

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS CAUSE NO. 102 OF 2009
(Arising from Chief Magistrates Court of Mengo, Administration Cause N0. 67 of 1982)

1. ERUNASANI KIVUMBI 2. NAJJEMBA CHRISTINE 3. NAKIGANDA MATIDA 4. FAROUK SSEMWANGA	}	::::: APPLICANTS
VERSUS		
THE REGISTRAR OF TITLES		::::: RESPONDENT

RULING BY HON. MR. JUSTICE JOSEPH MURANGIRA

The applicants, through their lawyer M/s Kiwanuka, Lubega, Mpiima, brought this application by Notice of Motion against the respondent. The respondent was duly served with application and it opted to keep quiet.

The application is seeking for the following orders:-

- (a) A consequential order does issue directing the Chief Registrar of Titles, her officers to cancel all registration of Hassan Bin Salim Lubega on all certificates of titles forming part of the estate of late Samuel Bategwanga and have the Certificates of title rectified by substituting and replacing the names of the said Hassan Bin Salim Lubega with those of the applicants as administrators of the estate of late Samuel Bategwanga Semwanga.
- (b) The Costs be provided for.

The application is based on the grounds disclose in the affidavit of the 4th applicant, Farouk Semwanga, but briefly are that: _

1. The applicants were the successful party in the Chief Magistrate's court of Mengo in Miscellaneous application N0. 581 of 2008 (Arising from Administration Cause N0. 67 of 1982)
2. The Chief Magistrate ordered that the Letters of Administration to the estate of late Samuel Bategwanga Semwanga be revoked and accordingly granted to the applicants.
3. The Letters of Administration which had been granted by the Court to Hassan Bin Salim Lubega vide Mengo Administration Cause N0. 67 of 1982 were rectified, revoked and granted to the applicants vide the same Administration Cause.
4. As a result of the acquisition of the Letters of Administration by Hassan Bin Salim Lubega of registered on to Certificates of title for land forming part of the estate of late Samuel Bategwanga Semwanga comprised in Kibuga Block 25 plot 222.
5. The applicants cannot properly administer the estate when Hassan Bin Salim Lubega is still on the above mentioned land as proprietor.
6. The application is brought without undue delay and the same has very high probability of success.
7. It is in the interest of justice that the application is allowed so that the applicants can properly administrator the said estate.

On 4th March 2010 when this application came up for hearing, Counsel for the applicants, Mr. Musa Bbale applied to Court to proceed exparte. That application to proceed exparte was granted. On perusal of the record, I noted that on 7th January 2010, the respondent was duly served with the application. The respondent acknowledged receipt of the application by stamping the official stamp on the application. Despite the service of the court process, the respondent failed, neglected or/ and refused to file an affidavit in reply to this application and the affidavit in support of the application. In that regard, therefore, the application stands unchallenged. Further, it is settled law that when facts are deponed to in an affidavit and the same are not challenged in rebuttal, the same facts are presumed to be admitted by the other party. Wherefore, the facts deponed to in the affidavit in support of the application is taken to have been admitted by the respondent.

In the result, this application is allowed without costs in the terms sought for therein. The consequential order is granted. The respondent, the Registrar of Titles/ Commissioner to cancel all registration of Hassan Bin Salim Lubega on all certificates of titles forming part of the estate of late Samuel Bategwanga Ssemwanga, and have the Certificates of titles rectified by substituting and replacing the names of the said Hassan Bin Salim Lubega with those of the applicants as administrators of the said estate.

Dated at Kampala this 18th day of March, 2010.

JOSEPH MURANGIRA
JUDGE