

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

MISCELLANEOUS APPLICATION NO. 437 OF 2010
(Arising from Civil Suit N0.40 of 2010)
(Arising out of Civil Suit N0. 450 of 2008)
(Arising out of Civil Suit N0. 445 of 2008)

1. GEORGE MUKASA KYAGABA
2. BUCANA YOSAMU

}

:::: APPLICANTS

VERSUS

1. MUGUME GAWEDDE
2. FRIDA MUREBWAYIRE
3. RONALD MUGUNZI
4. MUFULUUKI YUDESI
5. THE REGISTRAR OF TITLES

}

::::: RESPONDENTS

RULING BY HON. MR. JUSTICE JOSEPH MURANGIRA

I perused the applicant's application by chamber summons brought under Order 11 rules 1 and 2 of the Civil Procedure Rules and Section 98 of the Civil Procedure Act together with its supportive affidavit.

This application is seeking the following orders:-

- 1. That HCCS N0. 450/2008: Bucana Yosamu Vs Frida Murebwayire & Anor, HCCS N0.40/2010: George Mukasa Kyagaba Vs Mugume Gawede & 3 others, and HCCS N0.445/2008: Frida Murebwayire & Anor vs Yosamu Bucana & 2 ors be consolidated.**
- 2. That the further proceedings in HCCS N0.40/2010: George Mukasa Kyagaba Vs Mugume Gawede & 3 others, be stayed until Court has pronounced itself on HCCS N0.450/2008: Bucana Yosamu vs Frida Murebwayire & Anor and HCCS N0.445/2008: Firda Murebwayire & Anor vs Yosamu Bucana and 2 others**
- 3. That costs for and incidental to the application be provided for.**

On the 14th September, 2010 when this application came up for hearing, the applicants were granted an order to proceed ex parte. Indeed that meant that this application stands unopposed by the respondents. It ought to succeed. In the case of **Samwiri Massa vs Rose Acen (1978) HCB 297** it was held that:

“Where certain facts are sworn to in an affidavit, the burden to deny them is on the other party and if he does not they are presumed to have been accepted.”

This authority supports this application, whereby the respondents despite service on them the court process they opted to keep quiet. It is therefore, presumed that the facts deponed to in the said affidavit in support of the application were accepted by the respondents.

Further, I have also read and considered the written submissions by Counsel for the applicants and they support this application. In fact, I have no genuine reasons and grounds on which I would base myself to deny the grant of this application. The application is not opposed; it should be allowed.

In the result and for the foregoing reasons given hereinabove, this application is allowed in the orders sought for therein.

Costs of this application shall be met by the applicants.

Dated at Kampala this 24th September, 2010.

sgd
MURANGIRA JOSEPH
JUDGE