

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
CIVIL SUIT NO. 64 OF 2010

SILVER T. KANGAHO

: : : : :

PLAINTIFF

VERSUS

THE COMMISSIONER, LAND

: : : : :

DEFENDANT

REGISTRATION

JUDGEMENT BY HON. MR. JUSTICE JOSEPH MURANGIRA

The facts of the plaintiff's case are that the plaintiff purchased land comprised in LRV 3922 Folio 10 Plot 140 at Buziga upon a warrant of attachment and sale issued in HCCS NO. 266 of 2008: **ASIIMWE DIANA JACKLINE VS DERRICK AGGREY KIIYINGI** for a variable consideration. That as no duplicate certificate of title was in place, the Registrar of the Commercial Court ordered the defendant to issue a special Certificate of title and to transfer the suit property into the plaintiff's names after removal of all encumbrances. That the defendant refused to comply with the Court orders causing loss and inconveniences to the plaintiff.

On the other hand, the facts of the defendant's case are that the defendant shall adduce evidence to prove that the plaintiff's case is premature, as the defendant is still waiting for the response in respect of the orders from the Registrar High Court, Commercial Division. That the plaintiff withdrew the application he had filed before the Registrar after realizing that the same was premature.

The issues for determination in this suit are:-

- 1. Whether the warrant of attachment and sale of the suit property comprised of LRV 3922 Folio 10 Plot 140 was recalled by the Registrar High Court, Commercial Division.**
- 2. Whether the plaintiff is entitled to the reliefs sought in the plaint.**

On 26th April 2010 when the suit came up for hearing, the plaintiff was represented by Mr. Stephen Sserwadda from Makeera & Co. Advocates. And the defendant was represented by Mr. Yusuf Kalekewe, Registrar of Titles, Ministry of Lands, and Housing and Urban Development.

Counsel for the plaintiff Mr. Stephen Sserwadda raised a point of objection to the defence. He submitted that the Written Statement of defence was filed out of time. And that Mr. Yusuf Kalekewe, Counsel for the defendant had no audience before this Court. After a brief argument by Mr. Yusuf Kalekewe, Counsel for the defendant and upon perusal of the affidavit of service and its annexures filed in Court, Counsel for the defence conceded to late filing of the Written Statement of defence. That being the case, there is no defence to this Suit. And indeed the Registrar of Titles representing the defendant has no audience before me.

However, the foregoing notwithstanding, I allowed Counsel for the defence to proceed under Order 9, rule 10 of the Civil Procedure Rules; as he had undertaken to discuss the matter with the Commissioner Land Registration with a view of settling the matter amicably with the plaintiff. The suit was henceforth adjourned to 28th April 2010 to receive a settlement report from Counsel for the defendant.

On 28th April 2010, when the suit came up for settling interparties, Counsel for defendant submitted that their view about the case was that the letter recalling the previous order had recalled all the properties and not saved the property which is the subject matter of this suit. He made a prayer that Court helps them to clarify this position before they proceed to comply with the subsequent Order of the Registrar of the High Court, Commercial Division. The parties with the guidance of Court reviewed and considered all the documents attached to the plaint, and Counsel for the defendant, Mr. Yusuf Kalekewe in his reply submitted that the matter is no longer contentious; that the issue is resolved and that they are going to come up with a settlement. He further submitted that they needed more time of about two weeks to sort out themselves towards a settlement of the matter.

From the submissions of both counsel for the parties, I found it not necessary to conduct a hearing of this suit on a formal proof. This suit falls in the suits that could be summarily tried without calling evidence. The documentary evidence on record is enough to dispose of the suit. I now proceed to resolve the issues raised:-

1. On whether the warrant of attachment and sale of the suit property comprised in LRV 3922 Folio 10 Plot 140 was recalled by the Registrar, High Court of Uganda Commercial Division.

Consequent to the above, It is on record that on 14th August 2009 the High Court, Commercial Division issued an Order of attachment in respect of properties comprised in LRV 3922 Folio 10 Plot 140; LRV 3931 Folio 24 Plot 33; and LRV 3931 Folio 25 Plot 28 all situated in Buziga. Pursuant to this Order of the Court, all the said properties were attached and warrants were entered on the said certificates of title respectively.

It should also be noted that on 27th August 2009 the High Court, Commercial Division by letter addressed to MMAKS Advocates and copied to the Commissioner Land Registration lifted the Warrants of attachment on two plots out of the three which had been attached. The plots which were rescued by the said letter are LRV 3931 Folio 24 plot 33 and LRV 3931 Folio 25 plot 28. The said letter which is annexure D to the plaint reads in part:-

“ 27th August, 2009
MMAKS Advocates
Kampala

Re: KAMPALA HIGH COURT
CIVIL SUIT NO. 266 OF 2008
ASIIMWE DIANA JACKLINE
VS
AGGREY KIYINGI

1. **LRV 3931 Folio 24 plot 33 Kyadondo Block 273 at Buziga Reg. Prop. Aggrey Kiyingi.**
2. **LRV 3931 Folio 25 plot 28 Kyadondo Block 273 at Buziga Reg. Prop. Aggrey Kiyingi.**

I refer to yours ref. 3948/VMS/908/2006 dated 27 August 2009.
I have noted the contents of your letter and to avoid unnecessary objection proceedings, given the developments, the warrant of

attachment and sale of the above property registered on the 25th June 2009, under Instrument N0s. 414920 and 414921 is hereby recalled.

**Gladys Nakibule Kisekka
Deputy Registrar**

**cc: The Commissioner Land Registration
cc: Makeera & Co. Advocates
cc: Quick way Auctioneers & Court Bailiffs.”**

From the wordings of the said letter, certainly the suit property was not affected by the directives of the said Registrar of the Court. The said letter of the Registrar of the High Court Commercial Division did not resale the suit land from execution.

Further, after lifting the said warrant of attachment from the said properties, on 14th January 2010, the Registrar High Court, Commercial Division in her judicial powers as the registrar issued an order directing the Commissioner Land Registration to issue a special Certificate of Title in respect of Land comprised of LRV 3922 Folio 10 plot 140 at Buziga which had not been affected by her letter which recalled the attachment order.

The said order further directed the Commissioner Land Registration upon preparing a special certificate of title to transfer the same in the names of Silver T. Kangaho, the plaintiff in this case, and to cancel the caveat which had been lodge by one Ngiya Musa and Catherine Nakayenga on behalf of the registered proprietor.

It is surprising to note at this point in time that the Commissioner Land Registration wrote a letter addressed to the Registrar, High Court, and Commercial Division duly informing her that she rejected the order of the Court. That annexure “A” to the plaint is the said letter to the Commissioner Land Registration which reads in part:-

“29th January, 2010,

**Registrar High Court of Uganda,
Commercial Division,
Kampala**

Re: PLOT NO. 140 KYADONDO BLOCK 273 AT BUZIGA, LEASEHOLD REGISTER VOLUME 3922 FOLIO 10

I am in receipt of your order in respect of property registered as leasehold Register Volume 3922 Folio 10. This Order however is based on an order of attachment and sale issued by the High Court on 29th May, 2009.

However, this office notes that this order of attachment and sale, as recalled by your Court by a letter addressed to MMAKS Advocates and copied to this office.

In the circumstances, this order of sale cannot be registered. It is hereby returned.

**SARAH KULATA BASANGWA
AG. COMMISSIONER FOR LAND REGISTRATION**

**cc: Permanent Secretary
cc: Makeera & Co. Advocates,
P.O Box 23528,
Kampala.”**

As I have already made a finding hereinabove, that the order of the Registrar High Court, Commercial Division of 29th May 2009, addressed to MMAKS Advocates did not affect the attachment and sale of the suit property, with due respect to the defendant, Commissioner Land Registration, she misinterpreted the said Order. That I make a finding that her above stated letter of 29th January 2010 was of no consequential and it did not overrule the order of the Court that was issued on 14th January 2010 (annexture “J” to the plaint) by the Registrar of High Court, Commercial Division who has judicial power to issue such orders to the Commissioner Land Registration. The latter should not have rejected the Court Order, to say the least.

More so, it is important to note that the suit property was subjected to fresh attachment and sale order that was issued to Henry Mugenyi, a Court bailiff on 15th December 2009 (see annexture “E” to the plaint”. Wherefore, the defendant ought to have complied with that Court Order. In her failure or refusal to comply with the Court Order, her actions violated Article 128 (1) (2) & (3) of the Constitution of the Republic of Uganda, which reads:-

“Article 128: Independence of the Judiciary

- (1) in the exercise of judicial power, the Courts shall be independent and shall not be subject to the control or direction of any person or authority.**
- (2) No person or authority shall interfere with the Courts or judicial officers in the exercise of their judicial functions.**
- (3) All organs and agencies of the state shall accord to the Courts such assistance as may be required to ensure the effectiveness of the Courts.”**

In the result and for the foregoing reasons I hold that the sale and transfer of the suit property was not affected by the Letter of the Registrar, High Court, Commercial Division dated 29th May 2009 and addressed to MMAKS Advocates.

I now turn to issue number 2; that is whether the plaintiff is entitled to the reliefs sought in the plaint.

For the reasons given in resolving the first issue, I find that the plaintiff was highly affected by the unlawful actions of the defendant. And as such, the plaintiff is entitled to his reliefs as set out in the plaint. I have also noted that according to annexure “H” to the plaint the issue of a Special Certificate of Title in respect of the suit property alone was lodged in the Uganda Gazette of 17th August, 2009, on 4th August, 2009 the Gazette issued the application and therefore, there is no need to re-advertise for the issuance of the Special Certificate of title in the Uganda Gazette.

In the result, and for the foregoing reasons hereinabove, judgment is entered in favour of the plaintiff in the following terms and orders; that:-

- (a) The defendant is to issue a special certificate of title in respect of LRV 3922 Folio 10 plot 140 at Buziga, the suit property.
- (b) The defendant cancels all the encumbrances on the suit land.
- (c) The defendant transfers the said suit land into the names of the plaintiff.
- (d) Costs of the suit are granted to the plaintiff.

Dated at Kampala this 30th day of April, 2010.

MURANGIRA JOSEPH
JUDGE