

THE REPUBLIC OF UGANDA  
IN THE HIGH COURT OF UGANDA AT KAMPALA  
MISC. APPLICATION NO. 272 OF 2005  
(Arising from Civil Suit No. 141 of 2003)

MOSES SEMANDA KAZIBWE ::::::::::::::: APPLICANT/DEFENDANT

**VERSUS**

JAMES SENYONDO KATONGOLE ::::::::::::::: RESPONDENT/PLAINTIFF

**BEFORE: HON. JUSTICE REMMY K. KASULE**

**RULING:**

Regrettably, the Court file in this case i.e. 141 of 2003 was last before me on 22<sup>nd</sup> December, 2005, when, it was adjourned for a Ruling on 26.02.06. Soon thereafter however, I moved to Gulu, and the case inadvertently remained un-attended to; as in the process of transfer to Gulu, the file somehow got misplaced.

This Ruling is in respect of a submission by Mr. Katabalwa, learned Counsel for the defendant that the Plaintiff's suit be dismissed under Order 43 Rule 2(1) of the Civil Procedure Rules, (old version) on the ground that the Defendant had failed to provide security for costs in the terms ordered by the Deputy Registrar, High Court, Land Division, in Miscellaneous Application No.272 of 2005 on 06.10.05.

By way of back ground, the Plaintiff sued the defendant in the main suit in respect of the ownership of a piece of land comprised in Busiro Block 266 Plot 186 situate at Kisimbiri, Busiro county, Wakiso District. Plaintiff claims that the suit land belongs to him, while the Defendant on his part, claims that he owns the suit land, having acquired the same by purchase from one Christopher Katongole, now deceased.

On 15.11.15 when the case came up for hearing, both Plaintiff and defendant consented to an order to amend their respective pleadings and to file the same in court before 08.12.05 when the case was fixed for mention. Before the said mention date was reached, the Registrar Land Division, His Worship W.M. Musene, ordered on 06.10.05 the plaintiff to deposit in Court Shs.8,000,000/= security for costs within a period of 60 days from the date of the order.

Court has studied the proceedings relating as to how the order for security for costs came to be made by the Registrar, Land Division, when the hearing of the case was already before this Court. Whether or not the Registrar, Land Division, had jurisdiction to issue the order of security for costs, given the stage the case had reached before this Court, is a matter to be decided upon by the Court that will entertain the appeal against that order. This appeal is Land Division Miscellaneous Appeal No. 4 of 2005.

In view of the fact that an appeal is still pending in this Court against the decision of the Registrar, Land Division, dated 06.10.05, this Court declines to dismiss H.C.C.S No.141 of 2003 on the ground that the Plaintiff has failed to provide security for costs. Instead this Court directs that the file of the suit and that of the appeal against the Registrar's order for security for costs be placed before the Land Division of the High Court with a view to a quick disposal of the appeal. It is so ordered and directed.

Given the fact that the appeal against the Registrar's order i.e. Miscellaneous Appeal No.4 of 2005, is still pending in this Court and the main suit too is not yet disposed of, it is ordered that each party bears the costs of these proceedings as relate to matters the subject of this Ruling.

**Remmy K. Kasule**

**Judge**

**2<sup>nd</sup> February 2009**