THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(CIVIL DIVISION)

MISCELLANEOUS APPLICATION NO. 0691 OF 2022

ARISING OUT OF CIVIL SUIT NO. 449 OF 2018

PAK FAZAL INVESTMENT LIMITED::APPLICANT

VERSUS

1. BITUNGIRO JACKSON

2. AHUMUZA NABOTH::RESPONDENTS

BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

This is an application for review of a decision of this court in HCCS No.449 OF 2018. It is made by way of notice of motion under the provisions of sections 82 and 98 of The Civil Procedure Act, Order 46 rules 1 & 2, and Order 52 rules 1 & 3 of The Civil Procedure Rules seeking for orders that;

a). *The proceedings, ruling and orders that arose from HCCS NO. 449 of 2018 be reviewed and set aside.*

b). Costs of this application be provided for.

The application was supported by the affidavit of Mr. Shahroz Ahamad, the director of the Affidavit. The grounds of the application are briefly as follows:

1. That the applicant is the registered proprietor of Motor Vehicle Registration No. UAZ 235M, FUSO FIGHTER, white in color,

Engine No. 6D16682E11, CHASIS No. FK417K-550248 hereinafter referred to as the suit Motor Vehicle.

2. The applicant is the legal owner of the suit Motor Vehicle, its interest in the suit Motor Vehicle is protected by law.

3. The applicant has been informed of the judgment in HCCS No. 449 of 2018 at High Court Civil Division, Ahumuza Naboth v Butungiro Jackson & Anor which declared that the suit Motor Vehicle belongs to the 1st respondent.

4. That the applicant was not a party to HCCS No. 449 of 2018 and therefore the orders giving away its vehicle were issued in error by court as the applicant was not heard.

5. That the effect of the judgment in HCCS No. 449 of 2018 and orders made there under was to deprive the Applicant of its proprietary rights and interest in the suit motor vehicle, without affording it a hearing which is against the principles of natural justice.

6. That the applicant is aggrieved by the judgment in HCCS No. 449 of 2018 and orders made thereunder.

7. That there is an error apparent on the face of the record of the Honourable Court which ought to be reviewed and corrected.

8. That it is in the interest of justice that this application succeeds.

Both respondents did not file affidavits in reply and this matter proceeded ex parte. The applicant served them by way of substituted service.

The applicant was represented by *Counsel Karigyenda Robert*.

The issues for the court's determination are:

1. ***Whether court should review and consequently set aside the Decree in the head suit?***

2. ***Whether the applicant is entitled to the orders sought in the application?***

Determination

Whether court should review and consequently set aside the Decree in the head suit?

The brief background of this matter is that the 2nd respondent filed civil suit No. 449 against the 1st respondent and another party. The dispute was in regards to Motor Vehicle Registration No. UAZ 235M, FUSO FIGHTER, white in color hereinafter referred to as the suit motor vehicle. The 2nd respondent claimed that he purchased the suit motor vehicle from the Applicant in this matter and employed the 1st respondent to drive the suit motor vehicle for some time until he disappeared with the motor vehicle.

The 1st respondent counterclaimed seeking orders for a declaration that the counterclaimant was a lawful and bonafide owner of the suit motor vehicle, a declaration that the motor vehicle was illegally impounded by the counter-defendant, a declaration that the counter-defendant claims no interest whether legal or equitable in the suit motor vehicle.

This court determined the matter on the evidence that was available to it and found that the suit motor vehicle belongs to the 1st respondent and made orders declaring that the 1st respondent is the rightful owner of the suit motor vehicle after compensating the 2nd respondent for the same and paying the Applicant the remaining balance that it was demanding the 2nd respondent, hence this application.

Counsel for the Applicant submitted that the applicant is the registered owner of the suit motor vehicle as evidenced by the log book attached to the director's affidavit in support of this application. He further alluded to the fact that by the sale agreement, the 2nd respondent was allowed to part with possession of the suit motor vehicle.

He further submitted that the judgment made by this honourable court without taking into consideration of the fact that the applicant who is the registered owner of the suit vehicle was never heard. He states that it was an error very apparent for court to have made a decision concerning the ownership of the vehicle without hearing the registered owner.

Furthermore, the evidence on record shows that the log book of the suit vehicle which clearly shows that the suit motor vehicle is registered in the name of the applicant and yet the head suit was heard and concluded without the input of the applicant. This was clearly an apparent error on the record from which this application arises hence occasioning an injustice to the applicant. In the circumstances the decree in question was borne out of error that was never rectified and is therefore tainted.

Analysis

Section 82 of the Civil Procedure Act Cap 71 provides that any person considered 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
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> 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.

The provisions above are replicated in Order 46 CPR amplifies on the law by providing for the considerations when granting an application for review. It provides as follows;

Application for review of judgment.

> (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
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> 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 considerations were restated in ***Re-Nakivubo Chemists (U) Ltd (1979) HCB 12***, where Manyindo J (as he then was), held that the three cases in which a review of a judgment or orders is allowed are those of;

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

A review is a reconsideration of the subject matter by the same court and by the same judge. Since he/she is better suited to correct to remove any mistake or error apparent on the face of his/her own order. It is the duty of the court to correct grave and palpable errors committed by it to prevent miscarriage of justice. ***see Luitingh Lafras and Anor v Special Services Limited (Civil***

Miscellaneous Application No. 572 of 2020) [2021] UGHCCD 89 (15 June 2021)

For one to make an application for review, the applicant must satisfy the court that it is aggrieved. To be aggrieved one within the meaning of section 82 of the Civil Procedure Act Cap 71 and Order 46 rule 1 of the Civil Procedure Rules SI 71-1 means that the applicant has suffered a legal grievance. ***See Re Nakivubo Chemist (U) Ltd (1979) HCB 12.***

In the matter at hand the applicant claims being aggrieved by the decree, sought to have the decree reviewed by this honourable court which made the decree as required by Order 46 Rule 2 of the Civil Procedure Rules. An application for review ought to be made to the judge who made it except where the said judge is no longer a member of the bench. ***See Outa Levi v Uganda Transport Corporation [1975] HCB 353***

In the case of ***Ojijo v Brown (Miscellaneous Application No. 758 of 2017) [2020] UGHCCD 127 (26 March 2020)*** wherein I cited the case **of** *Nyamogo & Nyamogo Advocates v Kago [2001] 2 EA* it was defined as follows:

An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long-drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal.

A review may be granted whenever the court considers that it is necessary to correct an apparent error or omission on the part of the Court. The error or omission must be self-evident and should not require an elaborate argument to be established. It will not be a sufficient ground for review that another Judge could have taken a different view of the matter. That the Court proceeded on an incorrect exposition of the law and reached an erroneous conclusion of law is not a proper ground for review. Misconstruing a statute or other provision of law cannot be ground for review but could be a proper ground for appeal since in that case the court will have made a conscious decision on the matters in controversy and exercised his discretion in favour of the successful party in respect of a contested issue. If the court reached a wrong conclusion of law, in circumstances of that nature, it could be a good ground for appeal but not for review otherwise the court would be sitting in appeal on its own judgment which is not permissible in law.

The applicant's counsel contended that the applicant's director contended there was sufficient evidence which was vital for the determination of the head suit. The same evidence was available for evaluation during the determination of the suit. The first is the **sale agreement** for the suit vehicle between the applicant and the 2nd respondent. This agreement of sale clearly states in ***clause 7*** that the 2nd respondent was not supposed to sell the suit motor vehicle to a third party before completion of the balance of the purchase price except with the consent of the seller.

The plaintiff's claim (Ahumuza Naboth) against the 1st defendant (Bitungiro Jackson) was for among others: A declaration that he was the lawful owner of the suit motor vehicle registration No. UAZ 235M Mitsubishi Fuso Lorry white in colour Chassis No. FK 417K-550248; A declaration that the said 1st defendant fraudulently and illegally acquired the suit motor vehicle.

The plaintiff in the main suit further pleaded in paragraph 5a that; That the plaintiff on 5/10/2016 bought the suit motor vehicle described above from Pak Fazal Investment Ltd (now applicant) at Ush 80,000,000/=. 5b: The plaintiff was and still paying for it in installments and at the time of filing

this suit, the plaintiff has already paid Ug.shs 57,200,000 out of the total purchase price. 5c: With permission, knowledge and consent of the seller (now applicant) the plaintiff took possession and use of the said vehicle on the understanding that upon paying for it in full, he would be transferred it into the plaintiff's full name.

It can be deduced from the plaint before court that the 2nd respondent indeed pleaded all facts to show that the said motor vehicle was registered in the names of the applicant and he was only a lawful owner. The plaintiff (2nd applicant was seeking to recover motor vehicle he lawfully purchased from the applicant from the said Bitungiro Jackson whom he accused of having converted the said vehicle.

The 1st respondent/(defendant) in his defence contended that he bought the said vehicle from the 2nd respondent/plaintiff at a sum of 70,000,000/= from the 2nd respondent which money was paid in installments of 65,000,000/= and the balance of 5,000,000/= which was to be paid upon receipt of the logbook from the plaintiff.

That after one and half years of demanding for the said log book and in possession of the said motor vehicle, the plaintiff turned around and reported a case at Katwe Police Station stating that the 1st defendant (1st respondent) was his driver and had stolen the plaintiff's motor vehicle. The police impounded the said vehicle and investigated the matter upon which it found that the motor vehicle was sold to the 1st respondent and it was released to him and the plaintiff/2nd respondent was charged with an offence of giving false information to police.

The police in its investigation on the matter established that the plaintiff had remained with a balance of 22,800,000/= from the applicant car bond. The 1st respondent was asked to pay the said balance of 22,800,000/= before the said motor vehicle would be released to him together with the logbook which money the 1st respondent paid in two installments at police of 5,000,000/= and 17,800,000/=.

This court impounded the said vehicle for over two years under an application for attachment before judgment while the said motor vehicle was packed or remained packed at Nakawa Chief Magistrates court since 23rd November 2018. The applicant who claims ownership as a registered proprietor went to Nakawa Chief Magistrates Court in 2019 and obtained a judgment for a sum of 30,000,000/= vide Civil Suit No. 439 of 2019 as the balance of his purchase price against Ahumuza Naboth who is the 2nd respondent.

The applicant cannot come to this court and try to claim ownership of the said motor vehicle where he had sued for the balance of the purchase price or in simple terms for breach of contract. The plaintiff's claim wholly lies in the recovery of the court award of 30,000,000/= and had no basis whatsoever with the suit between the respondents.

The applicant was fully aware of the suit in this court since the motor vehicle remained attached and packed at the court where they had filed their suit for recovery of the balance. It is unbelievable that they can now turn to this court after 2 years to claim that the court did not hear them in a matter where they had no claim or cause of action. The applicant's balance was duly deposited at police as per the police exhibit slips before the motor vehicle was released to the 1st respondent vide DExh2 in the main suit.

When a matter becomes the subject of litigation between them in a court of competent jurisdiction, to bring their whole case before the court so that all aspects of it may be finally decided. The applicant dragged the purchaser-Ahumuza Naboth and never sought for recovery of the motor vehicle but rather sought recovery of the balance of the purchase price. He cannot be allowed to re-litigate the same matter by seeking to join other proceedings and contending that he was never heard in the matter or that the decision was made in error.

It is a rule of public policy based on desirability, in general interest as well that of the parties themselves, that litigation should not drag on for ever and

that a party should not be oppressed by successive suits when one would do. The above statement of the principle of abuse of process clearly underscores the essence of preventing those who want to make the litigation arena i.e the law courts a career from embarking upon a process as it is contrary to public policy and leads to loss of valuable time and resource. The rule mandates that litigation should not be allowed to be pursued piecemeal. See ***NOAS Holding Inc v GCB Ltd [2011] 29 GMJ 1 SC***

This application therefore, is an abuse of court process and there is no error or mistake upon which this court should review or set aside the judgment and decree in the main suit. The applicant's counsel was trying his legal luck in court under the guise of review. It should be borne in mind that as a general principle, an application for review should be declined where the purpose is to provide an opportunity to re-argue matters already adjudicated upon. See ***Darbah v Ampah [1989-90] 2 GLR 103***

This court has not found any merit in this application. The applicant was not entitled any hearing in the dispute between the respondents in the main suit. The applicant has a judgment and decree for recovery of 30,000,000/= which is recoverable by way of execution. This application had no basis and was an abuse of process and it is accordingly dismissed with costs.

I so Order

SSEKAANA MUSA
JUDGE
15th December 2023