THE REPUBLIC OF UGANDA,

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(CORAM: CHEBORION, MADRAMA AND MULYAGONJA, JJA)

CIVIL APPEAL NO 93 OF 2014

RUZINDANA SENYONGA ANDREW} ..... APPELLANT

VERSUS

MASH INVESTMENTS LTD} .....RESPONDENT

(*Appeal against the Ruling and Orders of the High Court at Mbale before Musota J as he then was dated 6th December 2011, in Miscellaneous Application No. 174 of 2011 arising from Miscellaneous Cause No. 2011*)

JUDGMENT OF CHRISTOPHER MADRAMA, JA

This is an appeal lodged with the leave of the Court of Appeal against the ruling and orders of Musota, J in High Court Miscellaneous Application No 174/2011 which had been for review of the orders made by the Court in Miscellaneous Cause No 0011 of 2011 where the court issued a vesting order vesting the suit property being land to be registered in the names of the respondent and also ordered for the issuance of a special certificate of title. The application for review of these orders in HCMA No. 174 of 2011 was dismissed.

The appellant being aggrieved appealed to this court on eight grounds of appeal that:

1. The learned trial judge misdirected himself wrongly applied or misconstrued Order 1 rule 10 (2) of the Civil Procedure Rules and section 177 of the Registration of Titles Act when he dismissed Miscellaneous Application No 174 thereby declined to review the orders in Miscellaneous Cause No 011 of 2011, thereby denying the

appellant of the right to be heard and depriving him of his interest in the suit property.

2. The learned trial judge erred in law and fact when he misconstrued Order 46 rule 1 and 3 held that the appellant was not an aggrieved party and had no locus standi to bring an application for review of the orders in Miscellaneous Cause No 011 of 2011.

3. The learned trial judge erred in law and fact when he sustained his earlier orders of the issuance of a Special Certificate of Title in respect of Plot 21 A Folio 17 Volume 2668 Cathedral Avenue Mbale Municipality, on grounds that the owner's original copy of title was inaccessible or unrecoverable when in fact, the same learned trial judge had received the same original owner's copy of the title certificate in evidence and ordered the same into the safe custody of the High Court Registrar, Mbale.

4. The learned trial judge erred in law and fact when he held that the appellant's case was weakened by a requirement for certified copies of court documents from a court file, the original of which was actually under the learned trial judge's supervision and which the learned trial judge had called and perused before his ruling.

5. The trial judge erred in law and fact when he ignored all the appellant's evidence on record that the orders in Miscellaneous Cause No 0011 had been procured by material misrepresentation by the respondent.

6. The learned trial judge erred in law and fact when he ignored the appellant's evidence on record and held that the appellant had not proved his interest in or ownership of the suit property.

7. The trial judge erred in law and fact when he went beyond his jurisdiction in the matter and held that Miscellaneous Application No 148 and Miscellaneous Application No 147 of 2008 in the Chief Magistrates court had subsisting orders staying or halting the sale of the disputed property at the time it was first sold in Civil Suit No 262 of 2008.

8. The trial judge erred in law and fact when he declined to grant a review as sought on consideration of extraneous, irrelevant and immaterial matters not in issue for determination before the court, to wit;

   a. that the cause of action in the Chief Magistrate Civil Suit No 262 of 2008 by which the suit property had been sold was questionable.
   b. That Miscellaneous Application No 148 nor Miscellaneous Application No 147 of 2008 in the Chief Magistrate's Court had subsisting orders staying or halting the sale of the disputed property at the time it was sold in the Civil Suit No 262 of 2008.

The appellant prays that the appeal be allowed and judgment be entered in favour of the appellant to the effect that the High Court ruling and orders in Miscellaneous Application No 174 of 2011 be set aside. Secondly that the ruling and orders of the High Court in Miscellaneous Cause No 0011 of 2011 be reviewed and set aside. Thirdly that a declaration be issued that the second attachment and purported sale of the suit property in HCCS No 95 of 2005 was unlawful and of no effect. Fourthly for declaration that the appellant is the equitable owner of the suit property and lastly for orders of cancellation of the Special Title issued in favour of the Respondent on 23rd of July 2010 under instrument No 469265 and a consequential directive of this court to issue to the High Court Registrar to release the original title to the suit property in the custody of the court to the appellant.

When the appeal came for hearing, the appellant was represented by learned counsel Mr Richard Brian Kabayiza and the respondents counsel was absent. With leave of court, the matter proceeded ex parte though it was noted that the respondent had filed written conferencing notes which included submissions under the direction of the registrar. The appellant's counsel was given a few days to file his written submissions and judgment was reserved on notice.

Submissions:

The appellant's counsel abandoned ground 7 of the appeal and proposed to argue grounds 1 separately and grounds 2 and 6 together further grounds 4 together and finally ground 3 separately.

Ground 1:

As far as ground 1 of the appeal is concerned, the appellant's counsel submitted that there is a typographical error when he made reference to Order 1 rule 10 (2) instead of Order 3 and 13 of the CPR.

Counsel submitted that proceedings and vesting order under section 77 of the Registration of Titles Act (RTA) in the Miscellaneous Cause No 0011 of 2011 in the absence of the registered proprietors constituted an error of law on the face of the record. Counsel submitted that the appellant's application for review was to the effect that proceedings under section 77 of the RTA and the grant of the vesting order in respect of the suit property and in the absence of the registered proprietors was an error of law on the face of the record. He submitted that the learned trial judge found that it was pointless to make a person from whom the land has been recovered the respondent. As contended that the ruling of the trial judge misconstrued and thereby wrongly applied section 77 of the RTA continued to shield the error of law in entertaining Miscellaneous Cause No 0011 of 2011 and granting of vesting order without affording the registered proprietors and opportunity to be heard on the matter. He submitted that proceedings for vesting order must be served upon the registered proprietor of the property to be effected and thereby granting of vesting order in proceedings where the registered

proprietor is not a party or served is an illegality rendering the vesting order a nullity. He relied on **Adonia Vs Mutekanga (Civil Appeal No 30 of 1969) [1970] EA 429** Spry V-P rejected the argument that vesting order could properly be made ex parte or that its making ex parte was a mere irregularity. It was held that that without service on the registered proprietor, they could have been no jurisdiction to make a vesting order.

Counsel further relied on the Judgment of Law JA in **Bir Singh Vs Parmar (1971) 1 EA 209** was cited with approval the decision of Spry V-P (supra) that under the RTA of Uganda, any proceedings affecting registered land must be with notice hearing of the persons affected and the Registrar. Further, the appellant's counsel submitted that the decision of the High Court in the **Uganda Blanket Manufacturers Vs Chief Registrar of Titles High Court Miscellaneous Application No 55 of 1993** relied upon by the learned trial judge was not good law in light of pre-existing precedents of the East African Court of Appeal.

Further the appellants counsel submitted that Miscellaneous Cause No 0011 of 2011 was brought jointly against the Registered Proprietors and the Chief Registrar of Titles before the respondent withdrew the application against the Registered Proprietors and retained only the Registrar of Titles. He submitted that the ruling and order of the learned trial judge issuing the special certificate of title and cancelling the registered proprietors from the title as well as granting an order of vesting order include the registered proprietors who were the administrators of the estate of the deceased.

Further, the appellant's counsel submitted that the position of the case law was erroneously disregarded by the trial judge when there was binding precedent of appellate courts. He prayed that the court be pleased to allow the appeal and grant the remedies sought on the basis of ground 1 of the appeal only.

In addition, the appellant's counsel submitted that the appellant had new and important matters of evidence which, after the exercise of due diligence, could not be produced by him at the time the vesting order sought

to be reviewed was made. He submitted that the appellant had been denied the opportunity to be added as a party to Miscellaneous Application No 0011 of 2011 where he sought to produce evidence that he was the owner of the suit property, and that he had possession of the original copy of the relevant certificate of title which was purported to be missing or hidden from the respondent's reach by the registered proprietors.

The appellant's counsel submitted that in Miscellaneous Application No 174 of 2011, the appellant presented new and material evidence or information that was not available to the trial judge when he made the vesting order. The material information included the fact that when the suit property was included in the list or properties agreed to be put on sale under the consent order dated 27th May 2009 item 1 (g) the same property was no longer available for sale as it had already been sold by way of an execution order dated 31st of October 2008 and there is a sale agreement dated 1st November 2008 arising from proceedings against the registered proprietors/administrators in the Chief Magistrates Court Civil Suit No 262 of 2008.

Further, the appellant's counsel submitted that the suit property original owner's title certificate was actually in the hands of the appellant who took possession thereof upon purchase of the same and not withheld by the registered proprietors as alleged by the respondent in his application for a vesting order. Further in his ruling, the learned trial judge held that the appellant had not made a formal application to be joined as a party under Order 1 rule 3 and 13 of the Civil Procedure Rules (CPR) and on that basis went ahead to reject the application for review of the earlier orders on the basis of the new evidence before him. Counsel submitted that the learned trial judge had the latitude and power to join or add the appellant in the respondent's application for a vesting order in terms of Order 1 rule 10 (2) of the CPR.

Further, the application for vesting order in Miscellaneous Cause No 0011 of 2011 was brought by the respondent for remedies under section 177 of the RTA and was a suit before a court within the meaning in section 2 of the

Civil Procedure Act and Order 1 rule 10 (2) of the CPR. Counsel relied on **Baku Raphael Obudra and Obiga Kania Vs Agard Didi and the 2 others Constitutional Petition No 04 & 6 of 2002** where the constitutional court considered Order 1 rule 10 (2) of the CPR and held that it gives the court wide discretion to other parties at any stage of proceedings either upon or without application of either party on such terms as may be just. That the test to be applied is whether the addition would enable the court to effectually and completely adjudicate and settle all questions involved in the cause or matter.

As to who a necessary party is in the proceedings before the court, the appellants counsel relied on the holding of the Constitutional Court in Dr. James Rwanyarare and Another v the Attorney General (Constitutional Appeal No 1 of 1999) for the proposition that Order 1 rule 10 (2) CPR enables addition of parties where the court orders have the consequence or the effect of prejudicing affecting the rights or interest of those persons. The question is whether the litigant is entitled to protect their interest when they are prejudiced by persons already on record. The in the premises the appellants counsel submitted that this court should find and hold that the appellant was a necessary party in the application by the respondent seeking vesting orders of court which had the effect of eroding his prior existing interest and that the appellant should have been added in such application under Order 1 rule 10 (2) of the CPR. He invited the court to hold that Miscellaneous Application No 174 of 2011 was a clear and deserving cases for review on the basis of new and important evidence the appellant had which he could not have produced after the exercise of due diligence the time orders were issued of issuance of the special certificate of title and a vesting order.

In reply, the respondent its conferencing notes addressed to ground 1 of the appeal in its conferencing notes which contain the submissions in reply to the conferencing notes of the appellant that in turn has the basic arguments in the appeal.

The respondents counsel submitted that the trial judge properly applied Order 1 rules 3 and 13 of the CPR which provide for joining defendants and the procedure for joining any party as a defendant or plaintiff.

The respondents counsel submitted that the learned trial judge did not apply Order 1 rule 10 (2) of the CPR and stated that if the applicant wanted to join proceedings, he ought to have formally applied to do so and not to write a letter and send it by post and remain incognito. He found that the appellant wrote a letter addressed to the registrar only do not appear in person and therefore could not apply to court in a summary manner which application could have been considered. Counsel further submitted that the learned trial judge further rightly held that for one to be summarily considered to be added as the party, his presence is necessary. Further, the learned trial judge held that despite the applicant claiming to have spent colossal sums of money to acquire the suit property, he never showed up in court none of his accomplices have also appeared in court or giving evidence in court and that there was no way the applicant could be added without a formal application.

The respondents counsel contends that the learned trial judge rightly construed Order 1 rules 3 and 13 CPR where the applicant must either file a formal application or be added as a party or apply in a summary manner to be added and that this can only be done by a party who is present at the trial. In the circumstances, the applicant/appellant did not file a formal application nor did he appear in court at the hearing of Miscellaneous Cause No 11 Of 2011 in order to apply to be added summarily as a party. Instead he wrote to the registrar and the letter was not brought to the attention of the judge at the hearing.

Further, the respondents counsel submitted that the learned trial judge did not misapplied or misconstrued Order 1 rule 10 (2) as alleged but rightly applied it and construed Order 1 rules 3 and 13 of the CPR. Further counsel submitted that the learned trial judge rightly applied and construed section 177 of the RTA when he held that it is the law that upon recovery of land, estate or interest in any proceeding from the person registered as

proprietor thereof, it shall be lawful for the High Court to order the registrar of titles to substitute the registered proprietors with the names of the person who has acquired interest through any proceedings. Further he held that before this is done, the person who has obtained judgment against the registered proprietor has to move court to make an order under section 177 of the RTA and the court stated that this is called a consequential order since it is made consequent upon the recovery of land and he said that this is the only method prescribed by the RTA for execution of orders or decrees relating to registered land. He submitted that the learned trial judge rightly relied on **Andrea Lwanga versus Registrar of Titles [1980] HCB 24**. He contended that it is not in dispute that the registered proprietors/administrators of the estate of the late Yahaya Wamono after consenting to the sale of the suit property and after benefiting from the proceeds of the sale, challenge the sale and wanted it cancelled because the property had been sold cheaply according to them. They made this application in **Miscellaneous Application No 180 of 2009 arising from HCCS No 95 of 2005**. The application was dismissed the sale was validated.

Further, the respondent tried to obtain the certificate of title in vain and decided to move court under section 177 of the RTA against the registrar of titles to cancel the certificate of title for plot 21 Folio 17 volume 2668 Cathedral Ave. Registered in the names of the administrators of the estate and also to order the issuance of a substitute or special certificate of title to the applicant in respect of the suit property in the names of the respondent. The court granted an order for investing order and the application was not challenged by the Registrar of Titles.

The learned trial judge upon consideration of the evidence the submissions of counsel granted the orders sought on 18 October 2011 whereupon the special certificate of title was issued and the title was vested in the names of the respondent. In the premises the learned trial judge held that under section 177 of the RTA, the only respondent is the registrar of titles since it is the one mandated to counsel, issue, special certificates and substitute proprietors.

The respondents counsel also submitted that the learned trial judge relied on the decision of the **High Court in Uganda Blanket Manufacturers versus Chief Registrar of Titles in Miscellaneous Application No 55 of 1993** where the judge held that under section 185 of the RTA, the Chief Registrar of Titles should be made the respondent and it would be pointless to make a person from whom the land has been recovered the respondent. The respondent further asserts that the learned trial judge rightly held that it would be pointless to co-opt the applicant as the respondents because the issue in miscellaneous application No 11 of 2011 was not about ownership but an application by a person who had recovered land to compel the Chief Registrar of Titles to registered it in his names. In addition, the learned trial judge held that the orders sought to be reviewed arise from a different suit altogether and not HCCS No 95 of 2005 Miscellaneous Application No 180 of 2009 which concerned ownership of the suit property. In Miscellaneous Application No 180 of 2009, but found that the land recovered by Marsh Investments Ltd was from court and by a court order and by the time of purchase thereof, there was no encumbrance or caveat to stop the sale. Further it was held that the applicant had not proved proprietorship the registration, caveat or purchase of the suit property and it would be unnecessary to add him to Miscellaneous Application No 11 of 2011 since she could not be ordered to cancel or alter a land title and the trial judge rightly held that the applicant ought to have sought review of the suit which resulted into the consent judgment of Miscellaneous Application No 180 of 2009 where there was a challenge which was instituted against the purchase of the suit land by Marsh Investments Ltd.

The respondents counsel further submitted that the learned trial judge held that application No 11 of 2011 was for enforcement of the court order and not for determination of the property rights.

In the premises, the respondents counsel submitted that under section 177 of the RTA, only the registrar of titles and the respondent and according to the orders sought it was only the registrar of titles was required to implement the order. Further the respondents counsel submitted that the

learned trial judge rightly advised the appellant, to apply for review of orders in HCCS No 95 of 2005 of miscellaneous application No 180 of 2009 where the ownership issues of the suit property were considered. In the premises the respondents counsel submitted that the learned trial judge rightly advised the appellant to file a suit for determination of his rights if any, of ownership to the suit property. He invited the court to dismiss ground one of the appeal.

Grounds 2 and 6 of the appeal.

2. The learned trial judge erred in law and fact when he misconstrued Order 46 rule 1 and 3 and held that the appellant was not an aggrieved party and had no locus standi to bring an application for review of Miscellaneous Application No 0011 of 2011.

6. The learned trial judge erred in law and fact when he ignored the appellant's evidence on record and held that the appellant had not proved his interest in or ownership of the suit property.

The appellant's counsel submitted that the learned trial judge held that the appellant had on the balance of probabilities failed to prove any interest in the suit property and could not therefore be considered an aggrieved party by the orders made in Miscellaneous Application No 0011 of 2011. The appellants counsel submitted that the appellant was an aggrieved party because the learned trial judge made an order for a substitute duplicate certificate of title to the suit property ignoring the original title that the appellant had in his possession and which he had submitted to the court on the orders of the learned trial judge and which was still in custody of the court. Secondly the court issued investing order in respect of the suit property in favour of the respondent when there was a prior existing interest of the appellant in the same suit property.

In the premises, the appellant's counsel submitted that the appellant's proprietary interest in the suit property was established and therefore he was aggrieved by the order of the issuance of a special title and investing

order and therefore had locus standi to apply for review of the trial judge's prejudicial orders.

For purposes of illustration, the appellant's counsel submitted that there is evidence on record by which the appellant claims an interest in the suit property. Counsel relied on the definition in Black's Dictionary 9th Edition for the definition of "proprietary interest" as a property right. Secondly he also relied on Osborne's Law Dictionary, sixth edition which define it as a right recognised and protected by the law, respect of which is a duty and disregard of which is a wrong. He submitted that the appellant had an equitable interest. Further that the High Court has jurisdiction under section 14 (2) (b) (i) of the Judicature Act, to apply doctrines of equity.

The appellant's counsel submitted that from the meaning of the term "proprietary interest", the appellant's interest or right in the suit property is enforceable in law is an equitable interest. This is simply because it had not been registered under the RTA and only remained as the registrable interest in terms of section 1 (aa) of the Land Act, cap 227 where such proprietary right or interest is recognised by law. Further registrable interest was defined as an interest registrable under the RTA namely Mailo, freehold, leasehold, sublease and includes a certificate of customary tenure and a certificate of occupancy (See also **John Katarikawe v William Katwiremu (HCCS No 2 of 1973**) where Sekandi J said that a purchaser who had not yet registered his interest as having equitable rights which was good against all persons accepted bona fide purchaser for value without notice). He submitted that in the appellant's case, the appellant bought the suit property and took possession of the certificate of title and transfer instrument had been duly executed by the registered proprietors in his favour. Further this was confirmed by one of the registered proprietors. The instrument of transfer was executed by the registered proprietors who were the administrators of the estate of the deceased and they were fully cognizant of the fact that the property had been attached and sold in execution of the decree and orders in Chief Magistrate Civil Suit No 262 of 2008.

Months later, the same registered proprietors or administrators together with one Sarah Wamono a beneficiary of the estate, executed a consent judgment dated 27th May 2009 where they agreed to sell estate properties including the suit property. However, by the time of the consent Judgment, the suit property was no longer available for sale as part of the estate by virtue of the earlier sale of the property. This is because the administrators of the estate who are the registered proprietors had already executed a transfer in favour of the appellant. This consent Judgment was in civil suit No 95 of 2005 and is dated 29th of May 2009.

The appellant's counsel submitted that the scenario is that there are two purchasers of the same suit property involving the same registered proprietors in both cases but with the appellant having bought the suit property earlier and taken possession of the original duplicate certificate of title. He contended that such a situation is addressed by section 54 of the RTA which gives priority, where there are several instruments of transfer, to the purchaser, who purchased the suit property and who produces the duplicate certificate of title.

The appellant's counsel further submitted that the impugned special certificate of title and purported vesting order in favour of the respondent were handed down amid protests by the appellant. He submitted that it was the lawful and equitable position that both parties having purchased the suit property and holding no registered title, were regarded as equitable and competing owners of the suit property. However, the appellant had a superior right founded on the maxim of equity that where there are two equal equities, the first in time prevails. The appellant's counsel further submitted that the courts in Uganda are enjoined to protect and enforce rights in equity and in the instant case, equity favours the appellant.

In the premises, he invited the court to hold that the learned trial judge erred in holding that the appellant had not adduced evidence to prove any interest in the suit property and for the court to hold that the appellant has equitable and registrable interest in the suit property which is recognised and enforceable under the law.

The appellant's counsel submitted on whether the appellant had locus standi to apply for review in Miscellaneous Application No 0011 of 2011 and contended that the appellant had equitable interest in the suit property protected by law and the same was unassailable by any person in the position of the respondent. He submitted that for one to have locus standi in an application for review of any decree or order, he or she must fall within the terms and provisions of section 82 of the Civil Procedure Act and Order 46 rules 1 (a) and (b) of the CPR. He submitted that it is clear from the law that in an application for review, the applicant must be an "aggrieved person" and either have a new and important matter or evidence within the terms provided for in the law or prove a mistake or error on the face of the record or have sufficient reason to cause a review. He contended that such a person need not have been a party to the proceedings from which the decree or order sought to be reviewed arose.

Counsel relied on **Adonia Vs Mutekanga (1970) EA 429** where Spry JA considered Order 42 rule 1 now the equivalent of Order 46 rule 1 of the CPR for the proposition that the right to apply is not restricted to parties and is applicable to any person considering himself or herself aggrieved. Further in **Mohamad Alibhai versus W.E. Bukenya Mukasa and Another Civil Appeal No 56 of 1996**, Karokora JSC considered whether a non-party could seek review under section 82 of the CPA and cited with approval the decision in **Re: Nakivubo Chemists (U)** for the proposition that an aggrieved party includes any party who has been deprived of his property. He submitted that in the instant case, the learned trial judge, amid protests by the appellant, made orders for the issuance of a special certificate of title and a vesting order of the suit property in favour of the respondent which orders were fundamentally and greatly prejudicial to the appellant as it had the effect of extinguishing his equitable interest in the suit property which interest was acquired prior in time than the interests of the respondent.

He submitted that in the circumstances, the court should find that the appellant was an aggrieved party within the meaning of section 82 of the Civil Procedure Act and Order 46 rule 1 of the Civil Procedure Rules.

In reply, the respondents counsel addressed the court on ground 2 and ground 6 separately but I shall set out the submissions together one after the other in the order adopted by the appellant.

In reply to ground two of the appeal, the respondent's counsel submitted that the trial judge rightly construed Order 46 rule 1 and 3 of the CPR and held that the appellant was not an aggrieved party and had no locus standi to bring an application for review in Miscellaneous Application No 11 of 2011. The learned trial judge with reference to the provisions of Order 46 found that any person aggrieved by a decree or order can apply for review. An aggrieved person means a person who has suffered a legal grievance or against whom a decision has been pronounced which has wrongfully deprived him or her of something or wrongfully affected his or her title to something. Further after careful consideration of the application, the learned trial judge found that the appellant was substantially arguing the substantial evidence which could only be relevant if the review was accepted and that he ought to have constituted what is clear and should benefit from Order 46 of the CPR. Further counsel submitted that after setting out the grounds for the review of the order of the court the learned trial judge noted that the orders in Miscellaneous Cause No 11 of 2011 had their origin in HCCS No 95 of 2005 between Sarah Wamono and Atibu Wamono and Aida Wamono which had been concluded by a consent judgment. He submitted that the suit property belonged to the estate of the deceased and indeed the property was sold pursuant to a High Court order the first respondent. Thereafter two of the parties to the consent judgment disputed that the sale namely Atibu Wamono and Aida Wamono had filed an independent suit namely Miscellaneous Application No 180 of 2009 against Sarah Wamono. They lost the suit and the court decreed that the first respondent Messieurs Marsh Investments Ltd lawfully bought the suit property. The effort of the respondent to transfer the property into his names was futile because they could not access the title. They accordingly applied to court for the appropriate remedies.

Further the court noted that in order to execute the orders of the court, the court ordered the registrar of titles to issue a special certificate of title and substitute the entry on the title of the registered property's name with that of the respondent. In the proceedings the appellant was not a party and his interests were not hinted at even by the persons he allegedly bought the property from. The appellant emerged much later to have the orders reviewed.

The respondents counsel submitted that the learned trial judge held that the applicant was not an aggrieved party within the meaning of section 82 of the CPA and order 46 rules 1 and 2 of the CPR because he did not seek review of HCCS No 95 of 2005 of Miscellaneous Application No 180 of 2009 which give rise to all subsequent matters and that he had failed to satisfy the requirements for Miscellaneous Cause No 11 of 2011 as provided under section 82 of the CPA and Order 46 of the CPR. Further he submitted that the appellant was not entitled under section 177 of the RTA and failed to prove interest of the land on the balance of probabilities. He did not show that the tenant on the land KCB is his tenant. He further failed to show that he was in possession of the suit property.

In the premises, the appellant claims to have purchased the land or property on 2 April 2009 but he did not lodge any caveat showing that he had any interest nor did he register as the proprietor of the suit property. The appellant did not adduce any evidence of purchase of the property unlike Mash Investments Ltd that paid money according to the evidence on records. If he bought the property on 2 April 2009 from one Patrick Matovu, the transfer forms were signed for him on 2 April 2009, the very day he purchased the property yet he made part payment and the balance of Uganda shillings 140,000,000/= was to be paid upon surrender of the duplicate certificate of title and this balance was purportedly paid on 26th of December 2009. He submitted that it was also agreed in the purported agreement between Matovu Patrick and the appellant that the transfer was to be effected upon completion of payment of the purchase price. However, the transfer forms were signed on 2 April 2009 by Atibu Wamono and Aidah

Wamono in favour of the appellant. Further the appellant claims to have paid Uganda shillings 140,000,000/= to Matovu Patrick on 26th of December 2009.

Further the respondents counsel pointed out that both Atibu Wamono and Fulatu Wamono signed for the certificate of title on 12 October 2009 but the same was released by counsel Sekabanja on 10th of March 2011 and by December 2009 there was no certificate in the hands of either Atibu Wamono or Aidah Wamono (the administrators of the estate of the deceased Yahaya Wamono) or Patrick Matovu. The premises, the respondents counsel submitted that the appellant did not produce sufficient evidence which was new in nature to prove that he was an aggrieved party. Further that he did not prove payment for the property or that he was not in possession of the property. He was not a registered proprietor and he did not register any interest by way of caveat on the title. The respondent's counsel submitted that if at all the administrators of the estate were aware of an actual sale between Patrick Matovu and the appellant, why did they sign the consent judgment to sell the same property on 27th of May 2009 and why did they challenge the sale of Mash Investments on the basis that it had paid little money to purchase the property? Counsel submitted that it was important to note that by 21st of December 2010, the appellant was aware that the property had been sold and he wrote to the assistant registrar of the High Court requesting that no transfer be conducted without his consent.

The respondent contends that if the appellant had actually purchased the property and the transfer forms duly signed for him, why did he not register his interest as proprietor or lodge a caveat forbidding any transfer and why did he not challenge the sale which he was aware of in 2010 but waited for the respondents to obtain orders under section 177 of the RTA to challenge the same?

He submitted that the administrators of the estate challenged the sale and the appellant was aware but did nothing because they had connived.

The respondent contends that after losing, the appellant emerged showing that he had bought the property earlier. In the premises the respondent's counsel submitted that the learned trial judge was right to conclude that he was not an aggrieved party and had no locus standi to bring an application for review of the orders passed in Miscellaneous Cause No 11 of 2011 which was brought under section 177 of the RTA where only the respondent is the registrar of titles and not any other person. He prayed that this court dismisses the appeal on this ground.

As far as ground 6 of the appeal is concerned, the respondents counsel submitted that the appellant did not produce cogent and credible evidence to show that he had purchased the suit property. There is no evidence of payment, he had not registered his interest if any the suit land if at all be bought it on 2 April 2009.

Further, the respondents counsel submitted that there is no evidence of the appellant conducting a search to establish whether the property had encumbrances or not. By the time he purportedly bought the property, it had a caveat lodged by Nandudu Wamono Sarah. He did not produce any evidence to show that he was in possession of the property and did not show that he was collecting rent from the premises but instead the administrators were the ones collecting rent. Neither the appellant nor Patrick Matovu were introduced to Kenya Commercial Bank as the new landlord. The respondent contends that the appellant did not buy the property but was just playing games with the administrators to defeat the interest of the respondents. He submitted that the respondents carried out a search of the property before the purchase of it and established that on the encumbrance page, there was a sublease to Kenya Commercial Bank and also caveat lodged by Nandudu Wamono Sarah one of the beneficiaries of the deceased who undertook to remove the caveat upon purchase.

Further at the time of the purchase, the respondent contends that it had neither constructive nor express notice that the appellant had earlier bought the suit land because it was not reflected anywhere on the title nor was it collecting rent from KCB. He was a stranger to the applicant when

he emerged claiming ownership of the suit property. In fact, if at all the appellant had any interest in the property or paid his money to Patrick Matovu, he can recover it from him because the respondent is a bona fide purchaser for value. The mere waving of the original certificate of title produced in court in 2011 while the appellant was aware of the respondent's interest in 2010 but did nothing to challenge the same is not a sign of a serious person who purchased the property. The respondents counsel submitted that because of the nature of the evidence of the appellant, the learned trial judge advised him to file a fresh suit because such evidence could not be relevant in an application under section 177 of the RTA. He submitted that the learned trial judge was right to find that the applicant did not have any interest in the suit property to warrant a review of the order in Miscellaneous Cause No 11 of 2011.

Consideration of the appeal.

I have carefully considered the above submissions and find that submissions on grounds 1, 2 and 6 espouse points of law that can be handled by any of the other grounds namely grounds 3, 4, 5 and 8. In ground 1, the question is whether the learned trial judge misdirected himself or misconstrued Order 1 rule 10 (2) of the Civil Procedure Rules as well as section 177 of the Registration of Titles Act. Secondly in ground 2 of the appeal, the question of law is whether the learned trial judge misconstrued Order 46 rule 1 and 3 of the Civil Procedure Rules in terms of whether the appellant was an aggrieved party competent to bring the application for review of Miscellaneous Application No 011 of 2011. Ground 6 deals with the evidence whether the appellant proved his interest or ownership of the suit property and partially concerns the question of whether the appellant is an aggrieved party or a person considering himself aggrieved in terms of section 82 of the Civil Procedure Act. Further, I find that the chronology of the various decisions is important and needs to be set out first in terms of whether the orders sought to be reviewed arose out of execution proceedings when considering the applicability of section 177 of the Registration of Titles Act and certain salient provisions of the Civil

Procedure Act which deal with the execution where the property is immovable property and is sold by the court.

Before delving into the basis of the above grounds 1, 2 and 6 of the appeal, it is necessary to set out the genesis of this appeal. The record of appeal shows that the appellant had applied by notice of motion in Miscellaneous Application No 0174 of 2011 seeking to review the order of the High Court in Miscellaneous Cause No 0011 of 2011.

The facts of the appeal as appears from the decision of the learned trial judge are that the appellant was the applicant in the High Court in an application by notice of motion under Order 46 rule 1, 2, 3 and 8 of the Civil Procedure Rules, section 98 and 82 of the Civil Procedure Act and section 33 of the Judicature Act, against four respondents including the respondent in this appeal namely Messrs Mash Investments. The application was for review of the orders of the High Court in Miscellaneous Cause No 0011 of 2011 and for costs of the application.

The grounds of the application for review were that:

There is an error apparent on the face of the record to wit the court disregarded the applicant's request to be added as a party to Miscellaneous Cause No 011 of 2011 even when his proprietary rights to the property in issue were to be affected by the outcome of the application. Further, the applicant in Miscellaneous Cause No 0011 of 2011, having withdrawn its case against the first and second respondent whose title the applicant sought to cancel or substitute, the orders as granted could no longer obtain.

Secondly, that the applicant is in possession of new evidence which, after exercise of due diligence, could not be produced by him at the time when the orders in Miscellaneous Cause No 0011 of 2011 were made.

Thirdly the orders as granted in Miscellaneous Cause No 0011 of 2011 at Mbale High Court are highly prejudicial and have the effect of depriving the applicant of his proprietary rights in property comprised in volume No 2668

folio No 17 plot No 21 A situated at Cathedral Avenue, Mbale municipality without being heard.

Fourthly that the orders in Miscellaneous Cause No 0011 of 2011 were procured by fraudulent misrepresentation.

Fifthly that sufficient reason exists for review of the orders as granted in Miscellaneous Cause No 0011 of 2011.

Lastly that the application was brought without inordinate delay and ought to be granted to serve the ends of equity and justice.

The application is supported by the affidavit of the appellant which gives elaborate facts that can be considered at a later stage.

The learned trial judge having considered the rules governing review of the orders of the High Court found that the orders of the High Court in Miscellaneous Cause No 0011 of 2011 had their origin from HCCS No 95 of 2005 between Sarah Wamono and Atibu Wamono, Aidah Wamono and was concluded by consent of the parties and the beneficiaries of the estate of the late Yahaya Wamono to whom the suit property belonged. They agreed that plot 21 A Cathedral Avenue Mbale Municipality be sold and the proceeds distributed as stipulated in the consent judgment. The trial judge found that the property was sold pursuant to a court order to the first respondent, Messrs Mash Investments Ltd. Thereafter two of the parties to the consent namely Atibu Wamono and Aidah Wamono disputed the sale agreement and filed Miscellaneous Application No 180 of 2009 against Sarah Wamono. They lost the suit alleging that the first respondent illegally and wrongfully bought the suit property. The Court upheld the sale to the first respondent. The effort of the first respondent to transfer the property into his name failed because it could not access the title. Steps were taken by the applicant to caveat the title so that it does not change hands. In order to execute the orders of the court, the first respondent Mash Investments Ltd filed Miscellaneous Cause No 011 of 2011 for execution whereupon the court ordered the Registrar of Titles to issue it with a special certificate of title

and substitute the entry of the title of plot 21 A Cathedral Avenue Mbale with that of Mash Investments Ltd.

In the proceedings, the applicant was not a party and his interests were not hinted to even by the applicants who challenged the consent decree.

The court found that there was no satisfactory evidence to show that the applicant owned the suit property. Firstly, a copy of the certificate of title produced was not in the names of the applicant. It was in the names of Atibu Wamono and Aida Nagudi Wamono as administrators of the estate of the deceased in Administration Cause No 033 of 2003. Appellant alleged that he bought the suit property from one Matovu Patrick whom the court found to have remained anonymous because he had not filed any affidavit in support of the applicant's claim. The court found that Miscellaneous Application No 0011 of 2011 was an application by a person who obtained judgment for recovery of land by consequential orders to compel the Chief Registrar of Titles to transfer the ownership to him. The matter before court was not a contest for ownership but execution of a judgment. The orders sought to be reviewed arise from a different suit HCCS No 0095/2005 or Miscellaneous Application No 180 of 2009 where court found that Mash Investments bought from court by court order. By the time of purchase thereof there was no encumbrance or a caveat to stop the sale. He found that it was unnecessary to add the applicant to Miscellaneous Cause No 0011 of 2009 because court cannot be directed to cancel or alter a land title. He ought to have sought the review in the lead suit which resulted into the consent judgment or Miscellaneous Application No 180 of 2009 where there was a challenge to the purchase of the suit property by Mash Investments Ltd. He found that the application was aimed at a matter which was for enforcement and not proprietary rights. In any case, there was no formal application for the applicant during the proceedings sought to be reviewed.

The court ruled that if the appellant wanted to join the proceedings as a party, he ought to have filed a formal application. Instead he wrote a letter addressed to the registrar and he did not appear in person and therefore could not apply to the court in a summary manner to be joined.

Nevertheless, having considered the matter on the merits, he found that the applicant was not a suitable party to Miscellaneous Cause No 011 of 2011 because also he did not seek review of civil suit No 95 of 2005 or Miscellaneous Application No 180 of 2009.

The learned trial judge also held that the best course of action of the appellant was to file a fresh suit to claim his rights and not a review application. He found that the applicant inter alia had not satisfied the requirements for review of Miscellaneous Cause No 0011 of 2011 as provided for under section 82 of the Civil Procedure Act and Order 46 of the Civil Procedure Rules. In any case he was not entitled to be heard in terms of section 177 of the Registration of Titles Act. He dismissed the application with costs.

In the Miscellaneous Cause No 0011 of 2011 Messieurs Mash Investments Ltd brought an action against Wamono Atibu, Wamono Aida Nagudi and the Registrar of Titles for an order directing the registrar of titles to cancel the certificate of title of the suit property which was described therein. Secondly for an order directing the registrar of titles to issue a substituted/special certificate of title to the applicant in respect of the suit property as described. Further for an order directing the third respondent to substitute the names in the certificate of title in the names of the applicant Mash Investments Ltd. The application indicated that the property was in the names of the first and second respondents. The applicant further sought an order reversing the property into the names of the applicant and for costs of the application. The application was brought by notice of motion under section 98 of the Civil Procedure Act, section 177 of the RTA, sections 71 and section of the RTA.

It is indicated that the applicant purchased the plot No 21 A Cathedral Ave folio 17, volume 2668, Mbale municipality from court pursuant to a consent judgment dated 24th May 2009 and a decree dated 13 August 2009. Further it is indicated that the applicant paid the full purchase price of Uganda shillings 501,000,000/= to the first and second respondents and other beneficiaries of the estate of Yahaya Wamono (also referred to as the

deceased). When he purchased the property, the first and second respondents challenged the sale before the High Court and the last to Sarah Wamono. Thereafter the first and second respondents disappeared and refused to hand over the certificate of title to the applicant. It is asserted that the applicant has been denied rent from the premises and does not have a certificate of title. The affidavit in support is that there was a warrant of sale of the suit property dated 19 August 2009 which was attached wherein in accordance with the consent judgment dated 11 June 2009 plot No 21 A Cathedral Ave, Mbale municipality was sold to the highest bidder according to the order of the court. The proceeds were to be distributed to the beneficiaries of the deceased in accordance with the consent judgment. The warrant of sale of property in execution of the decree was also attached. The property was sold by court auctioneers Messieurs Hebert Kidiya t/a Sui Generis Auctioneers & Court Bailiffs the agreement thereof is dated 20 August 2009. Several payments were received by the bailiffs the respondent to this appeal paid for the suit property.

The ruling of the High Court in Miscellaneous Cause No 0011 of 2011 is dated 18 October 2011. The learned trial judge found that High Court Civil Suit No 95 of 2005 had been concluded and an order had been given to sell plot 21 A Cathedral Ave to the highest bidder. He also found that the purchaser of the suit property had failed to access the certificate of title and therefore the person who obtained Judgment against the registered proprietor is to move Court to make under section 177 of the RTA for consequential orders upon recovery of land. In the premises, the learned trial judge ordered the Registrar of Titles to issue a special certificate of title for the suit property and to delete the entry of Wamono Atibu and Wamono Aidah Nagudi and substituted therefore the names of Mash Investments Ltd. He further held that the property interest in Plot 21 A thereafter vested in the applicant (Messrs Mash Investments Ltd).

The above is the application and the orders that the applicant who is now the appellant sought to have reviewed. Further it should be noted that the consent Judgment arises from HCCS No 0095 of 2005 between Sarah

Wamono versus Atibu Wamono and Aidah Wamono. The consent Judgment is dated 11th June 2009 and lists several properties inclusive of commercial building on Plot 21 A Cathedral Avenue, Mbale municipality. It also lists the beneficiaries of the estate of the deceased and distributes the property accordingly. There are nine beneficiaries who were allotted percentages from 10.5% to 15% from the suit property or proceeds there from. The property was supposed to be disposed of within three months from the date of the consent judgment. It was further stipulated specifically that the plaintiff Sarah Wamono would execute a document removing the caveat on plot 21 A Cathedral Avenue to allow for the sale. Thereafter, the property was advertised for sale the though the pleadings in the above suit have not been included on the record.

The first point of law is that a sale pursuant to a court order is governed by the Civil Procedure Act and the Civil Procedure Rules which are clear as to the legal effect of a sale of immovable property by order of court in execution and the procedure to be followed by an aggrieved party.

Generally, a purchaser who buys pursuant to execution of a decree of court acquires good title. Section 49 of the Civil Procedure Act provides that:

> "Subject to the provisions of any law for the time being in force relating to the registration of titles to land, where immovable property is sold in execution of a decree such sale shall become absolute on the payment of the full purchase price to the court, or to the officer appointed by the court to conduct the sale"

Unless the property is acquired fraudulently the purchaser who buys from a court official under a warrant of attachment and sale of property acquires good title. Further section 50 of the Civil Procedure Act bars a suit against the purchaser on the ground that the property was sold on behalf of the plaintiff. It is not in dispute, whatever the merits of the appellant's case, that the purchaser, who is the respondent to this appeal, paid the full purchase price and in Miscellaneous Cause No. 0011 of 2011, the court ordered the property to be vested in the respondent pursuant to a decree in HCCS No. 95 of 2005.

Under Order 22 of the Civil Procedure Rules and rule 75 thereof, a court may order sale of immovable property as happened by decree of the High Court in Civil Suit No. 95 of 2005 in this case: Order 22 rule 75 of the CPR provides that:

> 75. Sale of immovable property.
>
> Sales of immovable property in execution of decrees may be ordered by any court.

Secondly, upon payment of the balance, if any of the sale price, the officer conducting the sale is required to execute a transfer instrument in favour of the purchaser and inform court of completion of the sale. Order 22 rule 78 (2) is applicable and provides inter alia that:

> 78. Time for payment in full of purchase money.
>
> (1) The balance, if any, of the purchase money payable under rule 77 of this Order, shall be paid by the purchaser to the officer or other person conducting the sale, or to the court within fifteen days of the date of the sale of the property; except that in calculating the amount to be so paid, the purchaser shall have the advantage of any setoff to which he or she may be entitled under rule 67(2) of this Order.
>
> (2) On receipt of the balance, if any, of the purchase money or, if the decree holder is the purchaser, on the receipt of any sum not set off under rule 67(2) of this Order, the officer or other person conducting the sale shall—
>
> (a) immediately execute any instrument of transfer required by any law for the time being in force;
>
> (b) immediately inform the court of the completion of the sale; and
>
> (c) subject to the provisions of any law for the time being in force, pay immediately to the court any money received after deducting the costs of the sale.

In this appeal, it is clear from the facts that the officer from Sui Generis Auctioneers conducting the sale apparently did not have the certificate of title and was unable to complete the lawful transaction by order of court of executing a transfer in favour of the respondent. The respondent instead moved under section 177 of the RTA for a vesting order. Before considering

section 177, it should be clear that it was unnecessary to proceed under section 177 of the RTA because it was sufficient to execute a transfer in favour of a purchaser of immovable property ordered to be sold by the court. The question of possession of the duplicate certificate of title is a corollary issue relating to the requirement to produce the duplicate to the registrar of Titles to comply with the order of court to cancel the names of the Administrators and register the purchaser. It has nothing to do with the title of the owner or the legality of the transfer and was at best a formal process to realise through execution process the decree of the High Court in HCCS No. 095 of 2005. As noted above, the sale of immovable property becomes absolute upon payment of the full purchase price under section 49 of the Civil Procedure Act which section I have reproduced above. In addition, section 50 of the Civil Procedure Act bars certain suits against a purchaser and it provides as follows:

> 50. Suit against purchaser not maintainable on the ground of purchase being on behalf of the plaintiff.
>
> (1) No suit shall be maintained against any person claiming title under a purchase of immovable property sold under a decree of execution on the ground that the purchase was made on behalf of the plaintiff or on behalf of someone through whom the plaintiff claims.
>
> (2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of the third-party against the real owner.

Clearly, a suit is not barred against the purchaser pursuant to a claim of a third party. However, whoever files a suit has to contend with section 49 which provides inter alia that:

> 49. Purchaser's title.
>
> Subject to any law relating to the registration of titles to land, where immovable property is sold in execution of a decree, the sale shall become absolute on the

payment of the full purchase price to the court, or to the officer appointed by the court to conduct the sale.

The question of whether the sale was absolute and the legal effect of that can be considered in a suit by a third party upon the claim that the property is not liable to the sale or for some other reason such as fraudulent misrepresentations et cetera. This is because the procedure is provided for in conducting sale by court and includes advertisement of the intended sale thereby notifying interested parties and allowing court to entertain objections or the claims of third parties before sale of the property. Where there is an objection, the law provides for the procedure under Order 22 of the Civil Procedure Rules which allows attachment of immovable property before sale under rule 51 thereof. Further, where there is an objection to attachment Order 22 rule 55 of the Civil Procedure Rules allows the court to investigate the objection and to make appropriate orders. Thereafter there shall be notification of the sale by public auction under Order 22 rule 63 of the CPR. Where the sale is concluded, the receipt of the balance of the purchase price makes the sale absolute subject to a challenge in a fresh suit. It follows that the appropriate procedure to challenge execution by order of court is by objector proceedings brought to object to the attachment of the immovable property failure for which where the property is sold, the filing of a fresh suit on any grounds mentioned in section 50 (2) of the Civil Procedure Act.

That said, it is appropriate to consider the provisions of the RTA relating to sale by order of court. Firstly, section 77 of the RTA provides that any certificate of title procured through fraud is void. It provides that:

> 77. Certificate void for fraud.
>
> Any certificate of title, entry, removal of incumbrance, or cancellation, in the Register Book, procured or made by fraud, shall be void as against all parties or privies to the fraud.

It deals with the procuration of registration as a proprietor through fraud and is not material because fraud can be established in a suit alleging fraud

and not in application for review of an order in execution of a decree of the court. Secondly, section 177 of the Registration of Titles Act, follows section 176 of the RTA which deals with the cancellation of title and the grounds for cancellation of title of the registered proprietor. It follows that section 177 of the RTA deals with the enforcement of orders in prior proceedings between the parties as may be relevant to the question of cancellation of title wherein the court may have ordered the cancellation of the certificate or entry in the register. Section 177 of the RTA provides that:

> 177. Powers of High Court to direct cancellation of certificate or entry in certain cases.
>
> Upon the recovery of any land, estate or interest by any proceeding from the person registered as proprietor thereof, the High Court may in any case in which the proceeding is not herein expressly barred, direct the registrar to cancel any certificate of title or instrument, or any entry or memorial in the Register Book relating to that land, estate or interest, and to substitute such certificate of title or entry as the circumstances of the case require; and the registrar shall give effect to that order.

Section 177 of the RTA is clear and unambiguous in that it deals with proceedings which occurred earlier where there is an order of recovery of land estate or interest. By use of the phrase "any proceedings", it includes proceedings in which a valid order is issued of cancellation of title. In the circumstances of this appeal, the administrators of the estate had been sued by Sarah Wamono leading to the sale of the suit property by decree of the High Court. The respondent bought in an auction and was not part of the proceedings and is therefore protected. The recovery was against the registered proprietors were the administrators of the estate of the deceased. It follows that registered proprietors had notice of the suit and in the absence of any application to set aside the consent Judgment, the order remained valid as against the registered proprietors against whom an order was made concerning cancellation of their names as trustees by virtue of letters of administrations. The orders had the effect of transferring the property and vesting it in the purchaser who is deemed to have bought it bona fide. In case of any fraud, the suit property can be recovered from the

parties who are privy to the fraud under section 77 of the Registration of Titles Act which makes parties who are privy to any proved fraud liable to be sued.

The claims of the appellant as rightly held by the learned trial judge could only have been pursued in the setting aside the decree which decreed sale of Plot 21A Cathedral Ave Mbale in HCCS No 95 of 2005, if there are any grounds proved such as the purchase was fraudulent or with not bona fide. On the face of the record, the property was registered in the names of the administrators of the estate who executed a consent judgment from which a decree was extracted leading to execution proceedings in Miscellaneous Cause No 0011 of 2011. The application for review intended to reopen facts leading to HCCS No 95 of 2005 by alleging that the administrators had already passed on title to another person, namely the appellant that the appellant bought from Patrick Matovu who had bought from court pursuant to other proceedings in a magistrate's court for recovery of money against the administrators and the sale of the suit property to recover sums.

Going to the grounds of the application for review, it was that the applicant was in possession of new evidence which after the exercise of due diligence could not be produced by him at the time when the orders in Miscellaneous Cause No 0011 of 2011 were made. Secondly that the orders were prejudicial to the appellant who had purchased the suit property.

Needless to state that execution proceedings are handled as execution proceedings. Section 49 of the Civil Procedure Act is very clear that the sale became absolute upon payment of the purchase price. The appellant was within his right as held by the learned trial judge to seek for review of the consent decree or to file a fresh suit. In the premises, it was unnecessary to consider the merits of the application for review inclusive of the fact that the appellant was not added as a party in a summary way. He ought to have made a formal application and in any case, since objection proceedings had not been taken against the sale of the suit property, the best option was for the appellant to file a fresh suit and establishes claim.

I agree with the learned trial judge that the sale of the suit property to the appellant could not be upset or cancelled in Miscellaneous Application No. 174 of 2011 where the appellant sought review of Miscellaneous Cause No. 011 of 2011. Miscellaneous Cause No. 011 of 2011 was an execution proceeding enforcing a decree in HCCS No. 095 of 2005. The decree could not be set aside by allowing a review of Miscellaneous Cause No. 0011 of 2011 which enforced the decree. In the absence of a challenge to the consent judgment in HCCS No. 095 of 2011, the decree remained valid and the sale to the respondent was absolute subject to impeachment in a fresh suit as I have held above.

In the premises, it was unnecessary to consider application for review on the merits and the learned trial judge reached the correct decision on a point of law. For that reason, and on the point of law, the appeal has no merit because it seeks to circumvent the law of execution and affect proceedings in other suits without proving fraud. The remedy of the appellant, if he has any grounds, was to file a fresh suit against any party inclusive of the purchaser of the suit property, provided there are grounds within the law to impeach the title of the purchaser or recover damages.

I find that the appeal has no merit and I would in the premises dismiss it with costs.

Dated at Kampala the 26th day of Sept 2022

Christopher Madrama

Justice of Appeal

THE REPUBLIC OF UGANDA

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Cheborion, Madrama and Mulyagonja, JJA)

CIVIL APPEAL NO. 93 OF 2014

RUZINDANA SENYONGA ANDREW:::::::::::::::::::::::::::::: APPELLANT

VERSUS

MASH INVESTMENTS LTD::::::::::::::::::::::::::::::::RESPONDENT

(Appeal from the Ruling and Orders of Musota J (as he then was) dated 6th December 2011 in Mbale High Court Miscellaneous Application No. 174 of 2011, arising from Miscellaneous Cause No. 011 of 2011)

JUDGMENT OF CHEBORION BARISHAKI JA,

I have had the benefit of reading in draft the judgment of my brother, Christopher Madrama, JA and I concur that the appeal has no merit and ought to be dismissed.

As Mulyagonja JA also agrees, the appeal is hereby dismissed with costs to the respondent.

Dated at Kampala this.....28th.....day of .....Sept.....2022

.....

Cheborion Barishaki

Justice of Appeal

THE REPUBLIC OF UGANDA,

IN THE COURT OF APPEAL OF UGANDA AT KAMPALA

(Coram: Cheborion, Madrama and Mulyagonja, JJA)

CIVIL APPEAL NO 93 OF 2014

RUZINDANA SENYONGA ANDREW :::::::::::::::::::::::::: APPELLANT

VERSUS

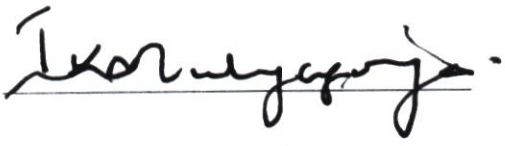
MASH INVESTMENTS LTD::RESPONDENT

(Appeal from the Ruling and Orders of Musota J (as he then was) dated 6th December 2011 in Mbale High Court Miscellaneous Application No. 174 of 2011, arising from Miscellaneous Cause No. 011 of 2011)

JUDGMENT OF IRENE MULYAGONJA, JA

I have had the benefit of reading in draft the judgment of my learned brother, Christopher Madrama, JA. I agree that the appeal ought to be dismissed for it had no merit, with costs to the respondent.

Dated at Kampala this 28th day of Sept 2022.



Irene Mulyagonja

JUSTICE OF APPEAL