THE REPUBLIC OF UGANDA

IN THE SUPREME COURT OF UGANDA AT KAMPALA

CIVIL APPLICATION NO. 36 OF 2019

ARISING FROM CIVIL APPEAL NO. 14 OF 2016

(Coram: Opio Aweri, Mwondha, Tibatemwa-Ekirikubinza, Muhanguzi, Tuhaise JJSC)

M. BUWULE.....APPLICANT

VERSUS

ASUMAN MUGYENYI.....RESPONDENT

RULING OF THE COURT

This Application was brought before this Court by Notice of Motion under Rules 2(2), 35(1) & (2), 42 and 43 of the Judicature (Supreme Court Rules) Directions, SI 13-11. It seeks for orders that:

1. The Judgment passed in Supreme Court Civil Appeal No. 14 of 2016 be recalled and set aside;

2. The Judgment of the Court of Appeal in Civil Appeal No. 24 of 2010 be reinstated;

3. The costs of the Application be provided for.

The grounds in support of the Application are contained in an affidavit deponed by the Applicant but briefly are as follows:

(i) That confirming the findings of the 1st appellate court on ground one in the Memorandum of Appeal was an accidental slip by this Honourable court.

(ii) That the Supreme Court concurred with the Court of Appeal to the effect that the applicable law to the dispute was the

Land Reform Decree of 1975 but reinstated the Judgment of the High Court (1st Appellate Court) which was based on the wrong law, the Land Act, 1998.

(iii) That the Judgment of the High Court (1st Appellate Court) which was reinstated contradicts with the findings of the Supreme Court as far as the applicable law to the dispute is concerned.

(iv) That the Supreme Court confirmed the finding of the Court of Appeal that a certificate of title is conclusive evidence of ownership and that the applicant is the registered proprietor of the suit land; but went ahead to reinstate the judgment of the High Court which held that the applicant did not prove ownership of the suit land; which is contradictory.

(v) That the intention of the Supreme Court was to apply and enforce the provisions of the Land Reform Decree of 1975 which was found as the applicable law to the dispute but not the Land Act, 1998.

(vi) That the finding by Court to the effect that the sale between the respondent and Freddie Kaggwa was not a nullity is contrary to the law particularly section 4 (2) of the Land Reform Decree, 1975 which declares all transactions contravening the section as criminal; null and void.

(vii) That the learned Justices of this Court, by holding that the non-compliance with section 4 of the Land Reform Decree, 1975 is a curable irregularity, yet there was no cure provided for by the Land Reform Decree; and this court did not provide the cure in its judgment.

(viii) That the role of court is to apply the law as it is and not circumventing the provisions of an Act by applying what is not in the law.

(ix) That the finding that the respondent's Kibanja is located on the applicant's title was based on unpleaded issue and thus an error of law; since the respondent has never claimed/pleaded that he owns a Kibanja on the applicant's land.

(x) That the finding that the matter raises concern to the general public and is of importance because the decision of the Court of Appeal if allowed would affect a greater section of the community especially where mailo land ownership is found in the regions of Uganda was speculative as it was not pleaded and no evidence was led to that effect and contradicts with Article 26 of the Constitution of Uganda.

(xi) That the judgment of the High Court materially contradicts with the judgment of this Court.

(xii) That the Supreme Court did not fault the Court of Appeal in any way on its finding but went ahead to set aside the judgment of the Court of Appeal.

(xiii) That the role of an appellate Court is to rectify errors of a lower court and where an appellate court finds no error, it ought to uphold the decision of the lower court.

(xiv) That awarding costs in this Court and courts below made the respondent benefit from his own wrong since the transaction between Freddie Kaggwa and the respondent did not comply with the applicable law at the time, as observed by court.

(xv) That it is in the interests of justice that the orders sought herein be granted.

The Respondent opposed the Application and filed an affidavit in reply to that effect. He contended that the applicant's affidavit was prolix, oppressive, argumentative and strays from matters of

fact to cover and argue matters of law. The grounds opposing the Application were summarised under paragraph 23 of the affidavit as follows:

(i) That there was no error in the judgment of the Supreme Court as already pointed in the foregoing depositions. Moreover, there was no accident slip as all the findings of the Court were founded on reasons which are given in details in the judgment

(ii) That the Supreme Court was not required to agree with the High Court on all details, the point is that on the material issue, of whether the respondent was the bonafide occupant of the suit Kibanja, the two courts agreed.

(iii) That the Court has a duty to determine the effect of non-compliance with the provisions of the law, and it did.

(iv) That the finding that the suit Kibanja is located on the applicant's land was made basing on the pleadings and evidence of the applicant himself and, in fact, that is the only point on which the court agreed with him. By his own pleadings, the applicant had put out that point in issue.

(v) That by resolving all the grounds of appeal in the affirmative, the Supreme Court faulted the Court of Appeal.

Background to the Application

The facts as summarised by this Court were that the applicant sued the respondent in the Chief Magistrate's Court of Nakawa, alleging that the respondent trespassed on his land comprised in Kyadondo Block 237, Plot 368 at Mutungo Luzira and sought for an eviction order, general damages and costs. It was the applicant's case that he was the registered proprietor and owner of land comprised in Kyadondo Block 237 Plot 368 at Mutungo Luzira and that around 1998 he discovered that the respondent had settled on his land and occupied it unlawfully without his consent and permission. The applicant averred that the suit land was mailo land which he bought from Lake View Properties and that he found the respondent in 1998 and 1999 constructing

structures on his piece of land. The respondent erected a house and a building in permanent material. That the applicant reached to the respondent for an understanding but the latter deliberately refused to approach him. On the other hand, the respondent contended that he saw the respondent for the first time in court and that he bought his Kibanja in 1996 from one Freddie Kaggwa, that by then he was the DPC, Jinja Road Police station. He paid for it 2.5 million Uganda shillings on 26/10/1996 and the sale agreement was witnessed by Obul Godfrey who was his driver, Joseph Muyenja, Edward Kiwanuka and Mrs. Betty Kaggwa. That by the time he bought it, there was a house of blocks with Iron sheets which was two roomed with a toilet and there were fruit trees of mangoes, avocadoes, coffee trees and a banana plantation. That he took over possession, and since then constructed houses on the said Kibanja.

The trial Magistrate (Byarugaba John) in his judgment found that the respondent had bought land from Kaggwa, who was a bonafide occupant of the suit land and that he had acquired interest thereon and that the applicant had failed to prove his case and dismissed the suit with costs.

The Applicant being dissatisfied with the judgment of the Trial Court appealed to the High Court in 2005. The respondent filed Misc. Application No. 220 of 2005 in High Court seeking to strike out the appeal having been filed out of time. However, the respondent withdrew the application. The High Court as the 1st appellate court heard the appeal on its merits. The parties filed written submissions but when the appeal came up for hearing, the respondent's new counsel raised an objection that the appeal had been filed out of time notwithstanding the earlier order withdrawing the application/objection. The court acceded to objection that the appeal had been filed out of time. However, the learned Judge proceeded to consider the appeal on its own merit. He found that the applicant had failed to justify/prove how he acquired the suit land as there was no sale agreement or transfer form. He also found that the respondent was a bonafide occupant on the suit land.

The applicant being dissatisfied with the 1st appellate court finding, filed the second appeal to the Court of Appeal, which

heard the appeal and allowed the appeal in favour of the appellant and issued an eviction order against the respondent with costs of the lower courts.

The respondent being dissatisfied with the Court of Appeal Judgment instituted a third appeal in this Court after obtaining a certificate of importance. This Court allowed the appeal, set aside the judgment of the Court of Appeal and reinstated the judgment of the 1st appellate court hence this Application.

Representation

The applicant was represented by Mr. Kiiza Kabundama Simon while the respondent was represented by Mr. Tusasirwe Benson.

The Applicant's submissions.

Counsel for the Applicant started his submissions by responding to the preliminary point of law raised by the respondent in his affidavit in reply that the affidavit in support of the Application was argumentative, prolix and contrary to the law governing affidavits. Counsel averred that the affidavit is not argumentative but merely a narration of factual detail and in any case, courts have developed a liberal approach towards affidavits. Counsel invited court to consider Article 126 (2) (e) of the Constitution to the effect that substantive justice shall be administered without undue regard to technicalities. Counsel argued that if at all there is offending content in the affidavit, which he denied, it is that offending content which should be severed but not to expunge the entire affidavit from the record. Counsel relied on the case of **Col. Dr. Besigye Kiiza Vs Museveni Yoweri Kaguta & Electoral Commission, Election Petition No.1 of 2001** for this position.

Counsel submitted that the objection does not take away the fact that the judgment sought to be recalled is contrary to the statute. He prayed that the objection be overruled.

Counsel further submitted that this Application is not intended to circumvent the finality of the judgment of this Court nor is it intended to make this court sit in its own appeal but rather to achieve what the court intended to achieve when it made its decision. Counsel relied on the case of **Isaya Kalya & 2 others Vs Moses Macekenyu Ikagobya Civil Application No.28 of**

2005 for the position that there are circumstances under which this Court may exercise its jurisdiction and recall its judgment, being, only in order to give effect to its intention or give effect to what clearly would have been its intention had there not been an omission to the particular matter.

Counsel submitted that this court overlooked the existence of the letter requesting for the record of proceedings and judgment and yet it was available on court record. Counsel averred that had this court seen the letter, it would not have concluded that the applicant's appeal was out of time and it would not have upheld the findings of the 1st appellate court. Counsel argued that this was a slip by the court necessitating this Court to make a slip order. Counsel relied on the case of **Incafex Limited Vs Matthew Rukikaire Civil Application No. 37 of 2017** wherein it was held that a slip order will only be made where the court is fully satisfied that it is giving effect to the intention of the court at the time when the judgment was given, or in the case of a matter which was overlooked, where it is satisfied beyond reasonable doubt, as to the order which it would have made had the matter been brought to its attention.

Counsel further submitted that it was an accidental slip for this court to hold that the applicable law is the Land Reform Decree of 1975 and at the same time reinstate a judgment which was based on the Land Act. Counsel argued that the intention of this court as gathered from its whole judgment was to fully apply the provisions of the Land Reform Decree and particularly section 4 thereof.

Counsel argued that the Land Reform Decree which was found as the applicable law doesn't provide any cure for non- compliance with section 4 thereof. Instead, the section makes it criminal for non-compliance with its provisions. Counsel submitted that while this court has inherent powers to provide remedies, such remedy should not contradict the provisions of a statute especially where the particular provision like in this case, provides a penal sanction. Counsel relied on the case of **Makula International Ltd Vs His Eminence Cardinal Nsubuga & anor Supreme Court Civil Appeal No. 04 of 1982.**

Counsel wondered how this Court could agree with the findings of the Court of Appeal and yet arrive at a different conclusion.

Counsel submitted that by coming to the conclusion that non-compliance with Section 4 of the Land Reform Decree was a curable irregularity, the applicant was deprived of the Constitutional protection provided for under Article 21 (1) of the Constitution.

Counsel argued that by allowing this Application and granting the orders sought, court will have achieved its intention in its earlier judgment.

Counsel submitted that this court, like the Court of Appeal, found that the applicant was the registered proprietor of the land but went ahead to reinstate the judgment of the High Court which deprived the applicant of the protection under section 59 of the Registration of Titles Act. Counsel argued that for this reason, the court should be pleased to recall its judgment and reinstate the judgment of the Court of Appeal which has the same findings as those of this Court.

Counsel submitted that the judgment was based on un-pleaded issues which is an error of law. Counsel stated that the respondent never claimed to be on land comprised in and known as Kyadondo Block 237 Plot 368 and it was an accidental slip for court to place the respondent on the applicant's land when the respondent claimed to be on plot 68.

Counsel submitted that in arriving at its decision, this Court went against the doctrine of stare decisis as espoused in **Attorney General Vs Uganda Law Society Const. Appeal No. 01 of 2006.** Counsel submitted that in reaching its decision, the Court of Appeal relied on two judgments of this Court to wit; **Lawrence Kitto Vs Bugerere Co-operative Union SCCA No. 15 of 2004 and Kisekka Saku Vs Seventh Day Adventist Church SCCA No. 08 of 1993.** Counsel argued that this Court did not indicate any exceptional circumstances as to why it was not bound by its earlier decisions relied on by the Court of Appeal.

Counsel submitted that this court found that the respondent flouted the law by not giving Notice to the prescribed authority.

Counsel argued that considering the fact that the respondent was in default, this Court should not have awarded him costs of the appeal and the courts below. Counsel argued that this had the effect of the respondent benefiting from his own wrong which contravenes the provisions of Article 21(1) of the Constitution.

Counsel prayed that the Application be allowed in accordance with the Notice of Motion.

Respondent's submissions

Counsel for the respondent submitted that the affidavit in support of the Application is prolix, oppressive, argumentative and offends the law governing affidavits specifically, Order 19 Rule 3 of the Civil Procedure Rules SI 71-1.

Counsel submitted that this Court's decision in **Rtd. Col. Dr. Kiiza Besigye Vs Museveni Yoweri Kaguta & anor S.C Election Petition No. 1 of 2001** is to the effect that where an affidavit contains offending paragraphs, these should be expunged but the rest of the affidavit survives. However, in this case, counsel argued that the entire affidavit ought not to survive considering that it is prolix and argumentative in its entirety.

Counsel submitted that this leaves the Application unsupported and therefore offends mandatory provisions of Rule 43 (1) of the Rules of this Honourable Court which require every formal Application to this Court to be supported by one or more affidavits.

Counsel further submitted that the Application is brought under Rule 2(2) of the Supreme Court Rules for Recall of Judgment, not for Review which is under Section 82 of the Civil Procedure Act.

Counsel relied on the decision of Mwondha, JSC in the case of **Mohammed Mohammed Hamid Vs Roko Construction Supreme Court Misc. Application No. 18 of 2017** for the distinction between Review under section 82 of the Civil Procedure Act and Recall under Rule 2(2) of the Supreme Court Rules. Counsel averred that an Application under Rule 2(2) of the Supreme Court Rules to set aside a judgment can only succeed after proof that the judgment is null and void after it was passed.

Counsel also relied on the Indian case of **Punjab Vs Davinder Singh Bhullar & others 2012 CR. LJ** referred to by Mwondha, JSC in the **Mohammed Mohammed Hamid case (supra)** for the position that a judgment is a nullity if pronounced without jurisdiction or in violation of the principles of natural justice, or where it is pronounced without the other party being given an opportunity to be heard, or where orders were obtained by abuse of court process which would really amount to the court acting without jurisdiction.

Counsel submitted that the Application has not faulted the court for arriving at a decision without jurisdiction or in violation of the principles of natural justice. Counsel argued that an Application for recall of a judgment cannot therefore stand or even be allowed.

Counsel further submitted that the Application does not also satisfy the requirements for review of judgment. He relied on the authority of **Giridharilal & others Vs Pratap Rai Metita & anor**, which was cited by Mwondha JSC in the **Mohammed Mohammed Hamid case (supra)** for the position that in a review petition, the court considers on merits whether there was an error apparent on the face of the record.

Counsel argued that all the grounds of the Application go into the merits of the judgment and there is no error of law apparent on the face of the record not made out by argumentation.

Counsel further submitted that the only circumstances under which this court may be asked to revisit its decision are set out in Rules 2(2) and 35 (1) of the Rules of this Court. Counsel relied on the case of **Orient Bank Vs Frederick Zaabwe & anor Supreme Court Civil Application No. 17 of 2007** for this position.

Counsel submitted that Rule 35(1) on slip rule can only be invoked in cases where there are typographical errors or errors of computation and no such errors exist in the instant case.

Counsel argued that the Application is an abuse of court process in that it is in effect an appeal against the judgment of this very court, yet no appeal is allowed against a decision of the Supreme

Court. Counsel argued that it also abuses the implicit principle that there ought to be finality to litigation, by seeking to keep in court a matter in which the final court in the land has already pronounced itself. Counsel relied on the case of **Lakhamshi Bros Ltd Vs R. Raja & Sons (1966) EA 3131** wherein it was stated that it is in the interest of all persons that there should be an end to litigation.

Counsel invited court to follow its reasoning in **Isaya Kalya & 2 others Vs Moses Macekenya Ikagobya Supreme Court Civil Application No. 28 of 2015** wherein the court cited the House of Lords decision **in R Vs Bowstreet Metropolitan Stipendiary Magistrate & others (1991) 1 ALL ER 577** and stated that where an order has been made by the House of Lords in a particular case, there can be no question that decision being varied or rescinded by a later order made in the same case just because it is thought that first order is wrong.

Counsel supported the findings of this court and argued that there was no contradiction between the same and the High Court decision on the material aspects of whether the respondent herein was a bonafide occupant of the suit land. Counsel further argued that whereas this court agreed with the two general findings of the Court of Appeal that the law applicable to the suit transaction was the Land Reform Decree, and that the applicant is the registered proprietor of Kyadondo Block 237, Plot 368, it did not agree with the said court on the material question of whether the respondent had a valid Kibanja claim on the suit land.

He further submitted that the court arrived at a well-considered opinion as to the scope and reach of section 4(2) of the Land Reform Decree, and the effect of non-compliance with the provision, a finding which is in agreement with existing precedent, to wit the decision in **Tifu Lukwago Vs Samuel Mudde Kizza, SCCA No.13 of 1996.** Counsel argued that it is not open to the applicant to ask the court to rethink its own substantive decision.

Counsel submitted that the point about the general public importance of the decision was a point raised in the application

for a certificate of public importance and from that stage, was made a valid point for consideration and also a responsible court had to consider the wider amplifications of its decision and not decide in robotic fashion.

He argued that as the successful party, the respondent was entitled to costs of the appeal and the courts below.

He also submitted that the application is misconceived on all points. He prayed that the Application be dismissed with costs.

Consideration of the Application by Court

This is an Application to Recall and set aside the Judgment of this Court passed on the 28th November, 2019 in Civil Appeal No. 14 of 2016, Asuman Mugyenyi Vs M Buwule. It was brought under Rules 2(2), 35(1) & (2), 42 and 43 of this Court's Rules.

In his affidavit in reply and submissions, the respondent raised a preliminary point of law and contended that the affidavit in support of the Application is argumentative in its entirety and contrary to the law governing affidavits. He prayed that the same be expunged from the Court record. On the other hand, the applicant argued that the affidavit is merely a narration of factual detail but in any case, if there is any offending content, it should be the only one to be expunged and not the affidavit in its entirety.

We have addressed our minds to the affidavit in support and agree that the same is riddled with matters that are prolix and argumentative.

Justice Benjamin Odoki, Chief Justice (as he then was) in the case of **Col. Dr. Besigye Kiiza Vs Museveni Yoweri Kaguta & Electoral Commission, Election Petition No.1 of 2001** held as follows:

From the authorities I have cited, there is a general trend towards taking a liberal approach in dealing with defective affidavits. This is in line with the constitutional directive enacted in Article 126 of the Constitution that the courts should administer substantive justice without undue regard

to technicalities. Rules of procedure should be used as handmaidens of justice but not to defeat it.

In this particular case therefore, we shall reject the parts of the affidavit which are argumentative and contrary to the law and consider only those parts which conform to the rules on affidavit evidence.

The grounds upon which the applicant seeks this court to recall and set aside its Judgment can be summarised as follows:

1. That the court overlooked the existence of a letter requesting for a record of proceedings and came to the erroneous conclusion that there was no valid appeal to the 1st appellate court, the High Court.
2. That the Judgment was contrary to the Land Reform Decree, 1975
3. That the Judgment was contrary to previous precedents of this Court relied on by the Court of Appeal.
4. That the Court's findings departed from the pleadings of the parties.
5. That this Court reinstated the orders of the 1st appellate court whose findings it disagreed with.

Rule 2(2) of the Judicature (Supreme Court Rules) Directions SI 13-11 provides;

Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the court, and the court of Appeal to make such orders as may be necessary for achieving 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 an abuse of the process of any court caused by delay.

In **Orient Bank Vs Fredrick Zaabwe & anor Civil Application No. 17 of 2007**, this court observed as follows:

It is trite law that the decision of this court on any issue of fact or law is final, so that the unsuccessful party cannot apply for its reversal. The only circumstances under which this court may be asked to revisit its decision are as set out

in Rule 2(2) and 35(1) of the Rules of this Court. On the one hand, Rule 2(2) preserves the inherent power of the court to make necessary orders for achieving the ends of justice, including orders for inter alia-

'...setting aside judgments which have been proved null and void after they have been passed....

On the other hand, under Rule 35(1), this court may correct inter alia any error arising from accidental slip or omission in its judgment, in order to give effect to what was its intention at the time of giving judgment.

In order to succeed in a prayer for setting aside a judgment, the applicant must prove that it is null and void. In the case of **Mohammed Mohammed Hamid Vs Roko Construction (supra)**, Mwondha JSC in her dissenting judgment laid down the parameters upon which this Court may declare a judgment null and void. The learned Justice relying on the Indian case **of Punjab Vs Bhullar and others 2012 Cr. LJ** held as follows:

If a judgment has been pronounced without jurisdiction or in violation of principles of natural justice or where the order has been pronounced without giving opportunity of being heard to a party affected by it, or where an order was obtained by abuse of court process which would really amount to its being without jurisdiction, inherent powers can be exercised to recall such order for reason that in such an eventuality, the order becomes a nullity...

We are inclined to agree with the above reasoning. In this particular case, we find nothing in the grounds of the Application that warrant this court to recall and set aside its judgment. The applicant has not shown Court how according to the evidence on record, he was denied the right to be heard or that this court acted without jurisdiction or there was abuse of this court's process. We therefore accept the respondent's counsel submission that the application cannot succeed on the prayer of recalling and setting aside the judgment in Civil Appeal No. 14 of 2016.

Counsel for the applicant in his submissions prayed that this Court reviews its decision and rectifies the errors apparent on the face of the record.

Rule 35(1) of this court's Rules provides as follows:

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 an order, be corrected by the court, 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.

The applicant's counsel submitted that this court overlooked the existence of a letter requesting for the record of proceedings which was available on court record and came to the erroneous conclusion that there was no valid appeal to the High Court.

We agree with the applicant's counsel that indeed, there is a letter by the applicant's counsel requesting for the record of proceedings. However, the non-existence of this letter as wrongly found by the 1st appellate court was not the reason this court found that the 1st appeal to the High Court was incompetent. This court held as follows at page 8 of its judgment:

The 1st appellate Judge was alive to the law as far as section 79 of the Civil Procedure Act and Order 43, Rule 10 of the Civil Procedure Rules are concerned with the institution of appeals from magistrate's court to High court. I note that the respondent obtained the decree of appeal on 30th September 2009 whereby under section 79(1) (a) of the Civil Procedure Act was required to file the memorandum of appeal within thirty days from the date of the decree and he did not do that. I find the appeal was instituted out of time and it was incompetent. The respondent did not need the record of proceedings in order to institute the appeal, because the appeal by its very nature was against the judgment or a reasoned order.

We therefore find no error to rectify in the judgment.

The Applicant's counsel further submitted that the judgment was passed contrary to the Land Reform Decree, 1975 in as far as non-compliance with section 4 thereof was found to be a curable irregularity and yet the repercussions are criminal. On this issue, this Court held as follows:

Section 4 (1) of the Land Reform Decree provides that a holder of a customary tenure on any public land may after notice of not less than three months to the prescribed authority or a lesser period as the authority approves transfer such tenure by sale or gift subject to such transfer not vesting the transfer of title in the land to the transferee except the improvements and developments carried within the land.

Subsection 2 is to the effect that any agreement or transfer by the holder of the customary tenure purporting to transfer of customary tenure if it were actual land shall be void and of no effect and the person purporting to such transfer shall be guilty of an offence and if found guilty be liable on conviction to a fine not exceeding two thousand shillings or imprisonment for two years or both.

The section only provides for the notice to the prescribed authority but does not state or provide who that prescribed authority is. In the case of Tifu Lukwago Vs Samuel Mudde Kiiza SCCA No.13 of 1996, this court held that the law does not specify the prescribed authority and the court could not hold that the sale or transfer of interest without notice to the prescribed authority is a nullity as it is a curable irregularity.

Court also clarified the position in the case of Paul Kisekka Ssaku Vs Seventh Day Adventists SCCA No. 3 of 1997 at page 7 of the judgment that there is need to clarify by the legislature who is the prescribed authority in relation to section 4(1) and (2) of the Land Reform Decree....

In the circumstances, I hold that the sale to the appellant was a curable irregularity as in the case of Tifu Lukwago...

We are therefore unable to fault the above reasoning of this Court. The court fully addressed itself on the effect of non-compliance with section 4 of the Land Reform Decree and came to a conclusion in line with existing judicial precedent. It seems to us that the applicant is only unhappy with the conclusion arrived at by the court; unfortunately, this is the apex court of the land and there can be no appeal against its decision.

The applicant's counsel further argued that this court's decision was per incuriam in as far as it ignored two previous authorities of its own relied on by the Court of Appeal before arriving at a decision. These authorities are **Kisekka Saku Vs Seventh Day Adventist Church SCCA No. 08 of 1993 and Lawrence Kitto Vs Bugerere Co-operative Union SCCA No. 15 of 2004.** Counsel argued that this Court did not indicate any exceptional circumstances as to why it was not bound by its earlier decisions relied on by the Court of Appeal. We have considered the Court of Appeal judgment and found that it relied on **Kisekka Saku Vs Seventh Day Adventist Church, SCCA No. 08 of 1993,** where it was held that the transfer of a Kibanja or customary holding without giving notice to the prescribed authority renders such transfer void. However, this court relied on another authority of this court to wit **Tifu Lukwago Vs Samuel Mudde Kiiza SCCA No.13 of 1996,** where it was held that the law does not specify the prescribed authority and the court could not hold that the sale or transfer of interest without notice to the prescribed authority is not a nullity as it is a curable irregularity.

We find that the Supreme Court as the apex court of the land, it was within its powers under Article 132(4) of the Constitution to follow the Tifu Lukwago case (supra) and depart from the reasoning in Kisekka Saku Vs Seventh Day Adventists (supra).

Article 132 (4) of the Constitution specifically provides:

The Supreme Court may, while treating its own previous decisions as normally binding, depart from a previous decision when it appears right to do so; and all other courts shall be bound to follow the decisions of the Supreme Court on questions of law.

In the circumstances, we are unable to fault this Court's decision. It was not a slip by the court. It was a deliberate decision arrived at consistent with Article 132(4) of the Constitution. Needless to say that in this Application, we are not concerned with the merits or otherwise of the decision since this would amount to an appeal being disguised as an Application.

Counsel for the applicant further argued that this court's findings departed from the parties' pleadings. He stated that the respondent never claimed to be on land comprised in and known as Kyadondo Block 237 Plot 368 and it was an accidental slip for court to place the respondent on the applicant's land when the respondent claimed to be on plot 68.

We are of the view that counsel for the applicant is overstretching the slip Rule. This Court held as follows on this issue:

Counsel for the respondent pointed out that Kaggwa's testimony relates to Block 237 Plot 62 and not the suit land as described in the plaint. I note that the respondent sued the appellant in the Chief Magistrate's court and his cause of action per the plaint was that the appellant was trespassing on his land comprising of Kyadondo Block 237 Plot 368 at Mutungo Luzira and the appellant in his written statement of Defence was that he was the rightful owner of the suit Kibanja having bought the same from Freddie Kaggwa. Throughout the trial and the two appeals, it was a perceived fact that the appellant's Kibanja was the suit land which was respondent's registered mailo land. Even if Kaggwa described the suit land as Block 237 Plot 62 Mutungo, I find that as a minor inconsistency which cannot change the fact of what he stated that he was a Kibanja holder on the suit land.

We find nothing in this court's judgment on this issue over which a slip order can be issued. We also find no merit in the submission by the applicant's counsel that this Court reinstated the orders of the 1st appellate court which it had disagreed with. This Court arrived at the same conclusion as the 1st appellate court but with different reasoning. We find nothing irregular with this.

In the result, the Application fails and it is hereby dismissed with costs.

Dated at Kampala this 28th day of September 2020.

Opio Aweri,
Justice of the Supreme Court

Mwondha,
Justice of the Supreme Court

Tibatemwa-Ekirikubinza,
Justice of the Supreme Court

Muhanguzi,
Justice of the Supreme Court

Tuhaise,
Justice of the Supreme Court