

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA HOLDEN AT MBALE
MISCELLANEOUS APPLICATION NO. 425 OF 2023
(ARISING OUT OF CIVIL SUIT NO. 047 OF 2023)

EVA BUKANZA ::: APPLICANT

VERSUS

1. **JENSEN KEVEN JAY**
(Suing through his lawful Attorney Tumuheki Moses)
2. **BAMUKHWANA CONSTRUCTION COMPANY (U) LTD**
3. **MBALE DISTRICT LAND BOARD**
4. **COMMISSIONER FOR LAND REGISTRATION ::::::::::::::::::::::::::: RESPONDENTS**

BEFORE: HON. JUSTICE LUBEGA FAROUQ

RULING

1. **Introduction**
2. This application was brought by way of notice of motion under section 98 Civil Procedure Act Cap 71 and Order 6 Rule 30 Civil Procedure Rules SI 71-1 for orders that;
 - (a) Civil Suit No. 047 of 2023 be struck off for being over taken by events, on accord of a cancelled certificate, land comprised on LRV MBA34 Folio 24 Plot 31 Sebei Avenue, Sebei Cell Mbale Municipality and
 - (b) Costs for this application and main Suit be provided for.
3. **Background**
4. The 1st Respondent filed Civil Suit No.047 of 2023 against the Applicant, 3rd and 4th Respondents and others on 28th of July, 2023 seeking for orders that;
 - (a) A declaration doth issue that the Plaintiff/1st Respondent is the lawful registered proprietor of the suit land described as LRV MBA 34 Folio 24 Plot 31 Sebei Cell in Mbale Municipality,



- (b) A declaration doth issue that the 1st Respondent/Plaintiff is bonafide purchaser for value without notice in respect of the suit land and property described as LRV MBA 34 Folio 24 Plot 31 Sebei Cell in Mbale Municipality,
- (c) A declaration doth issue that the actions of the Applicant and 3rd Respondents jointly or severally ordering the 4th Respondent to cancel a certificate of title of the 1st Respondent is illegal and *ultra vires*, permanent injunction against the Applicant, exemplary damages and cost.
5. However before the said suit was filed, the Applicant had petitioned the 4th Respondent, Commission Land Registration requesting for cancellation of a certificate of title which was erroneously created on land comprised LRV 34 Folio 24 plot 31 Sebei Avenue, Mbale Municipality, Mbale District issued to the 2nd Respondent and later transferred to the 1st Respondent on 17th day of March, 2023 under Instrument No. MBA-00009479 without the knowledge of the Applicant as customary sitting tenant and without following the right procedure. After hearing from all the parties, on 3rd November, 2023, the 4th Respondent cancelled the 1st Respondent's certificate of title.
6. Following the above background, the Applicant instituted this Application to struck off Civil Suit No. 047 of 2023 for being overtaken by events since the 1st Respondent's certificate of title was already cancelled.
7. This application was supported by the affidavit of **HILARY NDUNGUTSE** Applicant's attorney whose evidence has been considered in the determination of this application and briefly states that-
- a. The Applicant is bonafide owner of the suit land comprised on LRV 482 Folio 14 Plot 31, Sebei Avenue, Sebei Cell Mbale Municipality;
 - b. The Applicant purchased the suit land from a one Geoffrey Kyabihende Taban, with a subsisting lease of 49 years and subsequently registered the same in her names;
 - c. The Applicant immediately took possession, made renovations on the property and has since been using it as a commercial property;
 - d. The 2nd Respondent in collusion with the 3rd and 4th Respondents fraudulently created another Leasehold certificate of title in respect of the

- suit land on 26th day of April, 2023 under Instrument Number MBA-00009329 and illegitimately transferred the same to the 1st Respondent;
- e. The 2nd Respondent illegally transferred the same to 1st Respondent and was registered on 17th May 2023 under Instrument Number MBA-00009479;
 - f. In order to resolve the grievance, the Applicant petitioned for an investigation into an erroneous created certificate of title on the land located on LRV MBA 34 Folio 24 Plot 31 Sebei Avenue, Sebei Cell Mbale Municipality with the Commissioner Land Registration and other pertinent agencies;
 - g. The investigations into the aforementioned property revealed that the leasehold certificate of title created on LRV MBA 34 Folio 24 Plot 31 Sebei Avenue, Sebei Cell Mbale Municipality had been obtained fraudulently;
 - h. The Department of Land Management Administration, Mbale District Local Government held a meeting on 27th June 2023 and resolved that the new title comprised in LRV MBA34, Folio 24 be cancelled because of gross irregularities and it was indeed cancelled on 3rd of November, 2023.
 - i. On the 28th July 2023, the 1st Respondent filed Civil Suit No.047 of 2023 against the Applicant and others and the orders sought therein are already been cancelled and overtaken by events.
8. This Application was opposed by the affidavit of **TUMUHEKI MOSES** the lawful attorney to the 1st Respondent that has been considered in the determination of this application and briefly states that-
- a. The 1st Respondent intends to raise preliminary objections to the effect that this application is incompetent and misconceived and that it is fatally defective;
 - b. The 1st Respondent purchased the suit property from the 2nd Respondent and transferred the same into his names;
 - c. The 1st Respondent through his lawful attorney received a letter dated 05th July 2023 written by the 3rd Respondent ordering the 4th Respondent to

- cancel the Applicant's certificate of title on some allegations of alleged irregularities;
- d. The 1st Respondent filed the main suit HCCS No. 047/2023 on the 28th July 2023 together with Misc Application No. 0237 of 2023 seeking for orders of temporary injunction and maintaining the status quo of registration of the subject matter until determination of the main suit where both the summons to file defence and those of the application were effectively served on the 4th Respondent;
 - e. On 10th August 2023 this court issued the restraining order and the same was served on to the 4th Respondent;
 - f. Despite being served with the said court order, the 4th Respondent went ahead and summoned the 1st Respondent for a public hearing for recalling and cancellation of his certificate of title on allegations raised by the Applicant herein;
 - g. This prompted the 1st Respondent to reply to the summons informing the 4th Respondent that the matter is already subject to court orders and under court proceedings and investigation as per the pleadings served on to them and that it would be in breach of res-subjudice rule to attempt to conclude the same;
 - h. The 4th Respondent adamantly proceeded to issue an amendment order dated 3rd November 2023 recalling and cancelling of the 1st Respondent's certificate of title of the suit property;
 - i. The 1st Respondent's certificate of title was illegally inactivated from the system of the 4th Respondent;
 - j. Therefore, the proceeding of the amendment order and the cancellation of the 1st Respondent's certificate of title was done in a manner that was well designed by the applicant jointly with the 3rd and 4th Respondents to inflict and undermine the powers of this court and the Judiciary in general;
 - k. The 1st Respondent filed an application for contempt of court orders in vide Miscellaneous Application No.0450 of 2023 and the same is pending determination.

9. **Legal representation**

10. Counsel Nappa Geoffrey represented the Applicant, Counsel Emmanuel Wamimbi represented the 2nd Respondent while the 1st Respondent was not represented by advocate.

11. **Determination of court**

12. **Submissions**

13. At the hearing of this Application Counsel for both the Applicant and the 1st Respondent were given schedules within which to file their respective written submissions which they complied to.

14. **Submissions by counsel for the Applicant**

15. Counsel submitted that court may, upon application, order any pleading to be struck out on the grounds that it discloses no reasonable cause of action or answer and, in any such case, or in case of the suit or defence being shown by the pleadings to be frivolous or vexatious, may order the suit to be stayed or dismissed or judgment to be entered accordingly, as may be just. He contended that the 1st Respondent did not enjoy any right as to the Amendment order that was issued on the 3rd day of November by the 4th Respondent which cancelled and expunged the suit land from the register as compared to the Applicant who enjoyed the right as being the bonafide owner of the Suit land. He prayed that the plaint in civil suit No.47 of 2023 be rejected for failure to disclose a cause of action.

16. Counsel added that the orders prayed for in the main suit do not disclose a cause of action for reasons that on 3rd November 2023 the Land Certificate of title issued to the 1st Respondent was cancelled by the 4th Respondent, Commissioner Land Registration under Instrument No.MBA-00009479 because it had been erroneously created which makes Civil Suit No.047 of 2023 to be over taken by events.

17. **Submissions by counsel for the 1st Respondent**

18. Counsel submitted that HCCS No.047 of 2023 is not over taken by events and cannot be struck off and that this application is incompetent and misconceived which ought to be dismissed with costs.

19. He added that the Applicant and the 1st respondent are in antagonism over the suit property since the Applicant purchased the suit property in July 2004 and became registered on the said leasehold certificate of title on 26th July 2004 but never bothered to renew or extend the same before its expiry in 2009, she also never bothered to either convert the same and the suit property having reverted back to the controlling authority, it was viable for any new applicant subject to the approval process of granting relevant minutes from relevant offices.
20. The 2nd Respondent applied for and was granted ownership in the suit property which he later transferred to the 1st Respondent who got registered on the certificate of title on 17th May 2023 and took possession thereof. However, the commissioner land registration issued calling letters to cancel a certificate of title which was already subject to proceedings in this court which is a grave assault on the sanctity on the powers and independency of the Judiciary.
21. The commissioner land registration cited fraud in his summons and decisions yet it is only the High court clothed with the jurisdiction to investigate fraud in property acquisition and had no powers to make conclusive decisions on a matter which is subject to proceedings in court and the Applicant, together with the 3rd and 4th Respondents hurriedly made administrative decisions to frustrate a matter which was already under court investigation.

22. **Analysis of court**

23. The issue for this court to determine in this Application is whether Civil Suit No.047 of 2023 is over taken by events for reasons that the certificate of title comprised in LRV MBA34 Folio 24 Plot 31 Sebei Avenue, Sebei Cell in Mbale Municipality was cancelled. Secondly, whether following that background, Civil Suit No. 047 of 2023 discloses no cause of action?
24. **Order 7 Rule 11 (a) of the Civil Procedure Rules SI 71-1** provides that;

“The plaint shall be rejected here it does not discloses a cause of action”



25. **Order 6 Rule 30 of the Civil Procedure Rules SI 71-1** provides that-

“(1) The court may, upon application, order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer and, in any such case, or in case of the suit or defence being shown by the pleadings to be frivolous or vexatious, may order the suit to be stayed or dismissed or judgment to be entered accordingly, as may be just.”

25. It is trite that a cause of action has three ingredients, that is to say; the plaintiff enjoyed a right, that right was violated and the defendant is liable. **See: Auto garage & others Vs Motokov (No.3) (1971) EA at 519** and **Tororo Cement Co Ltd V Frokina International Ltd Civil Appeal No. 2/2001.**

26. In the instant case, the 1st Respondent on 28th of July, 2023 instituted Civil Suit No. 047 of 2023 seeking to protect his interest in LRV MBA 34 FOLIO 24 PLOT 31 Sebei Avenue Cell Mbale Municipality measuring approximately 0.2790 Ha. On the same day, the 1st Respondent further instituted Miscellaneous Application No. 0237 of 2023 seeking for interim relief maintaining the status quo of registration of the subject matter until determination of the main suit among other orders. The interim order was granted on 1st of September, 2023.

27. Counsel submitted for the Applicant that the orders prayed for in the main suit do not disclose a cause of action for reasons that on 3rd November 2023 the Land Certificate of title issued to the 1st Respondent was cancelled by the 4th Respondent, Commissioner Land Registration under Instrument No.MBA-00009479 because it had been erroneously created which makes Civil Suit No.047 of 2023 to be over taken by events.

28. However, looking at the date when Civil Suit No. 047 of 2023 was instituted, it was instituted before the order for cancellation was issued by the 4th Respondent.

29. Secondly, a court order stopping the 4th Respondent from cancelling the 1st Respondent's title and another order allowing the 1st Respondent to continue

being the registered proprietor of LRV MBA 34 FOLIO 24 PLOT 31 Sebei Avenue Cell Mbale Municipality were issued on 1st of September, 2023 still before the 1st Respondent's title was cancelled.

30. In the circumstance, by implication, the 4th Respondent's order cancelling the 1st Respondent's title issued during the subsistence of the court order, was in contempt.
31. That being the position, it cannot be said that by virtual of cancellation of the 1st Respondent's certificate of title, Civil Suit No. 047 of 2023 does not disclose a cause of action for being overtaken by events.
32. In the final result, I find that Civil Suit No. 047 of 2023 discloses a cause of action and not overtaken by events.
33. This application is accordingly dismissed.
34. Costs are awarded to the 1st Respondent.

I so order


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LUBEGA FAROUQ
JUDGE

3rd MAY, 2024