THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

[COMMERCIAL DIVISION]

MISC. CAUSE No. 255 OF 2021

(Arising from Misc. Application No.717 of 2020)
(All arising from High Court Civil Suit No.718 of 2020)

ONETI VINCENT::APPLICANT

VERSUS

1. **COMMISSIONER LAND REGISTRATION**
2. **ATTORNEY GENERAL**
3. **OGWANG MOSES**
4. **BALENGERA DAN**
5. **MUSOKE HENRY**
6. **WASIRWA EMMY**
7. **EQUITY BANK (U) LTD::RESPONDENTS**

BEFORE: HON. JUSTICE DUNCAN GASWAGA

RULING

[1] This is a ruling on an application for review and setting aside the ruling and orders of the Registrar in **High Court Misc. Application No.717 of 2020** requiring the applicant to deposit 30% of the outstanding loan amount to the 7th respondent within 120 days from **16/12/2020**.

[2] The background of this application is that; on 14/09/2020 the applicant filed **H.C.C.S No. 718 of 2020** against the respondents/defendants seeking for declaratory orders, an order for

cancellation of Title Deeds, a permanent injunction, general, exemplary and aggravated damages, interest and costs of the suit. On the same day, the applicant filed an application for temporary injunction vide **M.A No. 717 of 2020** against the respondents herein seeking a temporary injunctive order to restrain the respondents from interfering with the applicant's quiet possession and Certificate of Title comprised in **Kyadondo Block 82 Plot 1832**(the suit land) and all sub-divisions arising therefrom pending the hearing and determination of **H.C.C.S No.718 of 2020**. It is alleged by the applicant that whereas he holds the Certificate of Title to the suit land, the 3rd, 4th, 5th and 6th respondents obtained forged certificates of title for the suit land and the 4th and 6th respondents mortgaged the forged titles to the 7th respondent (bank) who is threatening to evict him from the land. On **16/12/2020** the learned Registrar granted the applicant an order for temporary injunction **but with a condition that the applicant deposits 30% of the outstanding mortgage sums which is equivalent to Ugx 255,270,149/= within 120 days from the date of that order**, the reason for this application.

[3] It may be worth noting that three different cases regarding the same subject matter had been filed separately by some of the respondents in the land division of the High court and one case (H.C.C.S No.718 of 2020) filed in the Commercial Court. By consent of all the representatives of the parties and their respective Counsel it was agreed that all the cases in the land division be and where accordingly transferred to the Commercial Court and amalgamated with H.C.C.S No. 718 of 2020 since they all stemmed from the same subject matter. The current applicant, Oneti Vincent remained as the

only plaintiff while the rest of the parties became the defendants in the main suit and respondents in the current application which arises from the said main suit. This application was filed by the plaintiff who was moving this court for an order of review of the learned Registrar's decision which granted him a conditional remedy of temporary injunction.

[4] It is important to note that this application proceeded exparte against the 1st, 3rd and 5th respondents who had not appeared in court despite of service of court process on them while the 2nd and 4th respondents conceded to the application. It is only the 6th and 7th respondents (the borrower and the bank) that challenged the application.

[5] Three issues were framed for determination and these are;

i. Whether the applicant is an aggrieved person?

ii. Whether there is a mistake or error apparent on the face of the record?

iii. Whether there is any other sufficient reason that warrants review by the court

Issue 1: Whether the applicant is an aggrieved person?

[6] It was submitted for the applicant that it is the law that for any such application for review to succeed the following must be proved;

(a) that there was a mistake manifest or error apparent on the face of the record,

(b) that there is discovery of new and important evidence which after exercise of due diligence was not within the applicant's

knowledge or could not be produced by him or her at the time when the decree was passed or the order made,

(c) that any other sufficient reason exists.

See **FX Mukuube Vs UEB, HCMA No.98 of 2005**.

[7] That the applicant for review must be a person aggrieved by the decision of court. See **Busoga Growers Co-operative Union Ltd Vs Nsamba & Sons Ltd, HCMA No.125 of 2000**. That in the instant case, the applicant was not only a party to the temporary injunction application but also the beneficiary of the temporary injunction order granted by the court in **HCMA No.717 of 2018**. Furthermore, the applicant not being a party to the impugned mortgages, was dissatisfied by the condition for deposit of 30% of the outstanding loan sums to the 7th respondent within 120 days from the date of the order. That as such, the applicant has *locus standi* to lodge this application for review under Sections 82 and 98 CPA as well as Order 46 Rules 1, 2 and 8 CPR.

[8] Section 82 CPA reads thus

1. 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 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.

[9] Order 46 Rule 1 & 2 of the Civil Procedure Rules is to the effect that;

Application for review of judgment.

(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.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except where the ground of the appeal is common to the applicant and the appellant, or when, being respondent, he or she can present to the appellate court the case on which he or she applies for the review.

[10] In the case of Busoga Growers Co-operative Union Ltd vs Nsamba & Sons LTD, HC (Commercial Court) Misc. application No. 123 of 2000, it was stated that;

"For an application for review to succeed, the party applying for review must show that he/she suffered a legal grievance and that the decision pronounced against him/her by court has wrongfully deprived him/her of something or wrongfully affected his title to something."

[11] From the foregoing provisions, as stated, it is apparent that the applicant is not an aggrieved person within the meaning of Section 82 CPA and Order 46 rules 1 and 2. However, considering the orders sought by the applicant before this court, specifically in the main suit, it is safe to say that the orders made by the learned Registrar, compelling the applicant to pay 30% of the mortgage value indeed makes the applicant an aggrieved person. See **Busoga Growers** (supra).

Issue 2: Whether there is a mistake manifest or error apparent on the face of the record?

[12] It was submitted for the applicant that the learned Registrar's Order in **HCMA No. 717 of 2020** requiring the applicant to deposit 30% of the outstanding mortgage sum within 120 days was made in error and is a mistake apparent on the face of the record, subjectable and rectifiable by review under Sections 82 and 98 CPA as well as under Order 46 rules 1&2 of the CPR. That what amounts to an "error apparent on the face of the record" cannot be defined precisely or exhaustively, there being an element of the indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. See **Attorney General & Others Vs. Boniface Byanyima HCMA No. 1789 of 2000** where the court, citing **Levi Outa Vs Uganda Transport Company [1995] HCB 340**, held that; "the expression *"mistake or error apparent on the face of the record"* refers to an evident error which does not require extraneous matters 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.

[13] That in **MK Creditors Limited Vs Owara Patrick, HCMA No. 143 of 2015** court cited **Independent Medico Legal Unit Vs The Attorney General of the Republic of Kenya (Application No. 2 of 2012);** arising from **Appeal No.1 of 2011 (East African Court of Justice, Appellate Division)** in which the phrase 'error on the face of the record' was explained in the following terms;

i. as the expression 'error apparent on the face of the record' has not been definitively defined by statute, it must be determined by courts sparingly and with great caution.

ii. The 'error' apparent must be self-evident; not one that has to be detected by a process of reasoning.

iii. No error can be an error apparent where one has to 'travel beyond the record' to see the correctness of the judgment.

iv. It must be an error which strikes one by mere looking at the record, and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions.

v. a clear case of error apparent on the face of the record is made out where, without elaborate argument, one could point to the error and say, here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it.

vi. In summary it must be apparent, manifest and self-evident error which does not require elaborate discussion or argument to establish."

[14] That in the instant case it is clear from the applicant's pleadings in the main suit vide **H.C.C.S No.718 of 2020** as well as the temporary injunction application **M.A No. 717 of 2020** that the applicant's suit is premised on the fact that the applicant solely owns and holds the certificate of title for the suit land. Further, that the 3rd, 4th, 5th and 6th respondents fraudulently obtained certificates of title for the suit land and the 4th and 6th respondents subsequently mortgaged the forged titles to the 7th respondent. In addition, that the 7th respondent in connivance with the 3rd,4th,5th and 6th respondents failed to, inter alia exercise due diligence, conduct the mandatory Know Your Customer (KYC) procedures, carry out a search on the suit land albeit warnings from the 7th respondent's valuers and surveyors to do a property valuation of the suit property before disbursing the loan amounts and to carry out further due diligence considering the fact that the suit land is located in an area that is prone to land fraud. Also that whereas under Regulations 13(1),(2),(3),(4) and (5) of the Mortgage Regulations, a security deposit of the forced sale value of the mortgaged property or outstanding amount is payable where there is a sale which the applicant wants to adjourn or stop.

[15] However, in the instant case, there was no such sale. Neither was the applicant seeking to adjourn or stop the sale but rather to cancel the fraudulently obtained certificate of title which was illegally and through collusion among the 3rd, 4th, 5th, 6th and 7th respondents purportedly mortgaged to the 7th respondent. It is also important to note that the 7th respondent confirmed to court that the 6th respondent, on whose mortgage the 30% deposit was erroneously based, "has never

defaulted on the repayment of the loan facility and continues to pay his instalments as they fall due".

[16] The applicant therefore submitted that the requirement imposed by the learned Registrar on the applicant to deposit 30% of the outstanding mortgage amount of the 6th respondent to the 7th respondent is exceedingly prejudicial to the applicant, was manifestly harsh and without any need of extrinsic evidence, erroneous since there was neither a default by the alleged mortgagor nor a sale of the suit property sought to be adjourned or stopped by the applicant. He prayed that the learned Registrar's orders be reviewed and set aside to the extent of that error and that the temporary injunction be maintained without a condition for the applicant to deposit 30% of the outstanding mortgage sums.

[17] It was submitted for the 7th respondent that the applicant had relied on two (2) authorities which they proceeded to examine. In **KCB Bank (U) Ltd Vs Formula Feeds Limited and Anor M.A 663 of 2020**, it was held that; "in effect therefore, the principles governing applications for review can be summarized as follows:

> *i. Greater care, seriousness and restraint are needed in review applications to ensure that the court remains within the domain of the review function. (**Stephen B. Rwehuta & 9Ors Vs Tumwijukye Mpirirwe & 13 Ors HCMA No.152 of 2020**)*
>
> *ii. An erroneous view of evidence or of the law or an erroneous conclusion of the law is not a ground for review though it may be a good ground of appeal. (**MK Financiers Ltd Vs Shah & Co. Ltd, HCMA No. 1056 of 2014**)*

iii. *In order that an error may be a ground for review, it must be one apparent on the face of the record, i.e an evident error which does not require any extraneous matter to show its incorrectness. It must be an error so manifest and clear that no court would permit such an error to remain on the record. (**Edison Kanyabwera Vs Pastori Tumwebaze, SCCA No.6 of 2004**; and **AIR Commentaries: The Code of Civil Procedure by Manohar and Chitaley, Volume 5,1908**)*

iv. *An order cannot be reviewed on account of the judge having decided the matter on a foundation of incorrect procedure and or that his/her decision revealed a misapprehension of the law, or that he/she exercised his/her discretion wrongly in the case. (**Hoima District NGO Forum & 6 Others Vs Murungi Catherine & 5 Others HCMA No.13 of 2013**)*

v. *Per incuriam decisions ought to be appealed to a higher court since they are not manifest and clear to any court but rather are an apprehension of the law and evidence. (**Stephen Rwehuta & 9 Others Vs Tumwijukye Mpirirwe & 13 Others, HCMA No.152 of 2020**)*

vi. *Misconstruing a statute or other provision of the law cannot be aground for review. Non-compliance with the provisions relating to writing a judgment or ruling does not constitute a ground for review. (**Hoima District NGO Forum & 6 Others Vs Murungi Catherine & 5 Others, HCMA No.13 of 2013**; and **Eastern & Southern Africa Development Bank Vs African Green Fields Ltd & Others [2002 J 1 EA 377]**)*

vii. *An issue which has been hotly contested cannot be reviewed by a court that had adjudicated upon it. (**National***

Bank of Kenya Ltd Vs Njau, Court of Appeal of Kenya [1995-98] 2 EALR 5 (Case No.211/1996)

viii. *A decision of a judge, even when erroneous, that was reached through a process of ratiocination (a process of logical reasoning) calls for appeal and a decision of a higher forum and cannot amount to an error apparent on the face of the record. (**Andrew Mirembe Tumwebaze Vs Deoc Tibeingana, HCMA No.149 of 2020**).*

[18] The applicant in an attempt to define an error on the face of the record relied on **MK Creditors Limited Vs Owora Patrick** (supra) where it was held that;

> *"the court noted that a similar doctrine for review of court judgments which is well established and which is widely practiced in the slip rule; by which courts are empowered to correct inadvertent mistakes of computation, of arithmetic calculations, clerical errors of e.g spellings, proper names, addresses and others of similar genre, which invariably slip into courts judgments by the, 'slip of the pen'."*

[19] The applicant in the submissions relies on the following allegations to support this ground;

i. *fraud in paragraph 4.4 of the submissions*
ii. *failure to carry out the mandatory KYC in paragraph 4.5 of the submissions*
iii. *failure to carry out due diligence in paragraph 4.5 of the submissions*

iv. *that there was no sale in paragraph 4.7 of the submissions*

v. *that the 6th respondent always paid in paragraph 4.8 of the submissions.*

[20] The 7th respondent further submitted that the test as pointed out by the applicant's own authorities is that the error must be self-evident not one that has to be detected by a process of reasoning, however in this case the applicant's allegations in the application and the submissions for the review of the orders in **M.A No.255 of 2021**, are a "travel beyond the record". That an application for review on the ground of a mistake or error on the face of the record was likened to the slip rule in **MK Creditors Limited Vs Owora Patrick M.A No.143 of 2015** as highlighted above. That the applicant has submitted on the facts that were considered by the Learned Registrar when the Order for the temporary injunction was granted conditionally. The applicant seeks to treat the reasoning of the learned Registrar as a mistake or error on the face of the record. An error on the record was illustrated in **Kalokola Kaloli Vs Nduga Robert, M.A No.497 [2014] UGHCCD 75** where it was held that; *"Regarding whether there is a mistake or error apparent on the face of the record, examples of such situation could be where a suit proceeds ex-parte when there is no affidavit of service on record"*; see **Edison Kanyabwere Vs Pastori Tumwebaze SCCA 61/2014** or where the court enters a default judgment when there is no affidavit of service or where a summary judgment is entered under Order 36, when there is a pending application for leave to appear and defend on record.

[21] That in this application, the allegations of fraud, whether the 7th respondent carried out the requisite due diligence and KYC have procedures and whether the existence of the sale could have informed the ruling of the learned Registrar were argued by the parties before the learned Registrar and the Ruling was made. They are not the issues that can be overturned by an application for review for a mistake or error on the face of the record. In **Kalokola Kaloli Vs Nduga Robert** it was held that; *"misdirection by a judicial officer on a matter of law cannot be said to be an error apparent on the face of the record."* An error apparent on the face of the record was further defined in **Batuk K. Vyas Vs Surat Municipality AIR (1953) Bom 133** thus: *"No error can be said to be apparent on the face of the record if it is not manifest or self-evident and requires an examination or argument to establish it....."* That in this application, it would be more than erroneous for the decision of the learned Registrar to be set aside yet the allegations require an examination or an argument. In fact, they were already adjudicated upon. The 7th respondent prayed that this court finds that there was no error or mistake on the face of the record.

[22] The case of **Nyamogo & Nyamogo Advocates v. Kago [2001] 2 EA 173** defined an error apparent on the face record, thus:

> *"An error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case. There is a real distinction between a mere erroneous decision and an error apparent on the*

face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record would be made out. An error which has to be established by a long drawn process of reasoning or on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Again, if a view adopted by the court in the original record is a possible one, it cannot be an error apparent on the face of the record even though another view was also possible. Mere error or wrong view is certainly no ground for a review although it may be for an appeal."(Underlining for emphasis)

[23] I am in agreement with the respondents that the error referred to in applications for review is that which is manifest on the face of the record and doesn't require traveling further in the decision or record. However, the error referred to herein by the applicant is one that requires a clear scrutiny of the principles of law under the Mortgage Regulations as applied by the learned Registrar. In my view, a thorough look at the impugned learned Registrar's decision would show that it was an erroneous decision rather than an error apparent on the face of the record. It was an error that could be established by a long drawn process of reasoning, and as can be seen from the canvasing done by both Counsel before the learned Registrar there may conceivably be two opinions on this point. The alleged collusion and fraud by the respondents as well as the misrepresentation of Regulation 13 (supra) by the learned Registrar required a deeper analysis and arguments before a conclusion could be made.

[24] Certainly, this was not the type of error that could be said to be manifest or apparent on the face of the record. So, even if one were to hold that Regulation 13 (supra) had been erroneously applied to the facts at hand, this, in my view, would certainly not form a ground for review although it may be a strong ground for an appeal. For a decision that had been reached through a process of ratiocination (logical reasoning) like that of the learned Registrar herein can only call for an appeal and not a review. As such, the error presented by the applicant is not an error manifest on the face of the record. Resultantly, issue number two is answered in the negative.

Issue 3 : Whether there is any other sufficient reason that warrants review by the court

[25] It was submitted for the applicant that there is sufficient cause for which this application for review should be allowed. See **Kaloli Tabuta Vs Transroad (U) Ltd HCMA No.478 of 2019** court citing with approval the case of **Bulandina Nankya Vs Bulasio Konde (1979) HCB 239** where it was stated that *"the words 'any sufficient reason' mean as a reason sufficient on grounds at least analogous to those specified immediately previously."* The applicant reiterated his submissions in paragraph 4.4 to 4.9 above and maintained that the applicant, in the instant application, had adduced cogent evidence that justifies the grant of this application for sufficient cause. It is also pertinent to note that the applicant was neither a party to the mortgage in question nor privy to the alleged fraud perpetrated by the respondents. The respondent's actions, jointly and or severally, were high-handed, wanton and well calculated to deprive the applicant of

his legal and lawfully obtained interest in the suit land, conduct which ought not to be condoned by this court. That in fact the applicant acted diligently and timeously in not only lodging and pursuing **Civil Suit No. 718 of 2020** but also all the interlocutory applications thereunder against the respondents/defendants, so as to protect his proprietary interest in the suit land, as soon as he found out of the respondent's unlawful actions. See **Mutegeki John Vs Tropical Bank & 2 Others HCMA No.109 of 2016.**

[26] It was submitted for the respondents that the applicant has not disclosed a sufficient reason for this court to review the order in **M.A No. 717 of 2020.** The applicant has further submitted that he was not a party to the fraudulent transactions that led to the impugned mortgages. In addition, that since he has brought this application timeously, this Court should review the order to pay the **Ugx 255,270,149/=** by the applicant which was 30% of the outstanding amount as of **10/12/2020**. The applicant relied on **John Mutegeki Vs Tropical Bank & 2 Others, M.A No. 109 of 2016** wherein a temporary injunction was granted unconditionally since there were allegations of fraud and the applicant therein was not a party to the mortgage. The applicant wonders why the above application was granted unconditionally yet his with similar circumstances was granted conditionally. The 7th respondent stated that it would not delve into this matter since it was not the application at hand rather that the issue was whether the applicant has sufficient reason for this honourable court to review the ruling in **M.ANo.717 of 2020**.

[27] It was further stated by Counsel in response to the application following the holding in **Crown Converters Limited Vs Hans Anderson Paper and Anor, M.A No. 468 of 2015** that;

> *".....I do not agree with Mr. Munabi's submission that the expression "any other sufficient reason" gives a discretion to the court to consider generally the merits of an application for review. If such a contention were to prevail every decree or order could be reopened for review on any ground whatsoever as if the application were an appeal. I entertain no doubt that a review is not the same thing as, or even a substitute for, an appeal. As observed by the Privy Council there are definite limits within which review is permitted. A point which may be a good ground of appeal may not be a good ground for review."*

That in this application, the applicant is making an attempt at overturning the decision by way of review instead of an appeal against the order for the grant of a temporary injunction.

[28] The respondents also submitted that this court does not have the requisite jurisdiction to hear this application. That an application for review can either be brought under **Order 46 rule 1** or **Order 46 rule 2 CPR.** This application was brought under Order 46 rule 1. That under **Order 50 rule 1** this application ought to have been heard by a court presided over by a Registrar that passed the order. That for an application to be brought under **Order 46 rule 2**, it is only on a ground of sufficient reason that can be heard and it shall be heard by the same judge who passed the order. Where the application bears a

ground for a mistake or error apparent on the face of the record as rule 1 such as this application, it will not be handled by the same judge who passed it, in other words, this court, not being presided over by the Registrar does not have jurisdiction to dispose of this application. That nonetheless, should this court find itself embued with the requisite jurisdiction to hear this application, the 7th respondent prayed that it finds that; there is no error apparent on the face of the record when the Registrar exercised the court's discretion in granting a conditional order for the temporary injunction in **M.A No. 717 of 2020** and there is no sufficient reason for this Court to overturn the decision of the Registrar since the reasons forwarded by the applicant are for appeal and not for review.

[29] From the foregoing discourse, it is apparent that this application was wrongly brought before this court. The right forum before which it should have been brought was before the Registrar to hear the application for review having heard the application from which the same arose. However, what is now apparent is that the applicant ought to have brought a temporary injunction appeal.

[30] Be that as it may, I find it imperative to revisit this provision pursuant to which the learned Registrar issued the impugned order herein. **Regulation 13(1) of the Mortgage Regulations, 2012 is to the effect that;**

> ***13. Adjournment or stoppage of sale***
>
> ***1. The court may on the application of the mortgagor, spouse, agent of the mortgagor or any other interested party and for reasonable cause, adjourn a sale by public auction to a specified date and time upon payment of a security deposit of***

<u>30% of the forced sale value</u> of the mortgaged property or outstanding amount. (Underlining for emphasis)

[31] It is not in dispute that there is no public sale herein as envisaged under the above provision. Neither can it be said that the applicant is applying to stop or adjourn any sale of any mortgaged property to a specified or future date. What can clearly be made out of the applicant/ plaintiff's case as a whole is that he applied for a temporary injunction to preserve the suit land which was in his names but subsequently and surprisingly purported to have been mortgaged to the 7th respondent (bank) by the 4th and 6th respondents whom he claims had forged the certificates of title over the same land.

[32] **The <u>Constitution of the Republic of Uganda, 1995</u>** guarantees the rights of the Citizens of Uganda to own property either individually or in association with others. **<u>See Article 26 of the Constitution</u>.** This right ought to be protected by all means and it is important to ensure that owners of land (property) are protected and not deprived from the ownership of what rightfully belongs to them. This I believe was the spirit in which the applicant, Oneti Vincent, moved this court to stop any likely dispossession since he alleges that some respondents had already obtained forged certificates of title over his land without his knowledge and or consent. It would be detrimental to the ends of justice for an innocent and aggrieved person to be condemned to payment of such huge sums of money yet he alleges that his land was wrongfully acquired by the defendants and subsequently mortgaged. These allegations however are yet to be substantiated and decided on by this Court in **<u>Civil Suit No. 718 of 2020</u>**. Be that

as it may, this Court ought to give justice to those that run to it in distress and not vice versa.

[33] As seen from the pleadings, the applicant holds an undisputed Certificate of Title for the suit land which supersedes all the other mortgaged titles (for the 4th and 6th respondents) in time. Moreover, according to Section 59 of the Registration of Titles Act (RTA), *possession of a certificate of title is conclusive evidence of ownership.* The pleadings further show that **Oneti Vincent (applicant)** obtained his title in June 2011 and transferred to **Ogwang Moses (3rd respondent)** in March 2018 at a consideration of Ugx 13,000,000/=. Ogwang then sold the suit land to **Balengera Dan** in May 2018 at a consideration of Ugx 40,000,000/=. This was after a period of two months. Perhaps I should note that the said certificate of title was at this point encumbered by a mortgage from the 7th respondent, for a facility of Ugx 66,000,000/= in respect of a one **Paul Kalule**, secured by the 4th respondent Balengera Dan. The 4th respondent then sold the land to one **Musoke Henry (5th respondent)**, at a consideration of Ugx 45,000,000/= who then transferred the suit land to the current purported registered owner **Wasirwa Emmy** at a consideration of Ugx 90,000,000/=. **Respondent No. 6 Wasirwa Emmy** mortgaged the suit land to the 7th respondent (bank) for Ugx 750,000,000/= loan facility. Important to note is that the said Wasirwa has never defaulted on the payment of the loan facility which fact is confirmed by the bank. So, the bank faces no loss at all. The applicant however, insists that until recently on 13/08/2020 when, some unknown people came to evict his caretaker from the suit land and he discovered this alleged fraud, he

was unaware of all the above alleged transactions and transfers undertaken on the land.

[34] Caution should therefore be seriously taken while applying Regulation 13. For it should be emphasized that it is not in every application for a temporary injunction where money or a **mortgage** is involved that would necessarily require the imposition of a 30% security deposit of the value of the subject matter or of the outstanding sums by the applicant.

[35] The applicability of the provision is very clear. It applies to specific situations which are well defined and prescribed. Generally, it applies in a situation where an adjournment or stoppage of a sale by public auction is sought by an interested party and for reasonable cause. The grant of such application is left in the discretion of the court which may impose a security deposit of 30% of the forced sale value of the mortgaged property or outstanding amount. I think the 30% security deposit was prescribed, among other reasons, to deter un-serious or tricky applicants who would want to buy more time from applying delaying tactics by filing frivolous and vexatious applications and objections and generally frustrate the whole exercise of sale or foreclosure and or recovery.

[36] Back to the facts of this case, this is not only sad and unfortunate but is also illegal and unjust to ask a litigant who has come to court for a remedy to protect his property from being stolen to pay such or any amount of money before obtaining an order of temporary injunction moreso when the said property has been mortgaged to the same defendants without his knowledge and or consent. As if that's not already enough pain, inconvenience and injustice, the applicant is

then ordered to pay 30% of a mortgage sum obtained by one or some of the people he is suing. Remember, it is not the applicant who borrowed the money. He is not even privy to the mortgage with the bank in any way. If it were a criminal case, one would liken it to a complainant who reports to police the theft of their car and instead of the police arresting and detaining the suspect, in whose possession the car is, they place the complainant in police custody and charge him for stealing that very car! This is simply unacceptable. It is unjust and illegal. *"A court of law cannot sanction that which is illegal and an illegality once brought to the attention of court overrides all questions of pleading including any admission made thereon."* See the case of **Makula International Limited Vs His Eminence Cardinal Nsubuga & Anor [1982] UGSC 2.**

[37] In conclusion and in the interests of Justice therefore, the impugned order by the learned Registrar cannot be left to stand. It is hereby set aside and instead replaced with an order of unconditional temporary injunction which shall remain in force until the final determination of Civil Suit No. 718 of 2020 or until otherwise ordered. For purposes of clarity, that part of the learned Registrar's order for the payment of 30% of the mortgage sum (Ugx 255,270,149/=) is hereby quashed.

[38] The costs of this application shall remain in the main cause.

I so order

Dated, signed and Delivered at Kampala this 6th day of April 2022

Duncan Gaswaga

Judge