

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISCELLANEOUS APPLICATION NO. 507 OF 2021

**(Arising from Misc. Applic. No. 269 of 2007 and Misc. Applic. No. 113
of 2008)**

- 1. OBONYO PETER**
- 2. OKWALINGA PETER MALINGA**
- 3. MUHINDO EDWARD**
- 4. AGUMIKIRIZA SALIM**
- 5. AIKU LUCIAN**
- 6. AKEN RICHARD**
- 7. ALELE JOSEPH**
- 8. ALIDEKI WLLIAM KAKETO**
- 9. AMIGO ANDEGA MICHAEL**
- 10. AMUNYET STEPHEN MOSES**
- 11. ANGUYO ALEX**

- 12. APIKU SAMUEL IRANYA**
- 13. ASABA ROGERS**
- 14. ASUA RICHARD**
- 15. ATIBUNI SANTOS OLEMA**
- 16. BALUKU K. JIMMY**
- 17. BALUKU MEDSON**
- 18. BERONDERA DICKENS**
- 19. BUA JOSEPH**
- 20. CADRIBO JOEL ACIDRI**
- 21. DEBO GODWIN**
- 22. DEMBULA MOSES**
- 23. DRABO FRED**
- 24. DRICILE SUNDAY**
- 25. EBUU MOSES**
- 26. ECHOMU CHARLES**
- 27. EKINU MOSES**
- 28. EKINU ROBERT**

29. ELIANU PETER

30. EMURIA DEO

31. ENGWENU SOLOMON EBANU

**32. BONGOMIN STEVEN (Administrator of the estate of the late AKERA
GEORGE)**

**33. OLOYA ANDREW (Administrator of the estate of the late AMOLA
PATRICK)**

**34. APOLOT MARY GORETTY (Administrator of the estate of the late
ENERU STEPHEN)**

**35. ANYANGO DORCUS (Administrator of the estate of the late OLWE
JIMMY)**

**36. AKELLO DORCUS (Administrator of the estate of the late ONYEK
JIMMY)**

37. GATTA DAVID

38. IKEEBA EMMANUEL

39. ISABIRYE BERNARD

40. JATHO ALIOTIA VALLENCE

41. KAO ISAAC

- 42. KISURA JOSEPH**
- 43. KUNGU SAMUEL MUGUME**
- 44. KWEREDI GEOFREY**
- 45. MABWA JACKSON MUGUSHA**
- 46. MASEREKA GEORGE**
- 47. MASEREKA HANNINGTON**
- 48. MUGABE PAUL**
- 49. MWASE PAUL**
- 50. NKURUMA JOHN**
- 51. NYERO MORIS**
- 52. OCAYA BISMARCK**
- 53. OCEN RICHARD**
- 54. OCHAN JOLLY SAM**
- 55. OCHOM ALEX MOSES**
- 56. ODEKE MARTIN**
- 57. ODUKU FRANCIS**
- 58. OGWANG MOSES**

59. OILIGA OKIROR GODFREY

60. OJOK ROBERT KISA

61. OKELLO GEOFFREY MOGI

62. OKELLO PETER

63. OKELLO SAMUEL

64. OKELLO WALTER

65. OLUKA ISAAC

66. OLUM DENIS

67. OLUTIA BONIFACE

68. OLWOR JAMES

69. OMADI DAVID

70. OMODA FRANCIS

71. ONGARIA C. DICKENS

72. ONGOLE EMMANUEL

73. OPIO ABEL

74. OPIO BONIFACE

75. OPIO HARBERT LUKE

76. OPIO SAMUEL

77. ORUMA JOHN BOSCO

78. OTIM ERIC

79. RUVA GILBERT JONATHAN

80. SAALI ANDREW

81. SIKENYI ERISA O.

82. TUMWESIGYE JOHN

83. WAPATITI ROBERT-.....:APPLICANTS

VERSUS

1. G4S SECURE SOLUTIONS (UGANDA) LIMITED (formerly G4S SECURITY SERVICES(U) LIMITED:.....:RESPONDENT

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The applicant brought this application against the respondents under section 82, 98 of the Civil Procedure Act and Order 46, Rule 1 of the Civil Procedure Rules SI 71-1 seeking for orders that;

1. That the judgment delivered by this Honourable Court in Civil Suit

No. 113 of 2008 & 269 of 2007 be reviewed as there is a mistake and or error apparent on the face of the record in regard to the prayer of general damages by the Applicants.

2. That the judgment delivered by this Honourable Court in Civil Suit No.113 of 2008 and 269 of 2007 be reviewed as there is sufficient reason for its review on the question of general damages
3. The Respondent pays costs of this Application.

The application was supported by the affidavit of Okwalinga Peter Malinga the applicant with the power of attorney by the other applicants in the case with grounds that briefly stated that;

1. THAT the dependents have been authorized by the other Applicants through power of attorney to represent them and swear affidavit on their behalf and on behalf of all the other applicants.
2. THAT the deponent together with the 82 other Applicants were employees of the Respondent working as security guards and we were employed for different periods.
3. THAT they together with the other Applicants used to work for long hours without being paid overtime and also we were never given a weekly rest as required by the labour laws
4. THAT upon leaving employment, they together with the other

Applicants decided to seek justice and sued the Respondent for breach of contract for failure to pay overtime and weekly rest, and also sought to recover general damages as pleaded and submitted upon in Civil Suit No. 113 of 2008 and 269 of 2007.(Copy of both complaints and plaintiffs' written submissions are attached hereto and marked as Annextures A2 & A3 respectively)

5. THAT they have been advised by their lawyers M/S Rwambuka and Company Advocates which advice I believe to true that it was the finding of this Honourable court in Civil Suit No. 269 of 2007 and 113 of 2008 that the Respondent breached the contract and the law when they failed to provide weekly rest and overtime as required by law while employing them.
6. THAT the breach of contract by the Respondent started from early 2000s until when the Applicants decided to terminate the employment contract and demand for payment of inter alia general damages.
7. THAT in the judgment in civil suit 269/2007 and 113/2008, the trial judge ordered that all the plaintiffs' entitlements of overtime and weekly rest be computed and endorsed by counsel and the registrar. All the Applicants' overtime and weekly rest were duly computed and endorsed by Court.

8. THAT the Applicants while filing civil suit 113/2008 and 269/2007 had pleaded a remedy of general damages for breach of contract. This was further submitted upon by counsel in the written submissions filed on 2nd August 2019 where a sum of UGX 200,000,000/= was proposed for each Applicant.
9. THAT the Applicants were aggrieved by the decision of this Court delivered on 18th September 2020 when the judge never addressed the issue of general damages yet it had been pleaded and submitted upon.
10. THAT they were advised by their lawyers Rwambuka and Co. Advocates that failure to consider the question of general damages in a case of breach of contract is an error on the face of the record that warrant a review of the judgment.

In reply, the respondents filed an affidavit in reply sworn by Allen Sebugwawo the Managing Director of the respondent company which was deponed on 27th /08/2021, who stated that the application is misconceived , premature and an abuse of court process.

That in specific response to paragraphs 4, 5, 6, 7, and 8 of the Affidavit in Support,

a) On the 18th day of September 2020, this Honourable Court delivered

judgement in Civil Suit No.113 of 2008 and 269 of 2007 in favour of the Applicants awarding them the amounts equivalent to their unpaid overtime and weekly rest days, interest of 8% per annum on the said amount and costs.

b) The total award as granted by this Honourable Court was computed at UGX. 513,788,932 (Uganda Shillings Five Hundred Million Seven Hundred Eighty-Eight Thousand Nine Hundred Thirty-Two Only).

c) The Applicant fully paid the award through the Applicants' lawyers, M/s Rwambuka & Co. Advocates with no outstanding balance being claimed by the Applicants on the award as granted by this Court.

In specific response to paragraphs 9, 10, 11, 12, 13, and 14 of the Affidavit in Support,

a) During the hearing of Civil Suit No.113 of 2008 and 269 of 2007, the Applicants sought an unjustified amount of UGX. 200,000,000 (Uganda Shillings Two Hundred Million) in respect of each of the 153 Plaintiffs and an interest rate of 30% per annum from the date the cause of action arose until payment in full.

b) Upon rightly exercising its discretion, this Honourable Court did not find any reason justifying the award of the aforementioned claim on general damages.

c) that the award of general damages is purely discretionary upon this Court further been advised by the aforementioned lawyers that the instant Application cannot subsist alongside the pending Civil Appeal No. 171 of 2021 and that the same ought to be dismissed with costs to the Respondent

The application came up for hearing before this court and the parties were ordered to file their submissions respectively in the interest of time which I have had the occasion of reading and consider in the determination of this application.

The issues for determination are:

1. Whether the decree in civil suit No. 113 of 2008 and 269 of 2007
2. What remedies are available to the parties?

The applicant was represented by *Mr. Moses Wacha* holding brief for *Gilbert Nuwagaba* for 42 applicants while the rest were represented by *Mr. Nuwaninda Jonah Rwambuka* whereas the respondent was represented by *Mr. Fahim Matovu*.

Determination

The applicant's counsel submitted Section 5.82 of the civil procedure Act that the applicant has a right to seek review of the decision of this court made on 18/9/2020. The applicant also submitted that This Court heard

the above suits and indeed found that the Applicants' right to overtime had been violated and ordered the Respondent pay the overtime that had accrued over the years and the denied weekly rest. The Applicants had submitted a claim of general damages and prayed for a sum of UGX 200,000,000/= however the Court never made any decision/ finding on the question of general damages hence this application for review.

whereas the respondent in his submission, raised a preliminary objection mentioning that the application is improperly brought and that the affidavit was not deponed by the right person. The respondent went ahead to mention in there submission under issue one that and stated that there is a mistake or error apparent on the last face of the record. And mentioned the case of Edison *Kanyabwera versus Pastori Tumwebaze, Supreme Court Civil Appeal No. 6 of 2004*, the respondent also submitted that it was right not to award the plaintiff in the main suit any damages for various reasons that were mentioned.

Analysis

It is the general principle of law that the court after passing judgment becomes *functus officio* and cannot revisit the judgment or purport to exercise a judicial power over the same matter. However there are exceptions to the general rules as set out under the law that allows court to review its judgment. Section 82 Civil Procedure Act and Order 46 Civil

Procedure Rules. These provisions allow the High Court and Magistrates Court to sit in their judgments through a process called Review.

Section 82 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 judgment to the court which passed the decree or made the order, and the court may make such order on the decree or order as it thinks fit.

Application for review is provided for in Order 46 rule 1 thereof provides for application for review of judgments: Any person considering himself or herself aggrieved²

- (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 judgment to the court which passed the decree or made the order

The law under which review is provided is Section 82 of the Civil Procedure Rules and Order 46 of the Civil Procedure Rules. the grounds for review are clearly provided for and were outlined in ***FX Mubwike Vs UEB High Court Misc. Application No.98 of 2005***. These are: 1. *That there is a mistake or manifest mistake or error apparent on the face of the record.*2. *That there is discovery of new and important evidence which after exercise of due diligence was not within the applicants knowledge or could not be produced by him or her at the time when the decree was passed or the order made.*3. *That any other sufficient reason exists.* In the matter of ***Nakivubo Chemists (U) Ltd [1979] HCB 12***, The court found that there cases upon which review of judgment or order is allowed and these are;

- a) Discovery of new and important matters of evidence previously overlooked by excusable misfortune
- b) Some mistake or error apparent on the face of the record
- c) For any other sufficient reason but the expression sufficient should be read as meaning sufficiently of a kind analogous to (a) and (b) above.

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 applicants have premised

their 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.

An error which has to be established by a long drawn out process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. ***See Civil Procedure and Practice in Uganda by M & SN Ssekaana page 453***

In the present case the applicant faults the trial Judge for not awarding damages. General damages are given at the discretion of court and the applicants sought several awards which failed and only succeeded on overtime pay and weekly rest. There was no need for the court to pronounce itself on whether general damages ought to be awarded or

not. Once the court is silent on a remedy then it is not granted and this should not be deemed as an error of mistake as the applicants have argued.

I find no error of law apparent on the face of record as submitted by applicants counsel. The power of review should not be confused with appellate powers which enable an appellate court to correct all errors committed by a subordinate court. What the applicants term as errors or mistakes are only disagreement with the judgment and reasoning and are not errors apparent on the face of the record.

Greater care, seriousness and restraint are needed in review applications. In the case of ***MK Financiers Limited vs Shah & Co Ltd Misc. App No. 1056*** Justice Flavia Senoga Anglin held that;

“If the applicant was not satisfied with court’s decision, he ought to have appealed instead of applying for review. Since it has been established that an erroneous view of evidence or of law and erroneous conclusion of the law is not ground for review, though it may be good ground of appeal.” Misconstruing of a statute or other provisions of law cannot be a ground for review.

The proper way to correct a judge’s alleged misapprehension of the procedure or substantive law or alleged erroneous exercise of discretion is to appeal the decision, unless the error be apparent on the

face of record and therefore requires no elaborate argument to expose”

The erroneous decisions ought to be appealed to a higher court since they are not apparent on the face of the record. They are not manifest and clear to any court but rather are an apprehension of the law and evidence. ***See Edison Kanyabwera v Pastori Tumwebaze SCCA No. 2004***

This court also notes that indeed some of the claimants through another lawyer have filed an appeal against the said Judgment challenging the denial of general damages.

This application for review fails and is dismissed with costs to the respondent.

I so Order

Ssekaana Musa

Judge

10th February 2023