THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT JINJA
MISC APPLICATION No 113 OF 2015
(ARISING FROM MISC. APPLICATION No. 12 of 2015)
ARISING FROM MISC. APPLICATION No. 156 of 2013)
(ARISING FROM CIVIL SUIT No. 39 of 2005)

IGANGA DISTRICT LOCAL GOVT ==== APPELLANTS/PLAINTIFF

VERSUS

1. **BAKOOMA RUTH NABIRYE**
2. **ZIRABA STEPHEN AGGREY & 92 OTHERS ==== RESPONDENTS/DEFENDANTS**

BEFORE: HON. JUSTICE MICHAEL ELUBU

RULING

This is an application brought by the Iganga District Local Government against the respondents who include Bakooma Ruth Nabirye and 92 others. The applicants seek orders that:

1. That the judgment/orders/decree of the 27th of April 2011 be reviewed.
2. The Garnishee Nisi order vide Misc Appln No 12 of 2015 and proceedings be reviewed and stayed until determination of this application.
3. Provision be made for the costs of this application.

The application is based on several grounds which are particularised by the affidavits of Ezra Rwabuhindiya and Maira Mukasa Joseph. They state that the applicants are the judgement debtors in Civil Suit No 53 of 2005. That there

was an error apparent on the face of the record since the total decretal sum claimed by the respondents of 1,217,945,126/- was made without the deduction of amounts that had already been paid to the respondents. These payments include 75,000,000/- paid through the Advocate firm Opwonya and Co Advocates. In light of that the Decree nisi seeking to attach the accounts of the applicants is erroneous, illegal and intended to unjustly enrich the respondents. That it has also been discovered that there is new and important information which was not available at the time of the Judgment which shows computations of part payments of the terminal benefits of the respondents.

The respondents oppose the application and through an affidavit deposed by one Ziraba Stephen Aggrey aver that the applicants are not truthful as they are still indebted to the respondents in the sum stated. That 231,318,599/- was paid by way of garnishee but no other payment has been paid since. A list of respondents is attached and they all confirm non-payment of any moneys to them. It is alleged farther that the documents that say money alleged to have been paid to Opwonya &Co Advocates do not show any acknowledgement of the said moneys. Secondly the payment of another sum of 15,000,000/- was clearly for the payment of professional fees. That the computation sheet attached allegedly showing payments to the respondents does not show proof of payments made. That the applicants have been given several chances to pay but have not fulfilled any. That the figure of 1,217,945,126/- was arrived at by consent and is due and payable.

The parties here were granted leave to file written submissions which are on record and shall not be produced here. This Court shall refer to the same in the determination of this matter.

Preliminary point of law

The applicants raised a preliminary point of law that the respondents had filed their affidavit in reply out of time. That service was effected on the respondents on the 15th of September 2015 and the reply lodged on the 2nd of December 2015 - 77 days after service. The applicants submit that the reply offended Order 12 r. 3 of the **Civil Procedure Rules.**

The rule the applicants cited applied to interlocutory applications. The 8th Edition of Black's Law Dictionary defines Interlocutory as 'of an order, interim or temporary, not constituting final resolution of the whole controversy'. An application for review is not interlocutory in nature. It is an independent civil proceeding which is determined on its merits.

The cited law did not therefore apply.

As these were fresh proceedings, the application should have been served as provided for under Order 5 r.1 of the CPR. After the filing of the application it should have been served within 21 days from the date the hearing date was issued. Order 5 applies with equal force for service of summons as it does for service of hearing notices such as the one here (see **Kanyabwera vs Tumwebaze SCCA 6/2004**)

The respondents on the other hand have argued that the applicant filed its submissions on the 7th of June 2017. The court had given the deadline for filing written submissions as 6th of June 2017. Time fixed by court may only be enlarged on application to the court that fixed the time. No such application was made to enlarge time in this case.

It is clear that that there are infringements of the rules here. This however is an important application touching on the welfare of more than 90 pensioners. Therefore in the spirit of Art 126 (2) (e) of the Constitution of the Republic of

Uganda, I shall not dwell on the procedural matters here but address the substantive justice in this case by dealing with the merits of the application.

Substantive application

It is argued that the applicants have discovered new and important information which was not available when the Judgment in Civil Suit No 53 of 2005 was delivered on the 27th of April 2011 or the ruling in M.A. No 156 of 2013 on 28th of May 2014.

The new and important information referred to here is an amount of 75,000,000/- allegedly paid to the respondents through their then Counsel Opwonya and Co Advocates. According to Annexure 'A' to the application, these moneys were paid in three instalments of 25,000,000/- on the 30th of October 2012, on the 8th of January 2013 and lastly on the 12th of March 2013. Attached are payments vouchers and electronic transfer forms as proof.

There is also a form named 'District Computations and Part Payment of Terminal Benefits In The Matter of the Court in Civil Suit No 53 Of 2005'.

It gives a list of several names and gratuity due to them, the amounts paid and how much is in arrears or outstanding. The applicants claim that this is proof of payment to the respondents.

As stated earlier the respondents objected. The foregoing is what is said to be the new and important information that would merit a review of the impugned Judgments and orders of this Court.

The relief of Review prayed for is provided by Section 82 of **the Civil Procedure Act** which states,

Any person considering himself or herself aggrieved—

(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or

(b) by a decree or order from which no appeal is allowed by this Act,

may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order on the decree or order as it thinks fit.

Under Order 46 r 1 of **the Civil Procedure Rules** the Court may grant the order to review if any of the following grounds is met:

i. the discovery of new and important matter of evidence which, after the exercise of due diligence, was not within the applicants knowledge or could not be produced by him or her at the time when the decree was passed or the order made,

ii. where there is some mistake or error apparent on the face of the record,

iii. for any other sufficient reason

I have carefully considered the alleged new evidence in this matter. Looking at the EFT forms there is no evidence to show that the instructions to pay were ever actually carried out. All the parts of the form to show proof of transfer of funds to the recipient are blank. It is my finding that no payment was made. The payments vouchers against which the transfers were said to be made do not show any acknowledgement of receipt of money by the payee. In my view, this evidence of payments, as was submitted by Counsel for the respondents, is not useful to this court as it is not proof to the required standard, of any sort of payment.

The next document showing several alleged pensioners is said to be a list of computed part payments to them. If indeed the payments had been made then the applicant should have had no difficulty in showing the proof of individual payments made to each pensioner including the acknowledgements or proof of receipt by the recipient, how the payment was effected, when, where and how.

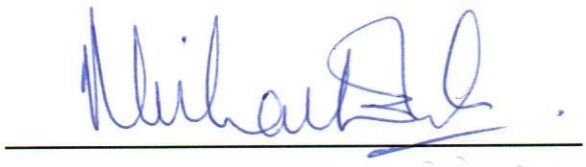
Simply attaching a list of computations is insufficient. I find again that this cannot be a proof of any kind of payment.

The last document attached is dated 10th April 2012 and clearly indicated to be part payment of legal fees and not payment of the decretal sum.

In order that an error may be a ground for review, it must be one apparent on the face of the record, i.e. an evident error which does not require any extraneous matter to show its incorrectness. It must be an error so manifest and clear that no court would permit such an error to remain on the record. The **"error"** may be one of fact, but it is not limited to matters of fact, and includes also errors of law (see **Kanyabwera [supra]**).

I therefore find that the applicants have not met any of the conditions required for this court to order a review under Section 82 of CPA and Order 46 of the CPR. There is no proof that any of the alleged payments was made. There is no error manifest on the face of the record nor does the evidence show that the Court erred in not deducting sums from the decretal amount.

As such the application lacks merit and is dismissed with costs.



Michael Elubu

Judge

1.12.17