5

THE REPUBLIC OF UGANDA

10 **IN THE COURT OF APPEAL OF UGANDA**

AT KAMPALA

CIVIL APPEAL NO. 288 OF 2016

(Arising out of Miscellaneous Application No. 0293 of 2016 itself arising out of High court Civil Suit No. 198 of 2014)

15

Between

1. **Apollo Wasswa Basudde**
2. **Isaiah Kalanzi**
3. **Rosemary Wanyana (As administrators to the estate of the late Sepiriya Rosiko** } **::::::::::::::::::::::::::::Appellants**

20

And

Nsabwa Ham :::Respondent

25

Coram: **Hon. Justice Kenneth Kakuru, JA**
Hon. Justice Hellen Obura, JA
Hon. Justice Remmy K. Kasule, Ag. JA

30

JUDGMENT

This appeal is against the Ruling and orders of the High Court Family Division, at Nakawa (Masalu Musene, J.) dated 31.10.2016, whereby the learned Judge reviewed and set aside his own Judgement he had delivered on 5th May, 2016 after a full trial in HCCS No. 198 of 2014.

The appeal is based on eight grounds stated in the Memorandum of Appeal as here below:

1. The learned trial Judge erred in law when without jurisdiction heard the application for Review having ceased to be attached to the Family Division of the High Court and transferred to the Criminal Division.
2. The learned trial Judge erred in law when he made final orders after granting the Application for Review without making a note in the Register and giving orders as to the rehearing of the case as required by the law.
3. That the learned trial Judge erred in law and fact when during the Application for Review he accepted and relied on a Record of Proceedings that was not accompanied by the Registrar's Certificate of Correctness nor had it been certified by Court.
4. The learned trial Judge erred in law and fact when he reinstated the respondent's Letters of Administration without traversing the fact that in his Judgment in the main suit he had made a finding that they had been obtained illegally and fraudulently.
5. The learned trial Judge misdirected himself in law and fact when in the course of the Application for Review he

entertained a new issue of whether the 1st and 2nd appellants were biological grandchildren of the deceased whereas it had not been raised or framed as an issue in the main suit.

6. That the learned trial Judge erred in fact when during the hearing of the Application for Review he found that there had been no agreed joint scheduling memorandum on record in the main suit whereas there had been one adopted by Court.
7. The learned trial Judge misdirected himself in law and fact when in the Application for Review without basis reversed his Judgement in the main suit on matters and issues he had given adequate consideration in his Judgment in the main suit.
8. That the learned trial Judge erred in law and fact when in the course of the Application for Review, he considered new and extraneous allegations which had not been on Court record regarding the professional conduct of the Appellants' Counsel." (Sic)

Background:

This litigation arises out of the estate of the late Sepiriya Rosiko Kaddu Mukasa herein to be referred to as "Kaddu Mukasa", of Manyangwa, Kyadondo, Wakiso District, a son and heir of the late Sir Apollo Kaggwa, a former Katikkiro (prime minister) of Buganda.

The first and second appellants stated themselves to be respectively grandsons of Kaddu Mukasa, their respective fathers having been biological sons of the said Kaddu Mukasa. The third appellant is a biological daughter of Kaddu Mukasa.

The respondent is a nephew to the late Kaddu Mukasa, being a
85 son to Kaddu Mukasa's brother one Ernest Kaggwa Serebe.

The appellants claimed that on 8th May, 2002 through High Court, Kampala, Administration Cause No. 434 of 2001, the High Court (Musoke-Kubuuka, J.) granted to them Letters of Administration to the estate of the late Kaddu Mukasa.

90 On the other hand, the respondent also claimed that on 25th August, 2008 through High Court at Nakawa Administration Cause No. 261 of 2008, he was granted by the said Court (Murangira, J.) Letters of Administration to administer the very same estate of Kaddu Mukasa. In that grant the respondent falsely
95 presented himself to the granting Court as a grandson of the said Kaddu Mukasa.

When the appellants came to know that the respondent had also been granted Letters of Administration to the same estate of Kaddu Mukasa, they lodged in the High Court at Kampala (Family
100 Division) Civil Suit No. 198 of 2014 against the respondent praying Court to annul or revoke the letters of administration granted to the respondent under High Court Administration Cause No. 261 of 2008. They contended that the respondent had obtained the same through fraud and misrepresentation by asserting, amongst
105 other falsehoods, that he was a grandson of the late Kaddu Mukasa whereas he was not. They prayed for a declaration that they were the lawful administrators of the estate of the late Kaddu Mukasa, having been lawfully appointed by the High Court in Administration Cause No. 434 of 2001.

110 The respondent filed a defence to the suit contending that he was the one lawfully entitled to administer Kaddu Mukasa's estate and that he had so lawfully been granted the letters of administration to the said estate.

A scheduling conference was held by Court and attended by the 115 parties to the suit and their respective Counsel on 20th November, 2014. Agreed upon facts and issues were set out and recorded. One of the agreed facts being that the 1st and 2nd appellants are biological grandsons of the late Kaddu Mukasa. The hearing of the suit started on 7th July, 2015 and ended on18th December, 2015. 120 Counsel for respective parties opted to file written submissions, which they did, and on 05.05.2016 the Court delivered Judgement in favour of the appellants against the respondent. The Letters of Administration granted to the respondent under High Court Administration Cause No. 261 of 2008 were revoked, and a 125 declaration was made that the Letters of Administration issued to the appellants in High Court Administration Cause No. 434 of 2002 were the valid ones. The Court also awarded other reliefs.

On 6th June, 2016 the respondent lodged in the High Court at Nakawa Miscellaneous Application No. 0293 of 2016 under 130 Sections 98 and 82 of the Civil Procedure Act and Order 46 Rules 1 and 8 of the Civil Procedure Rules. He sought reliefs of the Court to review its Judgment delivered in Civil Suit No. 198 of 2014 on 15th May, 2016 on the grounds that there had been discovery of new and important matters which, after exercise of due diligence, 135 were not within the respondent's knowledge at the time of hearing the suit, that the decision in the Judgment of the Court represents

a substantial mistake and an apparent error of fact and law that may be subject to misinterpretation, that the application had been made without unreasonable delay and that it was just and
140 equitable to review the Court decision so that the same reflects the proper position of the law.

The appellants opposed the application as being wrong in law and in fact.

The application came up for hearing on 1st September, 2016 before
145 the same Judge, Masalu-Musene J. and Counsel opted to file written submissions and on 31st October, 2016, the Judge delivered a Ruling on the application for review. He allowed the application with costs, set aside his own Judgment and orders he had delivered and issued on 05.05.2016, cancelled the Letters of
150 Administration the High Court had granted to the appellants and reinstated the respondent as the lawful administrator to the estate of the late Kaddu Mukasa. He awarded costs to the respondent against the appellants. Dissatisfied, the appellants lodged this appeal.

155 At the hearing of the appeal Counsel Richard Nsubuga appeared for the appellants while David Mushabe and Robert Nazaami were for the respondent.

Ground 1:

For the appellants, it was submitted that His Lordship Masalu-
160 Musene, J. erred in law when he, without being possessed of jurisdiction, determined the review application when he was no longer attached to the Family Division having been transferred at that material time to the Criminal Division of the High Court.

Counsel for the respondent, on the other hand, contended that the
165 learned Judge was seized of jurisdiction in law to determine the review application.

In resolving ground 1 of the appeal, this Court notes that jurisdiction as regards a subject matter is the power vested in a Court of law to entertain an action, petition or other Court
170 proceedings. Territorial jurisdiction is the geographical or territorial area within which the Court operates and within which the Judgments or Orders of a Court can be enforced or executed. Thus jurisdiction may be appreciated as the legal authority to administer justice according to the means which the law has
175 provided and subject to the limitations imposed by the law upon the Judicial Authority.

Section 20 of the Judicature Act, Cap. 13, provides for distribution of business in the High Court. Section 20(2) is to the effect that every proceeding in the High Court, where it is practicable and
180 convenient, shall be heard and disposed of by a single Judge and proceedings subsequent to a final Judgment/Order in an action are to be taken to the same Judge before whom the trial/hearing took place. A review application by one aggrieved is made to the Court that passed the decree/order, the subject of the review,
185 pursuant to Section 82(b) of the Civil Procedure Act, Cap. 71; and Order 46 Rule 1(b) of the Civil Procedure Rules.

Hon. Justice Masalu-Musene, having determined Civil Suit No. 198 of 2014, whose Judgment was the subject of the review, was therefore the Judge vested with powers to determine the Review
190 Application No. 0293 of 2016. Under the Law, stated as above, the

mere fact that His Lordship was, at the material time in the Criminal Division, as is alleged by the appellants' Counsel, did not in any way deprive him of the statutory jurisdiction to determine the Review Application. The appellants availed no evidence from 195 the Principal Judge, the head of the High Court, or indeed from any other source of the High Court, to prove that His Lordship Masalu-Musene had been deprived of powers, statutory or administrative, or otherwise from determining the Review application No. 0293 of 2016. Jurisdiction is conferred by statute, 200 and the appellants' Counsel did not avail to this Court any statutory law specifically depriving the stated learned Judge of jurisdiction to determine the stated Review Application.

Accordingly this Court finds no merit in ground 1 of the appeal. The same stands dismissed.

205 **Ground 2**

In this ground, the learned Judge who determined the Review is stated to have erred in law for making final orders after granting the application for Review without making a note in the Register and ordering a re-hearing of the case as required by law.

210 As regards the first part of this issue, relying on Order 46 Rule 6 of the Civil Procedure Rules, it was submitted for the appellants that on making the order allowing the application for Review, the learned trial Judge was obliged to make a note in the Register to that effect, but this was not done.

215 Order 42 Rule 6 provides:

"6. Rehearing upon application granted.

When an application for review is granted, a note of the application shall be made in the register, and the Court may at once rehear the case or make such order in regard to the re-
220 *hearing as it thinks fit".*

This Court's appreciation of the above Rule is that it requires the Court to note in the Court Register the fact that the Review application has been determined and allowed by the Court and a rehearing whether there and then, or later on, if that is the decision
225 of the reviewing Court, has been ordered.

The appellants, apart from merely alleging that this was not done by the Court, adduced no evidence that the orders made by the learned Judge as regards the Review application were not noted in the Court Register. At a rate, even if this were true, and the
230 appellants never so proved, such a failure would merely be a procedural irregularity that is not capable of vitiating the Review Application proceedings, given the constitutional command of Article 126(2) (e) that *"substantive justice shall be administered without undue regard to technicalities"*. It is also to be appreciated
235 that the learned Judge did not order a rehearing of the case. He just issued final orders as a result of the Review. So there was no order in regard to the hearing that had to be noted in the Register. This Court thus finds no merit in the first part of this ground of appeal.

240 The said ground thus stands partly dismissed to the extent stated above.

The second part of this ground is whether the learned Judge acted within the law when in the process of and/or as a result of the

Review, he re-visited his own Judgment in HCCS No. 198 of 2014, set the same aside and substituted the same with a new Judgment in the nature of the Ruling in the Review Application No. 0293 of 2016 that totally reversed the holdings and orders of the earlier stated Judgment delivered in HCCS No. 198 of 2014.

In the considered view of this Court it is necessary to resolve whether or not there were circumstances that justified the trial Judge to proceed by way of Review or whether actually the learned Judge sat and conducted an appeal in his own Judgment he had earlier delivered in HCCS No. 198 of 2014. This of necessity requires consideration of the second part of ground 2 as well as grounds 3,4,5,6 and 7 of the Appeal.

Part of ground 2 and grounds 3,4,5,6 and 7

An appeal is a process whereby the higher Court questions an erroneous conclusion on matters of law and/or the evidence of the lower Court. The right to appeal is provided by statute. See: Abdul Jafar Devji –v- Ali RMS Devji [1958] EA 558.

The general principle of law is that a Court of law becomes *functus officio* in a case it has entertained and made a final decision disposing of it to finality. The same Court cannot sit to reconsider or purport to exercise a judicial power over its own said Judgment. Having discharged its duty, it is only the higher Court of competent jurisdiction, that can deal with that Judgment by way of correction or otherwise. See: Kamudi V Republic [1973] EA 540 and Mapalala –v- British Broadcasting Corporation [2002] 1 EA 132.

As to Review, it is only under specified conditions that a Court of law may review its own Judgment or order. The power of review is

also a creature of statute. Section 82 of the Civil Procedure Act, (CPA) provides that:

"82. Review

Any person considering himself/herself aggrieved

275 (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*

280 *such order on the decree or order as it thinks fit."*

Order 46 r 1(a) and (b) of the Civil Procedure Rules (CPR) is also of the same wording as Section 82 CPA, but provides further as to the conditions to be satisfied by one applying for a review:

"........and who from the discovery of new and important matter

285 *or 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 review*

290 *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."*

An aggrieved person for the purposes of Review is one who has suffered a legal grievance in the sense that such a person has a

295 direct interest in the matter which interest has been injuriously

affected. See: Yusuf –v- Nokrach [1971] EA 104 and Re-Nakivubo Chemists (U) Ltd [1971] HCB 12.

The aggrieved person is required by the law set out above to establish any of the following grounds if he/she is to succeed in
300 the Review Application. First, that there is discovery of new and important matter or evidence not in his/her knowledge after the exercise of due diligence, and that there are valid reasons/ grounds that such a matter or evidence could not be availed, pointed out and/or produced by the applicant to the Court
305 determining the applicant's cause at the time the decree or order determining the cause was passed or made. See: Touring Cars (K) Ltd –vs- Munkanji [2000] 1 EA 261 (CAK) and Nduati –v- Mukani [2002] 2 KLR 778.

Secondly, the applicant for review must show that there is a
310 mistake or error apparent on the face of the record, of the proceedings in the applicant's cause that the Court has determined or is determining. An error apparent on the face of the record is one that is evident and its incorrectness does not require any extraneous matter by way of proof. It is so manifest and clear
315 that no Court of law exercising its judicial powers would allow it to remain on the Court record. This error may either be of fact or law. See: Edison Kanyabwera –v- Pastori Tumwebaze, Civil Appeal NO. 6 of 2004 (SCU).

The existence of such an error must be judiciously determined
320 depending on the facts of each case. It is an error whether of fact or law, that stares one in the face, leaving no room for two opinions being entertained about it as to its being an error. An erroneous

or wrong view by the Court entertaining the cause in appreciating and/or interpreting the evidence adduced or the said Court 325 wrongly applying the law is not a ground for review. It is a ground for an appeal to the higher Court to carry out the correction. See: Nyamogo & Nyamogo Advocates –v- Moses Kipkolam Kogo [2001] 1 EA 173.

What amounts to a sufficient reason for the Court reviewing its 330 own decree/order refers to grounds analogous to an error on the face of the record or discovery of a new matter.

Subject to the law on review as set out above, a Court of law that has determined a cause to finality has no jurisdiction to review its own judgment and re-open a concluded cause on the basis that 335 the said Court was wrong in its earlier judgment. See: R R Siree and Another –v- Lake Turkana [2000] 2 EA 521; Mbogo –v- Shah [1969] EA 93 and Veronica Rwamba Mbogoh v Margaret Rachel Muthoni and Another [2006] 1 EA 174.

The process of review must not be used by Courts of law to open 340 doors to all and sundry to challenge the correctness of the decisions made by Courts on the basis of arguments thought of long after the decision was delivered. See: Yusuf v Nokrach [1971] EA 104. A Judge, on final Judgment in a case becomes *functus officio* and it becomes highly improper and irregular for the same 345 Judge to sit on appeal involving his/her own Judgment by reconsidering the evidence on record, re-evaluating it and coming to different conclusions. See: Shah –v- Dhavanchi [1981] KLR 561.

In the appeal before us, the learned Judge who entertained the
350 Review Application, the subject of this appeal, allowed the same because first, though the 1st and 2nd appellants had claimed in HCCS No. 198 of 2014 that they were biological grandsons of the late Kaddu Mukasa, the Judge found on review that they were not. The 1st appellant was alleged to be a son of Ssewava Apollo
355 Kalibala, son of Eriyasatu Bisubulo Kasweesa, brother to the late Kaddu Mukasa. The Judge also found that the 2nd appellant was alleged to be a son of Ephraim Ssewanyana who had never been a son to the late Kaddu Mukasa.

In coming to the above conclusion and decision the learned Judge
360 relied on paragraphs 5,6,7,8 and 9 of the affidavit of the respondent (Nsabwa Ham) sworn on 7th June, 2016 in support of the Review Application. See page 59.

In paragraph 9 of the said affidavit the respondent as deponent refers to the proceedings which are annexure "C" to the said
365 affidavit before the office of the Administrator General. These were minutes of a meeting of the stakeholders in the estate of the late Kaddu Mukasa held on 15th August, 2012. The respondent attended the said meeting as No. 3, the 1st appellant as No. 1, the 2nd appellant as No. 4. See page 200 of the Record of Appeal. The
370 minutes show that the 1st and 2nd appellants attended as grandsons of late Kaddu Mukasa, while the respondent attended as son of E. Serebe. The respective fathers of the 1st and 2nd appellants and that of the respondent are stated in these minutes.

The 2nd appellant insisted that the respondent was not a direct
375 descendant of late Kaddu Mukasa. According to these minutes on

page 202 of the Record of Appeal, the officer of the Administrator General's office presiding over the meeting noted:

> *"At this moment I noted the disagreement of the lineal descendants of the deceased herein (Sepiriya Roscoe) and I drew*
380 *their attention that this will be drawn to the attention of AG."*

It follows therefore that by 15th May, 2012 the respondent to the appeal, who produced and does not dispute the genuineness of these minutes, was aware of the lineal assertions of the 1st and 2nd appellants that made them to be grandsons of the late Kaddu
385 Mukasa and those that made him, (respondent) not to be a direct descendant of late Kaddu Mukasa. Hence the respondent is stating a falsehood, as far as the lineage of the 1st and 2nd appellants to Kaddu Mukasa, is concerned in paragraph 5 of his said affidavit of 7th June, 2016 when he asserts: *"That, there has*
390 *been discovery of new and important matter which after exercise of due diligence were not within my knowledge or that of my former advocates and this Court."*

It is also of significance to note that HCCS No. 198 of 2014 at Nakawa, whereby the appellants moved Court to revoke the Letters
395 of Administration Cause No. 261 of 2008, was lodged in Court on 27th May, 2014 after the above stated meeting had been held in the office of the Administrator General on 15th August, 2012, a period of almost two years. In instructing his lawyers who filed a defence to the said suit on 19th June, 2014, the respondent admitted the
400 fact that the 1st and 2nd appellants are grandsons of the late Kaddu Mukasa. Thus paragraph 3 of the respondent's written statement

of defence to the suit (paragraph 293 of the Record of Appeal) states:

> *"Paragraph 1 is admitted in part in so far as the plaintiffs are grandsons and daughter respectively of the late Sepiriya Rasiko Kaddu Mukasa, but the defendant denies the allegation that the plaintiffs are administrators of the estate of late Sepiriya Rasiko Kaddu Mukasa and they shall be put to strict proof thereof."*

405

Thus the respondent was made aware of the status of the lineal connection of the 1st and 2nd appellants to the late Kaddu Mukasa as far back as 15th August, 2012 at the meeting at the Administrator General's Office and he admitted this status to be correct and so communicated to Court in his written statement of defence filed in Court on 19th June, 2014 in HCCS No. 198 of 2014.

410

It is therefore a falsehood for the same respondent to assert in paragraph 7 of his affidavit in support of the Review Application dated 7th July, 2016 that it was never an agreed fact at the trial of HCCS No. 198 of 2014 that the 1st and 2nd appellants are biological grandsons of the late Kaddu Mukasa.

415

Further, in his Judgment in HCCS No. 198 of 2014, the learned trial Judge set out under "agreed facts" and rightly took it as an admitted fact that the 1st and 2nd appellants were biological grandsons of the late Kaddu Mukasa, the 3rd appellant his daughter and the respondent his nephew. The learned Judge then observed in his Judgment at page 79 of the record of appeal that:

420

425

> *"........the defendant (now respondent in the appeal) admitted under cross-examination that at the time of his application, there were several lineal descendants of the deceased who*

included the 3rd plaintiff Rosemary Wanyana (a daughter to
430 *the deceased), and 1st and 2nd plaintiffs (grandsons of the deceased) who were better entitled to the estate.*

The defendant admitted that he never sought their consent in writing or other wise and no citation to them was issued as envisaged under Section 203 of the Succession Act. In the
435 *premises, I reject the submissions by Counsel for the defendant that the misrepresentations of the defendant were innocent and lacked intention to deceive or defraud anyone. Instead, I conclude that the grant of Letters of Administration to the defendant were illegally acquired and deserve*
440 *cancellation for a Just Cause under Section 234 of the Succession Act and for failure to issue a citation to the lineal descendants under Section 203 of the same Succession Act."*

Having so held as above in his Judgment in HCCS No. 198 of 2014, the learned Judge then proceeded to reverse himself in his ruling
445 in the Review Application No. 0293 of 2016 at page 19 of the Record of Appeal that:

"1. Having seen the joint scheduling memorandum, I found out that it was never an agreed fact that the 1st and 2nd respondents are biological grandchildren of Sepiriya Rosiko
450 *Kaddu Mukasa. The 2nd respondent (Isaiah Kalanzi) is not a biological grandson of late Sepiriya Rosiko Kaddu Mukasa but instead a son to Ephraim Ssewanyana who has never been a son to late Sepiriya Rosiko Kaddu Mukasa."*

With the greatest respect, this Court finds that the learned Judge
455 had no basis to hold as he did above in the Review Application.

The respondent to this appeal remained bound by his pleading in paragraph 3 of his written statement of defence filed in HCCS No. 198 of 2014 on 19th June, 2014 whereby the respondent admitted that the 1st and 2nd appellants were grandsons of the late Sepiriya
460 Rosiko Kaddu Mukasa. Further, it had been brought to the respondent's knowledge since the meeting at the Administrator General's office on 15th August, 2012 that the 1st and 2nd appellants were grandchildren of the said Kaddu Mukasa. It is from this time that the respondent, who claimed to be a nephew
465 and thus not a stranger to the estate of the late Kaddu Mukasa, could have established whether or not the assertion of the 1st and 2nd appellants being grandsons of the said Kaddu Mukasa was true or not. As already stated the respondent agreed and confirmed that the 1st and 2nd appellants were grandsons of Kaddu Mukasa
470 in 2014 and through out the hearing and delivery of Judgment in HCCS No. 198 of 2014 on 5th May, 2016. It is only on 7th June, 2016 after Judgment in the said suit had been delivered against him, that the respondent came up with the claim that the 1st and 2nd appellants were not grandsons of the late Kaddu Mukasa.
475 Accordingly, given these circumstances, such a claim of the respondent could not be held to be discovery of new and important matter which after exercise of due diligence was not within the respondent's (that is the applicant's) knowledge at the time HCCS No. 198 of 2014 was determined.

480 The contention that the 1st and 2nd appellants are not grandchildren of the late Kaddu Mukasa is a mere assertion by the respondent in his affidavit of 7th June, 2016 to support the Review Application. It is not in any way supported by authentic

independent evidence from any credible source from the estate of
485 the late Kaddu Mukasa or otherwise. There is nothing in the proceedings arising from the family meeting at the Administrator General's office held on 15th August, 2012 and attended by the 1st and 2nd appellants and the respondent whereby the said respondent or anyone else ever asserted that the 1st and 2nd
490 appellants were not grandsons of the late Kaddu Mukasa.

On the other hand, at page 201 of the Record of Appeal, the 2nd appellant strongly and clearly insisted that the certificate of no objection to administer the estate of the said late Kaddu Mukasa be issued to the direct descendants of the said Kaddu Mukasa
495 whom he named as himself, grandson to Kaddu Mukasa being son of late Ephraim Ssewanyana, then the 1st appellant, grandson to Kaddu Mukasa being son of Kalibala Godfrey son of Kaddu Mukasa and others, including Rosemary Wanyana, the 3rd appellant, as daughter of Kaddu Mukasa. The name of the
500 respondent is not at all mentioned amongst those to administer the estate of the late Kaddu Mukasa. The reason for not mentioning the said name must have been because the respondent was not a grandson, but rather a nephew of the late Kaddu Mukasa, a fact that the respondent admitted and confirmed to
505 Court in his evidence in HCCS No. 198 of 2014.

The respondent had, of course, fraudulently previously claimed to be a grandson of late Kaddu Mukasa in High Court Administration Cause No. 261 of 2008 which falsehood the respondent admitted at the hearing of the suit and the trial Judge confirmed in the
510 Judgment delivered in the said HCCS No. 198 of 2014.

The above being the state of affairs, this Court agrees with the assertion of the 2nd appellant in paragraph 9 of his affidavit dated 25th August 2016 filed in reply to the respondents' assertions in the Review Application No. 293 of 2016:

515 *"9. That further no fresh evidence has been brought to actually disprove the paternity of the 1st and 2nd respondents (now appellants) apart from the bare allegation in this application and as informed by my lawyer Mr. Richard Nsubuga this bare assertion cannot be a sufficient ground for review."*

520 This Court hastens to state that, with the greatest respect to the learned trial Judge, he was not justified to sit on appeal in his own Judgment delivered in HCCS No. 198 of 2014, re-evaluate the very same evidence and then proceed to reverse himself in a Ruling in High Court Miscellaneous Application No. 293 of 2016 on the issue 525 of the lineal relationship of the 1st and 2nd appellants to the late Kaddu Mukasa. The learned trial Judge had become *functus officio* in the cause.

It is also a fact that the respondent never challenged the fact that the 3rd appellant was a biological daughter of the late Kaddu 530 Mukasa and as such had priority in law over the respondent, who claimed to be a nephew to the said late Kaddu Mukasa, to the entitlement to administer the said deceased's estate under Sections 27,202 and 203 of the Succession Act, Cap 162.

The learned trial Judge gave no reasons at all as to why the said 535 3rd appellant was also removed from administering her father's estate but instead the administration of the said estate was vested

into the respondent whom His Lordship had found to be fraudulent in HCCS No. 198 of 2014.

The learned trial Judge also reversed himself on the issue of the grant of Letters of Administration by the High Court (Family Division) (Musoke-Kibuuka,J.) in Administration Cause No. 434 of 2002 to the appellants. The said Letters of Administration were pleaded and attached as annexure "A" to the plaint in HCCS No. 198 of 2014.

At the trial of HCCS No. 198 of 2014 the respondent challenged the said Letters of Administration granted to the appellants as being a forgery on grounds that the same did not conform to the usual form, they referred to "he" instead of "them", the "date" and "month" of the grant were typed instead of being hand written and that the order of entitlement was wrong to start with the grandchildren and not the daughter of the deceased. His Lordship Musoke-Kibuka, now retired, who issued the grant testified at the trial.

After considering all the evidence adduced for the appellants and the respondent including the evidence and testimony of the retired Judge Musoke Kibuuka, the learned trial Judge held in his Judgment that:

> *"And so any defects in form should not be visited on the plaintiffs and they are curable with the application of Section 99 of the Civil Procedure Act under the slip rule that allows correction of errors.*
>
> ....

The plaintiffs were the proper persons entitled to apply for the grant of the letters of Administration being lineal descendants,
565 *as opposed to the defendant who illegally acquired letters of Administration to the same estate. This Court has already found and held that the grant to the defendant deserves cancellation for a just cause under Section 234 of the Succession Act. And in view of the acknowledgement by the*
570 *retired Justice V.F. Musoke-Kibuuka that the signature on the grant was by all standards his, then the plaintiff's Letters of Administration are not a forgery. Any defects in form should not be visited on the plaintiffs, being lay people who cannot be expected to find issue in some of the errors. At best, it is their*
575 *lawyers who should have pointed out such typographical errors/omissions to Court for rectification, otherwise and as I have already pointed out, in terms of substantive justice, the plaintiffs were the ones entitled to the grant of Letters of Administration as opposed to the defendant, who was an*
580 *imposter and committed out right forgery."* (See: page 81 of Appeal).

The learned Judge, without any justifiable basis for reviewing his above stated holding in his Judgment in HCCS No. 198 of 2014, proceeded in the Review Ruling in Miscellaneous Application No.
585 293 of 2016 to sit in appeal of his own stated Judgment and re-considered the evidence on this very issue. He thus stated, wrongly, that the grant of certified Letters of Administration was never tendered in Court, when in actual fact the same were annexed to the plaint (pages 305-312 of the Record of Appeal) and

590 were referred to at the trial especially during the testimony of the retired His Lordship Musoke-Kibuuka.

The learned trial Judge then proceeded to consider dates in the copy of the proceedings report as related to the grant of Letters of Administration in Administration Cause No. 434 of 2002, which 595 proceedings report were never produced and made part of the proceedings of the trial of HCCS No. 198 of 2014 and in respect of which the appellants never made any input at the trial of the said suit. The so-called proceedings report, if they were part of the Court record of Administration Cause No. 434 of 2002, then they 600 were all along there and available for the respondent to refer to in the course of the trial of HCCS No. 198 of 2014. They could therefore not be a discovery of new and important matter or evidence, which after the exercise of due diligence, was not within the respondent's knowledge and could not be produced by the 605 respondent at the time of the trial of HCCS No. 198 of 2014. Further, no competent officers, or at all from the Judiciary testified by way of affidavit or otherwise as to the authenticity of these proceedings report. The learned trial Judge was thus in error to rely on the dates in these proceedings report of 23rd November, 610 2001 as to when the Court file of the Administration Cause was allocated to Judge Musoke-Kibuuka and then the 21st November, 2001 as to when the Letters of Administration were granted and then conclude that the Letters of Administration were granted before even the Court file was allocated to Hon. Judge Musoke-615 Kibuuka. The correct date of the grant of Letters of Administration in High Court Administration Cause No. 434 of 2001 was the 8th August, 2002 as per what is stated in those very Letters of

Administration annexure A to the plaint and relied upon at the hearing of HCCS No. 198 of 2014. (See: page 312 of the Record of

620 Appeal).

The learned trial Judge, again without any valid ground to review the holding in his Judgment on the issue of evidence by retired Hon. Justice Musoke-Kibuuka given in HCCS No. 198 of 2014 to the effect that:

625 *"And in view of the acknowledgement by the retired Justice V.F. Musoke-Kibuuka that the signature on the grant was by all standards his, then the plaintiff's Letters of Administration are not a forgery",*

proceeded in the Review Ruling in Miscellaneous Application No.

630 0293 of 2016 to sit in appeal over his own above stated holding in his said Judgement to reverse himself by holding that:

"3. Dw1 (Retired Hon. Justice Musoke Kibuuka) in his witness statement in paragraph 5 states that upon perusal of the grant in 4 above, I found that the signature is mine, but I do not recall

635 *clearing with this matter. In the certified copy of proceedings during cross-examination on page 7 the witness was very categorical. He stated that; I have seen the grant and the signature is mine. However, I never signed it. It is correct I do not recall dealing with the matter. Therefore, by this Court*

640 *concluding that the signature as borne on the attestation to the plaintiffs grant was indeed his in all substance and form is an error on the face of the record."*

With the greatest respect to the learned trial Judge, he was now *functus officio* in the cause. All the evidence on this issue was

645 before him and he considered and evaluated it and arrived at a conclusion on it in his Judgment in HCCS No. 198 of 2014. He was now barred by law to sit in appeal over his own Judgment and then proceed to reverse himself.

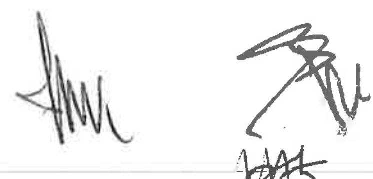
For the same reasons the learned trial Judge was wrong in law and 650 fact when he further held in the Ruling in Miscellaneous Application No. 293 of 2016 that:

> *"The above revelations by retired Justice Musoke were very fundamental and it was indeed an error on my part to have rejected those revelations as a matter of form. If the person 655 who alleged to have given the grant doubted it in many material particulars, then this court made an error on the face of the record by insisting that the grant of Letters of Administration to the plaintiffs, now respondents in this Application was proper".*

660 By holding as above the learned Judge sat in appeal over his own Judgment and then reversed himself. He was *functus officio* to do so.

This Court, for the reasons stated herein above allows the second part of ground 2 of the appeal to the extent that the learned trial 665 Judge was not at all justified to set aside his own Judgment in HCCS No. 198 of 2014 and as such the issue of an order to rehear the case afresh never became necessary at all. Grounds 3,4,5,6 and 7 of appeal, for the same reasons set out above, are allowed by this Court in their entirety.

670



Ground 8

As regards ground 8 of the appeal, the learned trial Judge found the allegation of the respondent that the appellants' Counsel had first acted for the respondent before he took on instructions of the appellants against the respondent and that this happened during the period from 23rd November, 2012 and 26th March 2014 when HCCS No. 198 of 2014 was filed in Court, in the same cause of the estate of the late Kaddu Mukasa to be sufficient reason to review his own Judgment.

The above alleged stated facts constituting ground 8 of the appeal cannot be a ground for a review of the learned trial Judge's Judgment in HCCS No. 198 of 2014 because they are not a discovery of new and important matter or evidence since they were within the respondent's knowledge by the time HCCS No. 198 of 2014 was filed, tried and Judgment delivered in the case from 26th May, 2014 up to 5th May, 2016. For the same reasons, the said alleged facts are not a mistake or error apparent on the face of the record and they are not analogous to any of those above based grounds.

Further, the allegations by the respondent against Counsel for the appellants were never part of the trial of HCCS No. 198 of 2014 and as such they are an extraneous matter to the Judgment delivered in that case. At the trial of HCCS No. 198 of 2014, the respondent never objected to Counsel of the appellants conducting the appellant's case in the said suit on that ground or at all. The respondent also does not assert that he ever lodged any complaint to the disciplinary committee of the Law Council concerning the

alleged professional misconduct of Counsel for the appellants. This Court therefore finds that the learned trial Judge was in error
700 to rely upon respondent's allegations against learned Counsel for the appellants, to sit in appeal over his own Judgment and then proceed to review and reverse himself. Accordingly ground 8 of the appeal is also allowed.

Having resolved the grounds of appeal as above, it follows that the
705 appellants have been unsuccessful only in respect of the first ground and also partly unsuccessful as regards the first part of ground 2 of the appeal. Otherwise the appellants have been successful in the second part of ground 2 of the appeal and in respect of the rest of grounds 3,4,5,6,7 and 8 of the appeal. The
710 appellants have thus substantially succeeded in the appeal.

This Court has held that the learned trial Judge was *functus officio* to sit in appeal of his own Judgment in HCCS No. 198 of 2014. Had the respondent to this appeal been dissatisfied with the said Judgement then he ought to have lodged an appeal against the
715 said Judgement to the Court of Appeal contesting the findings and holdings of the trial Judge in that Judgement. Neither the respondent nor the appellants lodged an appeal against that Judgment. Given the way the grounds of appeal have been resolved in this appeal, the Judgement in HCCS No. 198 of 2014
720 delivered on 05th May, 2016 remains a valid and binding decision delivered by a Court of competent jurisdiction in the said suit.

In conclusion this appeal stands allowed. The Ruling and all orders made and delivered on 31st October, 2016 in the Review Application High Court Miscellaneous Application No. MA 0293 of

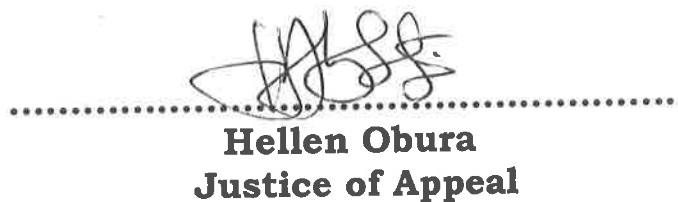
2016 Nsabwa Ham –v- Apollo Wasswa Basudde, Isaiah Kalanzi and Rosemary Wanyana are hereby set aside. The Judgment dated 5th May, 2016 and all the orders made and delivered in High Court Civil Suit No. 198 of 2014 are hereby reinstated as the valid binding decision of the Court and the parties to HCCS No. 198 of 2014 are to carry out, abide and be bound by the side Judgment in its entirely and the orders therein made.

As to costs, since the appellants have been substantially successful in the appeal, they are awarded the costs of the appeal as well as those in the Court below against the respondent.

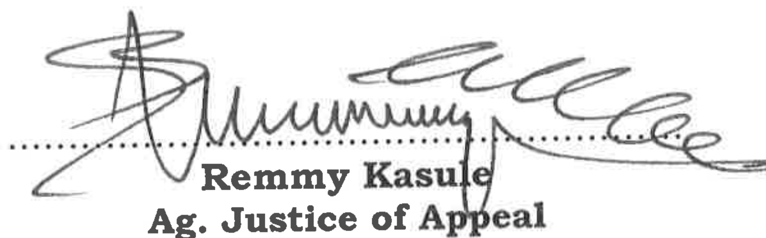
It is so ordered.

Dated at Kampala this.......1st....... **day of.......Nov.... 2018**

Kenneth Kakuru
Justice of Appeal



Hellen Obura
Justice of Appeal



Remmy Kasule
Ag. Justice of Appeal