

The Republic of Uganda

In The High Court of Uganda at Soroti

Miscellaneous Application No. 0127 of 2022

*(Arising from Civil Suit No. 016 of 2015, Misc. Application 031 of 2009 and Civil Suit No. 053 of 2018)*

- 1. Asunge Sipiriano
  - 10 2. Oluga Wilfred
  - 3. Oluma Francis
  - 4. Okure Stephen
- } ..... Applicants

Versus

John Peter Erimu Anyau ..... Respondent

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Before: Hon. Justice Dr Henry Peter Adonyo

Ruling

This is an application by way of notice of motion brought under Articles 28, 42 and 44(c) of the Constitution of Uganda, section 33 of the Judicature Act, sections 98 of the Civil Procedure Act and Order 52 rules 1, 2 & 3 of the Civil Procedure

20 Rules for orders that;

- a) The applicants be declared as the rightful owners of approximately 64 acres of land located in Madera ward, Madera Central cell, Soroti East Division Soroti city.
- b) An eviction order doth issue against the respondent and his agents.
- 25 c) Costs of this application be granted to the applicants.

The grounds of this application as set out in the application are briefly that the respondent sued the applicants with 7 others in Civil Suit No. 16 of 2005 before

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5 this court for general damages for trespass, mesne profits, an injunction restraining the applicants and others from trespassing on the suit land.

On the 8<sup>th</sup> April 2009 Hon. Justice Stephen Musota dismissed that suit which prompted the respondent to file MA 031 of 2009 seeking review and reinstatement of the suit.

10 That application MA 031 of 2009 was heard and dismissed by Hon. Justice Margaret C. Oguli which prompted the respondent to file a notice of appeal in the Court of Appeal Uganda. The appeal was later withdrawn.

That the disposal of the respondent's suit by the two justices and withdrawal of the appeal left the applicants as the lawful owners of the suit land.

15 In reply the respondent stated that this application is barred by law, misconceived and an abuse of court process. That the applicants admit that his case has never been heard on merit and granting the prayers sought in this application will condemn him unheard.

That neither Civil Suit No. 016 of 2015 nor Miscellaneous Application No. 031 of  
20 2009 declared the applicants the owners of his land.

The applicants are represented by M/s Atigo & Co. Advocates while the respondent is represented by M/s Tugume-Byensi & Co. Advocates and Opio & Co. Advocates.

25 The main issue for determination is whether there are grounds for grant of a consequential order.

I have carefully perused the affidavits and the submissions by both parties but before determining the merits of this case I find it necessary to state the principles that govern consequential orders.

5 Section 177 of the Registration of Titles Act Cap 230 vests the High Court with powers to order the cancellation of a certificate of title upon recovery of land in any proceedings. The section provides thus;

10 *"Upon the recovery of any land, estate or interest by any proceeding from the person registered as proprietor thereof, the High Court may in any case in which the proceeding is not herein expressly barred, direct the commissioner to cancel any certificate of title or instrument, or any entry of memorial in the Register book relating to that land, estate or interest, and to substitute such certificate of title or entry as the circumstances of the case require; and the commissioner shall give effect to that order."*

15 Clearly a party seeking this order must prove that he or she has recovered land by any proceedings against the registered proprietor before this order can be granted.

This is the position established by courts in various cases. See *Re Ivan Mutaka [1981] HCB 28, Kampama v Registrar of Titles [2013] UGHCLD 70, Nabukeera v Nansikombi & 5 Ors (Miscellaneous Cause No. 42 OF 2011) [2014] UGHCLD 119, Mpanga John Musisi Alias Mayor Vs Twabaje Edward and 3 Ors* etc.

The land subject to this application is unregistered land, counsel for the applicant knowing this submitted that the principles under section 177 of the RTA are applicable *mutatis mutandis* to unregistered land.

25 Counsel relied on *Mpanga John Musisi Alias Mayor Vs Twabaje Edward and 3 Ors MC No. 50 of 2020*.

I have read this decision and it is the opposite of counsel's submissions. Indeed Hon. Justice Henry I. Kawesa in his ruling found thus;

5            ***“Section 177 of the Registration of Titles Act and the principles highlighted above apply only to governed by the Registration of Titles Act. It means that only a person who has recovered land, estate or interest registered under the said Act can apply for a consequential order.”***

10           The applicants seek to get a consequential order on unregistered land which is not governed by the RTA under which the order is sought.

             This alone suffices for dismissal of this application. I also noted that the head Civil Suit and Miscellaneous Application from which this application arises did not determine the parties’ rights on their merits meaning the issue of ownership of the suit land was never determined and as such even if the land was registered  
15           land this application would be improper before this court as no land was recovered by the applicants. There is indeed still a dispute between the parties which has never been resolved on merits. Let the parties pursue their rights in respect of the disputed land accordingly subject to the law of limitation.

             Consequently, I would find that this application is without merit and it is  
20           summarily dismissed with costs to the respondent.

I so order.



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Hon. Justice Dr Henry Peter Adonyo

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Judge

17<sup>th</sup> May 2023