**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT JINJA**

**MISCELLANEOUS APPLICATION NO.229 OF 2009**

**[Arising from Civil Appeal No. 001 of 2007]**

1. **WATETA MOSES }**
2. **ROSELYN NAKIBUKA}**
3. **NAIRUBA ESTHER }::::::::::::::::::::::::::::::APPLICANTS**
4. **KEYA PETER }**
5. **MBEIZA ROSE }**

**VERSUS**

**HAJIRA NATOLI }:::::::::::::::::::::::::::: RESPONDENTS**

**BEFORE: HON. LADY JUSTICE IRENE MULYAGONJA KAKOOZA**

**RULING**

The applicants, who are the appellants in Civil Appeal No. 001 0f 2007, brought this application under the provisions of Order 48 rule 22 of the Civil Procedure Rules. They sought leave to adduce additional evidence in Civil Appeal No. 1 of 2007 in which they are the appellants and the costs of the application.

The application which was filed on the 13/06/2009, about 2 ½ years after the appeal was filed and was supported by the affidavit of Wateta Moses, the 1st applicant, deposed on the 13/08/2009. The respondent filed an affidavit in reply opposing the application which was deposed by Jalia Nairuba, one of the witnesses in the proceedings in the court below.

In his affidavit in support of the application, Wateta Moses averred that at the time of the trial he and his co-defendants were financially incapacitated and could not hire a lawyer to represent them. Further that attempts to cause the production of the true survey to show the boundaries that were contested was resisted by the official in the Office of Lands and

Surveys and the same officials later became witnesses for the respondent. He alleged that the officials in that office all along told them that the file with the documents for the survey was with one Mr. Batambuze. He further averred that after the departure of Mr. Batambuze from the office the applicants were able to access the file and get the relevant evidence. That the documents in the file showed that there were anomalies in the survey. That as a result, the applicants through their advocates caused a new survey to be conducted and the report was attached to the affidavit as Annexure "A." That the applicants had also found that the title issued to the respondent was inconsistent with the documents of the lease offer. Mr. Wateta further averred that other material evidence in the form of an agreement between one Bandese and Jalia Nairuba, which could not be got at the time of the trial had emerged and it showed that the signature of his father, Henry Wateta, on the said agreement was a forgery. That the said agreement had been submitted to a handwriting expert for his opinion but a copy thereof was attached to the affidavit as Annexure "C."

In reply, Jalia Nairuba affirmed that she deposed the affidavit in support as one who was conversant with the dispute between the applicants and the respondent. Further that she bought land from Henry Wateta in 1983 and another piece of land from Mary Bandese in 1991 but she transferred her interest in both pieces of land, now comprised in LRV 2235 Folio 15 and known as Plot 388 Block 3 Butembe, to the respondent herein. She further averred that she came to know of the applicants' appeal in this court when they filed Msc. Application No. 128 of 2007 in which they sought to have the execution that had been carried out in the suit revised and set aside by this court but that application was dismissed with costs. In her view that applicants wasted a lot of time in applications to repossess their property that was sold off pursuant to execution of orders of the District Land Tribunal instead of pursuing their appeal. Further that the relatives of the applicants had sued the respondent and others challenging the execution of the said orders in Civil Suit No. 19 of 2008 now pending hearing before the Magistrates Court at Jinja.

Jalia Nairuba further averred that she was a witness in the suit before the Land Tribunal and attended the proceedings but the applicants did not challenge the admission of the sale agreement between her and Henry Wateta (Exhibit P1) and the respondent's certificate of title (Exhibit PII) in evidence. That in her testimony before the Land Tribunal she stated that the

applicants had been sued for defacing/removing boundary marks which the applicants' father had planted for her when she bought the land. That it is the same land that was together with the piece that was bought from Mary Bandese in the suit; it was therefore not necessary to produce the sale agreement in respect of it in evidence. Jalia Nairuba further averred that the evidence of George William Bamutya Batambuze, the Senior Staff Surveyor, was never challenged by the applicants in the court below. That instead the applicants were trying to smuggle in documents that had been made long after the conclusion of the trial in the court below. Further that the applicants did not follow the correct procedure for carrying out their survey because it was done in the absence of the respondent. She also challenged the affidavit of Moses Wateta as being full of falsehoods and raising new matters that were not the subject of contention in the lower court.

At the hearing of the application, Mr. Godfrey Mafabi who represented the applicants objected to the affidavit in reply to the application because it was sworn by Jalia Nairuba on behalf of the respondent. He contended that it was therefore bad in law. He relied on the decision in the case of **Makerere University v. St. Mark & Others (1994)5 KLR 26** for the submission that where there is no authority to depose an affidavit on behalf of another the affidavit cannot stand. He prayed that the affidavit be disregarded by court. Mr. Mafabi also sought to cross-examine the deponent on the affidavit. Leave was granted to him to do so and he cross-examined her. In reply to the objection, Ms. Nassiwa submitted that the deponent needed no authority to depose the affidavit in reply because the matters that she deposed to were within her knowledge. Further that she deposed to some facts which she specified were true to her information from sources that she disclosed. That as a result, the affidavit complied with the provisions of Order 19 rule 3 of the CPR and the argument that she did not have the capacity to depose the affidavit could not be sustained.

I did not have the benefit of reviewing the authority that Mr. Mafabi cited in support of his submission that the affidavit in reply should be disregarded because the deponent had no authority to affirm to it. However, perusal of the affidavit confirmed that Jalia Nairuba stated in paragraph 2 thereof that she affirmed to the affidavit as the person who bought and had the land in dispute registered in the names of the respondent. That as such she was conversant with the dispute between the applicants and the respondent. In addition to that, in paragraphs

11 and 12 of the affidavit she stated that she testified in the proceedings in the court below and also attended the rest of them. She thus deposed that she recalled that the testimony of George William Bamutya was not challenged by the applicants. Jalia Nairuba also appeared to be conversant with other aspects of the dispute such as the applications that were filed by the applicants after judgment was pronounced by the Land Tribunal. I therefore find that she had the capacity to depose to the affidavit in her own capacity without any authorisation from the respondent. The objection is therefore hereby overruled.

In support of the application for leave to adduce additional evidence, Mr. Mafabi repeated the contents of the affidavit in support and then submitted that the principles that courts consider before admitting additional evidence on appeal were stated in the case of **Attorney General v. P. K. Semogerere & Others, Supreme Court Constitutional Appeal No. 2 of 2004**. In that case the court laid down the principles as follows:

i) **Discovery of new and important matters of evidence which, after the exercise of due diligence, was not within the knowledge of, or could not have been produced at the time of the suit or petition by, the party seeking to adduce the additional evidence;**
ii) **It must be evidence relevant to the issues;**
iii) **It must be evidence which is credible in the sense that it is capable of belief;**
iv) **The evidence must be such that, if given, it would probably have influence on the result of the case, although it need not be decisive;**
v) **The affidavit in support of an application to admit additional evidence should have attached to it, proof of the evidence sought to be given;**
vi) **The application to admit additional evidence must be brought without undue delay.**

With regard to the first principle, Mr. Mafabi submitted that the applicants had secured an agreement of sale which showed that the signature of Henry Wateta thereon was a forgery. Also that the applicants had produced a survey report which showed that contrary to the lease offer which showed that the land Nairuba bought was 0.2 hectares, the survey report from

Wemo Consulting Planners and Surveyors (Annexure A to the affidavit in support) showed that the owner of Plot 388 had encroached on an area measuring 0.017 hectares which belonged to the applicants. Mr. Mafabi was of the view that this new piece of evidence would be of great importance to court in determining whether the respondent trespassed on the applicants' land. Further that the applicants had proved that this evidence could not be obtained at the time of the trial because they failed to gain access to the file at the District Surveyor's Office. Mr. Mafabi further submitted that the proposed new evidence was relevant because it would enable the court to determine whether the appellants trespassed on the respondent's land or not. It would also prove that the respondent's title contains 0.017 hectares of the applicants' land which she encroached on. It was further submitted that the new evidence was credible and capable of belief because the survey report was prepared by a qualified and registered surveyor. Further that the evidence would influence the result of the case because the results of the survey were communicated to the Commissioner of Lands & Surveys in a letter dated 19/11/2009, Annexure A to the affidavit in support of the application. That this letter would show that the applicants did not encroach on the respondent's land. It was also submitted for the applicants that the additional evidence sought to be adduced had been attached to the application as required. Finally, that the application had been brought without delay because M/s Muwema & Mugerwa, Advocates being the applicant's third lawyers had tried to make an oral application to adduce additional evidence at the most opportune time (i.e. on the 31/03/2009 when the appeal was called for on hearing) but they were ordered to file a formal application.

Mr. Mafabi further challenged the respondent's production of evidence that the matter now before court had been completed and execution concluded. He submitted that the annexure to the affidavit in reply, i.e. the plaint and WSD in C/S No. 19 of 2008 in the Magistrates Court, between the applicants and others, and the respondent and others challenging the execution which ensued fter judgment in the current suit were irrelevant to the determination of this application.

In reply, Ms. Nassiwa for the respondent submitted that the issue whether the applicants' land was included in the respondent's certificate of title was never canvassed before the Land Tribunal; neither was the issue of the size of land in dispute. With regard to the guidelines

laid down in the case of **A.G. v. P. K. Semogerere (supra)**, Ms. Nassiwa submitted that the applicants were trying to re-open the case by adducing additional evidence that could have been accessed while the matter was before the lower court. She challenged the applicants for failing to demand that Mr. Bamutya who appeared as PW2 in the lower court produce the documents that the applicants required when he appeared with the relevant file as a witness before the Land Tribunal. Further that the applicants had failed or neglected to cross-examine him on his evidence. That in addition to that, the evidence of Mr. Bamutya clearly explained the difference between the size of the land in the certificate of title and that in the agreement of sale. Ms. Nassiwa thus concluded that the applicants had not proved the first guideline in the **Semogerere** case.

With regard to the 2nd guideline in that case Ms. Nassiwa submitted that the evidence that the applicants sought to adduce was relevant and had been adduced before the Land Tribunal, except the agreement of sale between Salaamu Ngobi and Mary Bandese. With regard to the survey report sought to be adduced by the applicants, she submitted that the same had been fabricated. While the instruction to survey was issued on the 11/11/08, the report of the survey was also dated the same date. That in addition, the survey report noted that there were mark stones that had been removed which supported the respondent's case in the court below because it was a result of defacing or removing the mark stones complained of by the respondent. Ms. Nassiwa further submitted that the plaint and WSD annexed to the affidavit in reply were relevant to disposal of this application because they showed that the applicants had abandoned this appeal which was filed on 4/01/2007 and preferred to file other suits to repossess their land. That as a result, inordinate delay in bringing this application had been proved. She further submitted that the application to adduce additional evidence in the appeal when execution of the decree appealed against had already been completed would not help the applicants. She prayed that the application be disallowed.

In rejoinder, Mr. Mafabi submitted that the **Semogerere** case did not require a court considering an application to adduce additional evidence to go back to the issues that were canvassed in the lower court. With regard to the pleadings attached to the affidavit in reply he submitted that they served to show that the execution in the suit was illegal. Also that the fact that the date of the instruction to survey was the same as that on the report about the survey

did not make the report questionable but only demonstrated that the survey was done as an urgent matter.

For some unexplained reason, the applicants brought this application under Order 48 rule 22 of the CPR and s.98 of the CPA. I presume that the applicant's counsel fell into the trap of citing the old CPR before the amendments that were incorporated in the 2007 edition of the rules. The correct rules according to the 2007 edition of the CPR would have been Order 43 rules 22 and 23. I shall now consider whether the applicant satisfied the six principles that were listed in the **Semogerere** case (supra) which have long been accepted by the courts as the criteria for determining applications for leave to adduce additional evidence in relation to the instant application.

Regarding whether the evidence that the applicants seek to adduce is such that they could not have obtained it with reasonable diligence, I perused the record of proceedings in the Land Tribunal. In his affidavit in support of the application, the 1st applicant alleged that the office of the District Land Surveyor denied them access to some of the documents that they now seek to adduce in evidence. The 1st applicant alleged that the file was being held by George William Bamutya, the principle land surveyor. That it was only after he left that office that they were able to access the documents. However, the said Bamutya testified before the Land Tribunal as PW2. He testified in detail about the procedure that his office ordinarily goes through in a survey and what is done before a certificate of title is issued in respect of the surveyed land. He detailed all the steps that were taken before the respondent's land got it title, including that neighbours were present when the Land Inspection Committee went to inspect the land applied for. The neighbours who signed the inspection report included Henry Wateta who sold the land to Jalia Nairuba. PW2 also testified that the land was surveyed without any incident. When it came to cross-examination, his testimony was barely challenged by the applicants. None of the applicants questioned him about the size of the land which he named as 0.101 hectares instead of the 0.2 hectares that had been applied for. Neither did they request him to produce any of the documents that they claim they wanted to adduce in evidence in their own case. Instead the cross-examination confirmed that the land was inspected in the presence of neighbours and LCs in order to establish the boundaries of the respondent's land. Further that the boundaries were established by the applicant for land

(i.e. Jalia Nairuba), and her neighbours. This would of course include Henry Wateta who had sold her the land.

In addition to Bamutya's testimony, Werikhe James, the surveyor who officiated at the re-opening of the boundaries when the dispute arose testified as PW3. In spite of his testimony that he found when three of the mark stones demarcating the respondent's land had been removed, and the 1st applicant had obtained a letter from the LCII that the mark stones should not be replaced, the applicants hardly cross-examined him. PW3 also testified that he tried to replace the mark stones but only succeeded in replacing two of them because the applicants were hostile and prevented him from replacing the third mark stone but he was not challenged on this. Only the 2nd applicant cross-examined him and in reply he confirmed that the measurements he relied on were on the site plan that was in his possession. The applicants did not require him to produce it. Instead, in their submissions to the Land Tribunal, the applicants included a map drawn by Moses Wateta to show the area that they alleged the respondent had encroached upon. The Land Tribunal did not consider it because it was not part of the evidence adduced by the applicants at the trial.

I therefore agree with Ms. Nassiwa that the applicants have not proved that they discovered new and important matters of evidence which, after the exercise of due diligence, was not within their knowledge, or could not have been produced at the time that the suit was heard by the Land Tribunal. The proceedings show that the applicants had the opportunity to insist on the production of the evidence that they now seek to adduce. They could have drawn it to the members of the Land Tribunal when Bamutya and Werikhe appeared to testify. They could also have had an independent survey done as they did later. It was their prerogative to apply for an adjournment and delay the proceedings to have this done but they did not. This shows that the additional evidence sought to be adduced was an afterthought and not something that the applicants could not been achieved at the time of the trial. The applicants have therefore failed to prove the first consideration laid down in the **Semogerere** case.

Ms. Nassiwa's submission that the applicants are trying to introduce new matters that were not canvassed in the lower court is worth considering at this point. The respondent's claim before the Land Tribunal was for trespass on her land. She sought a declaration that she is the

rightful owner of the land registered under LRV 2235 Folio 15 and known as Block … Plot 15 situated in Katwe Zone at Bugembe. She also sought an injunction to restrain the applicants from further trespassing and converting the land, and general damages for trespass and conversion. At the trial the Land Tribunal framed three issues:

i) Whether the claimant had proved her claim;
ii) Whether or not the respondents had a genuine and legal claim over the suit land; and
iii) Whether the claimant was entitled to the remedies claimed.

The Land Tribunal found for the claimant (now respondent) on the first issue and declared that she had proved her claim and was therefore the rightful owner of all the land that is described in the certificate of title. On the second issue, the Land Tribunal found that the applicants herein had encroached on the respondent's land and they had no legal claim to the disputed piece of land whatsoever. They thus awarded the respondent herein the remedies that she claimed.

The suit was conducted in such a manner that the main issues to be determined where whether the respondent had an interest in the land in the certificate of title. It also had to be determined where the boundaries of the land where and this was established by the evidence of the surveyor, Nairuba (PW1), Werikhe the surveyor who opened the boundaries and the neighbours who testified. The Land Tribunal found that when they went to the locus in quo the applicants failed to prove that the respondent herein had encroached on their land as they alleged in their defence. The Land Tribunal did not frame an issue as to what the size of the land in the title was, although the applicants focused on it in their written submissions. The matter was finally resolved on the basis of s.56 of the Registration of Titles Act that because the applicants did not prove fraud the respondent's certificate of title could not be impeached and it was conclusive evidence of title.

I considered the applicants' WSD filed in the Land Tribunal in which they claimed in paragraph 10 thereof that there was "forgery and false information," which I assume related to obtaining the certificate of title. However, no evidence was led on the forgery and false information pleaded. In fact, the evidence that was adduced by Moses Wateta (DW1/the 1st

applicant herein) about Nairuba's alleged encroachment on the applicants' land related to a period after the mark stones around the titled land had been placed; while he testified that the mark stones were placed in the respondent's land in 1987, he stated that Nairuba encroached on their land and removed *birowa* in 1992 when the applicants had gone to Kaliro to bury their grandfather. I find that the *birowa* could not have been in issue because what was being considered by the Land Tribunal was not customary land but titled land which had mark stones and a map to guide the owner if any dispute arose. Once a certificate of title was issued in respect of the land, the *birowa* stopped being significant because the boundaries would now be identified by mark stones. I also find that by trying to raise the issue of fraud or forgery at this point the applicants are raising a new issue that was not considered in the court below. Besides, the alleged forgery or fraud refers to the agreement between Mary Bandese and Musa Salaamu Ngobi, not the agreement between Jalia Nairuba and Henry Wateta. Definitely that agreement could not have been in issue in the lower court and cannot form a new issue for the determination of this court.

The legal position on raising new issues on appeal is settled. It was discussed by the Supreme Court in the case of **Christine Bitarabeho v. Edward Kakonge, Civil Appeal No. 4 of 2000** (unreported) where Oder, JSC (RIP) cited with approval the decision of the House of Lords in ***North Staffordshire Railway Co. v. Edge (1920) A.C.254 at 270*** *as follows:*

> *"Upon the question as to whether appellants should be permitted to raise here a contention not raised in the court of first instance I find myself most closely in accordance with the views just stated by Lord Atkinson. Such a matter is not to be determined by mere consideration of the convenience of this House, but by considering whether it is possible to be assured that full justice can be done to the parties by permitting new points of controversy to be discussed. If there be further matters of fact that could possibly and properly influence the judgment to be formed, and one party has omitted to take steps to place such matters before the court because the defined issues did not render it material, leave to raise a new issue dependent on such facts at a late stage ought to be refused, and this is settled practice."*

Oder, JSC, then ruled as follows:

> *"A new point raised for the first time in a court of last resort ought not to be entertained unless the court is satisfied that the evidence upon which they are asked to decide establishes beyond doubt that the facts, if fully investigated, would have supported the new plea."*

*I am of course mindful of the fact that this is not the court of last resort but it is a court of appeal in this matter and it is bound by the decision above. I am also mindful of the legal position that fraud is an illegality which a court cannot sanction; illegality once brought to the attention of court overrides all questions of pleading, including any admissions thereon (**Makula International Ltd. v. His Eminence Cardinal Nsubuga [1982] HCB, 11**. However, for a certificate of title to be impeached for fraud, it must have occurred before or in the process of acquisition of the title or registration of any other interest and with knowledge of the registered proprietor (sections 77 and 176 RTA and **John Katarikawe v. William Katwiremu [1977] HCB 210**). But that is not the applicants' case in this application. For that reason also, Annexure "C" to Moses Wateta's affidavit cannot be admitted as additional evidence.*

As to whether the proposed additional evidence is credible in the sense that it is capable of belief, I have carefully considered Annexure "A" to the affidavit in support and Wemo Consultant Planners and Surveyors report dated 11/11/2008. In its conclusion the report states that *"Mark-stones of Plot 388 were removed and ground boundaries relocated in favour of Plot 388 justifying the encroachment on the neighbourhood land."* The report seems to suggest that it is the owner of Plot 388, i.e. either Jalia Nairuba or Hajira Natooli or their agents, who removed the mark stones. Having perused the record of the lower court the evidence is that it was not the respondent or her agents that removed the mark stones the removal of the mark stones was the cause of their filing the suit in the land tribunal. They wanted the mark stones replaced but the applicants did not want that done and heaped a pile of stones on the place where one of them was supposed to be replaced. The applicants' private surveyor cannot now turn round and report that the respondent herein removed the mark stones so as to extend the boundaries of her plot. This part of the proposed evidence is

simply incredible and cannot be believed within the context of the rest of the evidence on record. Regarding the alleged forgery, I am unable to decide whether the handwriting expert's report on it is credible because it was not filed with the application. As a result, the 2nd principle that this court was enjoined to consider in applications of this nature also fails.

With regard to whether the proposed additional evidence is such that, if given, it would probably have influence on the result of the case, I have already ruled that the agreement between Salaamu Ngobi and Mary Bandese would introduce a new issue not canvassed in the court below. It has also not been proved to be relevant to the decision of matters relating to the boundaries between the applicants' and the respondent's land. For those reasons, I find that it would not influence the decision on appeal of issues that were canvassed by the land tribunal.

Regarding Annexure "A," and in particular the surveyor's report, I have already ruled that it is incredible given the body of evidence already on record. It is therefore most unlikely that it would influence the decision of this court in the appeal. The applicants have therefore also failed to satisfy the third principle required to have their application granted.
And while it is required that the affidavit in support of an application to admit additional evidence should have proof of the evidence sought to be given attached to it, Moses Wateta's affidavit only had the incredible surveyor's report attached to it. The handwriting expert's report was no where in evidence. The applicants have therefore failed to satisfy the fourth consideration as well.

As to whether this application was brought without undue delay, the appeal was filed on 4/01/2007. For unknown reasons it failed to take off in 2007. For the whole of 2008 the appeal lay in limbo, except that on 23/04/2008, M/s Muwema & Mugerwa Advocates filed a notice of change of advocates in this court. For the rest of 2008 M/s Muwema & Mugerwa Advocates and the applicants/appellants did nothing. They then fixed the matter for hearing on 31/03/2009 when they made an oral application for leave to adduce additional evidence. I then ordered that they file this application which they did four months later on 13/08/2009. But in the meantime (i.e. between 4/01/2007 and 13/03/2009, a lot of water had passed under

the bridge. This could be deduced from the numerous applications that were filed between the date of judgment and this application.

The record from the Land Tribunal shows that judgment was delivered on 8/11/2006 and a decree was extracted on the same day. The applicants did not obtain an order for stay of execution of the decree after judgment was pronounced but they had filed Civil Appeal No. 1 of 2007 in this court on 4/01/2007. But before that, on 8/12/2006 the respondent/judgment debtor had applied for execution of the decree and a warrant had on the 19/12/2006 been issued to Kibeedi Samuel (Kibstar General Auctioneers) to put the respondent in possession of the disputed property. The record in the court below shows that the warrant was executed on 19/01/2007 by removing portions of two mud houses from the land. A return of the warrant was made to court on 22/01/2007. On 21/03/2007 the applicants filed Miscellaneous Application No. 40 in this court for an order for stay of execution of the order for vacant possession as well as Misc. Application No. 41 for an interim order pending the hearing of Misc. Application 40 of 2007. The record for Msc. Application No. 41 of 2007 shows that on 15/05/2007 the application for an interim order to stay execution was dismissed with costs because the Deputy Registrar found that it had no merit.

On 12/07/2007 a warrant of attachment and sale was issued to Batabaire J. W. Nkoma of Kibsar General Auctioneers to sale the applicants' land at Katwe Zone, Bugembe in order to recover the costs of the suit due to the respondent. The property was attached and advertised for sale in Bukedde newspaper of 23/07/2007. On 24/08/2007 the land and house on it were sold to one Juma Jalali Kaziba for shs 5.7 million. On 13/09/2007, the purchaser was put in possession of the property by an order for delivery of land in execution dated 7/09/2007.

On 19/10/2007 the applicants filed Miscellaneous Application No. 128 of 2007 in this court for revision of the order for sale of the land in execution. They also obtained an interim order to stay execution by demolishing the rest of the houses that had remained standing on the disputed land. That order was to last until the 31/10/2007 when the main application for stay of execution was to be heard before a judge but the application was not heard. When the parties appeared before V. T. Zehurikize, J. on 31/10/2007 in Misc. Application 128 of 2007, the applicants' advocates applied to withdrawn the application as well as Misc. Application

No. 41 of 2006 on the ground that Civil Appeal No. 1 of 2007 and Misc. Application 41/2006 were pending before the same court and they both sought the similar remedies. But I think the advocate meant to withdraw Misc. Application 40 of 2007 not Misc. Application 41/2006 because Misc. Application 41/2007 which was relevant to the matter at hand had been heard and disposed of before the D/R; only Misc. 40/2007 remained pending and required action. Court granted the applicants leave to withdraw both applications with costs to the respondent and they were so withdrawn.

Since the applicants' buildings that had been built on part of the respondent's land were demolished and execution carried out to recover the costs of the suit by selling the rest of their land, the matter was for all intents and purposes completed. The applicants no longer had land to disagree over with the respondent. This was confirmed by the contents of paragraph 8 of the affidavit in reply and Annexure "A" thereto. In paragraph 8 of the said affidavit the deponent stated that other members of Henry Wateta's family filed C/S No. 19 of 2008 in the Magistrates Court at Jinja in which they are challenging the execution and sale of their land. That confirms that the dispute between the applicants and the respondent was without a doubt completed which leads me to the conclusion that the applicants inordinately delayed to bring this application. Even if the documents sought to be admitted as additional evidence were admitted, any orders that would be made in the appeal cannot be executed without occasioning injustice to third parties who are not party to this suit. The applicants have therefore failed to satisfy the final consideration required for their application to be granted and it fails.

But before I conclude, it is pertinent to consider Mr. Mafabi's submission that the fact that execution of the orders of the Land Tribunal was completed should not be held against the applicants because the suit now pending in the Magistrates court is to challenge the execution as having been illegal. I have given serious consideration to the dispute in Civil Suit No. 19/2008 now pending in the magistrates' court after perusing the plaint and WSD that were attached to the affidavit in reply as Annexure "A." The facts stated in the plaint raise serious concern because they contradict the applicants' claims in Civil Appeal No. 1 of 2007 from which this application arose. Though the plaintiffs in the suit seem to be different from the applicants herein, coincidentally three of them, i.e Wateta Moses, Keya Joseph and Mbeiza

Winifred, have similar surnames to three of the applicants in this application and the pending appeal. The plaintiffs therein claim that the applicants herein had no rights to the suit land. They seek declarations that the first plaintiff (Kekulina Wateta) who is the widow of Henry Wateta was a joint owner of the land with her deceased husband because she contributed shs.50/= towards its purchase in 1954. Also that they are the beneficiaries to the estate of Henry Wateta and as such have interest in the land. They state that the land was not the applicants' property but the applicants and the respondent herein misled auctioneers to believe that the land belonged to the applicants which led to a wrongful and/or illegal execution. The plaintiffs in Civil Suit 19 of 2008 therefore claim special damages against the respondent and the applicants herein (and others) of over shs 48 million, as well as general damages arising out of the illegal execution.

I have not seen the applicants' WSD in Civil Suit 19 of 2008. They did not file a rejoinder to the affidavit in reply to clarify their position regarding the pending suit so I presume they did not file a WSD. If the execution in Claim 19 of 2004 before the Land Tribunal was illegal because (among other things) the land in dispute did not belong to the applicants herein, then Civil Appeal No. 1 of 2007 from which this application arises is a hoax intended to delay justice. In the alternative, Civil Suit No. 19 of 2008 was filed with the complicity of the applicants who appear not to have challenged it and is intended to undo the sale to the benefit of the applicants and other members of their family.

In conclusion it is very clear that execution in the suit from which the Civil Appeal No. 1 of 2007 arises was completed way back in 2006 and the land that led to the dispute was sold by court order to one Juma Jalali Ngobi in 2007. Courts hear disputes in order to provide remedies to the parties therein and not merely as an academic exercise. [See **Uganda Corporation Creameries Ltd & Another v Reamaton Ltd., C/A Civil Reference No. 11 of 1999**.] The appeal from which this application arises was rendered nugatory by the execution of the orders of the Land Tribunal even before it was filed. The reliefs which the applicants seek on appeal cannot be granted because there is no live dispute between the parties. The applicants' land which was the subject of the dispute is now the property of Juma Jalali Ngobi who is not a party to the pending appeal. Even if the applicants were to succeed in their appeal any orders granted against the respondent cannot be executed against Juma

Jalali Ngobi. Courts do not decide cases for academic purposes because court orders must have practical effect and must be capable of enforcement. [See **The Environmental Action Network Ltd. v. Joseph Eryau, C/A Civil Application No. 98 of 2005** (Unreported)]. The execution of the orders of the Land Tribunal drove the applicants' appeal into a limbo of legal mootness even before it was filed.

This application therefore had no merit and it is hereby dismissed with costs to the respondent. Civil Appeal No. 1 of 2007 is also hereby dismissed with costs to the respondent.

**Irene Mulyagonja Kakooza**
**JUDGE**
**20/01/2009**