

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)**

MISCELLANEOUS APPLICATION NO. 0307 OF 2023

(Arising from Miscellaneous Application NO. 717 OF 2021)

**(Arising from Consolidated Suits HCCS No. 66/2017; HCCS No. 678/2017; HCCS
No. 330/2013; HCCS No. 351/2018; HCCS No. 134/2017; HCCS No. 822/2017)**

1. HAM ENTERPRISES (U) LTD. 2. HAMIS KIGUNDU 3. THE BOARD OF TRUSTEES NAKIVUBO WAR MEMORIAL STADIUM TRUST	} APPLICANTS
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VERSUS

1. KATENDE STEVEN & 2 OTHERS 2. MUKWAYA JIMMY & 245 OTHERS 3. LUGYA MOSES & 85 OTHERS 4. KABEERA EZRA & 4 OTHERS 5. KAKANDE BERNARD 6. MBIDDE AHMED & 7 OTHERS	} RESPONDENTS
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BEFORE: HON. JUSTICE SSEKAANA MUSA

RULING

The Applicants brought this application under Section 98 & 99 of the Civil Procedure Act Cap 71 and Section 33 of the Judicature Act Cap 13 and Order 52 Rule 1 & 2 of the Civil Procedure Rules, against the respondents jointly and severally for orders that;

- a) The ruling and orders of this Honourable Court in Miscellaneous Application No. 717 of 2021 be corrected under the slip rule so as to reflect that HCCS No. 330/2013 was withdrawn by the 5th Respondent and not HCCS No. 822/2017.
- b) Costs of this application be provided for.

The grounds of this application are set out in the application briefly and broadly in the affidavit of Webisa Denis who was one of the advocates in the matter.

- 1.) That on 31st day of October 2022, a ruling was delivered by this Honourable Court wherein the application succeeded against the respondents.
- 2.) The Learned judge in his ruling at page 5 observed that the 5th respondent Kakande Bernard who filed HCCS No. 822/2017 and had filed an affidavit in reply opposing this application, filed a Notice of Withdrawal of his suit against the applicants/defendants in HCCS No. 822/2017.
- 3.) The learned judge in his ruling at page 22 further observed that the respondents' suits and claims in HCCS No. 66/2017 and in HCCS No. 330/2013 are barred in law for being *res judicata* yet HCCS No. 330/2013 had been withdrawn by the 5th respondent.
- 4.) The clerical errors in the said ruling by this honourable court in Miscellaneous Application No. 717 of 2021 be corrected under the slip rule so as to reflect that HCCS No. 330/2013 was withdrawn by the 5th respondent and not HCCS No. 822/2017.
- 5.) The Orders of the said Ruling and Orders by this honourable Court in Miscellaneous Application No. 717 of 2021 be corrected under the slip rule so as to reflect that HCCS No. 330/2013 was withdrawn by the 5th Respondent and not HCCS No. 822/2017.

The 1st, 5th and 6th Respondents jointly with others instituted HCCS No. 66/2017, HCCS No. 822/2017 and HCCS No. 330/2013 respectively, against the Applicants challenging the validity of the leases created on the suit land, by the 3rd Applicant in favor of the 1st Applicant. The pleadings state that the suits were brought in public interest under Article 50 of the 1995 Constitution of the Republic of Uganda. On the other hand, the 2nd, 3rd and 4th Respondents, jointly with others, filed HCCS No. 678/ 2017, HCCS No. 351/2018 and HCCS No. 134/2017 claiming as former market vendors who were displaced or evicted from the suit land, allegedly without prior notice. In the suits, they claim that they were entitled to be re-allocated and fault the Applicants for not relocating them. They claim compensatory damages for merchandises lost.

The 1st and 6th respondent's counsel filed an affidavit which seems to be trying to challenge the main application out of which this application MA No. 717 of 2021 and does not address any of the clerical errors intended to be corrected in this application.

The Applicants were represented by the firms, *M/s Ssemambo & Ssemambo Advocates*, *M/s Baraka Legal Associated Advocates*, *M/s Kimara Advocates & Consultants*, and specifically *Counsel Ssemambo Rashid and Counsel Lukwago David*. The respondent was represented by *Counsel Ssekyanzi Lawrence* who appeared on behalf of 1st and 6th respondents.

Determination

Whether this application raises any grounds for correction under the slip rule?

The applicants' counsel submitted this application seeks to correct a minor error overlooked by this honourable court in its ruling delivered on the 31st day of October 2022. Citing section 98 and 99 which provides for inherent powers of court and power to correct clerical and mathematical mistakes in judgments. Counsel relied on the case of ***Uganda Development Bank Ltd vs Oil Seeds (U) SCCApp 15 of 1997*** to buttress his argument that the conditions set out therein have been satisfied.

It was counsel's contention that the foregoing authorities allows this court to correct clerical errors made in a ruling to reflect the intention of the court at the time the ruling was made.

Analysis

Section 99 of the Civil Procedure Act provides that;

Clerical or mathematical mistakes in judgments, decrees or orders or errors arising in them from any accidental slip or omission may at any time be corrected by the court either of its own motion or on application of any of the parties.

It is clear from the above provision that a court is empowered to correct clerical errors or accidental omissions in a judgment or ruling even after it has been delivered and formally entered under what is known as a "Slip Rule". The court can correct an accidental slip which may include clerical mistakes in a judgment or ruling.

However, the rule applies to clerical mistakes and accidental slips or omission in expression of the judgment or ruling but not in its substance. The judgement or ruling is what the court intended it to be but in the course of expressing it in writing errors of the types occurred.

The power of court to correct errors or mistakes in a judgment or ruling is discretionary and it will only be done in the interest of justice. The Supreme Court has guided in the case of ***Uganda Development Bank Ltd v Oil Seeds (U) Ltd SCCiv App No. 15 of 1997*** when it set out conditions that have to be proved under such an application as follows;

"In a situation like that, the court has inherent jurisdiction to recall its judgments in order to give effect to its manifest intention or what clearly would have been the intention of the Court had some matter not been inadvertently omitted, but the court will not sit on appeal against its own judgment in the same proceedings."

"A slip will only be made where the court is fully satisfied that it is giving effect to the intention of the court at the time when judgment was given or in case of a

matter which was overlooked, where it is satisfied beyond reasonable doubt, as to the order which it would have made had the matter been brought to its attention. The applicant must therefore prove that there was a clerical or arithmetic mistake in the judgment or any error arising from an accidental slip or omission which did not give effect to the intention of the Court when it passed the judgment”

In the present case as shown earlier, this court while delivering its ruling at page 5 held that; the 5th respondent, Kakande Bernard who filed HCCS No. 822/2017 and had filed an Affidavit in reply opposing this application, filed a Notice of Withdrawal of his suit against the applicants/defendants in HCCS No. 822/2017.

Further, the court at page 22 noted that the respondents’ suits and claims in HCCS No. 66/2017 and HCCS No. 330/2013 had been withdrawn by the 5th respondents. It is clear this was an error to refer to the case filed by the 5th respondent as 822/2017 and 66/2017 whereas not.

It is important that the intention of court is made clear without distorting the facts and orders already given by court in its ruling of 31st October 2022. The 5th respondent had filed HCCS No. 330 of 2013 and it was the suit he had filed a notice of withdrawal that this court was referring to in the said ruling. It was a mere mix of the case numbers which can be corrected without any prejudice to the respondents and in the interest of justice.

This application succeeds and the orders to correct are granted in the terms set out herein.

The ruling and orders of this Honourable Court in Miscellaneous Application No. 717 of 2021 be corrected under the slip rule so as to reflect that HCCS No. 330/2013 was withdrawn by the 5th Respondent and not HCCS No. 822/2017.

Each party shall meet their respective costs of the suit.

It is so ordered

SSEKAANA MUSA
JUDGE
12th January 2024