settlement of costs in HCCS No. 0657 of 2013 (Commercial Court), in a matter filed in the Civil Division, the impugned Consent Judgment/Decree bears an error apparent of the face of it and we humbly invite this Court to exercise its powers under sections 33 of the Judicature Act, 82 of the Civil Procedure Rules and Order 46 and have the same varied.

And the last concern was on whether the participation of Counsel without a valid Practicing Certificate invalidated the proceedings?

Applicant counsel submitted that, pursuant to a response from the Chief Registrar confirming that Mr. Kintu Nteza Felix did not obtain a Practicing Certificate for 2020, upon discovery of a new material fact the applicant filed a supplementary affidavit ,on this issue/ground where an advocate participates in proceedings and signs documents without a valid practicing certificate, the applicant relies on the Supreme Court of Uganda authority of **Prof. Syed Huq vs The Islamic University in Uganda, SCCA No.47/1995**, the lead Judgment of the Court at page 10 where Court held that;

"(3) that an advocate who practices without a valid practicing certificate after February in any year commits an offence and is liable to both criminal and disciplinary proceedings (see sections 14 & 18 of the Advocates Act). The documents prepared or filed by such an

advocate whose practice is illegal, are invalid and of no legal effect on the principle that courts will not condone or perpetuate illegalities."

Applicant counsel submitted for applicant that the documents to wit; the notice of change of advocates, the impugned consent and the certificate of translation, letters and any other document on court record signed by Advocate Felix, are illegal and of no legal consequence and now that is has been brought to the attention of Court, Court should treat them as such, and doing the contrary would amount to the Court condoning or perpetuating an illegality.

Respondent counsel submitted that in view of Section 14A of the Advocates (Amendment) Act 2002 and the decision in the case of *Attorney General & Hon. Nyombi Peter v. Uganda Law Society, supra*, saves the documents that were signed by Counsel Felix Kintu Nteza acted who acted on behalf of the Respondent and the Applicant and as such the actions of Counsel Felix Kintu Nteza of holding out as an Advocate or impersonating as an Advocate in filing and representing the Respondent before Court when both Parties were executing the Consent Judgment did not invalidate the proceedings more so that the Applicant was duly represented by a duly qualified Advocate whose legal presentation the Applicant has not challenged anywhere.

Analysis

Consent judgments are not like the regular judgments of the courts entered after a trial conducted by the court summarily or upon full trial. It is not dependent upon exchange of pleadings or calling of evidence and/ or addresses of counsel. In fact, there is no stage in the proceedings where the law requires a consent judgment to be entered as the same can be entered at any stage in the proceedings because it simply based on an agreement of the parties to the litigation which agreement they consider binding on them and those who claim through them.

In view of the fact that consent judgment is a contract whereby new rights are created between the parties in substitution and in consideration of the

abandonment of the claim(s) pending before the court, it does not matter whether at the stage it was entered, the defendant had filed a defence to the claims of the plaintiff or the plaintiffs had filed a defence to a counter-claim or that evidence had been called or issues resolved or whether a judgment had already been entered between the parties. What matters is the agreement of the parties concerned. See *D.T.T Ent (Nig) Co Ltd v Busari (2011) 8 NWLR (pt 1249) p. 387*.

The Supreme Court of Uganda in the locus classicus case of **Attorney General & Anor. vs James Mark Kamoga & Anor, SCCA No. 8 of 2004** at page 21, where the Court quoted with approval the holding by the Court of Appeal for East Africa in **Hirani vs. 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 set aside an agreement.”

In Krone Uganda Limited vs. Kerilee Investments Limited Miscellaneous Application No. 306 of 2019 arising from HCCS NO. 365 OF 2015, Justice Boniface Wamala held that;

*“Parties to civil proceedings are free to amicably settle a dispute and consent to a judgment being entered. The parties may do so orally before a judicial officer who then records the consent or they may do so in writing, affix their signatures and place the same for endorsement by the court. See: **Order 25 rule 6 of the CPR** and the case of **Betuco (U) Ltd & Another vs. Barclays Bank & Others, HC M.A No. 243 of 2009 (Commercial Court)**”.*

However, Hon. Mr. Justice Christopher Madrama Izama (as he then was) in the case of **Ken Group of Companies Ltd vs. Standard Chartered Bank (U) Ltd, Nicholas Ecimu and Kamugisha M. Bertram Civil Suit No. 486 of 2007** stated that;

*“.....A consent order also operates as estoppels against someone trying to assert a different position from that stipulated in the agreement of the parties. See Lindley L.J. in **Huddersfield Banking Co. Ltd –Vs.- Henry Lister & Son Ltd** (1895) 2 ChD page 273 at page 280 when he said:*

A Consent Order I agree is an order and so long as it stands it must be treated as such, and so long as it stands it is as good an estoppels as any other order.

The doctrine of estoppels acts as a shield against a party trying to assert a different position from that stipulated or represented. The doctrine of estoppels is incorporated by section 114 of the Evidence Act cap 6 laws of Uganda (revised edition). In the absence of any grounds for setting aside the Consent Judgment order/contract between the parties, the Consent Judgment can only be varied or set aside by another agreement of the parties.....”

This court agrees with Counsel for the respondent on the fact that by the applicant appending his signature on the Consent Judgment acknowledged the fact that both Parties had no further claims against each other in respects of costs in HCCS 26/2014 and costs in HCCS 0657/2013 (Commercial Court). This brought to the respondent’s belief that the applicant was contended and would not bring any further claims in respect of costs in both suits. Therefore the applicant claiming costs in the same suit twice amounts to an illegality and/or irregularity that ought to be condoned.

The Applicant in his affidavit in reply attached annexure marked D where he acknowledged receipt of the final payment under the consent judgment.

This means that the consent judgment was binding to the applicant as he managed to attain benefits from it but failed to procure sufficient material facts or in misapprehension or ignorance of material facts or that the consent judgment was actuated by illegality, fraud and contravention of court policy. Neither did the advocate who was representing the applicant raise an issue concerning the fact that the consent judgment had been procured without sufficient material facts or in misapprehension or in ignorance of material, or it was actuated by illegality, fraud, contravention of court policy.

However, the law is to the effect that after a Consent Judgment has been entered, it may be vitiated, varied and/or set aside where it is proved that it was entered into without sufficient material facts or in misapprehension or in ignorance of material facts, or it was actuated by illegality, fraud, mistake, contravention of court policy or any reason that would enable court set aside an agreement. The Applicant has failed to prove that consent judgment was faced with any of the above grounds or factors as he appended his signature onto the Consent Decree hence he is estopped from trying to assert a different position from that stipulated in the agreement of the parties.

In relation to whether the Learned Deputy Registrar acted without jurisdiction, it should be noted that the powers of the Registrar are set out in Order 50 of the CPR, and Rule 2 goes ahead to say that: in uncontested cases and cases in which the parties consent to judgment being entered in agreed terms, judgment may be entered by the Registrar. This was also enlightened in the Supreme Court case of **Attorney General & Uganda Land Commission vs. James Mark Kamoga & Anor, SCCA No. 8 of 2004**, where, in pointing out that the powers conferred on Registrars of the High Court by law are circumscribed, Mulenga JSC stated as follows: –

"The powers of Registrars are set out in Order 50 of the CPR, and enhanced in Practice Direction No. 1 of 2002. I need not reproduce the detailed

provisions here. It suffices to say that the former confers on the Registrar powers to enter judgments in uncontested cases and consent judgments, to deal with formal steps preliminary to the trial, and with interlocutory applications, and to make formal orders in execution of decrees; and the latter empowers the Registrar to handle matters governed by specified rules and Orders of the CPR, which do not include any rule of Order 46. Clearly, the power to review judgments or orders of the High Court (including those entered by the Registrar) is not among the powers delegated to the Registrar.....emphasis added."

Therefore the Consent Decree/judgment entered by the Deputy Registrar was proper and within his jurisdiction and there was nothing illegal in endorsing the Consent Decree for the settlement of costs due to the Applicant arising out of HCCS. No 0657 of 2013. The Consent Decree was proper, lawful and did not amount to fraud nor did it require any court order for consolidation of the two suits as purported by the Applicant's counsel.

I therefore dismiss this Application and each party shall bear its own costs.

I so Order

SSEKAANA MUSA

JUDGE

7th October 2022