**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT MASINDI**

**REVISION APPLICATION NO. HCT-12- CV-CR-017 OF 2014**

**(Arising out of Civil Suit No. 021/2014)**

1. **ABWOOLI MUKUBWA BEATRICE**
2. **UROMCAN MARTIN**
3. **AUSENGE PETERO =============APPLICANTS**
4. **OBITA QUINTO**
5. **LATIM ALEX**

**Versus**

**BANSIGARAHO ROBERT ========================RESPONDENT**

**Before:** **HON. JUSTICE BYABAKAMA-MUGENYI**

**RULING**

The application is brought under section 82 (b) of the Civil Procedure Act (CPA), Order 46 rule 1, and Order 52 rules 1, 2 & 3 of the Civil Procedure Rules. It seeks the following orders:

1. The Consent Judgment endorsed on the 17th day of September 2013 by the Honourable Court arising out of Masindi High Court Civil Suit No.32 of 2012 be reviewed and set aside upon discovery of new and important matter or evidence as well as on grounds of sufficient cause.
2. The Consent Order entered on the 16th day of September 2013 by this Honourable Court and all orders consequential upon the aforesaid consent Judgment be reversed and/or vacated.
3. That the entire execution process arising out of the said Consent Judgment and Consent Order be declared *void ab intio* and thus nullified.
4. That the applicants be restored back onto the suitland.
5. That the costs of this application be granted to the applicants.

The grounds are:

1. That there has been discovery of new and important matter which would have led the Honourable Court not to endorse the Consent Judgment and order mentioned above, had it been brought to the attention of the Court at the time of adjudication.
2. That the respondent procured the stated consent judgment based upon deceit and fundamental misrepresentation of both facts and law.
3. That as a resultant consequence the Honourable Court issued a warrant to give vacant possession of the suitland to wit FRV 1051 Folio 16, land at Bugahya, Block 7, Plot No.44 known as land at Rwamutonga, Katanga, Hoima District and demolition of any structure dated 14th July 2014 in Masindi High Court Civil Suit No.32 of 2012.
4. That the applicants were ruthlessly evicted of the suitland (sic) and yet the applicants filed served and are pursuing Masindi Civil Suit No. 21 of 2014 against the respondent for court to determine their claims of customary ownership.
5. That the forceful eviction of the applicants was irregular and done in error that is bona fide on the face of it.
6. That the applicants have sufficient cause for this Honourable Court to review its decision.
7. That there is sufficient ground for Court to reverse all the consequential orders thereupon.
8. That the applicants have sufficient cause for this Honourable Court to restore them back onto the suitland.
9. That it is proper, just and equitable that this application is allowed.

The application is supported by the affidavits of the five applicants and is opposed by the affidavit in reply of the respondent.

The applicants were represented by Mr. Ian Musinguzi together with Ms. Joan Banana while Mr. Akakwasa Edward appeared for the respondent. Counsel of both sides were directed to file written submissions and they duly complied.

The background facts to this application briefly are that, Joshua Tibagwa and Kusiima Robinah filed a suit against Bansigaraho Robert (respondent herein) and Hoima District Land Board, vide Civil Suit No. 0032/2012 before this Court. The plaintiffs sought the following orders from Court:

1. a declaration that they are the lawful owners of 750 Ha of land situate at Rwamutonga, Katanga, Bugambe, Bahaguzi.
2. a declaration that the 1st defendant [Bansigaraho Robert] by forcefully entering upon the property of the plaintiffs is a trespasser.
3. a declaration that the allocation of 103 Hectares part of the plaintiffs’ property by the 2nd defendant [Hoima District Land Board] to the 1st defendant was irregular, unlawful, fraudulent and contrary to law.
4. an order for cancellation of the Certificate of Title in respect of LRV 1051 Folio 16 Plot 44 Block 7 land at Rwamutonga measuring approximately 103.553 hectares.
5. an order that the said land reverts to the plaintiffs.
6. a permanent injunction restraining the defendants from dealing with and/or interfering with or/and entering upon the suit property in any manner whatsoever.
7. general damages, and
8. costs of the suit.

On the 16th of September 2013 the plaintiffs and the 1st defendant (Bansigaraho Robert) entered into a consent judgment before the Assistant Registrar in the following terms:

1. The parties do agree to amicably settle High Court Civil Suit No. 32 of 2012.
2. The first defendant shall handover the Certificate of Title in respect of the property comprised in LRV 1052 Folio 6 Block 7 Plot 44 measuring approximately 103.553 hectares land at Rwamugonga, Katanga, Bugambe, Buhaguzi (the suitland) to the plaintiffs.
3. The 1st defendant’s registration as proprietor in respect of the suitland be cancelled and the plaintiffs be registered as proprietors.
4. The 1st defendant has been duly compensated and hereby relinquishes all his claims, possessory interests and/or any interest whatsoever in respect of the suitland.
5. The 1st defendant shall cause all the occupants/squatters on the suit property to vacate the land within a period of ten days from the date of signing this consent by the parties.
6. The parties do hereby confirm that they have duly resolved the conflict in respect of the suitland and that the property has reverted to the plaintiffs.
7. The Hoima District Land Board be notified of this consent and be requested to issue a minute cancelling the grant of the land in favour of the 1st defendant and issues a new grant in favour of the plaintiffs.
8. This consent duly settles/resolves the claim/dispute between the plaintiffs and the 1st defendant in High Court Civil Suit No.32 of 2012.
9. That each party shall bear its own costs.

It was decreed accordingly.

On the 14th of July 2014, Court issued a Warrant to give vacant possession of the suitland to the Court bailiff in favour of Tibagwa Joshua and Kusiima Robinah (plaintiffs). It expired unexecuted but was renewed by the Court bailiff on 14th August 2014. The execution was carried out on 25th of August 2014 in the presence of police officers, some district and local council officials. The warrant was to the effect the bailiff was to give vacant possession of land and demolish any structures thereon.

In the instant application, it is contended in the supporting affidavits that the applicants and 46 others individually have legitimate customary interest in the suitland. Their eviction was in error since they were not party to the proceedings in Civil Suit No. 32/2012. By the time the Warrant was issued (14-7-2014) they had filed a suit against Bansigaraho Robert (respondent) over the same land, vide High Court Civil Suit No. 21 of 2014, which was filed on 16th of June 2014 and served on the respondent on 1st of July 2014. The said suit is pending determination by this Court.

It is further contended the consent judgment was obtained fraudulently since the respondent did not disclose to Court the ongoing Civil Suit No. 21 of 2014 where the applicants and others are seeking, inter alia, a declaration on rights as customary owners of the suitland. The applicants were adversely affected by the consent judgment and order for they were not accorded a hearing nor given compensation. They contend there is sufficient cause to warrant the Court to review the consent judgment and nullify the resultant execution.

The respondent contends in the affidavit in reply, that the applicants’ occupation of the suitland was illegal and were evicted as trespassers. The applicants are using the instant application to get back to the suitland whose ownership is in contention in Civil Suit No. 21 of 2014.

Section 82 of the Civil Procedure Act and O.46 r 1 of the Civil Procedure Rules are to the effect that,

***any person considering himself or herself aggrieved by a decree or order from which an appeal is allowed, but from which no appeal has been preferred, may apply for 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 it thinks fit*.**

The expression ***“any person aggrieved*”** means

***“a person who has suffered a legal grievance*”**.

The three instances under which review of a judgment or order can be made are:

1. discovery of a new and important matter of evidence previously overlooked by excusable misfortune,
2. some mistake or error apparent on the fact of the record, or

1. for any other sufficient reason, but the expression ***“sufficient*”** should be read as meaning ***“sufficiently of a kind analogous to (a) and (b)*** *above***”** – see **IN RE NAKIVUBO CHEMISTS (U) LTD [1979] HCB 12 AND THE OMUKAMA OF TOORO KINGDOM -Vs- KIBBAMU t/a PLANTEK CONSULTANTS, Misc. Appl. No.344 of 2008**.

The circumstances in which a consent judgment may be interfered with were considered in the case of **HIRAM -V-** **KASSAM (1952)19 E.A.C.A. 131** where the following passage from **SETON ON JUDGMENTS AND ORDERS** (7 ed) Volume 1 at 124 was approved.

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| ***“Prima facie, any order made in the presence and with the consent of the Counsel is binding on all parties to the proceedings or action and on those claiming under them………and cannot be varied or discharged unless obtained by fraud or collusion, or by an agreement contrary to the policy of the court or if consent was given without sufficient material facts, or in misapprehension or in ignorance of material facts, or in general for a reason which would enable the court to set aside an agreement.”*** |
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The above passage was cited with approval in **BROOKE**

**BOND LIEBIG (T) -V- MALLYA [1975] E.A 266**.

In the instant application, the applicants have demonstrated they and others were aggrieved by the consent judgment/order that resulted in their forceful eviction from the suitland. It is also crystal-clear they were not party to the proceedings in Civil Suit No. 32 of 2012, thus they were not heard. Under Article 26 of the Constitution, no person shall be deprived of any interest in or right over property without prompt payment of fair and adequate compensation.

From the record, it is however not correct as averred in the supporting affidavits, that, at the time the consent judgment was entered the respondent did not disclose to Court the existence of Civil Suit No.21 of 2014. The consent judgment was entered on the 16th of September 2013 while Civil Suit No.21 of 2014 was filed on 16th of June 2014. What is not in dispute is that the Warrant to give vacant possession was issued after the latter suit was filed. In the premises, the contention that the consent judgment was obtained by fraud on account of non-disclosure of the pending suit cannot be sustained, since there was no such suit then.

Paragraph 5 of the consent order required the 1st defendant (respondent herein) to cause all the occupants/squatters on the suit property to vacate the land within a period of ten days from the date of signing of the consent judgment by the parties. The issue of who was an occupant or squatter was not defined or described. It was clearly a question of fact that could only be determined by hearing evidence.

The respondent averred in the affidavit that the applicants were in illegal occupation and trespassers who stood to be and were rightly evicted. The status of the applicants in relation to the suitland was a matter for determination by a competent court, certainly not the respondent. That issue was not resolved/determined at the time of the consent order. What if they were bona fide occupants whose interests are protected under the provisions of the Land Act?

Furthermore, the warrant to give vacant possession was coached in the following words:

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| ***“Whereas the under***-***mentioned property in occupancy of and being utilized by Robert Bansigaraho, his relatives, agents and/or servants was decreed to Tibagwa Joshua and Kusiima Robinah…………..and you are hereby authorized to remove any property/person bound by the decree that may refuse to vacate the same”*** *–* (*emphasis added*). |

In effect, the persons to be evicted included the respondent and all those claiming under him. The applicants cannot be said to fall under that category.

In my view, the respondent was under obligation to disclose to court of the existence of Civil Suit No. 21 of 2014 when the warrant was issued on 14th July 2014. He did not which resulted in the applicants being erroneously evicted. They were clearly not bound by the terms of the consent order whose proceedings they were not a party to. Their status on the suitland was not yet determined at the time of eviction vide Civil Suit No.21 of 2014. The respondent could only get them off the land after compensating them. His affidavit in reply did not allude to that.

As a consequence, the consent judgment/order is hereby varied by striking out paragraph 5 of the same.

As a result of the wrongful eviction, the applicants have been subjected to hardship and loss of property that can only be atoned for by way of compensation/damages. This application is, however, not concerned with that. According to their affidavits the suitland has been fenced off and is currently under possession of Tibagwa Joshua and Kusiima Robinah. Their homes were erased during eviction. The *status quo* has therefore significantly changed.

The applicants seek an order restoring them to the suitland. The Court has to be conscious that its orders do not create an absurd situation where implementation is rendered impracticable, or, is bound to occasion further hardship on account of the prevailing circumstances. For instance, what if the current occupants/possessors have made certain developments in areas previously occupied by the applicants? What if they (applicants) are not successful in Civil Suit No. 21 of 2014 where they seek to be declared as having customary interests in the suitland? All these are matters that make a restoration order at this juncture seem untenable.

As earlier mentioned, the remedy lies in the applicants’ pursuing a process that will enable them get compensated for the ills they have been subjected to on account of the wrongful eviction.

For the foregoing reasons, this application succeeds to the extent the consent judgment is varied or revised as stated above. Further, the eviction of the applicants from the suitland is declared wrongful. The costs of this application are also awarded to the applicants.

**BYABAKAMA-MUGENYI**

**JUDGE**

22-10-2015