

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS CAUSE NO.98 OF 2009**

1. REV. KARWANI SAMSON }
2. MBABAZI JOVANIS } ----- APPLICANTS

VERSUS

1. REGISTRAR OF TITLES }
2. STANELY WILSON RWABUZAIRE } ----- RESPONDENTS

RULING BY HONOURABLE MR. JUSTICE JOSEPH MURANGIRA

The applicants through their lawyers M/s Bashasha & Co. Advocates brought this application against respondents under section 134 (1) of Registration of Titles Act, Section 98 of Civil Procedure Act, Order 52 rules (1) and (3) of Civil Procedure Rules and Section 39 of the Judicature Act.

The two respondents were not represented at the trial of this application. Nor did each of them file any affidavits in reply to this application and the affidavit in support of this application. Therefore one can easily say that this application stands unchallenged by the respondents. On that finding alone, the application could be allowed.

Consequently, this application was filed in court seeking the following orders:-

- (1) The vesting order doth issue and the first respondent to register the applicants as the co-proprietors /owners on land comprised on plots N0s 2, 4 and 7 Bululi Block 4; plot 2 Block 5 Bulemezi LRV 956 Folio 20.
- (2) That the 2nd respondent surrenders the certificate of title to the applicants to effect their resgistration as the co- proprietors/ owners.
- (3) Costs of this application be provided for.

Further, this application is supported by the affidavit of the 1st applicant, Rev. Karwani Samson, which was read and relied upon at the hearing. The said affidavit cleary sets out the grounds of the application, but briefly they are; that:-

- (a) the late Samson Kanyankole was one of the registered proprietors of land comprised in plots numbers 2, 4 and 7, Bululi Block 4; plot 2 Block 5 Bulemezi LRV 956 Folio 20.
- (b) The applicants were granted letters of administration of the estate of late Samson Kanyankole vide administration cause N0. 1033 of 2007.
- (c) The 1st respondent has refused and or / failed to accordingly register the applicants as proprietors on land comprised on plots 2, 4 and 7 Bululi Block 4; and plot 2 block 5 Bulemezi LRV 956 Folio 20.
- (d) The said Stanely Wilson Rwabuzaire has neglected, failed and / or refused to surrender the certificate of title to the applicants so that they register their interest.
- (e) That it is in the interest of justice that this application be granted.

The above grounds of this application and the reliefs sought in the application are supported by the affidavit evidence which is well articulated in the affidavit in support of the application which was sworn by Rev. Karwani Samson on 30th October 2009. As I have already made a finding hereinabove, that the respondents never filed any affidavits in reply to the application, the aforesaid evidence is not challenged at all.

On 27th January 2010, when this application came up for hearing, counsel for the applicants Mr. Alex Bashasha submitted that the respondents were duly served upon with this application and the supportive affidavit and that the respondents chose not to oppose this application. Upon perusal of the court record, I ascertained that the respondents were duly served as submitted by counsel for the applicants. And accordingly the application was allowed to proceed *ex parte*.

The evidence of the applicants as presented is not challenged by the respondents. The law in this area is now settled by our courts, that when facts are sworn in an affidavit and if the other party does not file an affidavit in rebuttal, then, the facts therein are presumed to have been accepted by the other party. This principle in law was held in the case of **Samwiri Massa vs Rose Achen [1978] HCB 297**. In that case **it was held that where certain facts are sworn in an affidavit , the burden to deny them is on the other**

party and if he or she does not they are presumed to have been accepted and the deponent need not raise them again but if they are disputed then he has to defend them. In this regard therefore, I do not see any reasons that would justify the refusal not to allow this application, in the circumstances.

In the result, and for the forgoing reasons, I do allow this application in the terms and orders as sought in the said application. Further, since the application was not opposed by the respondents, this application is allowed without costs.

Dated at Kampala this 20th day of May, 2010.

sgd
MURANGIRA JOSEPH
JUDGE