

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[COMMERCIAL DIVISION]
MISCELLANEOUS APPEAL NO. 0014 OF 2023
(ARISING FROM MISCELLANEOUS APPLICATION NO 0444 OF
2023)
ARISING FROM CIVIL SUIT NO. 295 OF 2023
LUCY KAGORO MURAMUZI=====APPELLANT/APPLICANT
VERSUS
CAIRO BANK UGANDA LTD=====RESPONDENT
Before Hon. Lady Justice Patricia Kahigi Asimwe
Judgment

Introduction

1. This matter was brought under Section 33 of the Judicature Act Cap 13, Sections 98 and 82 of the Civil Procedure Act 71, Order 50 Rule 8, Order 44 Rule 1 of the Civil Procedure Rules SI 71-1.
2. The Appellant/Applicant being dissatisfied with the orders of the Assistant Registrar made in HCMA No. 444 of 2023 seeks orders that:
 - a) Court sets aside and varies orders made in HCMA No. 0444 of 2023;
 - b) Court reviews and varies orders made in HCMA No.0444 of 202; and
 - c) costs be provided for by the Respondent.
3. The grounds of appeal stated in the Notice of Motion are as follows:
 - I. The Assistant Registrar erred in law and fact in granting a prayer of payment of 30% of the forced sale value of the

mortgaged property or the outstanding amount within 30 days from the date of determination of the application yet it was never prayed for by the Respondent

- II. The Assistant Registrar erred in law and fact in relying on the wrong provision of the law that does not apply to the Appellant to make an order of payment of 30% of the forced sale value of the mortgaged property or the outstanding amount within 30 days from date of determination of the Application.
 - III. The Assistant Registrar erred in law and fact by prematurely determining the main suit on merit by ordering the payment of the outstanding amount within 30 days from the date of determination of the application.
 - IV. The Assistant Registrar erred in law and fact in holding that the Appellant would be more inconvenienced and yet went ahead to make orders for payment of 30% of the forced sale value of the mortgaged property or the outstanding amount within 30 days from the date of determination of the application.
4. The Application/ Appeal was supported by the affidavit sworn by Lucy Kagoro Muramuzi the Appellant herein who stated as follows:
- a) She is the legal wife of the 2nd Respondent in MA No. 0444 of 2023 and they have been married since 10th June 1989.
 - b) The Assistant Registrar heard MA No. 0444 of 2023 and granted her a temporary injunction on condition she deposits 30% of the forced sale value of the mortgaged property or the outstanding amount within 30 days from the date of determination of the Application.
 - c) She is dissatisfied with part of the condition of paying 30% of the forced value of the mortgaged property or the outstanding amount within 30 days.

- d) The Assistant registrar erred in law and fact in granting a prayer of payment of 30% of the forced sale value of the mortgaged property or the outstanding amount within 30 days yet it was never prayed for.
- e) The Assistant Registrar erred in law and fact in relying on the wrong provision of law that does not apply to her to make an order of payment of 30% of the forced sale value of the mortgaged property or the outstanding amount within 30 days from date of determination of the Application.
- f) The Assistant Registrar erred in law & fact by prematurely determining the main suit on merit by ordering the payment of the outstanding amount within 30 days from the date of determination of the application.
- g) The Assistant Registrar erred in law and fact in holding that the Appellant would be more inconvenienced and yet went ahead to make orders for payment of 30% of the forced sale value of the mortgaged property or the outstanding amount within 30 days from the date of determination of the Application.
- h) The provision relied on by the Court is only applicable to the borrower because she never utilized any part of the borrowed money, ordering her to pay part of it would be condemning her without being heard.
- i) Court could have granted the order of 30% of forced sale value or the outstanding amount if it was pleaded in the Respondent's affidavit in reply.

5. The Respondent opposed the Appeal via an Affidavit in Reply sworn by Stella Ladona Wattanga, the Head of Legal & Company Secretary of the Respondent. She stated as follows: