



## Representation

This application came up on 5<sup>th</sup> November 2026 and the applicant was represented by M/S Atrium Advocates while the respondents were absent. The affidavit of service of the application on the respondent is on record but they did not file their reply.

## 5 Issue for Determination

The issue for determination is whether the application discloses sufficient grounds to warrant review of the judgment in *Originating Summons No. 029/2024* and stay of execution in *Miscellaneous Application No. 38/2025*.

## Submissions

10 The applicant, in their submissions, resolved two issues: whether the applicant is an aggrieved person within the meaning of the law and whether there are sufficient grounds for the Court to review its judgment in *Originating Summons No. 0029/2024*.

Counsel for the applicant made reference to Section 82 of the Civil Procedure Act Cap 71 which provides that any person considering himself or herself aggrieved by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or  
15 by a decree or order from which no appeal is allowed by this Act. Counsel submitted that the Supreme Court has already settled the matter as to who can be considered an aggrieved party in applications for review, specifically determining that even a third party who was not a party to the order or decree being challenged can be an aggrieved party. He specifically cited  
20 the case of *Mohamed Alibhal vs W.E. Bukenya Mukasa & Anor Civil Appeal No. 056/1996* wherein it was stated that an aggrieved party within the meaning of section 82 of the Civil Proceedings Act means a person who has suffered a legal grievance.

Counsel for the applicant submitted that the court further agreed with the holding in *Re Nakivubo Chemists (U) Ltd and In the matter of the Companies Act (1979) HCB 12*, where  
25 *Yusuf vs Nokrah (1971) EA 104* was cited with approval that an aggrieved party includes any party who has been deprived of his property. Counsel averred that in the instant case, the order sought to be challenged resulted from *Originating Summons vide No. 0029/2024* between the 1<sup>st</sup> and 2<sup>nd</sup> respondents, where the 1<sup>st</sup> respondent was entitled to sell the mortgaged property where the applicant who was not a party to, and owns, and occupies a  
30 Kibanja with a residential house on it, as indicated in paragraphs 2 and 3 of the affidavit in support of the application, and annexure A which is a copy of the applicant's purchase/sale agreement and annexure B an Eviction Notice, dated 4<sup>th</sup> November 2025 that was issued against the applicant. Counsel submitted that a third party to a judgment can apply for review under the inherent powers of the court.

35 Counsel for the applicant made reference to the case of *Ladak Abdulla Muhammad Hussein vs Griffiths Isingoma Kakiiza & 2 Others Supreme Court Civil Appeal No. 8 /1995*, where Odoki J.S.C. held that a person who could bring an application under Order 46 rule 1 of the

Civil Procedure Rules or section 82 of the Civil Procedure Act (revised laws) is a person who has suffered a legal grievance. He also held that in a suitable case, a third party may apply for review under the inherent powers of the Court. Counsel further looked at the case of *Ex parte Side Botham in re Side Botham (1880) 14 Ch. D 458 at 465*, wherein James L.J held that a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully affected his title.

Counsel for the applicant asserted that it is well within the knowledge of the 2<sup>nd</sup> respondent that the land being mortgaged had squatters/bibanja holders/equitable owners on it among whom the applicant is inclusive. He further averred that the 1<sup>st</sup> respondent successfully sued the 2<sup>nd</sup> respondent in *Originating Summons No. 0029/2024* as indicated in paragraph 6 of the affidavit in support of the application. Counsel submitted that the applicant acquired interest in the said property from a one Bukenya Michael who is well known to the 2<sup>nd</sup> respondent, on the 7<sup>th</sup> November 2022 as indicated in paragraph 2 and 3 of the affidavit in support of the application, and annexure A, proving that the Bank did not carry out the necessary due diligence, care, and honesty that is required by law before taking on the mortgaged property as a duty.

On whether there are sufficient grounds for court to review its judgment in *Originating Summons No. 0029/2024*, counsel submitted that the grounds for review under Order 46 Rule 1 of the Civil Procedure Rule and in the case of *RE Nakivubo Chemists (u) Ltd [1979] HCB 12* include: discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the applicant's knowledge, mistake or error apparent on the face of the record and any other sufficient reason.

Regarding discovery of new matter and sufficient reason, counsel for the applicant argued that in the case of *Yusuf vs Nokrach [1971] EA 104*, it was observed that sufficient reason was interpreted to include the interest of justice and must be under procedural rules and analogous to establish exceptions, not a substitute for appeal and must meet strict procedural criteria to avoid reopening cases arbitrarily. Counsel submitted that the applicant's interest in the land as a Kibanja holder is a new and important matter that was not before the court when it delivered judgment in *Originating Summons No. 029/2024*. Counsel asserted that the applicant in paragraphs 2 and 3 of her affidavit in support states that she has an equitable interest in the subject matter, annexed as annexure 'A'. That the applicant in paragraphs 5 and 6 of the affidavit in support only discovered the existence of the suit upon being served with an eviction notice annexed as annexure 'B' and paragraph 7 of the same affidavit, proves that the 1<sup>st</sup> respondent did not do due diligence that is required before a financial institution undertakes to grant a loan facility.

In light of the mistake or error apparent on the face of the record, counsel for the applicant submitted that the applicant in paragraph 7 of her affidavit in support states the 1<sup>st</sup> respondent obtained an order for vacant possession against the 2<sup>nd</sup> respondent, yet the 1<sup>st</sup> respondent allegedly failed to perform the statutory and professional due diligence required of a financial

institution to ascertain third-party interests on the land. That granting vacant possession of land occupied by an innocent third-party purchaser of a Kibanja who was not joined to the suit is an error that warrants the Court's intervention to prevent irreparable injury.

5 Counsel for the applicant further submitted that the applicant in paragraph 8 of her affidavit in support states that she will suffer irreparable damages and within her pleadings, and therefore prayed for a stay of execution in *Miscellaneous Application No. 38/2025*. Counsel averred that under Order 43 Rule 4 of the Civil Procedure Rules, court has the power to stay execution where it is satisfied that substantial loss may result to the applicant unless the order is made according to paragraphs 6 and 8 of her affidavit in support. If the eviction proceeds  
10 before the review is heard, the Applicant will innocently suffer irreparable damage as her home and equitable interest will be lost.

### **Determination of court**

In consideration of the pleadings filed and the applicant's submissions, this matter is determined as follows:

15 *Whether the applicant is an aggrieved person within the meaning of the law?*

Section 82 of the Civil Procedure Act empowers a court to review its judgment upon application by any person who considers himself or herself aggrieved by a decree or order and who satisfies the grounds prescribed under the law. Order 46 Rule 1(a) of the Civil Procedure Rules provides that a person considering himself or herself aggrieved by a decree  
20 or order may apply for review.

In *Mohamed Alibhai vs W.E. Bukenya Mukasa & Another Civil Appeal No. 2/1996*, the Supreme Court held that an aggrieved person is one who has suffered a legal grievance. Similarly, in *Ex parte Sidebotham (1880) 14 Ch D 458*, it was held that a person aggrieved is one against whom a decision has been pronounced which has wrongfully deprived him or her  
25 of something or affected his or her rights.

The evidence before court shows that the applicant claims an equitable interest in the suit property arising from a purchase agreement executed on 7<sup>th</sup> November 2022 (annexure A). The applicant argued that she occupies the property and that she only became aware of the proceedings after being served with an eviction notice (annexure B). The decision and execution proceedings vide *Originating Summons No. 029/2024* directly affect the  
30 applicant's occupation and the claimed proprietary equitable interest. The applicant's evidence is also unchallenged by the respondents. Therefore, the applicant cannot be said to be a stranger with no legal grievance. The court is satisfied that she qualifies as an aggrieved person capable of invoking the review jurisdiction of this court.

35 *The next question is whether sufficient grounds for review have been established.*

The applicant contends that her interest in the property was not brought to the attention of the court when *Originating Summons No. 029/2024* was determined. She further contends that she was not joined to the proceedings despite being in occupation of the property.

5 It is trite law that just like the right of appeal, review is a creature of statute which must be provided for expressly. In considering an application for review, court exercises its discretion judicially as was held in the provided for expressly. In considering an application for review, court exercises its discretion judiciously and reasonably as was held in the case of *Abdul Jafar Devji vs Ali RMS Devji [1958] EA 558*.

10 The grounds for review are established under Order 46 rule 1(b) of the Civil Procedure Rules and in the case of *FX Mubwike vs UEB High Court Miscellaneous Application No.98/2005* as follows:

1. Account of some mistake or error apparent on the face of the record.
2. 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 the order made.
3. Any other sufficient reason, desires to obtain a review of the decree passed or order made against him or her.

15 The rationale for this provision is the fact that the remedies of appeal and review are not the same. A comparison of the two was laid down by Herbstein & Van Winsen in their book, *Civil Practice of the Supreme Court of South Africa (4<sup>th</sup> Edition)* at page 932, as follows:

25 *“The reason for bringing proceedings under review or appeal is usually the same, to have the judgment set aside. Where the reason for wanting this is that the court came to a wrong conclusion on the facts or the law, the appropriate procedure is by way of appeal. Where, however, the real grievance is against the method of the trial, it is proper to bring the case on review. The first distinction depends, therefore, on whether it is the result only or rather the method of trial which is to be attacked. Naturally, the method of trial will be attacked on review only when the result of the trial is regarded as unsatisfactory as well. The giving of a judgment not justified by the evidence would be a matter of appeal and not a review upon this test. The essential question in review proceedings is not the correctness of the decision under review but its validity.”*

30 In the present application, the court notes that the judgment sought to be reviewed granted vacant possession of the property in favour of the 1<sup>st</sup> respondent. Where a person claiming an existing equitable interest in land demonstrates that such interest was neither disclosed to nor considered by the court, and that person was not afforded an opportunity to be heard, such circumstances may constitute sufficient reason for review within the meaning of Order 46 Rule 1 of the Civil Procedure Rules. Further, the applicant has demonstrated the existence of a *bon afide* claim to an equitable interest in the suit property which was not considered at the time judgment was entered. Court, therefore, finds that sufficient grounds have been disclosed to warrant review of the judgment in *Originating Summons No. 029/2024*.

With regard to stay of execution, Order 43 Rule 4 of the Civil Procedure Rules empowers the High Court to stay execution where substantial loss may result unless the order is made.

5 The applicant faces imminent eviction from the property she claims to occupy and in which she asserts an equitable interest (bibanja). If execution proceeds before the review application is determined, the applicant may be dispossessed of the property and the review proceedings rendered nugatory. The court is persuaded that substantial loss may occur if execution proceeds before the issues raised by the applicant are investigated and determined. Furthermore, the application was filed shortly after the applicant became aware of the proceedings through the eviction notice. There is, therefore, no evidence of unreasonable  
10 delay.

In the interests of justice and in order to preserve the subject matter pending determination of the parties' rights, this court finds it appropriate to stay execution.

Accordingly, this application succeeds and the following orders are made:s

- 15 1. The judgment delivered on 23<sup>rd</sup> December 2024 in *Originating Summons No. 029/2024* is hereby reviewed and set aside to the extent necessary to enable the applicant's claim and interest in the suit property to be heard and determined.
2. Execution proceedings in *Miscellaneous Application No. 38/2025* are hereby stayed pending the determination of the applicant's claim concerning her alleged equitable interest in the suit property.
- 20 3. Costs of this application shall be in the cause.

I so order.



25 ***Dr. Ginamia Melody Ngwatu***  
***Ag. Judge***  
16<sup>th</sup> June 2026

30 *Delivered electronically via ECCMIS*