THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS APPLICATION NO. 657 OF 2021
(ARISING FROM MISCELLANEOUS CAUSE NO. 77 OF 2018)

1. NAMUSISI ERONA
2. DIRISA BUKENYA :: APPLICANTS

VERSUS

1. TEDDY KISAMBIRA
2. THE COMMISSIONER LAND REGISTRATION :::::::::::::: RESPONDENTS

BEFORE: HON. JUSTICE BONIFACE WAMALA

RULING

Introduction

[1] The Applicants filed this application under Section 82 of the Civil Procedure Act Cap 71, Section 33 of the Judicature Act Cap 13, Order 46 rules 1 and 8 and Order 52 rules 1 & 3 of Civil Procedure Rules S.I 71-1 seeking orders that;

a) The order in M.C No. 77 of 2018 be reviewed and varied to exclude or remove Teddy Kisambira and Erias Kisambira as lawful and rightful owners of land comprised in Kyadondo Block 230 Plots 2 and 3, at Kamuli Estate Wakiso District.
b) The 2nd Respondent be restrained from registering the 1st Respondent on the certificate of title on land comprised in Kyadondo Block 230 Plots 2 and 3 as the registered proprietor.
c) The 2nd Respondent be directed to register the Applicants as administrators of the estate of the Late Nkonge Bulukani on the certificate of title on land comprised in Kyadondo Block 230 Plots 2 and 3 at Kamuli Estate Wakiso District.
d) Costs of the application be provided for.

[2] The grounds of the application are summarized in the Notice of Motion and also set out in the affidavit deposed in support of the application by **Dirisa Bukenya**, the 2nd Applicant. Briefly, the grounds are that the Applicants are

administrators of the estate of the late Nkonge Bulukani who was the lawful owner of land comprised in Kyadondo Block 230 Plots 2 and 3 situate at Kamuli Estate Wakiso District (hereinafter called **"the subject property"**). The 1st Respondent together with her late husband, the late Erias Kisambira, claiming to be the administrators of the estate of the late Nkonge Bulukani, filed M.C No. 77 of 2018 against the 2nd Respondent and a one Yowania Nalugwa Namitala for cancellation of her name from the certificate of title and to have them entered as administrators to the estate of the late Nkonge Bulukani. In the said Cause, the 1st Respondent lied that she was a niece to the late Nkonge Bulukani whereas she was only a wife to a nephew of the late Nkonge Bulukani. The 1st Respondent and her husband (Erias Kisambira) also claimed that they were administrators of the estate of the late Nkonge Bulukani whereas not. The deponent further stated that the 1st Respondent and Erias Kisambira, using forged letters of administration to the estate of the late Nkonge Bulukani, applied to court seeking to be registered on the subject property as administrators of the said estate. However, the court instead ordered them to be registered as proprietors of the said property contrary to what they had prayed for. The Applicants were not party to MC 77 of 2018 and the order was accordingly made without notice to them and yet the 1st Respondent was aware that the Applicants were the true administrators of the estate of the late Nkonge Bulukani.

[3] The 2nd Applicant also stated that the 1st Respondent has used the court order to attempt to convert the subject property into her personal property yet the property belongs to the estate of the late Nkonge Bulukani. The Applicants are beneficial owners and administrators to the suit land having inherited the same from the late Bulukani Nkonge. The Applicants only became aware of the court order in MC 77 of 2018 recently when the 1st Respondent informed them that she is the current owner of the suit land. If the court order in MC 77 of 2018 is not reviewed, the Applicants stand to suffer loss of their beneficial

interest in the property. It is in the interest of justice that the orders in MC 77 of 2018 be reviewed and varied and the orders sought in this application be granted.

[4] The 1st Respondent, **Teddy Kisambira**, filed an affidavit in reply in which she opposed the application. She stated that the application is misconceived, frivolous and an appeal in disguise. She further averred that this court has no jurisdiction to handle this matter where the Applicant is seeking revocation of letters of administration and where orders sought to be reviewed were passed by the court in judicial review of the actions of the 2nd Respondent. The 1st Respondent also averred that she and the late Erias Kisambira rightly followed the procedures in the acquisition of letters of administration and the same were accordingly granted to them way back in 1996. She stated that the 1st Applicant and the father of the 2nd Applicant were called to the office of the Administrator General where they consented to the appointment of the 1st Respondent as one of the administrators of the estate of the late Nkonge Bulukani. The Applicants never challenged the application for letters of administration by the 1st Respondent. The 1st Respondent was not aware that the Applicants had taken out letters of administration for the same estate in 2017.

[5] The 1st Respondent further stated that the reason the 1st Respondent and two others applied for letters of administration is that prior to the death of Bulkan Nkonge, they held powers of attorney over the said land to prosecute a suit against a one Abisali Sentongo. Upon the death of Bulkhan Nkonge, the family of the deceased, in presence of the 1st Applicant and of the father of the 2nd Applicant, authorized the 1st Respondent, her late husband (Erias Kisambira) and a one John Magoola to continue prosecuting the suit of Bulkhan Nkonge which was pending in court against Abiasali Sentongo. She also stated that the claim in the application for grant of letters of

administration that the 1st Respondent was a niece was a mistake done by the advocate who applied for letters of administration. She stated that she has never had interest in the matter save for protecting the estate of the late Bulkhan Nkonge vide Civil Suit 145 of 1995 to which she originally had a power of attorney to sue and later obtained letters of administration to complete and discharge her obligation which she had done by filing an inventory into the court. She averred that the letters of administration obtained by the Applicants in 2017 were fraudulent and illegal. She also stated that the Applicant have a pending appeal against the ruling in MA 77 of 2018 in the Court of Appeal. She accordingly prayed for dismissal of the application.

[6] The Applicants filed an affidavit in rejoinder whose contents I have also taken into consideration.

Representation and Hearing

[7] The Applicants were represented by **M/s Heritage Associated Advocates** while the 1st Respondent was represented by **M/s Matovu & Matovu Advocates**. The 2nd Respondent neither replied to the application nor appeared at the hearing. The matter therefore proceeded ex parte against the 2nd Respondent. It was agreed that the matter proceeds by way of written submissions which were duly filed by Counsel for the Applicants and of the 1st Respondent. The same have been relied upon by the Court.

Issues for Determination by the Court

[8] Two issues were raised for determination by the Court, namely;

a) **Whether the Applicants have sufficient grounds for review?**
b) **Whether the Applicants are entitled to the orders and remedies sought?**

Preliminary Objections

[9] In their submissions, Counsel for the 1st Respondent raised two preliminary points of objection which I intend to dispose of first. The points are, namely; that the Applicants have no *locus standi* to bring the application; and that the application is based on an illegality.

Locus Standi

Submissions

[10] It was argued by Counsel for the 1st Respondent that M.C No. 77 of 2018 was an application for Mandamus to order the Commissioner Land Registration to register the then applicants' names on the certificate of title in accordance with the orders granted to them under Civil Suit No. 145 of 1995. Counsel argued that it is, therefore, not possible for the court to review the grant of mandamus for the benefit of the Applicants herein who have no judgment to enforce. Counsel further argued that it is also not possible in law for the court exercising powers under judicial review to order a cancellation of land without exercising original jurisdiction under section 177 of the Registration of Titles Act (RTA). Counsel concluded that the High Court has no jurisdiction to cancel a title and substitute it while exercising its prerogative powers of judicial review. Counsel prayed for dismissal of the Application on this ground.

[11] In reply by the Applicants' Counsel, contained in the submissions in rejoinder, Counsel referred the Court to the provisions under Section 82 of the CPA and Order 46 rule 1 of the CPR and argued that although the Applicants could not prefer an appeal for not having been parties to the proceedings, the said provisions of the law permit them to prefer an application for review as persons aggrieved by the order of the court. Counsel submitted that the Applicants have locus standi to bring the current application and prayed that the objection be overruled.

Determination by the Court

[12] *Locus standi* is defined as the right to bring an action or be heard in a specific forum. See: **The Black's Law Dictionary, 8th Edition, page 2754**. The instant application is brought as an application for review pursuant to the provisions under Section 82 of the CPA and Order 46 rule 1 of the CPR. Under the said provisions, a person entitled to bring an application for review is *"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 by a decree or order from which no appeal is allowed by this Act"* upon grounds discovery of new or important matter of evidence, mistake or error apparent on the face of the record or any other sufficient cause. Once a person satisfies the above criteria, a question as to their locus standi would not arise.

[13] The question, therefore, is whether the Applicants rightly considered themselves as persons aggrieved by the orders passed in M.C No. 77 of 2018. In law, a person considered aggrieved is one that has suffered a legal grievance which may include the fact that such a decision has wrongfully or unlawfully deprived him or her of what rightfully belongs to them. To be so aggrieved, the person does not have to have been a party to the proceedings in which the judgment or order was passed; he or she may be a third party to such proceedings. See: ***Re Nakivubo Chemists (U) Ltd (1979) HCB 12 and Busoga Growers Co-operative Union vs Nsamba & Sons Ltd, HCMA No. 123 of 2000***.

[14] In the instant case, it is shown by the Applicants that they are beneficiaries to the estate of the late Nkonge Bulukani, the owner of the subject property. The Applicants also claim that they possess letters of administration to the said estate. Clearly, this entitles them to a claim in the subject property and, should such property be alienated, they stand to suffer loss. Such is a

legal grievance that entitles them to seeking a review of the impugned order. The objection by Counsel for the 1st Respondent is, therefore, misconceived and was apparently brought in disregard of the clear provisions of the relevant legal provisions. This objection fails and is accordingly rejected.

Objection Based on Illegality

Submissions

[15] It was argued by Counsel for the 1st Respondent that the Applicants were at all material times aware that the 1st Respondent and two others were holders of letters of administration to the estate of the Late Nkonge Bulukani issued way back in 1996 yet the Applicants went ahead and obtained other letters of administration for the same estate. Counsel argued that such was an illegality which cannot be let by the Court to stand. Counsel relied on the famous case of ***Makula International Ltd Vs His Eminence Cardinal Nsubuga & Another, C.A No. 4 of 1981***. Counsel prayed that the application be struck off for being incompetent, misconceived and bad in law.

[16] In reply, Counsel for the Applicants argued that the Applicants do not accept that the 1st Respondent and others lawfully held any letters of administration to the estate of the late Nkonge Bulukani since they challenge the authenticity of the purported letters of administration. It is contended for the Applicants that the said letters of administration held by the 1st Respondent were illegal and the same cannot constitute a bar to their being challenged by the Applicants.

Determination by the Court

[17] It ought to be made clear that this proceeding is not meant to determine who the rightful holder of letters of administration for the estate of the Late Nkonge Bulukani is. According to the material before the Court, there are two competing grants, both allegedly issued by the courts. It is claimed by the

Applicants that the grant in the names of the 1st Respondent and two others is not authentic for being a forgery and/or having been obtained fraudulently. The major grounds raised are that it was allegedly obtained before the death of the late Nkonge Bulukani and secondly that the 1st Respondent lied to the court in regard to her relationship with the deceased, among others. On the other hand, the 1st Respondent avers that she and the two others followed the proper procedure and lawfully obtained the said grant of letters of administration. She further claims that the Applicants had knowledge of this status but went ahead to obtain other letters of administration for the same estate; which is illegal.

[18] As I have indicated, the above contention does not constitute the dispute before this Court. Such a dispute is supposed to be determined by the court that issued the grants or one of the grants. Currently, such dispute ought to be raised in the Family Division of the High Court. As it is therefore, the allegations by either party are not supported by any evidence, are unverified and indeed not before the court for trial. Further, and equally important, that dispute was not before the court in the proceedings leading to the order sought to be reviewed. It cannot, therefore, be subject of these proceedings. Lastly, the same contention cannot be introduced under the ground of discovery of new and important matter of evidence since a grant of letters of administration, even when erroneously obtained, cannot be revoked in absence of proper proceedings for revocation of the same in accordance with the provisions of the Succession Act.

[19] Accordingly, any dispute based on existence of competing grants is not part of these proceedings and, later on in this decision, the parties will be directed on the options available to them. As it is, therefore, in this proceeding, the application is properly before the Court on matters that are relevant to its

determination. The relevant part of the application is not affected by any illegality. The second point of objection is, therefore, overruled as well.

Resolution of the Issues

Issue 1: Whether the Applicants have sufficient grounds for review?

Submissions

[20] It is submitted by the Applicants' Counsel that the Applicants are aggrieved by the decision in M.C 77 of 2018 in which the court was misled into making the order directing that the 1st Respondent and Erias Kisambira be registered on the certificate of title to the subject land and yet the said persons had neither a legal or equitable interest in the said property. Counsel submitted that if the order of the court is left to stand, the Applicants would lose their beneficial interest in the suit land since the 1st Respondent would be registered as the proprietor of the said land and not as administrator of the estate of the late Nkonge Bulukani as she had claimed in M.C 77 of 2018. Counsel submitted that such is an error apparent on the face of the record which should not be permitted to remain on the record; and the same ought, therefore, to be reviewed by the court.

[21] In reply, Counsel for the 1st Respondent submitted that the application raises no ground for review. Counsel submitted that at the time the orders in MC 77 of 2018 were made, there was no body challenging the 1st Respondent's right to the letters of administration. As such the record had no mistake nor error because the contest of the letters of administration was never brought to the attention of the court. Counsel also submitted that even if the contest for the letters of administration was brought to the attention of the court, the court had no jurisdiction in judicial review proceedings to decide who was best suited to be granted letters of administration. It is further submitted that there is no new or important matter arising since the Applicants knew of the procedural mistake in the process of applying for letters of administration but

did not challenge the same. Counsel stated that the 1st Respondent has filed an inventory in the court showing how the administration has been carried out. Counsel concluded that the orders sought do not accrue from the court decision and prayed that the suit be dismissed with costs.

[22] Counsel for the Applicants made submissions in rejoinder which I have also taken into consideration.

Determination by the Court

[23] The law governing applications for review of judgments, decrees or orders is now well settled. *Section 82 of the Civil Procedure Act Cap 71* provides as follows:

> *"Any person considering himself or herself aggrieved—*
> *(a) by a decree or order from which an appeal is allowed by this Act, but from which no appeal has been preferred; or*
> *(b) by a decree or order from which no appeal is allowed by this Act, may apply for a 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 as it thinks fit."*

[24] The considerations for grant of an application for review of judgments, decrees or orders are set out under *Order 46 Rule 1 of the Civil Procedure Rules*, to wit:

> *"(1) Any person considering himself or herself aggrieved—*
> *(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; or*
> *(b) 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 the order*

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 judgment to the court which passed the decree or made the order." (underlined for emphasis).

[25] The instant application is premised on two grounds of mistake or error apparent on the face of record and discovery of new and important matter of evidence. But as I have indicated above, in paragraph [18], the matter allegedly discovered is not one that was part of the impugned decision and is, certainly, not one that is part of this proceeding. That ground, therefore, fails.

[26] On the ground of mistake or error apparent on the face of the record, it was held in ***Attorney General & Others vs. Boniface Byanyima HCMA No. 1789 of 2000***, while citing ***Levi Outa vs Uganda Transport Company [1995] HCB 340***, that the expression "mistake or error apparent on the face of record" refers to an evident error which does not require extraneous matter to show its incorrectness. It is an error so manifest and clear that no court would permit such an error to remain on the record. It may be an error of law, but the law must be definite and capable of ascertainment. Also see **D. V. CHITALEY and S. APPU RAO, in the Code of Civil Procedure (supra) (pages 4468 – 4469)**.

[27] On the case before me, it is clear and not disputed that the 1st Respondent and her husband, now late Erias Kisambira, brought M.C No. 77 of 2018 as administrators of the estate of the Late Nkonge Bulukani. Indeed, in the affidavit in support of that application filed on 12th April 2018, the 1st Respondent (then 1st Applicant) averred as such. Even in the present proceedings, the 1st Respondent does not dispute that her claim on the subject property is in her capacity as a surviving administrator of the said estate. It is not stated anywhere that the land in issue has ever devolved to the personal

estate of the 1st Respondent or the late Erias Kisambira. In view of these undisputed facts therefore, it was clearly a mistake or error on the part of the Court to order that the subject land be registered in the names of "Teddy Kisambira and Erias Kisambira as proprietors". The Court went on to issue an Order which provided that the Commissioner Land Registration "registers the suit land in the names of the Applicants (Teddy Kisambira and Erias Kisambira) who are the lawful and rightful owners of the same". This is an evident error that does not require any extraneous matter in order to show its incorrectness. It is an error so manifest and clear that no court would permit such an error to remain on the record.

[28] Additionally, the effect of the error is gross; in that it bears the consequence of depriving rightful proprietorship and beneficial interest in the suit land. If such entry is made on the title by the 2nd Respondent, the 1st Respondent would have capacity to deal with the subject property the way she pleases which would be contrary to the law and injurious to the estate and its beneficiaries. Such an error ought to be corrected and the present application is a proper one for correction of the same. This ground of the application, therefore, succeeds and determines the application in the Applicants' favour.

[29] It is noteworthy that if the above said error is corrected, the order remains that the suit property be registered in the name of the 1st Respondent who is the surviving administrator of the estate of the late Nkonge Bulukani. I understand that such a position is heavily contested by the Applicants. But, as I noted above, this is not the proper forum for raising and determination of the said contest. The parties will have to take out proper proceedings for regularization of the administration of the estate in issue.

[30] In the meantime, this Court can only give guidance and directions that will ensure that the estate is not wasted, mismanaged or alienated. Before

determination of the rightful administrator of the estate by an appropriate court, the subject land shall remain registered in the name of the 1st Respondent as administrator of the estate of the late Nkonge Bulukani. As administrator, the 1st Respondent shall be accountable and subject to the strict provisions of the Succession Act. If the Applicants are not satisfied by anything that has been done or is done after this decision in the estate by the 1st Respondent, they have the right to institute proceedings in the appropriate forum; including challenging the inventory allegedly filed by the 1st Respondent.

[31] In all, therefore, this application is partly allowed in the following terms;

a) The Order in MC No. 77 of 2018 directing the 2nd Respondent to register Teddy Kisambira and Erias Kisambira as lawful and rightful owners of land comprised in Kyadondo Block 230 Plots 2 and 3, Kamuli Estate Wakiso District, is hereby reviewed and varied.
b) The 2nd Respondent is directed to register the subject property in the name of the 1st Respondent as Administrator of the Estate of the Late Nkonge Bulukani.
c) The dispute regarding administration of the estate of the late Nkonge Bulukani be taken by the parties to the appropriate court for determination.
d) Each party shall bear their own costs of this application.

It is so ordered.

Dated, signed and delivered by email this 12th day of June, 2023.

Boniface Wamala

JUDGE