THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

[Coram: Kasule, Kakuru, Egonda-Ntende, JJA]

CIVIL APPLICATION N0. 94 of 2009

(Arising from Civil Appeal No. 15 of 2002)

BETWEEN

PETER MULIRA.....APPLICANT

AND

MITCHELL COTTS LTD ..... RESPONDENT

RULING OF FREDRICK EGONDA-NTENDE, JA

Introduction

1. This is a very unusual application. It seeks to set aside the judgment of one of the Justices of Appeal that determined Civil Appeal No. 15 of 2002, rather than the entire judgment of the court, on the ground that the judgment of Kitumba, JA., (as she then was), was null and void. The applicant was the appellant in the above appeal. The appeal was dismissed by all the three justices that heard and determined the appeal in three separate judgments. The appeal was against a consent judgment of the High Court in Civil Suit No. 1471 of 1999.

2. The grounds of the application as set out in the notice of motion are;

> '(a) That at the time the judgment was delivered the Applicant was not a judgement debtor in H.C.C.S No. 1471 of 1999 and that it is only fair that the records in this Honourable court and the court below be harmonized;
>
> (b) That it is necessary in the interest of justice to set aside the judgement to prevent an abuse of court of process.
>
> (c) That no injustice will be occasioned to the Respondent.'

3. The application is supported by the affidavits of the Applicant, Peter Mulira, Caleb Amanya and Mr Kiryowa.

4. The respondent opposes this application and filed an affidavit in reply and a supplementary affidavit deponed by Mohsen Mousavi, a director of the respondent company contending that the issues raised in the application are res judicata, frivolous, vexatious and an abuse of court process.

Submissions of counsel

5. At the hearing, the applicant represented himself and in his submissions he sought this court to exercise its inherent jurisdiction under Rule 2 (2) of the Rules of this court to review the judgement of this court delivered on 3rd March 2004 in Civil Appeal no. 15 of 2002.

6. He submits that the basis of this application is to bring to the attention of this court the errors in the figures on record and in the judgement of Kitumba JA.,

in Civil Appeal No.15 of 2002. He submitted that that the figures on the record and in the judgement are wrong, fraudulent and an abuse of court process. The evidence the applicant is relying on was mainly the court records of the trial court.

7. Mr Peter Walubiri appeared for the respondent. He submitted that neither party disputed the correctness of the record of proceedings of the trial court during the hearing of Civil Appeal No. 15 of 2015. If the applicant is of the view that the record of the High Court is not correct, it should have been a ground of appeal. Secondly the applicant had initially taken the correct step of appealing to the Supreme Court against the Court of Appeal decision but he withdrew that appeal.

8. Mr Walubiri further submitted that all issues pertaining to the amount owed to the respondent and the figures due were superseded by the consent judgement signed and entered between the parties on the 22nd of November 2000 in H.C.C.S No. 1471 of 1999 and confirmed in this court in Civil Appeal No. 15 of 2002.

9. Mr Walubiri further submitted that no injustice had befallen the applicant as alleged. Rather the applicant has attempted to pervert the course of justice by filing numerous frivolous and vexatious suits and applications that have constantly been dismissed by courts of law.

Analysis

10. This application was brought under Rule 1 (3) of the Court of Appeal Rules, 1996, now Rule 2 (2) of the Judicature (Court of Appeal Rules) Directions, S I 13-10. The Rule stipulates as follows;-

> 'Nothing in these Rules shall be taken to limit or otherwise affect the inherent power of the court, or the High Court, to make such orders as may be necessary for attaining 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 abuse of the process of any court caused by delay.'

11. What is alleged by the applicant to be null and void about the judgment of the Kitumba, JA? This is articulated in paragraphs 4 and 5 of the applicant's affidavit which I shall set out below.

> '4. That at page 32 of the judgment it was stated,
>
> > "While I appreciate that no scheduling conference was held as required by law and no issues were framed this did not prejudice the appellant in any way. He freely consented to the judgment whose terms were, according to the record, carefully discussed by the parties."
>
> 5. That anything done contrary to the clear provisions of the law as the Court found is null and void and has no effect in law.'

12. If I understand the foregoing correctly it is suggested that the judgment of Kitumba, JA, is null and void, because it noted that no scheduling conference was held in the court below and no issues were framed. And the learned Justice of Appeal did not overturn the consent judgment but rather noted that the applicant had not suffered any prejudice. This argument must be addressed to the Supreme Court in challenging the decision of the Court of Appeal. It is not a matter that is envisioned to be considered under matters arising under Rule 2 (2) of the Rules of this Court.

13. I am unable to discover both from the submissions of the applicant and all the affidavits he has filed in this matter, any piece of evidence that renders the judgment of Kitumba, JA., null and void. There is no iota of evidence to suggest that the judgment of the Court of Appeal including the lead judgment of Kitumba JA, was procured by fraud, illegality or other improper means. Rather it is the reasoning and holding of the learned Justice of Appeal that is under attack. This cannot constitute a ground for annulling a judgment of the Court of Appeal in the circumstances of this application.

14. From the content of the applicant's submissions made before this court and affidavits filed in this matter the applicant is asking this court to sit on appeal over a judgment of this very same court. We have no such jurisdiction. The jurisdiction of this court is to hear appeals from decisions of the High Court or any other tribunal as provided by law. See Article 134 (2) of the Constitution. If a party is dissatisfied with the decision of this court as the applicant apparently was, the only available recourse was to pursue an appeal to the Supreme Court which he initially did but then withdrew the same. He cannot come to this court complaining that one of the judges of this court did

not properly appraise the evidence in the court below. This court has no jurisdiction to do so even if it is brought in the manner it has been done in this case, alleging that the judgment of one of the judges is null and void. In absence of proof of nullity, this court cannot reconsider what has already been determined by it.

15. It is settled law that where a consent judgment is entered on record that judgment can only be set aside on grounds that would cause a rescission of contract such as fraud, illegality, mistake, or contravention of court policy. Otherwise it will bind the parties to it. See Attorney General and Anor v James mark Kamoga and Anor, Supreme Court Civil Appeal No. 8 of 2004 (unreported). Mulenga JSC, summarised the position as follows:

> 'It is a well settled principle therefore, that a consent decree has to be upheld unless it is vitiated by a reason that would enable a court to set aside an agreement, such as fraud, mistake, misapprehension or contravention of court policy.' The principle is on the premise that a consent decree is passed on terms of a new contract between the parties to the consent judgment.'

16. It follows that no appeal would ordinarily arise against such a judgment. The ordinary recourse of a party that wishes not to be bound by a consent judgment is to go back to the Court that passed the consent decree and seek to set it aside. Such a party would only then come to this Court after the High Court has made a decision whether or not to set aside such consent judgment.

17. This application is devoid of any merit whatsoever. I would dismiss it with costs to the respondent.

Signed, dated and delivered at Kampala this 2 day of May 2018

Fredrick Egonda-Ntende
Justice of Appeal

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CIVIL APPLICATION NO. 94 OF 2009

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Peter Mulira ::Applicant

VERSUS

Mitchell Cotts Ltd :: Respondent

Coram: Hon. Justice Remmy K. Kasule, JA
Hon. Justice Kenneth Kakuru, JA
Hon. Justice Frederick Egonda-Ntende, JA

RULING OF REMMY KASULE, JA

I have had the benefit of reading in draft the Ruling of my brother Frederick Egonda-Ntende, JA.

I too agree that the applicant's application is totally misconceived and devoid of any merit. Since Kakuru, JA, also agrees this application stands dismissed with costs to the respondent.

Signed, dated and delivered at Kampala this.....2........ **day of** ....May............... **2018**.

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RemmyKasule
Justice of Appeal

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CIVIL APPLICATION NO. 94 OF 2009

(Arising from Civil Appeal No. 15 of 2002)

PETER MULIRA ..... APPLICANT

VERSUS

MITCHELL COTTS LTD ..... RESPONDENT

CORAM: Hon. Mr. Justice Remmy Kasule, JA
Hon. Mr. Justice Kenneth Kakuru, JA
Hon. Mr. Justice F.M.S Egonda -Ntende, JA

RULING OF KENNETH KAKURU, JA

I have had the benefit of reading in draft the Ruling of my brother F. M. S Egonda-Ntende, JA. I agree with him that this application has no merit and ought to be dismissed with costs for the reasons he has given.

I have nothing useful to add.

Dated at **Kampala** this ....2..... day of .....May..... 2018.

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Kenneth Kakuru

JUSTICE OF APPEAL