

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(CIVIL DIVISION)
MISCELLANEOUS CAUSE NO. 158 OF 2017

MARTIN MUGAJU**APPLICANT**

VERSUS

ATTORNEY GENERAL**RESPONDENT**

BEFORE: LADY JUSTICE LYDIA MUGAMBE

RULING

1. This is the ruling in Misc. application No. 158 of 2017 in which the Applicant sought:
 - i. A declaration that the continued seizure/detention of his land title is unconstitutional in so far as it violates his right to property.
 - ii. An order compelling the Respondent, in particular the Commandant Land Protection Unit of Uganda Police Force at Kibuli, to release the duplicate certificate of title in respect of land comprised in Kyadondo, block 180, plot 853 to the Applicant.
 - iii. Costs of the application.

2. The Applicant was represented by Mr. Patrick Alunga of M/s. BKA Advocates and the Respondent was represented by Mr. Madete Geoffrey from the Attorney General's Chambers.
3. The application is supported by the affidavit of the Applicant. The grounds are briefly that the Applicant is the registered proprietor of land comprised in Kyadondo block 180 plot 853. The duplicate certificate of title in respect of the land was seized by police while carrying out investigations vide Reference KMP/GEF/01/2014 and the same has not been returned him. Police investigations revealed that the Applicant had not participated in any criminal activity and as such no charges had been preferred against him. The prosecution of the suspect, a one Rugarama Daniel whom the police had failed to apprehend and charge since January 2016, can be conducted without the duplicate certificate of title. The Applicant is a bonafide purchaser for value and should not be unconstitutionally deprived use and possession of his duplicate certificate of title.
4. The Respondent opposes the application through the affidavit in reply of Mr. George Mukasa Kyagaba, the administrator of the estate of the late B.K. Kasirye who was registered on the certificate of title on 3rd August 2010 vide administration cause No. 67 of 1995. He avers that he had financial problems and approached the said Rugarama Daniel for a loan of Ug. shs: 7,000,000/= (Uganda shillings seven million only) to enable his daughter travel to Sweden. He signed an acknowledgment of receipt of the same but did not get a copy. The agreed interest was 3,000,000/= making a total of 10,000,000/= that Mukasa was to pay back.
5. Later, Mukasa failed to pay this money. In an effort to sort this debt, he asked Mr. Rugarama to sell a portion of the suit land measuring approximately 25 decimals off a larger parcel of land measuring approximately one acre and 10 decimals comprised in Block 180 Plot 853 for Ug shs: 40,000,000/= (Uganda shilling forty million).
6. After about two months, Rugarama informed the Mukasa that he had found a buyer and asked for the duplicate certificate of title for the intended buyer to examine. He gave him a photocopy but he insisted on the original which the Applicant surrendered. The Applicant

also signed transfer forms for the sale of the portion. Mr. Rugarama did not return and for about eight to nine months, all attempts to contact him were futile. Rugarama was also locked up for some time. Mr. Mukasa went to Kiwologoma police post, Kira road police station and Kampala central police station and lodged a complaint against Rugarama. He instructed Ilukor Emmanuel of M/s. Iluko Advocates & Solicitors to lodge a caveat on the suit land. On 19th July 2013, a caveat was lodged at the Wakiso land office. Shortly after lodging the caveat, people unknown to him went to the suit land, evicted his caretaker and broke down the fully furnished house on the suit land and destroyed and/or damaged all property therein.

7. Mukasa later discovered that after obtaining the certificate of title, Mr. Rugarama illegally transferred the entire parcel of land comprised therein into his names without his consent and subsequently sold it to Max Investments Ltd. The land was then transferred to the Applicant. He avers that Mr. Rugarama claimed that he had sold him the land vide a sale agreement dated 14th July 2014. This agreement was sent to the Uganda police forensic document examiner who vindicated Mukasa by showing that his signature was forged. The duplicate certificate of title should not be returned because it is now part and parcel of the intended criminal investigations and possible prosecution.
8. According to the joint scheduling memorandum filed on 19th October 2018, the issues for resolution are; (1) whether the Respondent is justified in continually holding the Applicant's duplicate certificate of title; (2) what remedies are available to the parties?
9. Article 26(1) of the 1995 Constitution as amended provides that "every person has a right to own property either individually or in association with others." Clause (2) provides that "no person shall be compulsorily deprived of property or any interest in or right over property of any description except where the following conditions are satisfied (a) the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and (b) the compulsory taking of possession or acquisition of property is made under a law which makes provision for (i)

prompt payment of fair and adequate compensation, prior to the taking of possession or acquisition of the property; and (ii) a right of access to a court of law by any person who has an interest or right over the property.”

10. The Applicant’s claim to the suit property is from his purchase from Max Investments who purchased the suit property from Rugarama Daniel. The glitch in all these sales is that the sale and transfer to Rugarama was illegal and bathed in fraud. He took Kyagaba’s title for purposes of selling off 25 decimals. Instead, he transferred the whole of the land measuring 0.465 hectares (approximately one acre and 10 decimals). This sale was for recovery of Ug. shs. 10,000,000/=.
11. It is not indicated how much the alleged different subsequent buyers bought the suit land. What is clearly demonstrated to my satisfaction is that the underlying purchases from Kyagaba to Rugarama and/or Max Investments was/were a fraudulent scheme by Rugarama who took the title from Kyagaba for transfer of only a small portion but instead transferred the whole land to himself.
12. As a result any purchase or sale stemming from Mr. Rugarama’s purchase is clearly birthed in this fraudulent scheme and cannot stand. The Applicant’s purchase is one such purchase unfortunately and I cannot protect it under the law. Because of the association of his purchase to fraud, the Applicant cannot claim to be a bonafide purchaser for value that can be protected under the law.
13. As a result, nothing in Article 21 of the Constitution bars the police in these circumstances from holding the suit land title as it investigates this apparent fraud. The Applicant’s remedy is to recover any money paid for the suit land from Max Investments. Max Investments should also recover any money paid from Mr. Rugarama.
14. In the circumstances of this case, the most that Mr. Rugarama could have taken and passed on to Max Investments and then to the Applicant was 25 decimals only. The remainder of the

suit land must remain in the names of Kyagaba. So the transfer of the entire suit land to the Applicant was an illegality.

15. Based on the above, this application is dismissed with costs and the following consequential orders and directions:

- i. The transfer of the suit land to the Applicant was illegal.
- ii. The Registrar of titles is directed to cancel the transfer of the suit land to the Applicant.
- iii. The registrar is directed to reinstate George Mukasa Kyagaba as the registered owner of the suit land.
- iv. The different parties can claim their money from the parties they allegedly paid it to.
- v. The police is directed to carry on with its investigations into this matter.

I so order.

Lydia Mugambe.
Judge.
10 June 2020.