

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**CIVIL APPEAL NO. 064 OF 2010**

**(ARISING OUT OF A DECISION OF THE COMMISSIONER LAND REGISTRATION)**

- 1. SARAH NAKKU**
- 2. NAKIMULI MARIAM**
- 3. ZAWEDDE THURAYYA.....APPELLANTS**

**VERSUS**

- 1. THE COMMISSIONER LAND REGISTRATION**
- 2. THE ADMINISTRATORS OF THE ESTATE  
OF THE LATE YULIANA NAKATUDDE.....RESPONDENTS**

**BEFORE HON LADY JUSTICE PERCY NIGHT TUHAISE**

**JUDGEMENT**

This is an appeal by the appellants brought under the section 91(10) of the Land Act cap 227, Article 139 of the Constitution and section 33 of the Judicature Act, against the orders/decisions of the Commissioner Land Registration, for orders to set aside the said orders and to allow the appeal with costs.

The brief facts of the case as presented by the appellants are that they are the registered proprietors of land registered as Mawokota Block 92 Plot 176 land at Mpami. On 16<sup>th</sup> April 2010 the 1<sup>st</sup> respondent allegedly wrote to the appellants a notice of intention to effect changes on the register on grounds that:-

- 1. It is alleged that the late Yuliana Nakatude sold only two acres of the above mentioned land. That this is confirmed by the copy of the sale of land agreement availed to her office.***

2. *That when the duplicate certificate of title was availed to the appellants' mother for purposes of sub division and transfer of the two acres, she went ahead and transferred the whole title.*
3. *That she received a copy of the record of proceedings of criminal case no. 422 of 2009 of the Chief Magistrate's court of Buganda Road where the appellants' mother pleaded guilty to the charges.*
4. *That since the appellants' mother is entitled to 2 acres out of the 32.4 acres this error has to be corrected by cancelling the appellants' entries on the title.*

On the 10<sup>th</sup> June 2010 the 1<sup>st</sup> respondent allegedly issued the second letter to the appellants cancelling their proprietorship of the said land. The appellants appealed against the order on the following grounds:-

1. *The Commissioner erred in law and fact by not giving the appellants an opportunity to be heard before cancelling their title, a violation of the canon principle of natural justice.*
2. *The Commissioner erred in law and fact by cancelling the appellants' title without effecting proper service on them.*
3. *The Commissioner erred in law and fact by cancelling the appellants' proprietorship of land registered as Mawokota Block 92 Plot 176 basing on falsehoods and lies by the 2<sup>nd</sup> respondent.*
4. *The Commissioner erred in law and fact by cancelling the appellants' proprietorship of the above described land over matters that were being adjudicated upon in the courts of Judicature vide High Court Civil Suit No. 98 of 2008*
5. *The Commissioner erred in law and fact by cancelling the appellants' proprietorship on the above land basing on non existent documents or forged documents.*

Before delving into the merits of the appeal, it may be stated that this appeal should have been brought before the District Land Tribunal since the appellant filed it under section 91(10) of the Land Act. This section provides that any party aggrieved by the decision or action of the registrar under this section may appeal to the District Land Tribunal within 60 (sixty) days after the decision was communicated to the party. The challenge rightly pointed out by the appellants'

Counsel however is that the Land Tribunals are no longer in existence. He cited the case of **Sebirumbi Kisizingo V The Commissioner Land Registration & Another, Civil Appeal No. 16 of 2010** where Justice Aweri Opio faced the same situation and held that Practice Direction No. 1 of 2006 gave courts jurisdiction in all matters which were being handled by the Land Tribunals. Counsel for the appellant also submitted that this court has jurisdiction to handle the case under Article 139 of the Constitution and section 33 of the Judicature Act

Article 139 of the Constitution gives the High Court unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by the Constitution or other law. Section 33 of the Judicature Act also grants powers to the High Court to grant absolutely or on such terms and conditions as it thinks fit, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided. Practice Direction No.1 of 2006 provides that following the expiry of contracts of chairpersons and members of the District Land Tribunals, magistrates' courts presided over by a Magistrate Grade 1 and above shall continue to have jurisdiction in land matters in accordance with section 95(7) of the Land Act. This Practice Direction was made to enable magistrates' courts to exercise jurisdiction in land matters until new chairpersons and members of District Land Tribunals are appointed or otherwise.

This implies that a magistrate's court presided over by a Magistrate Grade 1 and above could have entertained this matter. However, since the High Court has unlimited original jurisdiction under the Constitution and the Judicature Act, it can also entertain the same matter.

I would, in view of the foregoing provisions, agree that this court has the jurisdiction to handle this matter. In any case the same matter could also have been handled by this court under section 182 of the Registration of Titles Act. It is on that basis that I will proceed to entertain this matter.

**Ground 1: The Commissioner erred in law and fact by not giving the appellants an opportunity to be heard before cancelling their title, a violation of the canon principle of natural justice.**

**Ground 2: The Commissioner erred in law and fact by cancelling the appellants' title without effecting proper service on them.**

Counsel for the appellant argued grounds 1 and 2 together. He submitted that though the Registrar has special powers to cancel a certificate of title under section 91(2) of the Land Act, she/he cannot do so without providing the other party the right to be heard as required by section 91(8) of the same Act. He submitted that the appellants were not accorded an opportunity to be heard. He submitted that the appellants never received the notice written to them of the Registrar's intention to cancel their proprietorship, and that they came to know about it when their Counsel Bwambale David stumbled through it at the 1<sup>st</sup> respondent's office while checking for another client's letter. On inquiry the Secretary informed him that the letter had been sent to the appellants' registered postal address of P. O. Box No.746 Kampala and that the title had already been cancelled. The letter of cancellation, annexure **B** was then given to the appellants' Counsel. Counsel submitted that the said postal box number had ceased to operate and any notice to it is accessed under special pardon from the post office officials. He submitted that when the letter was eventually accessed, the stamp indicated that it was on 29<sup>th</sup> July 2011 long after the title was cancelled. He argued that much as the appellant's were served with a letter to give a response, the decision was made long before the letter was delivered which was in total breach of the fundamentals of natural justice. He contended that such decision was void *ab initio*, on the authority of **Boniface Arinze Emmanuel Onuoha & Anor V The Commissioner Aviation Police Entebbe [2006] HCB 154**.

The respondent on the other hand, submitted that section 91 of the Land Act empowers the Registrar to take such steps as necessary to give effect to the act, whether by endorsement or alteration or cancellation of certificate of title, the issue of fresh certificates of title or otherwise without referring the matter to court. He submitted that the appellants were given the opportunity to be heard. He argued that the 2<sup>nd</sup> respondent was copied a letter on 16<sup>th</sup> April 2010 written to the appellants, annexure **A**, requiring them to turn up before the 1<sup>st</sup> respondent to have their side heard before the cancellation of the title. He also submitted that the 2<sup>nd</sup> respondent was given a letter from the 1<sup>st</sup> respondent to the appellants informing them about the cancellation of their title on 6<sup>th</sup> June 2010. He contended that the appellants were given the opportunity to be heard but they simply sat on their rights. He cited the case of **Mpungu & Sons Transporters Ltd V The**

**Attorney General & Kembe Coffee Factory (Coach) Ltd [2006] HCB 26** to support his position. He argued that the requirement of natural justice depends on the circumstances of the case, nature of the inquiry, rules under which the tribunal is acting, and subject matter dealt with. He argued that the 1<sup>st</sup> respondent acted diligently and with caution by posting the letter to the appellants' known address. He argued that the appellants' claim of abandoning the postal address was an afterthought as they never filed a notice to that effect to the Registrar. The Registrar could not as a result know that the appellants had abandoned their postal address.

Section 91(2) of the Land Act states as follows:-

*“The registrar **shall**, where a certificate of title or instrument---*

- (a) is issued in error;*
- (b) contains a misdescription of land or boundaries;*
- (c) contains an entry or endorsement made in error;*
- (d) contains an illegal endorsement;*
- (e) is illegally or wrongfully obtained; or*
- (f) is illegally or wrongfully retained,*

*call for the duplicate certificate of title or instrument for cancellation, or correction or delivery to the proper party.”* (emphasis mine).

Sections 73, 74 and 75 of the Registration of Titles Act (RTA) together with section 91 of the Land Act accord special powers to the Registrar of Titles. In particular, sections 73 of the RTA and 90 of the Land Act empower the Registrar of Titles to call in duplicate certificates of title for the purposes of, among other things, rectifying or cancellation as the case requires. Section 91(8) & (9) of the Land Act requires the Registrar of Titles, while exercising the said functions, to give due notice to the party likely to be affected by the decision, to provide such party with an opportunity to be heard, to conduct the hearing within the rules of natural justice, to give reasons for any decision, and to communicate her decision in writing to the parties and the Committee. The said Registrar is also bound to conduct a hearing in accordance with the principles of natural justice and to communicate the decision in writing to the affected parties before executing the decision he/she may have reached. Section 91(3) of the Land Act provides that if the person holding a certificate of title refuses to produce it to the registrar within a reasonable time, the

registrar shall dispense with the production of it and amend the registry copy and where necessary issue a special certificate of title to the lawful owner. Section 91(10) & (11) of the Land Act provides for a right of appeal and a transfer is not to be effected until the determination of the appeal.

In the instant case, it is clear that the Registrar of Titles was exercising the statutory special powers accorded to him/her in cancelling the applicant from the title in respect of land comprised in Mawokota Block 92 Plot 176. A cursory examination of the affidavit evidence and the court record reveals that the 1<sup>st</sup> respondent by a notice dated 16<sup>th</sup> April 2010 annexure **A** informed the applicant of the intention to correct and amend the register by cancelling his registration on the suit property. The same notice requested the applicant to let the respondent know if there was any objection to the proposed action. The letter was posted to the appellants' last known postal address. This was the address that was furnished during the transfer. The appellants contended that the postal address through which the letter was sent had long ceased to operate. However they did not show that this fact was brought to the attention of the 1<sup>st</sup> respondent, who could only post the letter through the appellants' last known postal address. This was the only way he/she could have contacted the appellants. In my opinion, this exhibits diligence on the part of the 1<sup>st</sup> respondent in as far as serving the appellants was concerned. This therefore would make ground 2 of this appeal to fail.

Section 91(3) of the Land Act provides that if the person holding a certificate of title refuses to produce it to the registrar within a reasonable time, the registrar shall dispense with the production of it and amend the registry copy and where necessary issue a special certificate of title to the lawful owner. Thus the Registrar's going ahead to cancel the appellants' names from the title was presumably done under section 91(3) of the Land Act after the appellants failed to respond to the notice. This was after exercising due diligence and serving them through their last known address as stated above.

In **Mpungu & Sons Transporters Ltd V The Attorney General, supra**, court held that the requirement of natural justice depends on the circumstances of the case, nature of the inquiry, rules under which the tribunal is acting, and subject matter dealt with. In the given circumstances, I would agree with the 2<sup>nd</sup> respondent's Counsel that the 1<sup>st</sup> respondent acted justly, fairly and diligently when she wrote to the appellants inviting them to respond to the

notice of intention to effect changes on the register in connection with Mawokota Block 92 Plot 176 land at Mpami. In my opinion, the Registrar's act of sending the notice to their last known address amounts to according them an opportunity to be heard. She had done all she could within her powers to accord them the right to be heard. I would also agree that when she went ahead to rectify the register after the appellants failed to respond or turn up within reasonable time, she was acting within her powers under section 91(3) of the Land Act. In this connection ground 1 of the appeal would fail.

**Ground 3: The Commissioner erred in law and fact by cancelling the appellants' proprietorship of land registered as Mawokota Block 92 Plot 176 basing on falsehoods and lies by the 2<sup>nd</sup> respondent.**

**Ground 5: The Commissioner erred in law and fact by cancelling the appellants' proprietorship on the above land basing on non existent documents or forged documents.**

On the two grounds argued together, Counsel for the appellant submitted that the letter written to the appellants annexure **A** stated that her office had received a complaint from the administrators of the estate of the late Yuliana Nakatude that the appellant's mother had illegally transferred the land to them in excess of what he bought; that the late Yuliana only sold two acres; and that the appellants' mother pleaded guilty at Buganda Chief Magistrate's Court to have transferred the land illegally. He submitted that the statements in the letter were lies as evidenced by annexure **D, E, F** and **H**. He submitted that as an administrator with quasi judicial powers, the Registrar had a duty to evaluate the evidence before her before making a decision. He contended that it is a duty of this court to evaluate the evidence before it and come to its own conclusion while carefully weighing and considering the judgment as held in **Kifamunte V Uganda 1999/2 EA PG 127**.

The respondents' Counsel submitted in reply, relying on the 2<sup>nd</sup> respondent's affidavit evidence, that the 2<sup>nd</sup> respondent being administrators of the estate of Yuliana Nakatude were under duty to collect and administer the estate of the deceased. In the course of gathering the deceased's properties they established that actually the deceased left a will naming the properties. It was then discovered that only two acres were sold off to the appellants' deceased father. On further inquiry by the 2<sup>nd</sup> respondent from the 1<sup>st</sup> respondent, they discovered that the appellant had

caused the transfer of the whole land. The 2<sup>nd</sup> respondent opened up a police case in Land Fraud Division ref. E/159/2009 where it was established that the appellants had through their mother fraudulently caused the transfer of the land into their names. A criminal case no. 422/2009 was eventually instituted against the appellants' mother and a one Wabi Dan where the latter pleaded guilty and was sentenced to eight months imprisonment. Wabi also implicated the co accused as the master minder of the fraud but her case is still going on in court. The 2<sup>nd</sup> respondent thus saw it fit to protect the deceased's estate hence why they lodged a complaint with the 1<sup>st</sup> respondent who used her powers under the Land Act to cancel the appellant's entry.

It is clear from the record, particularly, annexure **A** that the Registrar had received a complaint from the administrators of the estate of the late Yuliana Nakatude that the appellant's mother had illegally transferred the land to them in excess of what he bought; that the late Yuliana only sold two acres; and that the appellants' mother pleaded guilty at Buganda Chief Magistrate's Court to have transferred the land illegally. The affidavit evidence of **Nakamya Sarah Rita** an administratrix of the estate of the late Yuliana Nakatude is that the Registrar relied on the late Nakatude's will and its English translation; a copy of an application for letters of administration for the estate of Haji Abdullah Mpanga Kigozi; the record of proceedings in Buganda Road Criminal Case no. 422/2009 *U V Sarah Male Mpanga & Wabi Dan*; and a police report Case File ref. E/159/2009. The said documents were annexed to the 2<sup>nd</sup> respondent's affidavit to this court as **A, B, C, D,** and **E** respectively and this court had opportunity to peruse them in detail. The appellants contended through their Counsel that the statements in the letter were lies. The appellant's Counsel attached annexures **A, B, C, D, E, F,** and **H** to his written submissions to prove his point. However, he did not show this court that the evidence availed by the 2<sup>nd</sup> respondent to the Registrar was rebutted before the said Registrar when she was sitting as an administrator with quasi judicial powers.

As rightly observed by the appellants' Counsel, the Registrar had a duty to evaluate the evidence before her before making a decision. He also rightly contended that it is a duty of this court to evaluate the evidence before it and come to its own conclusion while carefully weighing and considering the judgment as held in **Kifamunte V Uganda**, which he cited to court but did not avail a copy. I have had opportunity to look at the documents that the Registrar relied on to make her decision. I have also observed that at the time the Registrar made the decision, the documents



availed by the 2<sup>nd</sup> respondent were not rebutted by the appellants for reasons already highlighted above. It is my opinion that in the circumstances under which the Registrar made the decision, she, as a quasi judicial officer at the time, fairly and judiciously evaluated the evidence before her before making a decision. Grounds 3 and 5 of this appeal would therefore fail.

**Ground 4: The Commissioner erred in law and fact by cancelling the appellants' proprietorship of the above described land over matters that were being adjudicated upon in the courts of Judicature vide High Court Civil Suit No. 98 of 2008**

The appellant's Counsel argued on this ground that the same matters between the appellants and the respondents are a subject of litigation in *civil suit no. 98 of 2008* in the High Court of Uganda where the 2<sup>nd</sup> respondent is the plaintiff and the appellants are the defendants. He wondered why the 2<sup>nd</sup> respondent took the matter to a parallel tribunal which has no judicial powers when such a matter ought to be adjudicated upon in a court of competent jurisdiction. Counsel for the 2<sup>nd</sup> respondent submitted in reply that the appellants had illegally caused the transfer of the land into their names and the Registrar exercised her powers under the Land Act to cancel the entry. He submitted that the appellants' contention of an ongoing suit is misconceived and cannot bar the 1<sup>st</sup> respondent from carrying out her duties under the Land Act.

This court has already made a finding that the Registrar was acting within her powers under section 91 of the Land Act when she cancelled the appellants' proprietorship on the suit land. This court has not had opportunity to look at the pleadings in *civil suit no. 98 of 2008* in the High Court of Uganda, since they were not part of the record, as to be able to appreciate or ascertain whether the suit is misconceived. It would be superfluous and speculative for this court to go into matters that are not part of the record of this appeal. Ground 4 of the appeal therefore fails.

In the final result, I find that the appeal lacks merit. It is dismissed with costs.

**Dated at Kampala this 18<sup>th</sup> day of October 2012.**

Percy Night Tuhaise

**JUDGE.**

