

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT LUWERO
MISC. CAUSE NO. HCT-17-LD-MC-005-2023
(ARISING FROM LUWERO CHIEF MAGISTRATE'S COURT CIVIL SUIT
NO. 33 OF 2014)

MUYINGO FRED.....APPLICANT

V

- 1. SEZIRIYO FRED**
- 2. COMMISSIONER LAND REGISTRATION.....RESPONDENTS**

BEFORE LADY JUSTICE HENRIETTA WOLAYO

RULING

Introduction

1. By a notice of Notice of Motion filed on 11.4.2023, the applicant Muyingo James Lukose moved court under Section 177 of the Registration of Titles Act Cap.230, Section 98 of the Civil Procedure Act, Section 33 of the Judicature Act, and Order 52 rules 1 & 2 of the Civil Procedure Rules seeking for the following orders;
 - a) The second Respondent enters a substitute page for land comprised in Bulemezi Block 205 Plot 45 land at Bugayo Nakikonge
 - b) The first Respondent be compelled to produce the original duplicate certificate of title for land comprised in Bulemezi Block 205 Plot 45 Land at Bugayo.
 - c) In the alternative to (b) above, the second Respondent issue a special certificate of title for the suit land in the alternative.
 - d) A Vesting Order be issued for four (4) acres of land, forming part of the suit land in place of the Vesting Order issued consequent

to the recovery of the land in Civil Suit 033 of 2014 Mukasa Gava v Seziryo Fred.

- e) A Vesting Order be issued for two (2) acres of land, forming part of the suit land, in place of the Vesting Order issued consequent to the recovery of land in Civil Suit 033 of 2014 Mukasa Gava v Seziryo Fred.
 - f) The second Respondent be directed to subdivide the suit land to conform with the Vesting Orders
 - g) Costs of the application be provided for
2. The grounds in support of the application are contained in the affidavit of Muyingo James Lukose. The first Respondent filed an affidavit in reply opposing the application.

Background facts

3. When the matter came up for hearing on 26.04.2023, Mpiima Jamil counsel for the first Respondent, sought for more time to file an affidavit in reply. I directed the respondent to file his affidavit in reply by 10.5.2023 and the applicant to file a rejoinder by 17.05.2023 and both parties to file their submissions before the deadlines of 24.05.2023 and 31.05.2023 respectively. While the first respondent filed his affidavit in reply on 8.5.2023, he did not file written submissions. The applicant filed written submissions which I have carefully considered.
4. On 16.11.2023, I issued directions reminding the first respondent but there has been no response. This means I will determine this

application without submissions from the first respondent and without input from the Commissioner Land Registration, the second respondent.

The applicant's case

5. The applicant purchased land measuring 4.0 acres comprised in **Bulemezi Block 205 Plot 45 land at Bugayo Nakikonge**, registered in the first respondent's name Seziriyo Fred which had been attached in execution of a decree in Luwero Chief Magistrate's Court Civil Suit No. 33 of 2014. It was the applicant's case that Seziriyo being the registered proprietor of the suit land and the judgement debtor vide Civil Suit No.033 of 2014 refused to surrender the duplicate certificate of title in respect of the suit land.
6. It was further the applicant's case that subsequently, HW Awidu the learned trial magistrate issued a vesting order dated 24.6.2019 in Civil Suit No.033 of 2014 directing the Commissioner Land Registration to transfer four (4) acres from Seziriyo (judgement debtor) to Muyingo and further that the latter's name be registered on the title. The vesting order dated 24.6.2019 issued in Civil Suit No.033 of 2014 directed the Commissioner Land Registration to transfer another interest of 2 acres from Seziriyo to the judgment creditor, Mukasa Gava.
7. Furthermore, that the applicant having contracted a surveyor to sub-divide and transfer the four (4) acres into his name pursuant to the vesting order was advised by the Commissioner Land Registration

that sub-division and transfer could not be effected since the white page was missing and as such, the applicant should apply for a substitute page.

8. In a nutshell, the application is about giving effect to a purchase of four acres of land comprised in Bulemezi Block 205 Plot 45 at Bugayo that was attached and sold through an auction by bailiff Waswa in execution of a court order in **Luwero Chief Magistrate's Court Civil Suit No.033 of 2014.**

The first respondent's case

9. The gist of the first respondent's case is that the proceedings in the chief magistrate's court were ex parte and that the process leading up to the vesting order was flawed. Furthermore, that he applied for proceedings to enable him take steps in the suit but these were never availed.

Luwero Chief Magistrate's Court Civil Suit No.033 of 2014 Mukasa Gava v Seziriyo Fred

10. A review of what happened in this case is an essential pre-requisite to determining whether the current application for consequential orders has merit and also a means to verifying the facts deposed by the applicant in his affidavit in support for the application and in the process, re-evaluating them as is my duty. This is because my role is not just to issue consequential orders, but also to satisfy myself that the lower court judgment was based on facts and the law.

11. From the amended plaint filed on 19.3.2015, one Mukasa the judgment creditor in Civil Suit No. 33 of 2014 sued Seziriyo for recovery of two acres of land. The facts leading up to the suit are that by an agreement dated 22.2.2008, Mukasa sold 22 acres of land comprised in Block 205 Plot 4 at Mugogo –Makulubita to Seziriyo at a price of 10,000,000/ of which Seziriyo initially paid a deposit of 2,000,000/ but Mukasa refunded 3,100,000/ including interest. This means at this point, the contract was rescinded as between Mukasa and Seziroyi.
12. Subsequently, Mukasa gave his certificate of title and transfer form to Katabira Valatiyini to curve off 20 acres who instead handed to Seziriyo the said certificate and transfer form and the entire 22 acres were registered in the names of Seziriyo Fred. Mukasa claimed two acres of this land hence C.S 33 of 2014 in the lower court.
13. In defence, Seziriyo filed a written statement of defence in which he averred that both Mukasa and himself bought bibanja but Mukasa got certificate of title and sold the land to Engineer Katabira who in turn sold the land to him (Seziriyo). In other words, Seziriyo asserted a claim of right to the two acres Mukasa claimed.
14. The case in the lower court proceeded ex parte against Seziriyo with three witnesses. An examination of the witness statement of PW1 Mukasa Gava aged 88 years, resident of Mugogo Makulubita, Luwero district shows that he was the registered proprietor of Bulemezi Block 205 Plot 45 measuring 22 acres located in Bugayo,

Makulubita sub-county, Luwero district. Mukasa sold to Seziriyo 22 acres at 10,000,000/ by an agreement dated 22.2.2008. Kezironi paid 2,000,000/ but later Mukasa refunded this money and then handed Katabira the certificate of title to carve out 20 acres. Later Katabira handed the certificate to Seziriyo who registered the land in his name.

Privity of contract

15. In the plaint, Mukasa claims to have sold the land to Katabira who then gave it to Seziriyo. Read together with the evidence, there was no contract whatsoever between Seziriyo and Mukasa because the contract was rescinded when Mukasa refunded Seziriyo his 2,000,000/. Seziriyo purchased from Katabira who had bought from Mukasa the same land on 14.2.2008, a week earlier except that it was 20 acres. Therefore, there was a contract between Mukasa and Katabira but none between Mukasa and Seziriyo.
16. The doctrine of privity of contract is that a party who is not party to a contract cannot sue upon it. In **Uganda Electricity Distribution Co. Ltd v Citibank Uganda Ltd and two others (Misc. Applic. No. 1397 of 2022) 2022 UGCommC 98, (22 December 2022) ULII** , Mubiru J cited **Dunlop Pneumatic Tyre Co. Ltd v Selfridge Co. Ltd [1914-15] ALL ER Rep 333**, where Dunlop Tyre Ltd the appellant sued Selfridge for breach of contract. The facts were that Dunlop Tyre Ltd made an agreement with Selfridges Ltd not to sell Dunlop's goods below an agreed price except to some valued customers only whom Dunlop permitted could buy at a discount. Selfridges sold to one such customer D & C and this customer sold at a lower price than he had been told to sell by Selfridges. Dunlop sued Selfridges for breach

of contract. On appeal, the House of Lords held that Dunlop Tyres Ltd was not a party to the contract between Selfridges and D & C Company and no consideration passed from Dunlop Tyres to Selfridges so the agreement was not enforceable.

17. In the instant case, Seziriyo was not party to the agreement between Mukasa and Katabira. Seziriyo could not have known of the terms of the contract between Mukasa and Katabira about curving out only 20 acres out of 22 acres. Neither could Mukasa and Katabira impose an obligation on Kezironi without his participation in the negotiations. Therefore, Mukasa cannot sue Kezironi on a non-existent contract between them.

Agreement to refund 6,600,000/ was without consideration

18. In her judgment dated 14.6.2018, the learned trial magistrate Awidi Suzan found that initially Seziriyo had agreed to refund Mukasa the value of the two acres valued at 6,600,000/ but failed to pay. She gave judgment in favour of Mukasa for the recovery of two acres off Bulemezi Block 405 Plot 45 at Bugaya. An agreement to this effect is on record.

19. In his testimony, Mukasa had made reference to an agreement dated 7.7.2012 as a basis for the demand for two acres. This agreement was made between Mukasa Gava (the plaintiff) and Seziriyo, at the office of the Resident District Commissioner, Seziriyo agreed to pay Mukasa 6,600,000/ and in default, Mukasa would curve two acres from any of Seziriyo's land. This agreement was witnessed by vice chairperson of Kikoko LC 1, Makubilita, Kyewalabye Geoffrey.

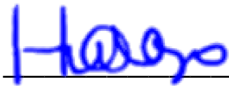
20. Evidently since this agreement is dated 2012 and the agreement with Katabira is dated 14.2.2008, it seems the two acres Mukasa wanted to recover from Seziriyo are the reason for the demand for 6,600,000/. I have already found that there was no contract between Kezironi and Mukasa and therefore Mukasa's demand for 6,600,000/ from Seziriyo was without consideration or exchange of value. I find that the learned trial magistrate erred in relying upon it to enter judgment for Mukasa.

21. In a nutshell, the effect of this analysis is that there was no contract for sale of land between Mukasa and Kezironi and therefore the trial magistrate ought to have rejected the claim and dismissed the case on the strength of **Section 10(a) of the Contract Act 2010** which defines a contract as an agreement made with the free consent of parties with capacity to contract for a lawful consideration and with a lawful object with the intention to be legally bound. The fact that there was no contract between Mukasa and Seziriyo for the two acres Mukasa demanded from Seziriyo, means that it cannot be enforced against Seziriyo nor can the agreement for Seziriyo to pay 6,600,000/ in lieu of two acres be enforced against him because Seziriyo was getting nothing in return from Mukasa.

22. For the foregoing reasons, I quash the proceedings in the trial court and consequently, the auction by the bailiff is of no effect as well as the orders of eviction passed against Seziriyo.

23. The sum total of this order is that MC. No. 005 of 2023 for consequential orders has no basis and it is struck out with costs to the first respondent Seziroyi.

DATED AT LUWERO THIS 28TH DAY OF FEBRUARY 2024



LADY JUSTICE HENRIETTA WOLAYO

Legal representation

Rutebemberwa & Co. Advocates for the applicant