

1 THE REPUBLIC OF UGANDA
2 IN THE HIGH COURT OF UGANDA AT MUKONO
3 HCT-14-CV-MC-023 OF 2018

4 1. SSENIONJO ROBERT SSEWAVA
5 2. NAAVA HARRIET
6 NAMBAZIRA:.....APPLICANTS

7 VERSUS

8 1. NATIONAL FORESTRY AUTHORITY
9 2. COMMISSIONER LAND
10 REGISTRATION:.....RESPONDENTS

11 BEFORE: HON. LADY JUSTICE MARGARET MUTONYI, JUDGE HIGH COURT

12 RULING ON PRELIMINARY OBJECTION

13 1. This Ruling is in respect of a Preliminary objection raised by Counsel Moses Muhumuza for
14 the 1st Respondent, National Forest Authority (NFA) The Application was set for hearing on
15 11th March 2019.

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17 The main Application is brought under section 33, 14 (2) C of The Judicature Act and Order
18 52 rules 1, 2 and 3 of the Civil Procedure Rules.

19 It is basically seeking for Orders that;

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21 [a] A boundary opening exercise be conducted and concluded by the Applicants for land at
22 Bwebereza, Mugangu and Kipayo, Zirimiti Mukono adjacent to Zirimiti Central Forest
23 Reserve.

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25 [b] Or in the alternative, the Applicants and Respondents conclude a joint Boundary opening
26 exercise for land comprised in Kyaggwe Block 393 and 421.

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28 [c] That the boundaries for the Applicants and 1st Respondent's land at Bwebereza
29 Muganga and Kipayo Zirimiti, Mukono district be ascertained by a precise survey of the
30 Applicants land interalia.

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32 [d] A boundary opening report be filed on the court record within 14 days thereof.

33 [e] That the 2nd Respondent expeditiously concludes the Freehold titling process for the
34 Applicant's land herein and that the Respondents meet the costs of the Application.

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36 The application was supported by the Affidavit of Senyonjo Robert Ssewava and Naava
37 Harriet Nambazira, the 1st and 2nd Respondents but briefly the grounds are:-

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39 (1) That the Applicants are administrators of the estate of the late Kanamwangi Musa.

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41 (2) That the late Kanamwagi Musa left behind land at Bwembereza and Kipayo comprised
42 in block Kyaggwe 393 and 421 Mukono, which can be ascertained by a boundary
43 opening exercise between the Applicants and 1st Respondent.

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45 (3) That in the interest of Justice an order for opening boundaries be granted and the 2nd
46 Respondent be directed to issue the Applicants land titles.

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48 (4) It is just, fair and equitable that this Application be allowed.

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50 (5) The 1st Respondent filed an Affidavit in Reply through its Registered Surveyor
51 employed as the boundary and Survey Specialist a one Opar Benard Zachary Wonumbe
52 dated 11th June 2018 wherein; he did not oppose the Application as such.

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54 The 2nd Respondent, the commissioner Land Registration did not oppose the
55 Application.

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57 (6) Perusal of the record, reveals letters from the Commission of Inquiry into land matters
58 which suggest its interest in the court process but I will not dwelve into them at this
59 stage.

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61 (7) When the matter came up for hearing on 11th March 2019, counsel for the Applicant
62 raised the Preliminary objection, hence this Ruling.

63 The objection was in respect of a vesting Order issued by the Deputy Registrar, His Worship
64 Jess Byaruhanga which according to Counsel for the 1st Respondent is the crux of this case.

65 He submitted that when the matter last appeared before the Registrar of Court, (Nabakooza
66 Flavia, then) she made a Ruling discovering some irregularities and forwarded the mother
67 file of the Application for review precisely stating that the vesting order issued by the
68 Deputy Registrar then at Jinja High court (His Worship Jesse Byaruhanga) was irregularly
69 issued without the authority vested in him as Registrar.

70 He submitted that the same vesting order is the crux of this Application for which the
71 applicants base on to move this court for the order to survey the suit land, seek the issuance
72 of the Certificate and in effect bringing the land under the Registration of Titles Act.

73 He relied on the case of **Ronald Oine Vs The Commissioner for Land Registration Land**
74 **Division MC No.90/2013** where Hon. Justice Bashaija Andrew relying on the case of
75 **Aidah Najjembe Vs Esther Mpagi CA 74/2005** restated the four conditions which must be
76 satisfied before the Registrar can exercise his or her powers of issuing a vesting order; under
77 section 167 of the RTA;

- 78 1. The land must be registered under the RTA and the Purchaser must have paid the whole
79 of the purchase price to the vender.
- 80 2. The Purchaser or those claiming under him or her have taken possession of the
81 purchased land.
- 82 3. The Purchaser has entered the land and the entry has been acquiesced in by the vendor
83 or his or her representative.
- 84 4. The transfer of the property has not been executed because the vender is dead or is
85 residing out of jurisdiction or cannot be found.

86 The Judge added that the Applicant must have made the first Application to the Registrar
87 who must cite reasons in case he declines to issue the vesting order.

88 Section 167 of the RTA vests the powers of issuing a vesting order to the Judge of the High
89 Court; in case the Registrar declines to grant it not in the Registrar of the High court.

90 Counsel prayed that this court takes note of the irregularity of the vesting order and prayed
91 that the order be set aside and this court having learnt of such an illegality disregards it.

- 92 5. In response counsel Sekalame for the Applicants submitted that counsel for the 1st
93 Applicant is challenging proceedings in MA 23/18 basing on the Order that was granted
94 by this very court in MC 54/2017 where land comprised in Block 393 and 421 in
95 Kyaggwe was vested to the Applicants.

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The said Order was issued by the Registrar of the High Court Jinja. He submitted the current Application is not seeking to vest the land in contention with the Applicants but rather to know where land in Block 393 and 421 passes.

Upon ascertaining the boundary of this land, the applicants would petition the 2nd Respondent to vest the land into their names as Administrators of the late Kanamwangi Musa.

He further submitted that the Applicants seek to obtain free hold titles from the second Respondent who actually did not oppose the Application which presumes that he accepted all the averments in the Applicant's Affidavits.

He relied on the case of **Massa Vs Acheng 1978 HCB at page 297.**

He agreed with the conditions for a vesting order but added that the conditions in this case are clearly distinguishable from the orders sought in the Application.

He further sought court's indulgence to re-endorse the order that was issued by the Registrar of court or in the alternative stay MC 23/18 to enable the Applicants table the order that was issued by this court before a Judge as a competent Officer of this hounourable court for endorsement.

In rejoinder, counsel Muhumuza submitted Counsel for the Applicant concedes that the vesting Order was irregular and therefore the Applicants have no ownership conferred to them by this court.

He prayed that the Application should fail having been based on an irregularly procured ownership.

Lastly, he submitted that it is the court's duty having learnt of an illegality to deal with it in accordance with the law and such should not be left to stand as it is of no legal force.

6. The issue for my opinion is whether the Preliminary objection has merit and whether it disposes off the main Application.

131 **7. RESOLUTION OF ISSUES**

132 I have carefully evaluated the submissions on record, looked at the authorities and the
133 Notice of Motion before court. Whereas I agree entirely with the authority cited on vesting
134 order, and circumstances under which it can be granted, and the fact that it was made by the
135 Deputy Registrar His Worship Jesse Byaruhanga without jurisdiction, making it a nullity,
136 and with no legal effect;

137 I do not agree with the submission of Counsel for the 1st Respondent that the vesting order is
138 the crux of the Application.

139 It is not mentioned anywhere in the Notice of Motion as a ground or basis for the
140 Application.

141 The vesting order is mentioned in the Affidavit in Support which is evidence and hence will
142 be subjected to evaluation and assessment of whether it has evidential value.

143 Counsel for the 1st Applicant prayed that the vesting order be set aside while Counsel for the
144 Applicants prayed that the court endorses it.

145 It is trite Law that jurisdiction of court can only be granted by statute and any proceedings
146 conducted by any court without jurisdiction is a nullity. Likewise any award or judgment
147 arising from such proceedings is a nullity. **(Refer to the case of Desai Vs. Warsaw [1967]**
148 **EA 351.**

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150 It is also trite law that court cannot sanction what is illegal and an illegality once brought to
151 the attention of court overrides all questions of pleadings made thereon. (See the case of
152 **Makula International Ltd. Vs H. E Cardinal Nsubuga and Another (1982) HCB 11.**

153 Whatever a court purports to do without jurisdiction is a nullity abnatio. A person affected
154 by it is entitled to have it set aside ex debito justitiae. (See **Peter Mugoya Vs James**
155 **Gidudu and another (1991) HCB 63.**

156 The right to have it set aside is not a matter of judicial discretion or determination but as a
157 matter of right.

158 Ideally, the Applicant should make or file a formal Application before court to have the
159 illegal order or judgment set aside.

160 However, it is my humble view that since it is settled law that a judgment of court without
161 jurisdiction is a nullity and a person affected by it is entitled to have it set aside ex-debito
162 judicial, once, such an illegality is brought to the attention of court, court should be at
163 liberty to set it aside.

164 The illegal Order dated 20th December 2017 affected the 2nd Respondent in this case, The
165 Commissioner Land Registration. To avoid multiplicity of suits and applying section 33 of
166 the Judicature Act, I declare the Order dated 20th December 2017 which vested land into the
167 Applicants null and void and set it aside.

168 Never the less, since the Application before court is premised on the fact that the Applicants
169 are administrators of the estate of the person who is alleged to have land neighbouring the 1st
170 Respondent, I direct that the Application be heard on merit and a decision be made by this
171 honourable court as to whether boundaries should be opened or not.

172 I so direct.

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175 _____
Hon. Lady Justice Margaret Mutonyi

176 **RESIDENT JUDGE**

177 **03rd April 2019**