

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

MISCELLANEOUS APPLICATION NO.2/93

YOKOBO NTATE MAYANJA:.....APPLICANT

VERSUS

SANYU LWANGA MUSOKE:.....RESPONDENT

BEFORE: THE HONOURABLE MR. JUSTICE I. MUKANZA

RULING

This is an application by notice of motion brought pursuant to section 149 (1) and 197 of the Registration of title Act and Order 48 Rules 1 of the Civil Procedure Rules. The applicant seeks an order for the respondent to show cause why the caveat she entered against the disputed property comprised in former mailo land Kibuga Block 10 plot No.869 at Bukesa/ Nakulabye should not be removed. The caveat is said to have been entered in the register of titles on 29th December 1989.

The background of this application is that the applicant was the Registered proprietor of the disputed property by virtue of instrument of transfer dated 16th November 1988 which transfer was registered on 2nd March 1989 as Instrument No.KLA 13372.

The applicant bought the said property from one Samwiri Galiwango here in after called the vendor who acquired the me as administrator the Estate of the late Mansa Nabaloga Galiwango (the vendor's mother and the previous registered proprietor there of) which acquisition was by of an instrument of transfer dated 25th November 1988 registered on 30th November 1988 as Instrument No.KLA 132653.

The fact further showed that the vendor was the real and natural father of the respondent and the only son of Rev. Galiwango and Mrs. Mansa Nabaloga Galiwango. The said Mansa Nabaloga

Galiwango now deceased made a will appointing Efulaimu Magala as one of the executors and the respondent who lives in Arusha in Tanzania and the grand daughter of late Mansa Galiwango was mentioned in the will as beneficiary and was bequeathed land at Namirembe comprised in plot 88. Then one Efulaimu Magala being one of the executors of Mansa Galiwango lodged a caveat on the said property on 14th/8/87. There was controversy however whether the caveat by Magala was removed or lapsed. The respondent meanwhile filed a civil suit against Galiwango Samwiri as a beneficiary mentioned in the will of the late Mansa seeking revocation of the letters of administration granted to Galiwango to the estate of the late Mansa and she sought the grant of probate of the will of the said Mansa. The civil suit was registered as H.C.C.S No. 309/87 and evidence shows that it is still pending in the High Court.

With that background I now proceed to consider the application. There was an affidavit deponed to by the applicant in support of the application and there was an affidavit in reply by the respondent and answer to the applicant.

The first ground for the application like the rest of the grounds were reflected in the affidavit of the applicant was that the applicant was still a bonafide purchaser for valuable consideration without any knowledge or notice of the respondents interest in the said property hence the applicant's certificate of title relating to the property in question was protected under the provisions of the Registration of Titles Act cap 205 and case law.

The second ground was that the respondents' caveat was registered on 29th December 1989 whereas the applicant's transfer which is prior in date was registered on 2nd March 1989 free from the respondent's or any other claim and or encumbrances.

And lastly that as bonafide purchaser the applicant was not and could not be made a party to any proceedings pending or intended to be filed before a court based on the alleged will the contents of which the applicant did not have any knowledge and was not supposed to know since a will is not a public document. I was addressed at length by the learned counsels and some authorities were cited in support of their submission. My role here is to find out whether there was sufficient evidence to warrant the removal of the caveat lodged on the suit property as provided by law see, RTA.

The applicant claims was a bonafide purchaser for value and as such protected by section 1889 of the Registration of Titles Act cap 205. Also provisions section 61 of the Registration of Titles Act is clear in that once a person is registered as proprietor of land his title is indefeasible except for fraud, see *Kristofa Simba .V. Tokana* 7 ULR quoted with approval in the case of *Katarikawe .V. William Katwimu (deceased) Maria Nyamihanda administrator and Item and Another*; while in *Sempambadi .V. Kiiza and 4 others (HCB)* Page 48 it was held that a bonafide purchaser of legal estate for value without notice has an absolute unqualified and unanswerable defence against the claims of any prior equitable owner. The onus of proof lies on the person setting it up where as section 184 (C) RTA provides:-

“ no action of ejectment or other action for the recovery of any land shall lie or be sustained against the person registered as proprietor under the provision of the Act except in any of the following cases. The case of a person deprived of land by fraud as against the person registered as proprietor such of land through fraud or against a person deriving other wise than as a transferee bonafide for value from or through a person so registered through fraud.”

The applicant in his evidence averred that before he bought the property and completed the transaction he searched the relative certificate of title for any encumbrances thereon and the property itself from the residents of the area for unregistered encumbrances affecting the property as required by law. There was evidence in reply from the respondent alleging fraud on the part of the applicant in that the said caveat was unlawfully removed as no notice was ever given to the caveator through their advocates Mulira & co. Advocates as directed in the Caveat which was in contravention of the provisions of the RTA. Therefore another caveat was lodged on the 29th day of December 1989 since HCCS No.309/1987 was still pending in court. There was also evidence that Samwiri Galiwango from whom the applicant derived his title to plot 869 fraudulently obtained a special certificate of title to plot 868 which was issued on 20/2/87 when the original certificate was still in existence and in the possession of the respondent. And that Samwiri Galiwango then transferred the property comprised therein to the applicant. The evidence from the respondent further showed that when the applicant realised that he had been cheated that was when he procured the purported rectification of the register referred to. Also the land claimed by the applicant and of which he purported to be a bonafide purchaser for valuable

consideration without notice belonged to plot 869 actually belonged to Alice Nava Magala whom the applicant and Sam Galiwango were trying to defraud. The evidence went on to show that the applicant could not claim to be a bonafide purchaser for value without notice as search in the register of titles prior to the sale the caveat of Efulaimu Magala was there depicting that there was a pending dispute over the property. And in addition the respondent averred that the applicant was informed by the residents of the area particularly the RCS officials that the land was the subject of dispute in court. But the applicant ignored their warning and went ahead to buy the land. The respondent further averred that the register of titles is a public document and so were the records of the court. The applicant should have made conclusive searches to establish that there was no dispute as to the ownership of the property.

It is clear from the evidence on this that notice of a caveator was sent to Efulaimu Magala through Ms. Mulira & Co. advocates informing him that the proprietor (the venter) of the registered property had applied for registration of the transfer which appeared to affect the estate or interest claimed by the said Efulaimu Magala. The notice urged the respondent's advocate to go to the High Court for an order delaying the registration by the Registrar of Titles.

He was given the statutory notice of 60 days as required by the RTA and the notice was dated 30th/11/88. Samwiri Galiwango was therefore justified in having the caveat lodged by Efulaimu Magala removed because M/S Mulira & Co. Advocates did not react to the notice. I do not agree with the learned counsel for the respondent that no such notice was given. The mode of delivery of such notice could have been by post or by hand. I do not think such delivery necessitated the issuance of receipts as claimed by Miss Mulyagonja. I do not see any fraudulent dealing on the part of the applicant. He bought the said property from Samwiri Galiwango and there was evidence that he made searches in the register of titles and there were no caveats or incumbrances at the time he made the purchase of the said property. It is inconceivable that the applicant should have made some searches in the High Court or any other place where the dispute arose in order to find out whether there was any dispute in connection with the said property in that the respondent had filed a civil suit No.309/87 against the venter (Samwiri Galiwango) her father. There was no such requirement in law since searches are carried out at the register of titles. And to strengthen my findings in this regard the applicant was not a party to HCCS No.309/87 which case was in my considered opinion between the respondent and the

vendor. Therefore he had no knowledge about the existence of the said suit. The applicant was also not bound to make enquiries from the RCs of the area regarding the property in question because there was no such requirement in the Resistance Committee Statute which establishes the RC system.

As to the allegation that the applicant obtained a special certificate of title for plot 868 issued on 20/2/87 when the original certificate was still in existence it is the firm view of this court that the dispute in the application was centered on the certificate of title as regards plot No.869. That was the property referred to throughout in the evidence. It defeats my imagination how the applicant could be responsible from a transaction carried on plot 868 of which he had no knowledge although there were references to it in the annexure to the affidavits sworn by the respondent and the applicant respectively about the accusation that the applicant and the vender combined fraudulently to deprive Nava Magala of the said property. I did not see the fraud. The applicant was not one of the parties in civil suit No 309/87, He was not a defendant and the said vendor was not a party in the instant application. In the end it is my firm view that the applicant was a bonafide purchaser for value without notice and was protected by S. 184 of the RTA. He made infact all necessary searches in the Register of titles and found no encumbrances and was as such protected by the RTA. I have not found any jota of evidence to suggest that there was any fraud perpetuated by the applicant when he acquired the certificate of title to the said property. In the premises I am satisfied that there was evidence to warrant the removal of the caveat lodged on the said property. It is therefore thereby ordered that the caveat lodged on property comprised on Block 10 plot No 869 at Bukasa/Nakulabye by Mr. Sanyu Lwanga Musoke (the respondent) be removed.

I Mukazna

JUDGE

2/04/1993