

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(EXECUTION AND BAILIFFS DIVISION)**

5 **MISCELLANEOUS APPLICATION NO. 760 OF 2016**

**(ARISING FROM EMA NO. 287 OF 2015)
(ARISING FROM HIGH COURT (LAND DIVISION) CIVIL SUIT 064 OF 2005)**

10 **WAMALA GROWERS COOPERATIVE UNION APPLICANT**

VS

KIGGUNDU KABANDWA AND 22 OTHERS RESPONDENTS

15

BEFORE LADY JUSTICE FLAVIA SENOGA ANGLIN

RULING

20 This application was made under SS. 82 and 98 C.P.A, 0.52 rr 1, 3 and 8 C.P.R by the Applicant seeking to review or to set aside the consequential order issued by the Deputy Registrar of the Execution and Bailiffs Division, His Worship Muse Musiimbi, directing the Commissioner Land Registration or Registration of Titles to transfer and register the property comprised in Kamoga Block 11, Plots 575, 576 and 577, land at Nsike, Nalukolongo Kiboga into the names of the
25 purchaser Ham Galabuzi Mukasa.

Costs of the application were also applied for.

The grounds for the application are that:-

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1) The consequential order of 26.02.16 was erroneously entered against the Applicant.

2) It is in the interests of justice from this court to review and or set aside the said order.

The application is supported by the affidavit of Herbert Kizito, the Chief Executive Officer of the
5 Applicant Union and another deponed by Katunda Stephen.

There are also several supplementary affidavits in affidavits in support of the application filed on
10.05.16, 24.05.16 and 01.07.16 and an affidavit in rejoinder filed on 16.05.16.

10 There are affidavits in reply to the motion deponed by Muyinja Abbas and Nsubuga Nsambu
both filed on 10.05.16.

After several adjournments for reasons appearing on record, the application was finally called for
hearing on 07.06.16. Counsel for the Seventh Respondent then insisted on raising a preliminary
15 objection although he was advised to make it an issue in the application.

Briefly the objection was to the effect that the land in dispute had been registered in the names of
Ham Galabuzi Mukasa under instrument No. 00027236 on 21.04.16. That this had been
confirmed by a search conducted on 31.05.16.

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That therefore the application had been overtaken by events and there was nothing to review or
set aside.

He prayed for the application to be dismissed with costs.

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Opposing the objection, Counsel for the Applicant denied that the application had been
overtaken by events and that is why the application had been made, contending that the
consequential order issued by the Registrar was a nullity and therefore its registration should be
cancelled.

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The grounds were that the order had been issued by a court without jurisdiction in a suit that had been concluded and the court was *funtus officio*. That civil suit 064/05 was a suit without declaratory orders and once dismissed, no consequential orders could arise from it.

5 It was asserted that consequential orders cannot be extracted like a decree or any other order of court but must be granted after a formal application before a Judge under 0.52 rr 1 and 2 C.P.R and the other party has been heard.

10 That the consequential order in the present case was issued out of the blue. There was no application made and the court had no jurisdiction.

Counsel submitted that an order of a court without jurisdiction is a nullity and has to be set aside. The case of **Dr. Ofula Manuel vs. Oboth Macksis Jacob and the Electoral Commission Miscellenous Application 66/2011 (from Election Petition No. 07/111 Tororo)** was cited for
15 the holding that *“consequential orders are based on declaratory judgments that declares existence of rights between parties, whoever is affected by the judgment may apply to the court for consequential order under 0.2 r 9 C.P.R.”*- Justice Rugadya.

The case of **Gladys Nyangire Karuma vs. Muhammed Kaliisa and Another Miscellenous Application 731/15 from Civil Suit 106/15 and 788/2007**, where 0.2 r9 C.P.R was exhaustively
20 discussed by Justice Madrama was also referred to.

Counsel then stated that, while Counsel for Respondents refer to a search certificate that allegedly indicates that the suit land is registered in the names of the Second Respondent, under
25 S. 59 Registration of Titles Act only a certificate of title is conclusive evidence of ownership and without such a certificate, the court cannot be persuaded that the suit land is in the names of the Seventh Respondent.

Further that the search certificate has got a disclaimer to the effect that *“accuracy not
30 guaranteed.”* And that therefore, the application was properly before court and should be heard

on the merits and has not been overtaken by events. Counsel prayed court to overrule the objection.

5 The second Counsel for the Applicant also submitted that the consequential orders sought to be challenged present a number of illegalities of the entire process, which cannot be hidden under the alleged transfer for the Respondent to benefit from the same.

10 He relied on the case of **Uganda Broard Casting Corporation vs. Simba K Ltd and 3 Others C.A. 12/14** where Justice Kakuru held that *“once illegalities are brought to the attention of court, they cannot be condoned. Court is bound to investigate.”*

15 The application before court, Counsel argued, points out apparent illegalities. There is no return indicating the sale which arose out of execution process. There is no receipt of the purported sum of money and transfer onto the names of the Seventh Respondent is not backed by evidence of payment. Court is therefore enjoined to investigate the fraud and the purchaser cannot purport to be acting on behalf of all the Applicants.

It was prayed that the objection be overruled.

20 In rejoinder, Counsel for the Seventh Respondent sought to be allowed time to peruse the authorities relied upon by Counsel for the Applicants, to determine if they are distinguishable. The matter was then adjourned to 05.06.16 for rejoinder.

25 On that date, Counsel for the Seventh respondent stated that, the consequential orders were not a nullity and that the court had jurisdiction to make the orders it did.

He pointed out that this was an execution matter that had been handled to its conclusion by the Land Division of the High Court and matter was then referred for execution. That therefore, whatever was done in execution was done with jurisdiction.

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Court was invited to evaluate the validity of the consequential order looking at S. 177 Registration of Titles Act;- which is to the effect that it should be as a result of proceedings which involved the Registered Proprietor. And that, that was the case here.

5 Further that, the section gives authority to court to direct the Registrar to make an entry as a result of the proceedings.

And that court accordingly had authority to handle the matter and whatever was done was not a nullity.

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Court is also invested with authority under 0.50 rr 1 and 4 C.P.R and S.33 Judicature Act. The Registrar, Counsel asserted acts for and on behalf of the High Court.

15 It was further stated that, the Judgment Debtor was issued with notice to show cause but the Applicant did not object.

The Applicant was a party to the suit under S.177 Registration of Titles Act, and made several commitments to pay without fulfilling them.

20 Also that there is no law providing that consequential orders can only issue in suits that seek declaratory orders or that declaratory orders are the only ones that give rise to consequential orders. The case of **Gladys Nyangire (Supra)** is distinguishable in that it was a case dealing with a consequential order for eviction following a declaratory order.

25 In the present case, it is a consequential order putting into effect a decree of court. **Nyangire's** case underlines the fact that **“error of procedure is no ground for interference with a decision.”**

30 The case of **Uganda Broadcasting Corporation vs. Simba K Ltd and Others (Supra)** is also distinguishable in that it dealt with an application challenging a certain decree, attachment and

sale. The registered proprietor was the Applicant. While in the present case, the sale and attachment are not challenged. And the application seeks to set aside the consequential order.

5 Commenting about 0.52 r 1(2) C.P.R – Counsel stated that it is a general provision on how to handle motions. The order does not clothe the judge with jurisdiction in all matters to the exclusion of the Registrar.

The case of **Dr. O. Otaala vs. Oboth Jacob and Another (Supra)** is also distinguishable, as it was an election matter where the Registrar purported to do what he was not authorized to do.

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In the present case, the Registrar cannot be faulted as he acted under 0.50 rr 1 and 4 C.P.R.

It was also alleged that the receipt of Shs. 52,000,000/- is an indicator of forgery on the part of the Applicant.

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It was prayed that application be dismissed with costs.

The matter was fixed for ruling on 15.06.16. However, on that date, Counsel who raised the objection conceded that the application be heard on merit and then court would rule on the issues raised in the preliminary objection in the main application.

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Several adjournments followed thereafter until 07.07.16 when the application was finally heard. The Applicant's Chief Executive was cross examined on the affidavits he swore in the application. He identified all the affidavits and told court that he stands by the contents thereof.

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The witness confirmed that it is true as indicated in the affidavit filed on 26.04.16 that the Applicant was the Judgment Debtor in civil suit 064/2005. The judgment debt was Shs. 52,484,000/-. When the suit was dismissed a demand notice was issued by Counsel for Defendants then Nsambu and Co. Advocates.

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By receipt Annex “B₃” – Nsambu & Co Advocates acknowledged receipt of the whole sum due in the judgment debt.

5 The money was paid by the Applicant Company to Nsambu & Co Advocates and receipt was issued.

By the time the payment was made, the property had not yet been put on the auction block.

10 The Applicant did not attend court when notice to show cause was issued because they were not notified. The Applicant was also not aware that a decree had been issued against it until a demand notice was issued by Nsambu & Co Advocates.

15 The property was sold to Uganda Land Commission – the offer to buy the land was received on 27.07.15 from Uganda Land Commission. The offer was accepted by letter dated 03.08.15, and the condition set out in the offer where fulfilled on 04.08.16 and handed over the two titles and signed the transfers on 05.08.16.

The other Respondents were sued as the Applicants were the legal proprietors of the land.

20 Counsel Nsambu did not appear for cross examination as requested by the Respondents as he was ill. Counsel for the Respondents prayed court to expunge his affidavit from the record on the ground that it had not been tested in cross examination and yet no specific response had been made to it as it was received after a reply had been filed.

25 The application to strike out the affidavit was declined by court, noting that the lack of cross examination would be taken into account when writing ruling and that the affidavit is a sworn document.

30 Hearing of the application then began. Counsel for the Applicant submitted that it was an application for review or to set aside the consequential orders of the Registrar dated 25.02.16, which directed the Commissioner Land Registration and or the Registrar of Titles to transfer and

register the land comprised in Kiboga Block 11, Plots 575-577 at Nsiike, Nalukolongo, into the names of Ham Galabuzi Mukasa. Counsel referred court to the several supporting affidavits and supplementary affidavits totaling to six.

- 5 Counsel then gave a brief background to the application, to wit: The Applicant filed High Court civil suit 064/05 against the Respondents, seeking vacant possession of the disputed land already described herein.

- The suit was dismissed for want of prosecution on 04.04.13 with costs to the Defendants –
10 Annexure A to the affidavit of Applicant dated 19.04.16.

Throughout the proceedings, the Respondents were represented by M/S Nsambu & Co Advocates.

- 15 The Bill of Costs was taxed and allowed at Shs. 52, 484,000/-. M/S Nsambu & Co Advocates demanded the money from the Applicants.

M/S Omax General Auctioneers applied for attachment and sale of the suit land to recover the taxed costs.

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The attachment and sale were advertised in the Monitor Newspaper of 23.03.15, but the warrant of attachment expired before the sale could be effected. – Refer to the affidavit of the Court Bailiff filed on 23.05.16.

- 25 The warrant of attachment was renewed on 27.04.15, but there was no re-advertisement of the intended sale.

On 08.05.15, the Applicant fully paid the taxed costs to M/S Nsambu & Co Advocates. – Refer to the affidavit of Nsambu Senior Counsel, where this is admitted:- Paragraph 4.

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On 13.05.15, M/S Nsambu & Co Advocates duly notified court of the Applicants settlement of its indebtedness. – Annexure B₁, B₂ and B₃ to the affidavit in support of the motion dated 19.04.16.

- 5 On 20.05.15 – M/S Omar General Auctioneers entered into an agreement of sale with Ham Galabuzi Mukasa: – See Annexure C to the affidavit dated 19.04.16.

Subsequently, the Applicants sold the suit land to the Uganda Land Commission and title was transferred into the names of the Commission. – See affidavit dated 30.06.16 filed on 01.07.16,
10 Annexure A thereof.

On 26.02.16, the disputed consequential order was issued by the Deputy Registrar – Annexure D to the affidavit of 19.04.16.

- 15 On 21.04.16, Ham Galabuzi Mukasa had the disputed consequential order registered on the suit land and hence this application.

It is the contention of the Applicant that, the consequential order amounts to an error apparent on the face of the record.

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Counsel argued that, a consequential order must be based on a judgment of court and must be consequential upon that judgment. The judgment would have a declaratory order as to a right, as a result of which the party in respect of whom the order was made seeks a consequential order to enforce that right.

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It was pointed out that in civil suit 064/2005 there was no judgment but only a dismissal order and hence the issuance of consequential order would be an error apparent on the face of the record.

- 30 Counsel also reiterated the submissions made in answer to the preliminary objection and added that the order was issued without a formal application.

Further that, the Applicant was also not given an opportunity to be heard before the orders were issued, which was contrary to the principles of natural justice.

5 The Applicant had fully settled its indebtedness and any purported sale of its property was an error. Court was referred to the submissions in the preliminary objection and the cases cited thereunder.

10 It was the assertion of Counsel for the Applicant that, the consequential order was premised on a sale agreement entered into by Omax General Auctioneers and Ham Galabuzi Mukasa, which was fraudulent and therefore illegal for the following reasons.:-

- The judgment debt had been fully settled by the time the sale agreement had been concluded and court had been notified.

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- The sale was not re-advertised as a precondition for the warrant of sale.

- The sale was entered into before the time allowed by the warrant expired that is thirty (30) days from the date of advertisement. The thirty days could not begin to run without the re-
20 advertisement.

- There is no evidence of payment for the sale arising out of the attachment and sale. The proceeds must be deposited in court unless court makes an order to the contrary. There is nothing on court record to indicate that this was done.

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- The Applicant had already sold the suit land to the Uganda Land Commission – Annexure A to the affidavit of the Applicant filed on 01.07.16- it shows that the land was transferred to the Uganda Land Commission in October, 2015. By the time the consequential order was issued, the land was in the names of the third party.

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- The Registration of the consequential order on the suit land was of no effect since the order was illegal and therefore a nullity at law and the Applicant is entitled to have the same set aside. – The case of **Dr. O. Otaala vs. Oboth and Uganda Electoral Commission (Supra)** was relied upon to assert that ***“a matter which is a nullity at law has no effect.”***

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It was also the argument of Counsel for the Applicant that, to purport to register a consequential order on land that belongs to a third party would be to affect the rights of that party without according it the right to be heard. More so as it is now settled law that ***“a registered proprietor of land can only lose ownership if fraud is proved against the Registration”*** which was never
10 the case in this matter.

Referring court to the preliminary objection, Counsel prayed court to allow the application with costs to the Applicants.

15 In reply, it was submitted for the Respondents that, the Seventh Respondent is a resident of the suit land, where he occupies close to an acre of the land.

On 20.05.15, the Seventh Respondent purchased the suit land from the Bailiff. Eventually, court issued the consequential order.

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Counsel argued that it is not in issue that the civil suit was dismissed with costs to the Respondents on 09.04.14.

The dismissal has never been appealed or set aside.

25

The suit land was attached under warrant of this court resulting into the sale on 20.05.16. – Agreement of sale is Annexure “E” to the Seventh Respondent’s affidavit.

It was then contended that the claim that the Applicant cleared its indebtedness on 08.05.15
30 together with the Bailiff’s costs is false because by the time the sale was effected, there was no

such evidence on record. That, it is on the strength of that, that the Registrar went ahead to issue the consequential order.

5 The consequential order put the attachment and sale into effect so as not to render the order of this court nugatory.

Further that, upon court appointing the Bailiff, all purported settlement of the decree should have been executed with the said Bailiff duly appointed by court.

10 And that by the Applicant purporting to go behind and settling the matter without the involvement of the officer duly appointed by court, the settlement amounted to abuse of the court process.

15 Upon attachment, Counsel argued, the land ceased to be available to the Applicant and any redemption ought to have been rightly done with the Bailiff. Therefore that, any dealings in the attached property without the Bailiff amounted to an illegality.

20 That is indicated in paragraph 12 of the affidavit in reply of the Seventh Respondent that, the warrant of attachment expressly directed the judgment debtor not to interfere with the property in any way of sale or change of ownership. – Paragraph 12 warrant of attachment.

25 The Applicant was also directed to deliver the duplicate certificate of title to court. The directive was not respected which according to Counsel amounted to contempt of court. Counsel relied upon the case of **Housing Finance Bank Ltd and Speed way Auctioneers vs. Edward Musisis Miscellaneous Application 158/2010** where it is stated that “ *a party in contempt of court by disobeying an existing court order cannot be heard in a different but related cause or motion unless and until he has purged himself/herself of the contempt.*”

30 The court in that case found that “*the applicants had come to court with unclean hands as they came having committed contempt of court by disobeying the court order.*” The same holding

was reiterated in the case of **Conform Uganda Ltd vs. Mega Industries Uganda Ltd HC Miscellenous Cause 21/14.**

5 Counsel also asserted that, it was illegal for the Applicant to purport to sell land which has occupants on it. Even if it had wished to sell the land, the Land Act provides that first opportunity should be accorded to the occupants.

10 Referring to the submissions in reply to the preliminary objection, it was contended that the consequential order being contested by the Applicant was rightly issued. And that there is no error apparent on face of the record to warrant the intervention of this court by way of review.

The Consequential order was issued under S. 177 Registration of Titles Act and it was right for court to put its orders and directives in effect.

15 That the argument that the property was sold to the Uganda Land Commission is not sustainable as there is no evidence before court that such a sale ever took place.

What is before court is the entry of the Uganda Land Commission on the Certificate of Title.

20 The Applicant ought to have brought the agreement so executed if any, and without it, it would be very extraneous for court to find that there was a sale to Uganda Land Commission.

25 While conceding to the entry of Uganda Land Commission on to the Title, Counsel argued that there is no evidence of payment for the land, before court. And that the consequential order cancelled the identity of Uganda Land Commission on to the suit property and entered the Seventh Respondent on the original certificate.

30 Further that, the argument that the indebtedness of the Applicant was fully settled by payment to Nsambu & Co Advocates could not hold, as the receipt annexed to the application showing the purported payment is very questionable as it was issued by “**Nsambu & Co Advocates**” which

cannot be a signature, The signature should have been of the agent who ought to have been disclosed.

5 Court was urged to disregard the argument that the consequential order should not have been issued as the suit land was already in the hands of a third party, on the basis that, Counsel for the Applicant ought to have advised the third party to appear and defend its interest if any, in this application.

10 That the non-appearance of the third party is an indicator that they have no interest in the property. Court was urged to find that the application had been overtaken by events and that the consequential order was rightly issued and the Seventh Respondent, the Registered proprietor should have his land.

Costs of the application were also applied for.

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Counsel for the other Respondents fully associated himself with the submissions of Counsel for the Seventh Respondent and opposed the application on the ground that it was devoid of any merit in so far as it seeks to set aside the consequential order issued by the Registrar on ground of illegality and error.

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Defining the word "**illegality**"- **Osborne Law Dictionary 6th Edith**, Counsel submitted that the consequential order issued was within the mandate of the Registrar under 0.50 rr 1 and 4 C.P.R. In execution of court orders and not in pronouncement of declaratory orders as the Applicant seems to suggest.

25

That the Registrar arrived at the right decision following the rightful events that culminated in the sale of the property. – See the two affidavits of the Bailiff who executed the sale filed on 23.05.16 and that of the process server who served the notice to show cause.

30 According to the Bailiff's affidavit – the notice to show cause was taken out on 01.02.15 and the parties were to appear on 02.03.15. The notice to show cause was served on the Applicant as per

affidavit of the Process Server. When the Applicant failed to appear on 02.03.15, court issued the warrant of attachment and sale of the property in issue.

The attachment and sale were advertised on 23.03.15 in the Monitor Newspaper of that date and run for thirty days that is up to 23.04.15 when it expired. The same was renewed for purpose of sale on 27.04.15 and there was no need for further advertisement.

And that since the due process of execution was followed; there was no need for court to review the consequential orders.

It was also emphasized that the Applicant had not come to court with clean hands to enable it benefit from the remedy sought.

The civil suit 64/2005, the Applicant filed against all Respondents seeking to be declared the rightful owner of the suit land and that the Respondents were trespassers and should be evicted was dismissed with costs. Counsel therefore wondered how the same Applicant could sell the land whose ownership he did not win. He concluded that the land was fraudulently disposed of and therefore the Applicant cannot benefit from orders of court.

The Respondents were never given an opportunity to buy their interest in the land. But the Seventh Respondent who bought the land will cater for the interests of the other Respondents who are occupants. That this is confirmed by Annexure D₁ to the Bailiff's affidavit to the effect that ***"interests of sitting tenants are legitimately taken care of"***.

Since the Seventh Respondent was registered as the owner of the land on 21.04.16, the application is overtaken by events.

The Applicant should seek for cancellation of the title by way of suit and not by application.

Court was urged to sustain the objections of the Respondents and dismiss the application with costs.

In rejoinder, Counsel for the Applicant while reiterating the earlier submissions in the preliminary objection and in this application emphasized the following:-

1) This is an application for review or to set aside the consequential order. It is not about the validity of the sale between the Applicant and the Uganda Land Commission. If the Respondents are aggrieved by the sale, the procedure to be followed is still open to them.

2) Consequential orders must be as a result of judgment of court that gives declaration as of right. There was no such order in civil suit 64/05.

Insisting that the consequential order was an error apparent on the face of the record, it was submitted that Counsel for the Respondents submissions that the prayers in civil suit 64/05 were declaratory, cannot be sustained since the law requires declaratory orders but not prayers.

Further that the consequential orders were premised on a fraudulent sale that was consequently illegal, as interalia the sale was not advertised.

The argument that there was no need for re-advertisement is misconceived once a warrant of attachment expires, it ceases to exist. It was brought back through renewal on 27.04.15 and hence the need to re-advertise and sale within the thirty days from the date of re-advertisement. And since there was no advertisement; the purported agreement of sale was fraudulent and cannot be allowed to show.

The submissions by Counsel for the Respondent that the Applicant came to court with dirty hands was referred to as a submission from the Bar, since according to Counsel for the Applicant there is no affidavit in reply.

But also that it is clear under civil suit 64/05 that the Applicant went to court as the registered proprietor of the suit land and never lost title until the land was disposed of to the Uganda Land Commission.

Annexure "A" to the Applicant's affidavit of 01.07.16 the copy of the certificate of title indicates that Uganda Land Commission became the registered proprietor in October 2015. A certificate of title is conclusive evidence of ownership:- Registration of Titles Act.

5 It was insisted that the application which seeks to set aside / review the consequential order which the Seventh Respondent purportedly registered with the Registration of Lands has not been overtaken by events.

10 Further that, a nullity at law cannot take effect. Once the court finds that the consequential order was a nullity, it cannot be allowed to create rights.

And that, since the land had already been transferred into the names of a third party, the consequential order cannot affect the rights of a third party without according the party a right to be heard.

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M/S Nsambu & Co Advocates were on record as the recognized agents of the Respondents. Any payment made to them in satisfaction of the taxed bill of costs was in order.

20 And while execution proceedings are meant to realize fruits of a judgment, this does not close the door to the settlement of the indebtedness by the judgment debtor if he/she wished to do so.

Earlier prayers were reiterated.

25 Having heard the submissions of all Counsel, gone through the various affidavits for and against the application together with other documents on record, and given them all the best consideration, I can in the circumstances, the following issues are framed for determination.

Whether the application was overtaken by events and there is nothing to review or set aside or whether the order issued by the Registrar should be set aside.

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The issues which were partly raised within the preliminary objection will be dealt with together. However, before that, I wish to make the following observations:-

The application was made inter alia under S.82 CPA- which provides for review. However, it is
5 clear from the section that, review of judgment or order should be ***“to the court that passed the decree or made the order.”***

Court therefore is of the view that, since the application was not made to the Registrar, it should have been made under S.83 CPA which empowers the High Court to revise cases and make such
10 orders as it thinks fit after hearing all parties and finding that no hardship will arise / be occasioned to the parties.

Be that as it may, this court is also aware of the principle established by decided cases that,
***“bringing an application under the wrong law is not fatal to the application as the right law
15 can be inserted or cited.”***

Secondly, the application was also made under S. 98 CPA which grants ***“court inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of court.”***
20

This court also bears in mind the provisions of S. 33 of the Judicature Act- which empower court
***“to grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters may be controversy between
25 the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided.”***

Court now proceeds to determine the issues and wishes to state from the outset that the submissions of Counsel for the Applicant were found to be more persuasive for the following
30 reasons:-

Civil Suit No. 064/2005 between the Applicant and the Respondents was dismissed by court on 09.04.14, due to the absence of Counsel for the Applicant / then Plaintiff. While costs were granted to the Defendants/Respondents, no declaratory orders were made by court.

- 5 The Bill of Costs was eventually taxed on 30.09.14 and allowed at Shs. 5,179,000/-, and seen from the Bill of Costs on record.

According to the affidavit of Counsel who represented the Respondents / Defendants in the suit, the Respondents had agreed with him on 27.10.05 that costs allowed would go to their Counsel,
10 as the instruction fee demanded could not be afforded by the Respondents.

This arrangement is confirmed by the affidavit of one Kalinda Stephen one of the Respondents, dated 23.06.16. See paragraphs 5 and 8, thereof.

- 15 The attachments to the affidavit of the Applicants of 13.05.16 show that the disputed land was attached and advertised for sale in the Monitor News Paper of 23.03.15 yet the warrant of attachment was issued on 27.04.15, to be returned by 28.05.15.

However, the Seventh Respondent contends that, the warrant of attachment was issued on
20 02.03.15 and 27.04.15 and was advertised in the Monitor Newspaper of 23.03.15.

The same contention is reflected in the letter of the Court Bailiff to the Commission Land Registration, of 16.12.15, where he complained that despite the attachment, the Applicant went ahead to transfer the disputed land to the Uganda Land Commission.

25

Court did not see the copy of the warrant of 02.03.15 on record and is left to wonder why if the warrant of attachment and sale was issued on 02.03.15; there was delay in advertising the same. Would the delayed advertisement go back to the date when the warrant is said to have been issued?

30

The warrant of 27.04.15 is said to have been a renewal, but there is no indication that the renewal was ever re-advertised. Court agrees with Counsel for the Applicant that, once a warrant expires without the sale being effected, it ceases to have effect and the renewal thereof has got to be re-advertised.

5

The affidavit of Nsubuga Nsambu who was then Counsel for the Respondents dated 09.05.16 and filed in court on 10.09.16, clearly states that the application of the Applicant is not opposed.

10 It also confirms that the costs that were due to the Respondents from the Applicants had been fully paid to his firm by 08.05.15, together with the Bailiffs fees. And that therefore the Applicant was no longer indebted to the Respondents. That the Bailiffs were notified to release the land from attachment. The payment is evidenced by receipt No. 240 dated 08.05.16 issued by Nsambu & Co Advocates to the Applicants, acknowledging receipts of Shs. 52,484,000/- - Annexure B to the affidavit in reply to the motion.

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Counsel for the Seventh Respondent complained about the signature of the receipt, but there was no other evidence to prove it was fake, more so as the the Senior partner in the firm acknowledged receipt of the funds.

20 It therefore follows that, by the time of the sale agreement between the Seventh Respondent and the Bailiff dated 20.05.15, the debt of the Applicant had been paid off and the land was no longer available for sale.

25 The payment to Nsambu &Co Advocates is confirmed by Stephen Katunda, one of the Respondents, in his affidavit of 23.06.16, earlier referred to in this ruling.

Since it is not disputed that the Bailiff was notified by then Counsel for the Respondents to release the land from attachment, the purported sale to the Seventh Respondent, in those circumstances was null and void.

30

There is no return of the warrant on record to indicate that the land was sold to the Seventh Respondent. It is not stated how much the land was sold for. There is no valuation report and no evidence of acknowledgment of receipt of the purported purchase price.

5 The supplementary affidavit of the Applicant dated 30.06.16 filed on 01.07.16, indicates that the Uganda Land Commission was entered on the title on 14.10.15. By this date, as earlier indicated, the costs due from the Applicants to the Respondents had long been settled and the land released from attachment. The argument that the transfer was fraudulently done cannot be sustained.

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The consequential; order of the Registrar was issued on 20.02.16, purportedly arising out of the attachment and sale of the disputed property. The order directed the Commissioner Land Registration or the Registration of Titles to transfer the land into the names of the Seventh Respondent.

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In the affidavit of 09.05.16, the Seventh Respondent contends that the import of the court order was to effect orders of court in the decree. But there was no order in the civil suit decree passing on the land to the Respondents. The decree condemned the Applicant in costs and as indicated, the costs had already been paid. The suit which was dismissed for failure of Counsel for the Plaintiff /Applicant to attend did not finally determine the issue of ownership.

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The supplementary affidavit of the Applicant filed on 24.05.16 is to the effect that the Seventh Respondent was registered on the title on 21.04.16, vide consequential order No. 287/2015, as indicated by the letter from the Lands Registry dated 21.04.16. The letter clearly states that the accuracy of the injunction is not guaranteed.

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If the consequential order was issued in 2015, why was it registered in April 2016?

The possibility that the Seventh Respondent claimed to have bought the land in order to defeat the interest of the Applicant cannot be ruled out. That may explain the letter of the Bailiff to the Commissioner Land Registration dated 16.12.15, requiring the Commissioner to declare the sale

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to the Land Commission null and void without a court order, and without hearing from the Commission.

For all those reasons, this court finds that the consequential order and attendant transfer to the
5 Seventh Respondent were done in error and cannot be allowed to stand.

The Bailiff who was aware that the land had been transferred to Uganda Land Commission ought to have brought it to the notice of the court so that the Commission could be heard in the matter.

10 As matters stand, the Commission was condemned unheard for irregularities **purportedly** committed by the Applicant.

The preliminary objection is also overruled as the court finds that the application is properly before court.

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The application is accordingly allowed for all the reasons set out herein and the orders of the Court Registrar are hereby set aside. The Seventh Respondent if registered should be struck off the title.

20 Each party should bear its own costs.

25 **Flavia Senoga Anglin**

JUDGE

25.11.16

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