

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

MISCELLANEOUS APPLICATION NO. 92 OF 2009

THE CHURCH OF ALMIGHTY GOD

MALAKI LTD

:::: APPELLANT

VERSUS

1. ADMINISTRATOR GENERAL

::::: } RESPONDENTS

2. THE COMMISSIONER, LAND REGISTRATION

}

RULING BY HON. MR. JUSTICE JOSEPH MURANGIRA

The applicant brought this application against the respondents through Lex Uganda Advocates and Solicitors. The application is brought by Notice of Motion under Sections 188 of the Registration of Titles Act (RTA), cap 230 and Order 52 rules 1 and 3 of the Civil Procedure Rules and Section 98 of the Procedure Act, cap. 71 for the following orders:-

1. A vesting order be issued directing the Commissioner Land Registration to transfer the suit property, part of Bulemezi Block 399 plot 12 Land at Kibose, Nakaseke District into the names of the plaintiff/applicant.
2. Costs be provided for.

The application is supported by the affidavit of Rev. Kikute and is based on the following grounds:-

1. That the applicant was given 10 acres as a donation by the late Yose Kato of Kibose on Bulemezi Block 399 plot 12 which is land under the operation of the Registration of Titles Act.
2. That the applicant has been in possession of the 10 acres ever since Yose Kato's death in 1976, and the said possession has been acquiesced by the late Yose Kato's family.

3. The 1st respondent opened a file for this estate in 1993 and the applicant requested it to facilitate the said transfer in vain.
4. The applicant's entry into possession was acquiesced by the 1st respondent.
5. The transfer of the suit property into the applicant's names has not been executed because the donee is dead the Administrator General has refused or failed to effect the transfer.
6. That this is a fit and proper case where the High Court Should exercise its inherent powers to order for the vesting of the land in the applicant.

The affidavit of Rev. Yekosofati Kikute supports the application with his evidence and documentary evidence. It should be noted that the respondents were served with the application but opted not to file any affidavit in reply to the application.

On 2nd March 2010 when this application came up for hearing, Counsel for the 1st respondent, Mr. Nashiero Robert Ekirita, State Attorney with the 1st respondent raised 5 (five) preliminary objections; namely:-

1. The affidavit in support of the application is not dated.
2. Service of the application was out of time.
3. The application is misconceived and that it is against a wrong party.
4. The 1st respondent is not the administrator of the estate from which the applicant purportedly claim the bequest under the Will (Annexure "A") to the affidavit of the applicant.
5. That the law prohibits bequests for charitable purposes.

On that date, Counsel for the applicant Mr. Mwenyi Joseph could not make a reply to the raised objections. In that regard, the Court directed parties to file in Court written submissions, and that the ruling would be delivered on 16th March 2010. The last date for the final submissions in reply was 11th March 2010. The 1st respondent's Counsel complied with the Court's directive and filed it's written submissions on 4th March 2010. By end of the working, yesterday, Counsel for the applicant had not filed his written submissions in reply. By that failure, the applicant put itself outside the jurisdiction of this court. And since the objections are based on pointes of law only, I decided to write this ruling.

The 1st preliminary objection is that the affidavit in support of the application is not dated. I have looked at the said affidavit and it is very clear that the said affidavit is not dated. What is the effect of not dating the affidavit?. The law requires that all affidavits be sworn at a named place and on a certain date.

Section 6 of the Oaths Act, cap 19, provides that:

“Every Commissioner for Oaths, or Notary Public before whom any oath for affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the oath or affidavit is taken or made.”

Further, Section 5 of the Commissioner for oaths (Advocates) Act, Cap. 5 provides that:

“Every Commissioner for oath or affidavit is taken or made under this Act shall state truly in the jurat or attestation at what place and on what date the affidavit or oath is taken or made.”

From the above provisions of the law, the affidavit which is not dated offended the law. Such affidavit cannot stand in law. Therefore, I answer the first objection in the affirmative.

On the 2nd preliminary objection that the application was served out of time, counsel for the applicant relied on Order 5 rules 1 (b) 2 and 3 of the Civil Procedure Rules which deal with service of the Court process. Section 2 of the Civil Procedure Act, cap. 71 defines a suit to include an application. In this instance, the application is governed by Order 5 of the Civil Procedure Rules. In the instant application, the Notice to the parties was given on 17th December 2009. According to the affidavit of service on record that was sworn by Atyang Faith a process server of the High Court she effected the hearing notice on to the 1st respondent on 26th February 2010. The hearing notice that was served on the 1st respondent, though it does not show whether she served the hearing notice together with the application is dated 21st February 2009.

From the 21st December 2009 to 26th February 2010, it is two months and five days. Yet Orders 5 rule 2 provides that serve must be in 21 (twenty one) days from the date of

issue, except that the time may be extended on application to court made within 15 days after the expiration of the 21 days upon showing sufficient reason for the extension. This application for extension of time to serve the court process was not done by the applicant. Failure to serve the Court process after its extraction/issue within 21 days offends the law. In the result, I answer the 2nd preliminary objection in the affirmative.

The 3rd preliminary objection is that the application is misconceived. It is the submission of Counsel for the 1st respondent that this application should have been brought before the Chief Registrar of Titles/Commissioner Land Registration. Section 78 of the RTA, cap 230, provides that the application for vesting orders on grounds of possession and acquittance has to be made to the Chief Registrar of Titles. The instant applications falls therefore, into the ambit of Section 78 of the RTA, cap 230. Further, Section 167 of the RTA, cap 230 provides for the vesting orders in relation to purchase of land for the deceased persons who had not been registered at the time of death of the registered proprietors. In the instant application the applicant is claiming a bequeath of 10 acres under the Will, which is not proper for a vesting order. In the result, I answer this preliminary objection in the affirmative.

The 4th preliminary objection is that the 1st respondent is not the administrator of the estate. Counsel for the 1st respondent submitted that 1st respondent is neither an executor of the will of late Yose Kato nor an administrator of the estate of late Yose Kato. The application and the affidavit evidence in support of the application are very clear. The evidence available thereof is that the 1st respondent does not hold neither probate nor Letters of Administration to the estate of Late Yose Kato. The 1st respondent has nothing to do with the administration of the deceased's estate. I, therefore, agree with counsel for the 1st respondent that the 1st respondent is wrongly sued. That being the case, the 2nd respondent is, too, wrongly sued. In the result, I answer the 4th preliminary objection in the affirmative.

The 5th preliminary objection is that the law prohibits bequests for charitable purposes. Section 105 of the Succession Act, cap. 162 prohibits persons having relatives to bequeath property to religious or charitable uses except of a will is made not less than 12 months before the death of the testator and deposited in a place provided by law for safe

custody of wills of living persons within 6 months from the date of its execution. Section 337 of the Succession Act, cap 162 appoints the Chief Registrar or Deputy Registrar of the High Court as the place for depositing wills of living persons.

From the evidence on record from the applicant, the deceased Yose Kato's will is said to have been executed in 1970, and that the late Yose Kato died in 1976. These are 6 years after the execution of the will. And the late Yose Kato did not deposit his will in the place provided by law for safe custody of living persons. Hence, according to the law and facts of the case, I agree with Counsel for the 1st respondent that the purported bequest of 10 acres out of land Bulemezi Block 399 plot 12 to applicant is not only illegal but also void.

In conclusion, I uphold all the 5 preliminary objections. The application has no merit. It is accordingly dismissed with costs.

Dated at Kampala this 16th day of March 2010.

MURANGIRA JOSEPH
JUDGE