THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA AT KAMPALA
CIVIL APPLICATION NO. 0384 OF 2014

EDWARD BAMUGYE :: APPLICANT

VERSUS

TROPICAL AFRICA BANK LTD :::::::::::::::::::::::::::: RESPONDENT

(Arising from the decision of the Court of Appeal before Nshimye & Aweri-Opio, JJA (as they then were) and Kiryabwire, JA in Civil Appeal No. 48 OF 2007)

CORAM: HON. LADY JUSTICE ELIZABETH MUSOKE, JA.
HON. MR. JUSTICE STEPHEN MUSOTA, JA.
HON. MR. JUSTICE REMMY KASULE, AG. JA.

RULING OF ELIZABETH MUSOKE, JA.

The applicant brought the present application seeking this court to apply the slip rule and award him general damages, which this same Court had, after entering judgment in his favour in Civil Appeal No. 0048 of 2007 omitted to award. The applicant is contending that he suffered loss and inconvenience as a result of the respondent's having unlawfully held the title to his property under an unlawful mortgage. The applicant is saying that this Court knew that he had suffered inconvenience as a result of the said acts of the respondent, and could not have intended to deny him general damages. The applicant, therefore, contends that the omission to award general damages was an accidental slip, which this Court can now correct in its decision in this application.

I have had the advantage of reading in draft the lead ruling in this matter by my learned brother Hon. Justice Remmy Kasule, Ag. JA; I agree with it, and I would dismiss the application for the reasons he gives. I only wish to add a few comments of my own in the matter below.

Background

In an earlier decision of this Court vide Civil Appeal No. 0048 of 2007 by a panel comprising of Nshimye and Aweri-Opio, JJA. (as they then were) and Kiryabwire, JA, dated the 28th day of October, 2014, this Court entered

judgment in favour of the appellant with costs of the appeal and in the Court below.

This Court set aside the judgment and orders of the High Court which had been challenged in that appeal, and made an order directing the respondent in that appeal to return the appellant's title free of the encumbrance of a mortgage the respondent had placed on the title, or if the respondent had sold the relevant property, to pay to the appellant the current market value of the relevant property.

That was all this Court said in its decision. There was no mention of awarding damages, whether general or special in that case. Specifically, the Court did not award general damages to the appellant in that case for any loss he may have suffered arising from the respondent bank's having illegally kept his title. This application is concerned with that omission.

The appellant in Civil Appeal No. 0048 of 2007, is the applicant herein, while the respondent bank in the same appeal, is the respondent in this application.

The applicant is contending in this application that this Court, could not have intended to deny him an award of general damages, yet it was within the knowledge of this Court that he had suffered inconvenience as a result of the respondent's having illegally held onto his title for over 24 years. The applicant further asserts that this Court cannot have intended to deny him general damages and occasion a miscarriage of justice on him.

The applicant herein, therefore, contends that it must have been due to an accidental slip that this Court omitted to include an award of general damages in the circumstances. He is therefore, asking the present panel, to address the accidental slip and make an order awarding him general damages to reflect the inconvenience he has suffered as a consequence of the respondent's having unlawfully held onto his title under an unlawful mortgage for 24 years.

The respondent opposes the application, and the gist of that opposition as set out in the affidavit in reply filed for the respondent, is that the denial of general damages to the applicant is not a clerical mistake or error arising out

of an accidental slip or omission in the judgment in Civil Appeal No. 0048 of 2007. The respondent, therefore, asks Court to dismiss the application.

The details of the said unlawful mortgage, and the history of the suit in the trial Court and this Court have been set out in detail the lead ruling of my learned brother Hon. Justice Remmy Kasule, Ag. JA. My learned brother also sets out the representations for the parties to this application, the submissions made in support of the respective parties' cases. I will respectfully adopt the same for my ruling. Therefore, I will only be adding a few comments on the matter.

I begin by stating that this application had been earlier heard by a panel consisting of (Kasule, Buteera & Bamugemereire, JJA), who directed the parties to file written submissions. It is those same submissions which the parties have adopted in support of their case before the present panel.

I note that the terminology "slip", for purposes of applications of this nature is derived from **Rule 36 (1)** of the **Judicature (Court of Appeal Rules) Directions S.I 13-10**, which provides that:

> **"36. Correction of errors.**
>
> **(1) A clerical or arithmetical mistake in any judgment of the court or any error arising in it from an accidental slip or omission may, at any time, whether before or after the judgment has been embodied in a decree, be corrected by the court concerned, either of its own motion or on the application of any interested person so as to give effect to what was the intention of the court when judgment was given."**

It must be observed that in applications to correct a slip, the Court will not be sitting on appeal from its own decision. Therefore, it will not concern itself with allegations that any matter was erroneously decided. **See: Orient Bank Limited vs. Fredrick Zaabwe & another, Supreme Court Civil Application No.0017 of 2007**

The Supreme Court has explained that, "where the purport and thrust of the prayer for correcting or altering the judgment is to ask the Court to reverse its findings not so much because the findings resulted from accidental slip or omissions but because in the view of the applicant the findings are erroneous, such prayers would not be sustainable, especially where the

judgment sought to be corrected fully reflects the intention of the Court." **(See: Zaabwe case (supra)).**

The Court in **Zaabwe case (supra)** further quoted with approval, the following passage by **Sir Charles Newbold P.**, in **Lakhamshi Brothers Ltd. vs. R. Raja and Sons (1966) E.A. 313; at p. 314** where he said that:

> **"I would here refer to the words of this court given in the Raniga case (1965) EA at p.703 as follows:**
>
> **'A court will, of course, only apply the slip rule where it is satisfied that it is giving effect to the intention of the court at the time when judgment was given or, in the case of a matter which was overlooked, where it is satisfied, beyond doubt, as to the order which it would have made had the matter been brought to its attention.**
>
> **These are the circumstances in which this court will exercise its jurisdiction and recall its judgment, that is, only in order to give effect to its intention or to give effect to what clearly would have been its intention had there not been an omission in relation to the particular matter."**

In **Fang Min vs. Dr. Kaijuka Mutabaazi Emmanuel, Supreme Court Civil Application No. 0006 of 2009**, the Court stated that:

> **"It is therefore, now fairly well settled that there are two circumstances in which the slip rule can be applied namely:**
>
> **(1) where the court is satisfied that it is giving effect to the intention of the court at the time when the judgment was given; or**
>
> **(2) in the case of a matter which was overlooked, where it is satisfied beyond doubt, as to the order which it would have made had the matter been brought to its attention."**

Neither the **Zaabwe** nor **Fang Min** authorities, both referred to above give detailed guidance on the factors, which should be considered in applications of this nature, when a Court has to consider whether any inclusion or omission in its judgment is a slip that is worthy of correction under the slip rule. Further still, the **Fang Min** authority does not offer the much needed guidance on how to determine "what the intention of the Court was at the time of handing down the judgment"; or "when a court can be deemed to

have been satisfied beyond doubt" so as to make the orders sought under an application as regards the slip rule.

In my view, the answers lie in **Rule 36 (1)** of the Rules of this Court, under which, this Court has the powers to correct a clerical or arithmetical mistake in any judgment of the court or any error arising in any of its judgments from an accidental slip or omission. It is easier to determine what a clerical or arithmetical mistake is, but perhaps less so to determine when an error arising from an accidental slip or omission has been made in a judgment. The latter type of error can best be identified by this Court reasoning to a fair and judicious conclusion, after taking into consideration all the relevant material on the court record. The guiding principle as discernable from the authorities is that this Court will only correct a slip in order to give effect to the intention of the Court at the time of writing the judgment. Therefore, in order to determine whether any matter is a "slip" which must be corrected in applications of this nature, the Court must reason judiciously and consider all the relevant material on the Court record in order to firstly, ascertain what the intention of the Court was when it passed the relevant judgment, and then thereafter, if necessary to correct any slip which it deems to have affected the said intention of the Court.

It would have been easier to ask the panel (Nshimye, Aweri-Opio, JJA (as they then were) & Kiryabwire, JA) which wrote the judgment in Civil Appeal No. 0048 of 2007, about their intention as regards the award of general damages in the circumstances. However, that is impracticable as neither of those justices are part of the present panel. Therefore, we shall have to determine their intention on our own.

The applicant contended that this Court had accidentally omitted to award him general damages, despite it having allowed his appeal. It is necessary here to reproduce the orders of this Court in its judgment in the relevant appeal, which is attached as annexture "A". The orders were that:

> **"...This appeal succeeds with costs here and in the Court below. We set aside the Judgment and orders of the High Court and substitute an order directing the respondent to return the appellant's title free of the said mortgage or if sold, the current market value of the same."**

It must be observed that the orders in any appeal flow from the grounds of appeal as well as the prayers set out in the appellant's memorandum of appeal. In the relevant appeal, the applicant formulated the following grounds of appeal:

> "1. **The learned trial Judge erred in law and fact when she held that the land comprised in Kibuga Block 20, Plot 254 was lawfully mortgaged to the respondent by the appellant.**
>
> 2. **The learned trial Judge erred in law and fact when she failed to evaluate the evidence on record and thereby came to a wrong conclusion that the appellant had mortgaged the property by Power of Attorney (Exh. P9) dated 9th April, 1991."**

It is now established that on any appeal, the appellant must set forth the grounds on which he/she objects to the decision of the lower Court against which the appeal is preferred. As such, a correct inference may be made that any matter that is not set forth as a ground of appeal is deemed to have been accepted as a correct decision by the appellant.

In the relevant appeal, the applicant never appealed against the decision of the High Court not to award him general damages as he had claimed in his counterclaim in the suit in the High Court. He also never seriously canvassed the matter during the hearing of the appeal, as he never prayed for general damages and never mentioned the same in his submissions. He only made a small reference to them in his conferencing notes.

With that background, it cannot have been the intention of this Court in Civil Appeal No. 0048 of 2007, to award the applicant general damages. Far from it, as there was no ground of appeal by the applicant relating to an award of general damages, the Court had intentionally omitted to award the same to him.

The applicant's prayers to this court in the relevant appeal, were for his appeal to be allowed and for this court to order that his title to the suit property be returned to him by the respondent bank. Those prayers were embodied in the decision of the Court. The only conclusion is that the Court made all the orders that it intended to make in the circumstances. The only

avenue which is open for the appellant in the circumstances is to appeal against the court's refusal to award him general damages.

I am, therefore, not convinced that the judgment of this Court in Civil Appeal No.0048 of 2007, did not fully reflect the Court's intention, so as to justify any intervention to correct the alleged slip in that judgment. In my view there was no such slip. Whether or not the relevant decision of the court was correct or erroneous cannot be decided in an application of this nature, but in an appeal against the said decision to the appropriate Court.

In view of the above analysis, I would dismiss this application, but with no order as to costs. I would make the order on costs for the reasons set out in the lead ruling of Hon. Justice Remmy Kasule, Ag. JA, with which I entirely agree.

As Hon. Justice Stephen Musota, JA also agrees, by unanimous decision of this court, this application stands dismissed, but with no order as to costs.

Dated at Kampala this ..... 17th day of ..... July ..... 2020.

.....

Elizabeth Musoke

Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

AT KAMPALA

Civil Application No. 384 of 2014

(Arising out of Civil Appeal No. 48 of 2007)

Edward Bamugye :: Applicant

Versus

Tropical Africa Bank :: Respondent

Coram: Hon. Lady Justice Elizabeth Musoke, JA
Hon. Mr. Justice Stephen Musota, JA
Hon. Mr. Justice Remmy Kasule, Ag. JA

Ruling of Hon. Mr. Justice Remmy Kasule, Ag. JA

Introduction:

The Applicant seeks an order of this Court to recall its Judgment dated 28.10.2014 in Civil Appeal No. 48 of 2007 so that this Court makes an order, as part of that recalled Judgment, awarding

general damages to the applicant, as appellant, in the said appeal, against the respondent, who was also respondent to the appeal.

The application is brought under Rules 2(2), 36(1) and 43 of the Judicature (Court of Appeal Rules) Directions SI 13-10.

Legal Representation:

The applicant was represented by learned Counsel Richard Mwebembezi of Messrs. Richard Mwebembezi Solicitors & Advocates, while the respondent was represented by learned Counsel Justine Semuyaba of Messrs. Semuyaba, Iga & Co. Advocates.

By consent and with the permission of this Court, Counsel for the respective parties proceeded by filing written submissions.

Background:

The respondent, as plaintiff, filed in the High Court of Uganda at Kampala HCCS No. 749 of 1996 against the applicant and two others as defendants, claiming recovery of Ug. Shs. 218,981,290= as a debt due under an overdraft facility extended to the applicant and his two co-defendants, at the respondent's main branch on Kampala Road, Kampala City.

The suit was filed under summary procedure. The defendants failed to apply for leave to appear and defend the suit within the prescribed time. Default Judgment was accordingly entered against the three defendants.

The applicant, as one of the defendants to the said suit, later successfully applied and set aside the default Judgment in respect of the claim against him. He filed a written statement of defence

denying liability to the respondent. He instead raised a counter-claim against the respondent for the return of the certificate of title of his land comprised in Kibuga Block 20 Plot 254. The applicant alleged in the counter-claim that the respondent was keeping the said certificate of title unlawfully and by reason thereof he claimed, amongst other reliefs, general damages and interest thereon, from the respondent.

A full trial of the said suit was held by the Hon. Lady Justice M.S. Stella Arach, Judge of the High Court, as she then was, and Judgment was delivered on 05.07.2007. The learned Judge held that the applicant, though a signatory to the account, the subject of the suit loan, was not liable for the repayment of the said loan to the respondent as he was just a mere signatory to the bank account of one of the defendants to the suit. The trial Judge however also held that the applicant had authorized the tendering of the Certificate of Title of his land comprised in Kibuga Block 20 Plot 254 at Busega as security for the mortgage executed by the respondent with the other two defendants to the suit. The learned trial Judge thus held that the respondent was lawfully keeping custody of the certificate of title of the said land of the applicant.

As to whether the applicant, as one of the defendants to the suit, was entitled to any reliefs prayed for under the counter-claim, the learned trial Judge held that the applicant, having voluntarily consented to the mortgaging of his stated land, was not entitled to any reliefs under the counter-claim. The learned trial Judge thus dismissed the suit and the applicant's counter-claim with each party bearing its own costs.

Dissatisfied with the decision of the trial Court in respect of the counter-claim, the applicant lodged to this Court on 12.09.2007 **Civil Appeal No. 48 of 2007: Edward Bamugye vs Tropical Bank Limited.** The two grounds of the appeal were first, that the trial Judge erred in holding that the land in question was lawfully mortgaged by the applicant to the respondent. Secondly, that the trial Judge erred by failing to property evaluate the evidence on record and thereby wrongly concluded that the applicant had mortgaged the suit land on the strength of a power of Attorney dated 04.04.1991: exhibited as exhibit P9 at the trial.

This Court determined **Civil Appeal No. 48 of 2007** on 28.10.2014 by allowing it and ordered that the respondent returns to the applicant the certificate of title of the suit land: Kibuga Block 20 Plot 254 land at Busega. The Court also awarded costs of the appeal and those of the Court below to the applicant. The Court made no order as to general damages.

Analysis of the Issue:

The applicant contends that having been successful in **Civil Appeal No. 48 of 2007,** this Court, as the one that decided the appeal, could not have intended to deny him general damages which the applicant had claimed in the counter-claim. Therefore it must have been as a result of the slip of the pen for the said Court not to address the issue of general damages. It is therefore in the interest of justice that this Court makes a "slip order" awarding general damages to the applicant under Rules 2(2) and 36(1) and (2) of the Rules of this Court.

For the respondent, it is submitted that this Court having conclusively resolved **Civil Appeal No. 48 of 2007**, the Court is now "fanctus officio" and cannot now re-open the case to address the issue of general damages. It was not a clerical mistake or an error on the face of the record arising out of an accidental slip or omission, made by this Court in its Judgment. Accordingly there is nothing to be corrected through this application.

Rule 2(2) of this Court vests in this Court powers to make such orders as may be necessary for achieving the ends of justice or to prevent abuse of Court process. The Rule provides:

> *"2(2) Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the Court, or the High Court, to make such orders as may be necessary for attaining the ends of justice or to prevent abuse of the process of any such Court, and that power shall extend to setting aside Judgments which have been proved null and void after they have been passed, and shall be exercised to prevent abuse of the process of any Court caused by delay".*

Rule 36 of the Rules of this Court makes provision for correction of slip errors or omissions. The Rule reads:

> *"36(1) A clerical or arithmetical mistake in any Judgment of the Court or any error arising in it from an accidental slip or omission may, at any time, whether before or after the Judgment has been embodied in a decree, be corrected by the Court, either of its own motion or on an application of any interested person so as to give effect to what was the intention of the Court when Judgment was given*

(2) An Order of the Court may at any time be corrected by the Court either of its own motion or on the application of any interested person, if it does not correspond with the order or Judgment it purports to embody or, where the Judgment has been corrected under Sub Rule (1), with the Judgment as so corrected".

The above Rules provide for what in law constitutes "the slip rule" and a "slip order".

A Court of law, under the slip rule doctrine, by the judicial exercise of its inherent jurisdiction, is vested with powers to make "slip orders" to correct errors or omissions in a Judgment passed by that Court. The Court recalls that Judgment only in order to give effect to what clearly was its manifest intention in the recalled Judgment, had the Court, at the time of passing that Judgment, not inadvertently omitted some matter, or as a result of an accidental slip, an error was committed in the Judgment, or where the said Judgment was rendered by that omission or accidental slip to be null and void. See: **Raniga V Jivraj [1965] 700 at 703-704.**

The operation of the slip rule and the issuance of slip orders is on the basis that Courts of law are manned by human beings and now and then, through human failure, an error or an omission can happen, through inadvertency, in a Judgment being made by the Court.

The "slip Rule" and "slip Orders" therefore deal with clerical or arithmetical mistakes arising from accidental slips and/or omissions or where the order of the court does not correspond with

the Judgment or Ruling of the Court it purports to embody. Slip orders are made by Court for achieving the ends of justice by the Court that passed the Judgment self-correcting itself in respect of the committed clerical or arithmetical mistakes or omissions. The purpose is to give effect to that Court's intention had there not been the clerical or arithmetical mistake or omission or where the said Judgment is proved to have been rendered null and void. See: **Supreme Court Civil Application No. 17 of 2007: Orient Bank Limited vs Frederick Zaabwe and Mars Trading Limited**.

The powers under which a Court of law may recall its Judgment for purposes of correcting the errors and/or omissions therein are strictly circumscribed. The Supreme Court in **Civil Application No. 15 of 1997: Uganda Development Bank vs Oil Seed (U) Limited** set them out as being:

1. The applicant must prove, or the Court itself must be satisfied, 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.
2. The Court will not sit on appeal against its own Judgment in the same proceedings. Therefore the recalling of the Judgment by the Court must be strictly in order, and after the Court recalling the Judgment is satisfied beyond reasonable doubt, that it is necessary to give effect to that Court's manifest intention or what clearly would have been the intention of that Court had some matter not been

inadvertently omitted or some mistake done through a slip of the pen.

3. Slip orders may be made by the Court after recalling its Judgment, where the Court, through a slip of the pen, has inadvertently overlooked some matter, or has made some clerical or arithmetic mistake or where Counsel of one of the parties to the cause, the subject of Judgment being recalled, failed to make some particular application and it is necessary to rectify that omission.

In resolving an application brought under the slip rule doctrine, the Court has to balance two principles, the principle of *"finality of litigation"* on the one hand, and the *"justice principle"*.

As to the principle of finality of litigation it was held in **Lakhamshi Brothers Ltd V R. Raja & Sons [1966] EA 313 at p.314** that:

> *"There is a principle which is of the greatest importance in the administration of justice and that principle is this: it is in the interest of all persons that there should be an end to litigation".*

A Court of law therefore will not sit on an appeal against its own Judgment in the same proceedings. All matters that ought to have been raised and disposed of during the trial, or at the level of an appeal, during determination of that appeal, ought to be raised and determined by the Court in the proper exercise of the powers of that Court whether as a trial or as an appellate Court, as the case may be. Otherwise, the Court becomes functus officio to entertain such matters once it has delivered its Judgment in the cause. The only remedy for the party dissatisfied with that Judgment is to appeal to the appropriate appellate Court, if the law provides for

such an appeal. See: **Supreme Court of Uganda Civil Application No. 4 of 1991: Livingstone Ssewanyana vs Martin Aliker** and also: **Supreme Court of Uganda Miscellaneous Application No. 8 of 2000: Npart vs General Parts (U) Ltd.**

The finality principle is on the basis of public interest and public policy. It is premised on the need for stability and consistency in law.

Contrasted with the above principle of finality of litigation is the justice principle that provides for the Court of law to carry out, in the exercise of its judicial powers, limited review of it Judgments, where circumstance so warrant based on the rationale that the object of litigation is to do justice to the parties and to boost the confidence of the public in the justice system. If justice can only be achieved through limited review by the Court of its own Judgment, under strictly circumscribed powers, then be it. See: **Orient Bank Ltd vs Frederick Zaabwe and Another (Supra).**

However, a power of review, whether under the slip rule or otherwise, ought not to be equated, let alone confused, with the appellate powers of an appellate Court where errors committed by the subordinate Court are corrected. See: **Hoystead and others v Commissioner of Taxation [1926] AC 155 at 165.**

The applicant in this application prays this Court to recall its Judgment delivered on 28.10.2014 in **Civil Appeal No. 48 of 2007** so that this Court can make an order awarding the applicant general damages against the respondent for unlawfully holding the applicant's certificate of title in respect of the land comprised in Kibuga Block 20 Plot 254.

In the original **High Court at Kampala Civil Suit No. 749 of 1996,** the applicant, then 3rd defendant to that suit, pleaded and prayed in his counter-claim for a court order that the respondent, then plaintiff to the original suit, returns the land title of the suit land to the applicant and also pays damages for the loss and damage to which the applicant had been subjected.

The learned trial Judge held in her Judgment that the applicant had consented to the mortgaging of the suit land to the respondent and thus dismissed the applicant's counter-claim.

Dissatisfied, the applicant lodged to this **Court Civil appeal No. 48 of 2007 on 12.09.2007.** There were only two grounds of appeal, namely:

"1. The learned trial Judge erred in law and fact when she held that the land comprised in Kibuga Block 20 Plot 254 was lawfully mortgaged to the respondent by the appellant.

2. The learned trial Judge erred in law and fact when she failed to properly evaluate the evidence on record and thereby came to the wrong conclusion that the appellant had mortgaged the property by Power of Attorney Exh. P9 dated 9th April, 1991".

The applicant prayed for the appeal to be allowed, set aside part of the said Judgment and orders of the trial Judge and substitute them with orders that:

> ***"(i) Allow the appellants' counter-claim and order the Bank to return the Title comprised in Kibuga Block 20 Plot 254.***

(ii) An order directing the Registrar of Titles to cancel and/or remove the mortgage.

(iii) The costs of this Appeal and in the lower Court be borne by the respondent".

It is obvious form the applicant's above referred to Memorandum of Appeal that the applicant, as the appellant, did not draw up a specific ground of appeal that the trial Court erred in law and fact for not awarding any damages to him by reason of the loss and damage subjected to him by the respondent's conduct of keeping away from him the Certificate of Title to the land comprised in Kibuga Plot 20 Plot 254. Even more significantly, the applicant did not, in his prayers to this Court, as the appellate Court, in his Memorandum of Appeal, include any prayer for damages for the alleged loss and damage suffered by him by reason of the respondent's retention of the Certificate of Title of the suit land.

It is therefore the holding of this Court that, as regards the grounds of appeal to this Court as well as the prayers and orders sought by the applicant as stated in the Memorandum of Appeal, the issue of general damages was not specifically and directly raised as one of the issues to be determined by this Court in **Civil Appeal No. 48 of 2007.**

The applicant, as appellant to the appeal; through his Counsel, only dealt with the issue of general damages, at the end of his written submissions dated 20.11.2007 when he referred this Court to the case of **Richard Kaggwa vs Nile Bank Ltd: Civil Application No. 71 of 2001 (COA)** where damages of Ug. Shs. 30 million were awarded to the appellant as general damages for the

inconvenience caused and denial of use of his title to the suit property. It was in that written submission that the applicant prayed to be awarded by the Court Ug. Shs. 50 million general damages.

In the written submissions dated 01.06.2016 before this Court in this application, the applicant, again through his Counsel's written submissions, this time raised the general damages sought from Ug. Shs. 50 million to Ug. Shs. 200 million, for the inconvenience caused as a result of the respondent holding the suit title for 24 years.

Having not made the issue of general damages a ground of appeal, let alone one of the prayers or orders being sought in the appeal, according to the applicant's Memorandum of Appeal dated 12.09.2007, the applicant through his lawyers, or otherwise, had no basis upon which to submit on the issue of damages at the determination by this Court of **Civil Appeal No. 48 of 2007**.

I am therefore unable to hold in this Ruling that this Court inadvertently made any error or omission by the slip of the pen when it did not address the issue of general damages and did not award any to the applicant in its Judgment in **Civil Appeal No. 48 of 2007.**

It is also a fact that what the applicant seeks in this application is for this Court to recall its Judgment in **Civil Appeal No. 48 of 2007,** examine the pleadings of both this appeal and those of the original **High Court Civil Suit No. 749 of 1996**, as well as the evidence adduced by the parties to the suit as relate to the issue of loss and damage allegedly suffered by the applicant. This Court

is then being prayed to resolve whether or not the trial Court and this Court acted, properly or wrongly, in not awarding general damages to the applicant. In case it finds that the applicant is entitled to any damages, the same Court is being prayed to assess the quantum of those damages and then award the same to the applicant.

In effect, through this application, the applicant is moving this court to recall its Judgment delivered on 28.10.2014 in **Civil Appeal No. 48 of 2007**, sit in appeal against that very Judgment in the same proceedings of the very same appeal and then pronounce itself on the issue of general damages that the applicant now seeks through this application. This Court is *"functus officio"* to carry out such a role.

The **Kenya Court of Appeal** held in **Civil Application No. 271 of 2003 Musiara Ltd v William Ole Ntimama** that the exceptional course of re-opening proceedings which the Court had already heard and determined can only be resorted to where:

> *"a significant injustice had probably occurred and that there was no alternative effective remedy".*

The **Uganda Supreme Court in Miscellaneous Application No. 21 of 2015 Belex Tours and Travel V Crane Bank Ltd** rejected an application which was asking that Court to reconsider the whole appeal the same Court had previously determined, admit new evidence of fraud, overturn its previous decision and make new orders for general and punitive damages against the respondent. The Court held that to do so would be to sit in

Judgment of its own previous decision and declared itself to be "functus officio" in the matter.

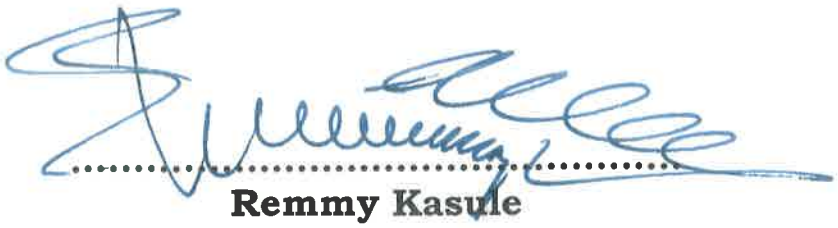
Earlier, the same **Uganda Supreme Court** had in **Npart vs General Parts (U) Ltd (Supra)** declined to review its previous Judgment where it was being moved to do so. The facts of that case were that the original suit and the appeals had been resolved, on the basis that the mortgage document adduced in evidence had not been properly executed because it was not sealed. Later, after the Supreme Court had determined the appeal, it transpired that the seal was visible on the original mortgage document. This document had not been availed to the trial Court at the trial of the suit and also to the appellate Court, at the determination of the appeals. The Supreme Court was moved through this application to examine the same and make appropriate orders. The Supreme Court declined to do so as this would amount to the Court sitting in appeal of its own Judgment.

On the basis of the facts of this application and having considered the above cited Court decisions, it is clear that this Court is being moved by the applicant to recall its Judgment delivered on 28.10.2014 in **Civil Appeal No. 48 of 2007**, and then sit on appeal, as it were, in the very same Judgment and determine the issue of whether or not the applicant is entitled to any general damages, and if so entitled, assess the quantum of those damages and then award the same to the applicant. This Court is functus officio to do so.

For the reasons given above, this application is disallowed. The same stands dismissed.

As to costs, the applicant was the successful appellant in Court of Appeal Civil Appeal No. 48 of 2007, which is the subject of this application. It is therefore only fair that he should be let to enjoy the benefits of the Decree in the said appeal. An order to pay costs to the respondent in this application will substantially take away the benefits he got by being successful in the appeal. Accordingly in the interests of justice, no order is made as to costs.

Dated at Kampala this ....17th.... day of ....July.... **2020**.



Remmy Kasule
Ag. Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA

CIVIL APPLICATION NO. 0384 OF 2014

(Arising from Civil suit No.48 of 2007)

EDWARD BAMUGYE :: APPELLANT

VERSUS

TROPICAL AFRICA BANK :::::::::::::::::::::::::: RESPONDENT

(CORAM: Elizabeth Musoke, Stephen Musota JJA, & Remmy Kasule Ag. JA)

JUDGMENT OF JUSTICE STEPHEN MUSOTA, JA

I had the benefit of reading in draft the ruling of my brother Remmy Kasule, JA.

I agree with his finding that this court is *functus officio* in the matter because recalling the judgment dated 28.10. 2014 in Civil Appeal No. 48 of 2007 so that this court makes orders awarding general damages to the applicant would amount to court sitting in appeal of its own judgment. I agree that this application is dismissed with no order as to costs.

Dated at Kampala this.....17th.....day of .....July.....2020

Stephen Musota

JUSTICE OF APPEAL