

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT MASAKA
MISCELLANEOUS APPLICATION NO. 024 OF 2022
(ARISING FROM CIVIL SUIT NO. 012 OF 2014)

MARI CAPITAL INVESTMENTS LTD APPLICANT

VERSUS

- 1. GRACE NAMULONDO KIGGUNDU**
- 2. HAJJATI JANAT NAMUGENYI KAYEMBA**
- 3. KIYONGA GEORGE KIRUMIRA**
- 4. NAMATA SARAH**
- 5. NAKITTO LUCY**
- 6. BUYINZA PATRICK**
- 7. ROSEMARY NAKABEMBE REGINA RESPONDENTS**

RULING

Hon. Lady Justice Victoria N. N. Katamba

BACKGROUND

This is an Application brought under S.33 of the Judicature Act, Section 98 of the Civil Procedure Act and Order 52 rules 1 and 2 of the Civil Procedure Act. It is an Application for an Order that the Consent Judgment in Civil Suit No. 012 of 2014 signed by the 1st, 2nd, 3rd, 4th and 5th Respondent on 17th November 2017 be set aside for fraud, illegalities and contravention of court policy among other reliefs.

The Application is supported by the affidavit of the managing Director of the Applicant, Mr. Ian Steven Mulindwa.

The 6th and 7th Respondents opposed the Application by filing an affidavit in reply.

Representation

The Applicant was represented by **M/s Silicon Advocates**.

The Respondents were on the other hand represented by **M/s Sam Sserwanga & Co. Advocates.**

APPLICANT'S CASE

The Applicant states that 1st and 2nd Respondents lacked capacity to sue in the suit from which the Consent Judgment arose because they had no Letters of Administration to the estate of their deceased benefactor. He also complains that the said Respondents also had no authority from the other Administrators and that as such they could not enter into a valid consent Judgment.

The Applicant also states that the 5th Respondent did not sign the consent Judgment but that it is the other Respondents who fraudulently signed on his behalf.

The Applicant further states that the Consent Judgment was signed without the approval of Alex Sebowa, Nkaada Edward and Kasule Raphael who were joint registered proprietors.

In addition to the above, the Applicant also states that, moreover, the Advocates of the 3rd to 5th Respondents never endorsed the terms of the consent Judgment.

The Applicant is also concerned that the 6th to 7th Respondents have sued the 3rd, 4th and 5th Respondents and that as such court needs to investigate as to who owns the land because the Applicant who owns a lease over the land is being disturbed by the Mailo claimants.

RESPONDENTS CASE

The Respondents stated that they have never instructed the Applicant to seek a redress for them as he purports to represent in the instant Application.

The Respondents also stated that the Applicant not being a party to Civil Suit No. 82 of 2019 stands to suffer no harm but that if he is interested in having any of his concerns addressed, she should apply to be added as a party to the suit.

In conclusion, the Respondent stated that the Application is a departure from the established principles and procedures for setting a side consent Judgments, is an abuse of court process and as such should be dismissed with costs.

DETERMINATION BY COURT.

I have carefully considered the Application, the reply and the submissions by the parties and I will refer to them from time to time as and when deemed necessary.

Preliminary Objection:

The Applicant raised an objection that the 6th and 7th affidavit in reply to the Application was undated, contrary to Section 6 of the Oaths Act Cap. 19 which requires the jurat or attestation of every affidavit sworn before a Commissioner for oaths state the place and the date on which the oath is taken.

I have looked at the affidavit in reply on the record of this court and confirmed that indeed it does not disclose the date on which the oath was taken. The Applicant prayed that this court should find that the affidavit is defective. Accordingly, I hereby find that the affidavit is defective for the omission to state the date on which the oath was taken.

The only issue for determination, therefore, is whether the application before this court discloses grounds that warrant setting aside the Consent Judgment of the parties in Civil Suit No. 012 of 2014.

Order 3 rule 1 of the Civil Procedure Rules as amended provides that any application to or appearance or act in any court required by law to be made by a party shall be made by the party or his/her recognized agent or Advocate duly appointed to act on the party's behalf.

In the instant Application, the Applicant complains on behalf of the Respondents that the consent was entered into illegally. She categorically states that the 5th Respondent's signature was fraudulently procured without her consent.

The Applicant even complains on behalf of persons who are not party to the instant proceedings like Alex Sebowa, Nkaada Edward and Kasule Raphael without proof of any authorization on record to act for them.

The other complaints that some of the parties to the consent Judgment are not abiding by its terms are also not a valid ground for setting aside the Consent Judgment which is a Judgment of court.


In sum, the I find that the Application is misconceived and that the Applicant has no locus standi to complain on behalf of persons that have not authorized her to do so. The Application is hereby dismissed with no order as to costs.

I so order.

Orders;

1. The Application is hereby dismissed with no order to costs.

Dated and delivered electronically this 20th day of October, 2023

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HON. LADY JUSTICE VICTORIA NAKINTU NKWANGA KATAMBA