

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA  
(COMMERCIAL DIVISION)**

**CIVIL SUIT NO 350 OF 2007**

**DFCU BANK .....PLAINTIFF**

**VERSUS**

**THE CHIEF REGISTRAR OF TITLES .....DEFENDANTS**

**BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN**

**JUDGMENT**

This case was stated by agreement of the parties for the opinion of the court under S. 174 of the Registration of Titles Act, Under 32 rules (1) (1) (c) 2, 3. 4 and 5 of the Civil Procedures, to obtain a decision on the following questions.

- 1) Whether the Legal mortgage dated 8.05.1996 executed in favor of the Plaintiff in respect of Block 244 Plot 1769 at Kisugu, should in the interests of justice be registered or reinstated on the Title.
- 2) Whether alternatively the caveat lodged on 8<sup>th</sup> May, 2001 as instrument No. 224814 should be registered on Block 244 Plot 1769 as an encumbrance to protect the Plaintiff's interests.
- 3) Whether costs of the suit should be provided for.

The facts of the case as gathered from the record are that: The predecessors in the Title of the Plaintiff Gold Trust Bank Ltd advanced a loan to Nagongera Millers and Farmers Ltd in the sum of shs. 80,000,000/- under the Investment Team Credit Fund (ITCRF) OF Bank of Uganda.

The Loan was secured by a mortgage over property comprised in Kyadondo Block 244, Plot 1769, Land at Kisugu. The land is registered in the names of Victor Paul Kobel, Managing Director and Shareholder in Nagongera Millers and Farmers Ltd. (The Company).

The said Victor Paul Kobel gave powers of Attorney to the Company and executed a guarantee in favor of Gold Trust Bank.

The Company defaulted in payment of the loan and the Plaintiff exercised its power of sale of the mortgaged property.

At the auction, one William Kasozi, an employee of Bank of Uganda was the successful bidder and a contract was signed. The mortgage encumbrance was removed from the Register/Title deed and transfers were executed and William Kasozi was registered as proprietor of the land. Victor Paul Kobel later contested the sale on the ground that it was conducted irregularly.

The trial judge then Justice Okumu Wengi set aside the sale on the ground that it was contrary to public policy. The judge directed the Registrar of Titles (Defendant) to cancel the transfer of the property under the sale and restore Paul Kobel's name on the Title.

Attempts to lodge a caveat on the title by the Plaintiff were put on hold by the Defendant.

Subsequently William Kasozi sued the Plaintiff for breach of Contract and judgment was given in his favor. The Plaintiff appealed to Court of Appeal, but the appeal was dismissed.

Thereafter, the parties agreed to state this case for the opinion of the court.

The matter proceeded exparte after the Defendant failed to appear on several occasions. – Affidavits of service on record.

The witness statement of the Plaintiff was tendered in and submissions were filed by Counsel for Plaintiff.

The issues will be dealt with in the order they were set out.

- Whether the Legal mortgage dated 08.05.1996 executed in favor of the Plaintiff in respect of Block 244 plot 1769 Kisugi should in the interest of justice be registered or reinstated on the Title.

The evidence that Victor Paul Kobel the registered owner of the suit property was at all material times a director, shareholder and signatory of the Company to which the loan was advanced, and that he personally guaranteed the loan is not disputed.

The Debtor Company and the Mr. Kobel are to date jointly and severally indebted to the Plaintiff, Bank in the sum of shs. 1,447,460,366/- on account of principal and accrued interest. – See statement of accounts\_ Annexure K.

When the Debtor Company failed to repay the loan and the Plaintiff sold the security to recover the monies, the sale was challenged by Victor Paul Kobel VIOC HC.CS 1325/99.

The sale was nullified on the grounds that the sale was contrary to public interest. The transfer of the property was cancelled and reverted back to Victor Paul Kobel – See Annextures E & F to the Suit.

However, the trial court never made any pronouncement on reinstatement of the mortgage thereby leaving the Plaintiff without any security for the money due and outstanding – See Annexure H.

The Plaintiff was directed by court in C.S 1326/2000 to refund the purchase price to and pay damages together with interest costs to the buyer Kasozi – See Annextures I and J respectively.

All demands made to the Debtor Company and the Guarantor to meet their obligations have proved futile to date.

In the meantime, the Guarantor/Mortgagor has made attempts to transfer the security into the names of third party in a bid to put it out of reach of the plaintiff. – See Annexure M.

While the Debtor Company and the Guarantor applied to be joined as Defendants to the suit and be heard, their application was abandoned and was dismissed for lack of prosecution. – See Annexure X.

All dealings in respect of the land have also been suspended by the Defendant until a decision is made in the matter.

The evidence of the Plaintiff in this case remains unchallenged.

The money due to the Plaintiff bank remains due and owing since the purchaser of the suit property William Kasozi did not pay off the Mortgage. When the sale and transfer were set aside his money was refunded.

In the circumstances, court finds that without reinstatement of the mortgage, the debtor and the guarantor stand to be unjustly enriched at the expense of the Plaintiff.

This finding is fortified by the decision in the case of **Cooperative Bank Ltd (in Liquidation) vs. Christopher Kisembo and Another HC.CS 398/2002** – where as in the present case, the sale to recover the moneys due was set aside and the Title reverted to the Defendants. Court held that, to dismiss the Plaintiff's case when the Defendants still owed money to the Plaintiffs would amount to breach of bank customer relationship and also amount to unjust enrichment.

Though in the present case, the Debtor Company and the guarantor are not part of these proceedings, as already pointed out herein; their application to be joined to the suit was dismissed for lack of prosecution. However, the undisputed fact is that they still owe money to the Plaintiff.

The mortgaged property is still subject to the mortgagee's interest that has not been discharged; and can be sold again in satisfaction of the mortgage debt in compliance with the law. Alternatively, since the guarantor's name was restored on the title deed, he can redeem the title by paying the outstanding amount to the Plaintiff. - **See Nyangire Karumu and 2 Others vs. DFCU Leasing Co. Ltd and 3 Others HCCS. 106, 105, AND 788 / 2007.**

In that case a sale and transfer was declared illegal null and void and the First Plaintiff's name was restored on title. Nevertheless, the court held that the Plaintiff still owed money and upon failure to redeem the property, it would be advertised and sold.

The case persuades court to maintain that “ the status of the suit property in respect of the mortgagor's interest vis a vis that of the mortgage after sale was set aside is that the property is still subject to the legal mortgage executed between the parties because it has never been discharged. Restoring the guarantor's name on the register only meant that he was being accorded an opportunity to redeem the property.

Court therefore directs that the mortgage deed under Instrument KLA 189903 dated 01.08.1997, be restored as an encumbrance on the title to the suit property.

The Registrar of Titles (Defendant) should cause to be re-registered on the title the mortgage executed between the parties unless the mortgagor and guarantor have redeemed the property.

The Plaintiff had sought an alternative remedy of having the caveat lodged on 08.05.01 as Instrument No. 224814 registered to protect the interests of the Plaintiff in the suit property.

Courts observation is that the Plaintiff having retained an equitable registrable interest in the suit land as a mortgage had a right to lodge a caveat directing the Registry of Titles not to record a change in ownership (that had been restored to the guarantor) or in any way dealing with the land that would affect the interest of the Plaintiff. – See S.139 RTA.

The Plaintiff had sought the lodging of a caveat as an interim remedy to protect its equitable registrable interest in the suit property.

The Registrar of Titles ought not to have refused to register the caveat. This finding is fortified by the case of **Kantilal Devraj Shah Vs Principal Registrar of Titles [1964] EA 303.**

Be that as it may, it is on record that the Registrar has strayed all dealings in the suit land until this court makes a decision. And court has directed that the mortgage be reinstated on the land. With the reinstatement of the mortgage, it will not be necessary to register the caveat.

The final issue to be determined regards costs. The Plaintiff prayed for costs to be applied for.

It is trite law that costs follow the event unless the court for good cause directs otherwise. See S.27 (1) C.P.A and the case of **Francis Butagira vs. Deborah Namukasa [1992 – 1993] HCB 98.**

In the present case, court orders the Plaintiff to bear its own costs for the reason that the circumstances leading to the present suit arose as a result of the Plaintiffs errors in concluding the first sale that led to the Title being restored to the guarantor.

Judgment is entered for the Plaintiff in the following terms:-

- The Registrar of Titles is directed to reinstate the mortgage instrument as an encumbrance on the title.
- The Registrar is to give notice to the mortgagor to deliver the guarantors' duplicate certificate of Title to enable reinstatement of the mortgage.

- The Registrar shall handover the owner's certificate of title to the Plaintiff as soon as the reinstatement has been effected.
- The Plaintiff shall bear its own costs.

**FLAVIA SENOGA ANGLIN**  
**JUDGE**  
**13.06.14**