

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

MISCELLANEOUS CAUSE NO. 55 OF 2011

ARISING FROM LUWERO CRIMINAL CASE NO. 378 OF 2009

SSETUBA C MISAIRI.....APPLICANT

VERSUS

THE REGISTRAR OF TITLES.....RESPONDENT

BEFORE HON. LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This was an application by notice of motion brought under sections 177 & 178 of the Registration of Titles Act and Order 48 rules 1 & 2 of the Civil Procedure Rules (CPR) for orders that:-

1. The Respondent cancels and deregisters from the certificate of land title of land comprised in Buruuli Block 109 plot 3 at Kisule in the names of Sendagire Moses, Wajja Peter, Serwada John and Kagwa Emmanuel and registers the Applicant thereon as the proprietor.
2. The costs of this application be provided.

The grounds of the application are contained in the affidavit of **Ssetuba C. Misairi** the Applicant, and are briefly that:-

- i) The Applicant is the administrator of the estate of the late Erieza Kyakwambala comprised in Buruuli Block 109 plot 3 land at Kisule.
- ii) The Chief Magistrate's court of Luwero vide criminal case no. 378 of 2009 held the two respondents and two others guilty of having forged a judicial document c/s 349 of the Penal Code Act (PCA) and obtaining registration by false pretences c/s 312 of the PCA.
- iii) That the Applicant now applies to this court for consequential orders that the said forged titles be cancelled and the Land registry as provided under section 177 of the RTA have the Applicant registered as the proprietor.
- iv) It is in the interests of justice that this honourable court allows this application.

The Respondent did not file any affidavit in reply though he/she was served with both the application and the hearing notices, as per the affidavits of service on the court record. The Respondent did not also appear at the hearing of the application. The application was therefore heard *ex parte* on the application of the Appellant. Counsel for the Appellant was requested to file written submissions on the matter.

In her written submissions, learned Counsel for the Appellant Namuleme Teddy chose to rely on the affidavit of **Ssetuba C. Misairi** the Applicant. The affidavit evidence is to the effect that the Applicant is the administrator the estate of the late Erieza Kyakwambala comprised in Buruuli Block 109 plot 3 land at Kisule. He also has powers of attorney granted to him by the Administrator General annexed to the affidavit as Annexure **A**. On 25th June 1998 a one Sendagire Moses, Wajja Peter, Sserwadda John and Emanuel Kaggwa under instrument no. BUK 54323 fraudulently procured registration and obtained a certificate of title (annexture **B** to the affidavit) to land comprised in Buruuli Block 109 plot 3 land at Kisule relying on a forged letters of administration vide LUW A. C. No. 20/97. The Applicant reported the matter to the Police Land Squad Central Police Station. Sserwadda John and Emanuel Kaggwa went into hiding but Sendagire Moses and Wajja Peter were charged before the Chief Magistrate's court vide criminal case no. 378 of 2009 and were found guilty of having forged a judicial document c/s 349 of the Penal Code Act (PCA) and obtaining registration by false pretences c/s 312 of the PCA. A copy of the judgment is annexed to the Applicant's affidavit as Annexure **C**. That the Applicant applies to this court for consequential orders that the said forged titles be cancelled under section 177 of the RTA and the Land registry have the Applicant registered as the proprietor.

On the issue of not filing a defence, in this case an affidavit in reply to the application and its supporting affidavit, Order 9 rule 11(2) of the CPR provides that:-

"Where the time allowed for filing a defence...has expired and the Defendant...has... failed to file his or her defences, the Plaintiff may set down the suit for hearing ex parte."

There are court decisions to the effect that in such circumstances, the Defendant will not be allowed to participate in the proceedings though he or she may be present in court. In **Kubibaire V Kakwenzire [1977] HCB 37**, court held that since the Appellants had been served with summons and failed to enter appearance, they had by that failure put themselves out of court and had no locus standi.

Order 9 rule 10 of the CPR is to the effect that where the Defendant has not filed a defence on or before the date fixed in the summons, the suit may proceed as if he had filed a defence. Case decisions on this point are to the effect that a party who has not filed a defence is deemed to have admitted the allegations. See **Agard Didi V James Namakajjo HCCS No. 1230 of 1998**;

Tindimwebwa Narisi V Mutebi Salim HCT - 00 - CV - 0057 - 2007, unreported. In the instant application the facts as stated on oath by the Applicant have neither been denied nor rebutted by the Respondent. On the authority of **Samwiri Massa V Rose Achieng [1978] HCB 297** they are presumed to be admitted.

Section 177 of the Registration of Titles Act provides as follows-

“Upon recovery of any land, estate or interest by any proceeding from the person registered as proprietor thereof, the High Court may in any case in which the proceedings is not herein expressly barred, direct the Registrar to cancel any certificate of title or instrument, or any entry or memorial in the Register book relating to that land, estate or interest, and to substitute such certificate or entry as the circumstances of the case require; and the Registrar shall give effect to that order.”

In **Re Ivan Mutaka [1981] HCB 28** it was held that in order to rely on the provisions of section 185 (now section 177) of the RTA and have the register book rectified by cancellation, the Applicant who invokes it has to satisfy court that he/she has recovered the land, estate or any interest in question by any proceedings from any person registered as proprietor of the land. In **Re Habib Lubwama [1991] HCB 74** it was held that an order stemming from a criminal case can form a basis for a consequential order.

The Applicant is the administrator of the late Eryeza Kyakwambala who was the registered proprietor of the land in question. He also has powers of attorney granted to him by the Administrator General in respect of the estate of the late Eryeza Kyakwambala under which the land in question falls. The Chief Magistrate of Luwero in his judgment annexed to the Applicant's affidavit as Annexure C convicted the people who had registered themselves on the land through forgery. He noted that the offence is rampant in this region of Buganda where people are being deprived of their land with impunity.

In the premises and on the foregoing authorities, I am satisfied that has proved the grounds of his application against the Respondent. I therefore allow the application for the following orders as prayed:-

- i) The Respondent should cancel and deregister from the certificate of land title of land comprised in Buruuli Block 109 plot 3 at Kisule in the names of Sendagire Moses, Wajja Peter, Serwada John and Kagwa Emmanuel and register the Applicant as the proprietor of the said land in his capacity as administrator of the estate of the late Eryeza Kyakwambala.
- ii) The Applicant will meet the costs of this application.

Dated at Kampala this 21st day of December 2011.

Percy Night Tuhaise

JUDGE.