

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT LUWERO
MISC. CAUSE NO. HCT-17-FD-MC-0028 -2023
(ARISING FROM FAMILY DIVISION CIVIL SUIT NO. 117 OF 2011)
MAYANJA GEORGE WILLIAMAPPLICANT
V
NABAWANUKA SARAH.....RESPONDENT

BEFORE LADY JUSTICE HENRIETTA WOLAYO

RULING

Introduction

1. On 13.03.2023, the applicant Mayanja George William moved court under Section 98 of the Civil Procedure Act Cap. 71, Section 33 of the Judicature Act Cap.13, and Order 52 rule 1, 2 and 3 of Civil Procedure Rules for the following orders:

- a) The consent judgement in Civil Suit No.117 of 2011 delivered on 04.06.2013 be set aside for violating the applicant's right to legal ownership of the said land comprised in **LVR 4147 Folio 25 Buruli Ranching Scheme Ranch 2C2**.
- b) The consent judgement be varied on grounds that it was not complied with.
- c) The respondent has violated the terms of the consent judgement.
- d) Costs of this application be provided for.

2. The grounds in support of the application are contained in the affidavits in support and in rejoinder of Mayanja George William the applicant. The respondent Nabakwauka Sarah opposed the application and the grounds for opposition are contained in her affidavit in reply.

Background facts to the application.

3. On 4.6.2013, the High Court presided over by my brother Lugayinzi Sempa J as he then entered a consent judgment in **Family Division Civil Suit No. 117 of 2011 Mayanja George William and nine others V Nabawanuka Sarah and Namigadde Sarah** who is now deceased.

The terms of this consent are reproduced below:

- a) The first defendant (Nabawanuka Sarah) is maintained as administrator of the estate of late Lule George for the purpose of ensuring that the land is transferred to the beneficiaries within 90 days from the date hereof.
- b) The defendant Nabawanuka shall refund a sum of 45,000,000/ to the plaintiff George William Mayanja as money received on the plaintiffs' behalf payable within 90 days from the date of this consent.
- c) The criminal cases arising from the administration of the two states in issue should be withdrawn immediately.
- d) The letters of administration to the second defendant (Namigadde Sarah) in respect of the estate of late Sekamwa Yokana cease to have effect.
- e) The family is free to appoint a different administrator who will come to court with such evidence and get new letters of administration.

4. The applicant Lule, now wishes to set aside or vary the consent judgment. On 20.6.2023, both parties were given a schedule to file written submissions. On 31.10.2023, I issued directions reminding the applicant to file submissions by 7.11.2023 while the respondent was to file by 14.11.2023 but as I write this Ruling, none of the parties has complied.

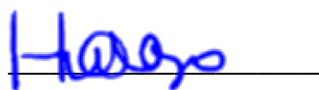
Resolution of the case

5. The applicant's case as deposed in his affidavit is that the respondent has not complied with the terms of the consent judgment. Furthermore, that the respondent sub-divided the property and that she has applied for compensation from Government arising from **Masaka Cooperatives Society and others v Attorney General, High Court Civil Suit No. 240 of 2015** without consent of other beneficiaries.
6. In response, the respondent deposed that the land comprised in LVR 4147 Folio 25 forms part of the estate of their late father late George Lule and that it is held under a lease with restrictive covenants . She denied attempting to sub-divide the land or even obtaining a special certificate of title.
7. I note from the Ruling of Katushabe Prossy Deputy registrar in Family Division MA No. 525 of 2021 Arising from Civil Suit No. 222 of 2017 George Lule and others v Nabawanuka Sarah that George Lule's application for a temporary injunction restraining the Attorney General

from paying Nabawanuka compensation for land comprised in Ranch No. 2C2 and ranch 2C Buruli Ranching Scheme, Nakasongola District was dismissed on 20.10.21 by the learned deputy registrar. This decision was never appealed.

8. As held in **Attorney General & Anor v James Mark Kamoga & Anor SCCA No. 8 of 2004**, *'a consent judgment is set aside by factors that would set aside an agreement such as; fraud, mistake, misrepresentation or contravention of court policy....'*
9. The applicant's complaint is to do with the failure of the respondent to give him his share of the estate of their late father which cannot be a ground for setting aside a consent judgment. The respondent has expressed difficulty in sharing part of the estate among beneficiaries due to restrictive covenant imposed by the district land board. Evidently, setting aside the consent judgment will not lead to the result the applicant desires.
10. Consequently, as the applicant has not demonstrated legitimate grounds to set aside the consent judgment, the application is hereby dismissed with no order as to costs as none of the parties filed written submissions.

DATED AT LUWERO THIS 21ST DAY OF FEBRUARY 2023.



LADY JUSTICE HENRIETTA WOLAYO

Legal representation

11. Maserejje & Co. Advocates for the applicant
12. MSM Advocates for the respondent