THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

CIVIL REVIEW NO.007 OF 2020

(Arising from CIVIL SUIT NO. 366 OF 2016)

NSUBUGA AMIR
(suing as the Administrator of the
***estate of the late Bumbakari Mukasa)*:::::::::::::::::::::::::: APPLICANT**

VERSUS

YOUNG MEN'S MUSLIM ASSOCIATION:::::::::::::::::::::::::: RESPONDENT

Before: Hon. Lady Justice Alexandra Nkonge Rugadya.

RULING.

This is an application under the provisions of ***section 82*** and ***Section 98 of The Civil Procedure Act Cap. 71, Order 46 rules 1 & 8 of The Civil Procedure Rules S.I. 71-1***, for orders that the judgement in ***High Court Civil Suit No. 366 OF 2016*** be reviewed and set aside and provision be made for the costs of the application.

The application is supported by the affidavit of the administrator of the estate of the late Bumbakari Mukasa, the applicant herein who deposes that he instituted ***High Court Civil Suit No. 366 of 2016*** against the respondent in error.

That the respondent association is not a registered entity. It is only the Registered Trustees of the Young Men's Muslim Association that was capable of holding or owning property but not the Young Men's Muslim Association.

Furthermore, that although court allowed the respondents to compensate the applicant to a tune of ***Ugx. 80,000,000/= (eighty million shillings only),*** the said amount was way below the actual value of the suit *kibanja.*

In the affidavit in reply deponed by Mr. Jamil Sewanyana, (the 4th respondent's) on behalf of the respondent it was admitted that the Young Men's Muslim Council which had been formed in 1940 had been registered under the ***Trustees (Incorporation) Ordinance.*** However that according to him, the instant application was misconceived and an abuse of court process and ought to be dismissed.

I have carefully read the pleadings on record and also considered the evidence as well as the written submissions of both counsel, the details of which are on court record.

Counsel for the respondent in his reply however raised an issue which I will deal with first objecting to the applicant's failure to extract a decree in respect of which he was seeking the review.

He relied on several authorities including: ***Benard Githi v Kihooto Farmers Co. Ltd H.C.C.S No. 32 of 1974*** in support of the proposition that where an applicant fails to apply for and have a decree drawn up the application must be dismissed.

As duly pointed out however by learned counsel for the applicant, in the spirit of the ***1995 Constitution, Article 126 (2) (e)***, courts are enjoined to administer substantive justice without undue regard to technicalities. On numerous occasions therefore courts have dispensed with the requirement to extract a formal decree adopting a liberal approach to litigants who fail to extract decrees/orders in respect of appeals to ensure that substantive justice is done.

As decided in ***Henry Kasambwa vs Yakobo Rutarehamba HCCA 10/98*** cited by counsel, for as long as one has a judgment, there would be no need to extract a decree on appeal.

Such a law can no longer exist in the context of ***Article 126 (2) (e) of the Constitution. (See also Banco Arabe Espanol v Bank of Uganda CACA No.42 of 1998).***

Similar principles would in my view apply to an application for a review as in this case given also the fact that the court which heard it is the very same court dealing with the application for review. All that is required of a respondent is for him/her to satisfy court that an injustice had been committed through any such omission, which in this case had not been done.

With all due respect therefore, the absence of a decree would not by itself render the application incompetent. For that reason, I would therefore overrule that objection.

Now for the merits of this application.

The jurisdiction of a court to review its orders/judgments is founded on ***Section 82 CPA*** which must be read together with ***Order 46 rule 1 of the CPR,*** providing that:-

> ***"Any person considering him/herself aggrieved by a decree or order from which an appeal is allowed but from which no appeal has been preferred or by a decree or order from which no appeal is hereby allowed and who from the discovery of new and important matter of 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 order was 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 a review of the decree passed or order made against him or her may apply for a review of the judgment to the court which passed the decree or made the order."***

The court in ***Re: Nakivubo Chemists (U) Ltd [1979] HCB 12*** while interpreting ***Order 46 of the CPR*** held that an applicant in order to succeed

in a claim for review has to show that there is discovery of a new and important matter of evidence previously overlooked by excusable misfortune; discovery of some error or mistake apparent on the face of the record; or for any other sufficient reason.

The instant application is premised on two grounds: an error apparent on the face of the record; and the existence of new and important evidence that was not available at trial and which was by some excusable misfortune not availed to court.

The 1st question to address therefore is whether there an error is apparent on the face of the record so as to justify a review of the judgement. It was held by the Supreme Court in ***Edson Kanyabwera V Pastor Tumwebaze civil Appeal No. 6/2004*** that in order for an error to be a ground of review, it must be one apparent on the face of the record, that is:

> ***"...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, and includes also error of law."***

In the case of ***Nyamogo & Nyamogo Advocates v Kago [2001] 2 EA 173*** it was held that an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature.

It must be left to be determined judicially on the facts of each case. A distinction is to be made between a mere erroneous decision and an error apparent on the face of the record.

In the instant application, the applicant contends that the respondent association lacks the capacity to possess any legal interest in the suit *kibanja* and that any such legal interest should be vested in the trustees of the association.

That he got such information after conducting a search at the registry indicating that the respondent is not a registered entity and has no capacity therefore to hold land.

As per Mr. Jamil Sewanyana, (the 4th respondent's) affidavit in reply, the Young Men's Muslim Association was formed in 1940 and subsequently registered under Trustees (Incorporation) Ordinance, the appointed trustees were issued with a title: *The Registered Trustees of the Young Men's Muslim's Association* ***(Annexture RA).***

Section 1(3) of ***the Trustees Incorporation Act 1939*** stipulates that a trustee or trustees becomes a body corporate subject to the conditions and directions contained in the certificate: to hold and acquire, convey, assign and demise any land or any interest in land now belonging to, or held for the benefit of, such body or association of persons. The same provision of the law further stipulates that the trustee or trustees shall have the power to sue and to be sued.

The respondent's response in essence is therefore an admission of an error in names which has been carried on over a period of time, acknowledged as such by the respondent and by this court therefore.

The phrase ***"error apparent on the record"*** is expounded upon in ***Mulla the Code of Civil Procedure (18th Ed.) Vol. 1 at page 1147***. In short an error ought not ordinarily to be permitted to be challenged by a party unless both parties to the litigation agree that the statement is wrong, or the court itself admits that the statement is erroneous. In such circumstances, the remedy available is review.

The fact therefore that it was never brought to the attention of court during the trial or thereafter during this application as a preliminary point of objection by the respondent/defendant meant that they themselves were not aware of the anomaly and that the title as indicated in the pleadings (*Young Men's Muslim Association)* had been used interchangeably with the title:

Registered Trustees of the Young Men's Muslim Association- that had the authority to sue or be sued.

This was a glaring error on the face of the record which error if not cleared could be used against any interest accruing under the judgment made by this court, which therefore makes the applicant an aggrieved party.

The second point of contention by the applicant was raised in *paragraph 9* of the affidavit in support. He claims that this court rendered a judgement in ***High Court Civil Suit No.366 of 2016*** under a mistake when the respondents were ordered to compensate the applicant with ***Ugx. 80,000,000/= (eighty million shillings only)*** as the value of the suit *Kibanja.*

The applicant relies on a valuation report dated 17th February, 2020 which gives his *kibanja* a market value of ***Ugx 292, 000,000/=.*** The exercise was conducted by the firm of ***Katuramu & Company.***

This court takes careful consideration of the fact that among the reliefs sought, compensation of the *kibanja* was not requested as an option. Nonetheless, this court exercising its discretion deemed it appropriate to award him an amount of ***Ugx 80,000,000/=*** as compensation for the loss of a *kibanja* which, from his affidavit in support was not commensurate with the current value of the area.

A holder of an interest is entitled to and may recover damages or receive compensatory relief for injury suffered out of the defendant's actions. In the present circumstances, it is not clear from the report whether or not the valuation covered only that portion claimed and occupied by the applicant or the entire area which had other occupants.

Secondly, I find no evidence to show that the rest of the occupants had been involved in the process of determining the actual value of the *kibanja.* Thus the presentation of this report without according the respondents an

opportunity to cross examine its authorship and authenticity would create an injustice.

Section 33 of the Judicature Act, Cap. 13 nonetheless gives this court the power to grant absolutely or on such terms and conditions as it thinks just, all such remedies to which a party may be entitled to in respect of any legal or equitable claim properly brought before court.

For the above reasons, and bearing in mind the fact as established by this court during its *locus* visit this was indeed prime land located in a busy area from which the applicant was presently deriving sustenance, I would allow that a compensatory sum be determined by the Chief Government valuer, and paid out by the respondent, Young Men's Muslim Association *a.k.a Registered Trustees of the Young Men's Muslim Association.*

The exercise shall be conducted by the Chief Government Valuer after ascertaining the actual size of the *kibanja* occupied by the applicant, in the presence of both parties or their authorised agents and/or representatives.

Accordingly, the judgement in ***High Court Civil Suit No.366 of 2016*** is reviewed in the terms below:

1. ***A valuation exercise shall be conducted by the Chief Government Valuer, in the presence of the parties/representatives/agents, area local council leaders, and neighbours, at the cost of the applicant upon determination of the actual size claimed and occupied by him.***

2. ***The respondent, the Young Men's Muslim Association a.k.a Registered Trustees of the Young Men's Muslim Association, shall pay the amount of compensation as determined by the Chief Government Valuer in a report which shall be presented to court within 45 days of delivering this ruling.***

3. ***The respondent shall immediately vacate the land, upon receiving the full amount as determined by the office of the Chief Government Valuer.***

Each party to meet its own costs of this application.

It is so ordered.

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Alexandra Nkonge Rugadya.

Judge.

28th October, 2020.