

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
IN THE MATTER OF THE REGISTRATION OF TITLES ACT CAP 230
MISCELLANEOUS CAUSE NO. 93 OF 2010

MARIA CHRISTINA VALVO.....APPLICANT

VERSUS

THE COMMISSIONER LAND REGISTRATION.....RESPONDENT

BEFORE HON. LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This is an application brought under section 91(2) of the Land Act cap 227, section 182 of the Registration of Titles Act cap 230, and Order 52 rule 1 of the Civil Procedure Rules (CPR) for orders that:-

- a) The respondent shows cause why she has not rectified the mailo land office register for the land comprised in Kibuga Block 28 Plot 760 at Makerere to restore the applicant's leasehold interest thereon, that is, Leasehold Register Volume 1517 Folio 17.*
- b) The respondent corrects the anomaly by entering the applicant's leasehold interest on the mailo land register, and*
- c) Costs of the application be provided for.*

The application is supported by the affidavit of **Maria Christine Valvo** the applicant. The respondent did not file an affidavit in reply neither did he attend the hearing despite being served

with the application and the hearing notice. There is an affidavit of service and an endorsed copy of the application on the court record. For those reasons, the matter proceeded *ex parte*.

The facts of the case as deduced from the applicant's affidavit evidence are that the applicant is the surviving registered proprietor of a 49 year lease comprised in Leasehold Register Volume 1517 Folio 17 situated on mailo land comprised in Kibuga Block 28 Plot 760 land at Makerere and the holder of a duplicate certificate of title for the said lease interest. Her late father Salvatore Valvo leased the said land from the original mailo owner, Israel Kanyerezi on 21st November 1986 and the lease was registered in the names of both the applicant and her said father. It was also registered as an encumbrance on the mailo certificate of title at the Land Office. A recent search at the Land Office indicated that the applicant's lease encumbrance on the mailo title was fraudulently cancelled and declared "surrendered" without the applicant's consent or knowledge despite the fact that the lease is still subsisting. The words "surrendered" have no instrument number on the encumbrance page to tally with which suggests that no documents were lodged to show that the lease was surrendered. Efforts to have the respondent correct the anomaly have proved futile as she has refused to rectify it despite numerous requests. The said facts were also stated to be the grounds of the application.

Learned Counsel for the applicant relied on the same facts and submitted that it is in the interests of justice that this application be granted.

Section 91 of the Land Act empowers the Registrar of Titles to give effect to the Registration of Titles Act by endorsement or alteration or cancellation or issuing of a certificate of title. Section 91(2)(c) of the said Land Act provides that where a certificate of title contains an entry or endorsement made in error the Registrar shall call for the duplicate certificate of title or instrument for cancellation, or correction or delivery to the proper party.

The Applicant has by affidavit evidence shown that she is the surviving registered proprietor of a 49 year lease comprised in Leasehold Register Volume 1517 Folio 17 situated on mailo land comprised in Kibuga Block 28 Plot 760 land at Makerere and the holder of a duplicate certificate of title for the said lease interest, and that an encumbrance lodged on the mailo land in respect of her lease interest was removed without her knowledge, consent or lawful justification. The lease interest, which is evidenced by annexure **B** to the applicant's supporting affidavit shows that the

lease commenced on 29th June 1986 and is to run for 49 (forty nine) years. Annexure **B** to the same affidavit shows that there was an erroneous and illegal entry on the encumbrance page of the certificate of title for the land comprised in Kibuga Block 28 Plot 760 land at Makerere when the word “surrendered” was endorsed there without an instrument number and without justification. Annexures **D** and **E** show that the respondent was moved by the applicant to correct the anomaly but she did not correct it. Despite being served, she has also ignored or failed to defend this application by not filing an affidavit in reply or appearing in court to show cause why she refused to perform her duty after being summoned under section 182 of the Registration of Titles Act.

In effect the respondent has neither shown any reasonable cause why she in the first instance made the entry “surrendered” on the original certificate of title for the land comprised in Kibuga Block 28 Plot 760 land at Makerere or failed to correct it once it was drawn to her attention by the applicant. The said 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 Achen [1978] HCB 297** the facts as adduced in the affidavit of the applicant which are neither denied nor rebutted are presumed to be admitted.

In the premises, I would allow this application.

There will be no order as to costs.

Dated at Kampala this 25th day of October 2012.

Percy Night Tuhaise

JUDGE.