

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT HOIMA
CIVIL MISC. APPL. NO. 17 OF 2024)
(ARISING CIVIL SUIT NO 149 OF 2022)**

**1. SSALI DAVID
2. NDAHURA WILLIAM GAFAYO
3. RWANSANDE MONICA
4. MWESIGYE WILLIAM
5. AMANYA GEORGE :.....:APPLICANTS**

VERSUS

**1. KAGARA STEVEN
2. NKURANGE EZEKIEL
3. TWINE GODFREY
4. BABIIHA B JOHN
5. COMMISSIONER FOR LAND REGISTRATION :.....:RESPONDENTS**

BEFORE: HON. JUSTICE BYARUHANGA JESSE RUGYEMA

RULING

[1] INTRODUCTION

This application, brought under **Section 33 of the Judicature Act, Sections 82 & 98 of the Civil Procedure Act, and Order 52 rules 1, 2 and 3 of the Civil Procedure Rules**, seeks a review of the judgment delivered in **Civil Suit No. 149 of 2022** dated 14/06/2024, reinstatement of their certificate of title and its rectification to exclude the Respondents land decreed to them, the nullification of the order canceling the Respondents' title, a stay of execution pending determination of this application, and a review or setting aside of awards for general damages, interest, and costs.

BACKGROUND

[2] In Civil Suit No. 149 of 2022, the 1st-4th Respondents succeeded in their case against the Applicants resulting in a judgment declaring them the rightful owners of a 927-acre land parcel fraudulently included in the Applicants' former Certificate of title for land comprised in FRV HQT 254 Folio 14 Buhaguzi Block 2 plots 99,100 and 101 at Nyawanga and Amabanga measuring approximately 497.68 hectares situate at Nyawaiga-Amabanga, Kabwoya Sub County, Hoima District (now Kikuube). The judgment concluded

that the Applicants had obtained their certificate of title through fraudulent means, leading to its cancellation. The Applicants, seek review of this judgment. The application is opposed by the Respondents who filed an affidavit in reply sworn by the 1st Respondent **Kagara steven**.

ISSUES FOR DETERMINATION:

[3] From the pleadings of both parties in this Application, the following issues are formulated for the determination of this Application.

1. *Whether the Applicants are entitled to a review of the judgment in Civil Suit No. 149 of 2022.*
2. *Whether there is sufficient cause for granting a stay of execution.*
3. *What remedies are available to the parties.*

Issue No.1: Whether the Applicants are entitled to a review of the Judgment in Civil Suit No.149 of 2022.

[4] As per **Section 33 of the Judicature Act**, the High Court may grant all necessary remedies to resolve matters brought before it. Review under **Section 82 of the Civil Procedure Act and Order 46 Rule 1 of the Civil Procedure Rules** is permissible only in instances of a clear mistake or error on the face of the record, or any other sufficient reason. In reviewing applications, courts have established that an error must be apparent without requiring extensive reasoning or extraneous evidence (*see Edison Kanyabwera v. Pastori Tumwebaza SCCA No. 6 of 2004*).

[5] **Section 33 of the Judicature Act** empowers the High Court to grant all necessary remedies to resolve matters brought before it, thereby minimizing the need for multiple legal proceedings. The section states:

"The High Court shall, in exercising the jurisdiction vested in it by the Constitution, this Act, or any written law, grant, either absolutely or subject to such terms and conditions as it deems just, all remedies to which any party to a cause or matter is entitled concerning any legal or equitable claim properly presented before it. This aims to ensure that all matters in controversy between the parties are completely and finally determined, thereby avoiding unnecessary multiplicities of legal proceedings."

- [6] In the case of *F.X. Mubuuke v. Uganda Electricity Board (HCMA No. 98 of 2005)*, the Court emphasized that a review involves reconsideration under specific legal conditions. Under **Section 82 of the Civil Procedure Act** and **Order 46 Rule 1 of the Civil Procedure Rules**, a review is permissible in the presence of an error apparent on the face of the record, discovery of new and important evidence which after exercise of due diligence was not within the Applicant's knowledge or could not be produced by him or her at the time when the decree was passed or order made or other sufficient reasons.
- [7] The Applicants in the instant case proceeded under consideration of "other sufficient reasons".
- [8] Counsel for the Applicants submitted that the Applicants having lost the case where land measuring **927 acres** were decreed to the Respondents out of the suit title that had a total measuring approximately **1230 acres**, the Applicants retained **303 acres**. That this is "sufficient reason" to warrant review as court did not declare the Applicants as owners of this land whose ownership was uncontested by the Respondents.
- [9] On perusal of the parties' pleadings in the main suit and the judgment sought to be reviewed, in agreement with counsel for the Applicants, I find that indeed, ownership of the **303 acres** of land was retained by the Applicants upon **927 acres** of land out of the entire title of **1230 acres** of the Applicants being decreed to the Respondents. The fraud decried of by the Respondents was that the Applicants had fraudulently included their **927 acres** of land during the processing of their impugned certificate of title.
- [10] The argument of counsel for the Respondents that the application has been overtaken by events by reason of the fact that the impugned title has already been cancelled by the 5th Respondent does not in itself entitle the Respondents the unclaimed **303 acres** of land unaffected by the decree and cannot bar the Applicants to seek for a pronouncement from this court regarding the **303 acres** unaffected by the decree. If it is true as alleged by the Respondents that the title has already been cancelled, this court would still be entitled to review the decision of this court in this matter for sufficient reason by pronouncing itself and ordering that the **303 acres** of land which were not claimed by the Respondents and therefore not affected by the decree, were retained by the Applicants, see **Florence Dewaru Vs Angomale & Anor H.C.M.A No.96 of 2016** and therefore it was not necessary for cancellation of the entire title affecting the uncontested portion of land.

There is therefore no prejudice to the Applicants for review of the judgment in the above terms.

- [11] As regards the grounds for review in relation to the award of general damages, costs and interest.
- [12] The foundation for reviewing a judgment is grounded in the stipulations outlined in **Section 82 of the Civil Procedure Act and Order 46 Rule 1 of the Civil Procedure Rules**. A review is warranted only in the presence of an apparent error on the face of the record or discovery of new and important evidence which after 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 or order made or other sufficient reasons. In the current case, the Applicants have not demonstrated any manifest mistake or error in the judgment from **Civil Suit No. 149 of 2022** or any "other sufficient reason" as regards the award of general damages, costs and interest. The Applicants' assertions appear to be more aligned with dissatisfaction regarding the judgment rather than presenting any clear legal basis for a review. In effect, the Applicants appear to seek an appeal disguised as a review, which is not permissible. The applicants are asking this court to declare its own decision a nullity; in effect to quash and set it aside through review. To grant such orders would tantamount to the court sitting in an appellate capacity over its own decision. A judgment cannot be quashed in a review application, that is a preserve of the appellate court - see **Mapalala versus British Broadcasting Corporation (2002) 1 E.A 202** and **Hoima Town Council v Monday Margaret Masindi HCMA No 0064 of 2013**.
- [13] In the premises, I find that no sufficient reason has been shown for review in relation to the award of general damages, costs and interest. The award of general damages, costs and interest was in respect of the Respondents' injury suffered as a result of the Applicants' act of fraudulently including the Respondents' 927 acres of land in the impugned title and costs followed the event (**S.27(2) CPA**). The Respondents as the successful parties were entitled to an award of costs.

Issue No.2: Whether there is sufficient cause for granting of a stay of execution.

[14] Regarding stay of execution, **Order 22 Rule 26** of the Civil Procedure Rules which the applicants cited governs this process, allowing for a stay pending a suit between the decree holder and the judgment debtor. It provides that;

“Where a suit is pending in any court against the holder of a decree, the Court may, on such terms regarding security or otherwise as it thinks fit, stay execution of the decree until the pending suit has been decided.”

[15] The Applicants in this case have not established substantial loss that would arise from denial of the stay. The standard for demonstrating substantial loss requires specificity, which the Applicants have not provided. *See Tanzania Cotton Marketing Board v Cogecot Cotton Co. SA (1995-1998) EA 312 and Tropical Commodities Suppliers Ltd & Others Vs. International Credit Bank Ltd HCMA No.379 of 2003.* In the case of *Editor - in - Chief New Vision, Newspaper vs Ntabgoba, Civil Application No. 63 of 2005, Court of Appeal* (unreported), the Court held the burden is on the applicant to prove special circumstance and good cause to justify grant of such an application for stay of execution. The burden is on the applicant to show the special circumstance and good cause to justify grant. In the present case, the applicants have not discharged the burden of proving special circumstances and/or good reason for grant of an order of stay of execution of the decree of this court in **HCCA No. 149 of 2022.**

Issue No.3: What remedies are available to the parties.

[16] In light of the foregoing, it is clear that the Applicants have not satisfied the conditions required for review in relation to the award of general damages, costs and interest or stay of execution

[17] It is trite, a successful party is entitled to costs unless the court, in the exercise of its discretion, thinks otherwise - see - *Uganda Development Bank versus Muganga Construction Company Ltd (1981) HCB 35.* However, in this case, considering the fact that this court omitted to save the Applicants' impugned certificate of title by ordering for the curving off of the **927 acres** of land decreed to the Respondents from the title thus save the **303 acres** of

the Applicants on the title, the Application partially succeeds with no order as to costs.

Dated at Hoima this 20th day of December, 2024.



.....
Byaruhanga Jesse Rugyema

JUDGE