

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISCELLANEOUS CAUSE NO. 85 OF 2011

ABBY NKUBA.....APPLICANT

VERSUS

COMMISSIONER LAND REGISTRATION.....RESPONDENT

BEFORE LADY JUSTICE PERCY NIGHT TUHAISE
RULING

This is an application by notice of motion brought under section 182(1)(2) & (3) of the Registration of Titles Act (RTA), section 33 of the Judicature Act and Order 52 rules 1 & 3 of the Civil Procedure Rules (CPR) for orders that:-

1. The Commissioner Land Registration be summoned to appear before this honourable court to substantiate grounds upon which she cancelled the applicant's certificate of title in respect of Kyadondo Block 257 Plot 875.
2. The Commissioner Land Registration be ordered to re instate the applicant on the title for Kyadondo Block 257 plot 875 and to release the confiscated certificate of title or issue a replacement thereof duly registered in the applicant's names.
3. Costs of this application be provided for.

The application is supported by the affidavit of **Abby Nkuba** the applicant and the grounds are briefly that:-

- a) The applicant herein was at the material times the registered proprietor of property comprised in Kyadondo Block 257 plot 875 at Munyonyo.
- b) Prior to the applicant's being registered as proprietor thereof on 27th September 2007 and taking possession there was no caveat on the register affecting the title to the land.
- c) That the acts of the Commissioner Land Registration in confiscating and cancelling the certificate of title belonging to the plaintiff was unconstituted (sic).
- d) That if the said application is not allowed the applicant will suffer a grave injustice.
- e) That there was no apparent error on the register book whether in the removal of caveat of M/s Centenary Rural Development Bank or in the creation of the title.
- f) That it is in the interests of justice this application should be allowed.

The background to the application is that the applicant is registered proprietor, and in occupation of, land comprised in Kyadondo Block 257 plot 875 at Munyonyo, having purchased it from a one Ssali Justice Justus by agreement dated 22nd May 2007. The applicant alleges that the respondent cancelled the applicant's name from the register, which is the basis for this application.

This court accorded a number of opportunities to the respondent to have her respond to this application by directing fresh service of the application and hearing notices. On 31st October 2012, Yusuf Kakerewe appeared for the respondent and successfully sought an adjournment on grounds that they needed to access the applicant's pleadings so that they file an affidavit in reply. The matter was eventually heard on 15th May 2013. The respondent had by that date neither filed an affidavit in reply nor did she attend the hearing. There is an affidavit of service on the court record showing that the respondent was effectively served by this court's process server. They acknowledged service by signing and stamping the hearing notice. The hearing therefore proceeded *ex parte* against the respondent.

There are case decisions however, that whether a suit proceeds *ex parte* or not, the burden of the plaintiff to prove his or her case to the requisite standards remains. See **Yoswa Kityo V Eriya Kaddu [1982] HCB 58**.

The applicant's affidavit evidence is that he was at the material times the registered proprietor of property comprised in Kyadondo Block 257 plot 875 at Munyonyo. Prior to his being registered as proprietor of the said land on 27th September 2007 and taking possession, there was no caveat on the register affecting the title to the land. In May 2008 he received notice of intention to cancel his title from the respondent and he responded through his lawyers. He did not hear from the respondent again until when he submitted his certificate of title through DFCU Bank for a mortgage transaction. The respondent confiscated the title purportedly that she had cancelled the same. The applicant protested the action through his lawyers. The respondent has time and again turned down the applicant's demands for his title. The applicant avers that the acts of the respondent in confiscating and cancelling his certificate of title was unconstitutional, and that if the said application is not allowed he will suffer a grave injustice, and that there was no apparent error on the register book whether in the removal of caveat of Centenary Rural Development Bank or in the creation of the title.

Learned Counsel Patrick Mugisha for the applicant submitted that the applicant's affidavit and annexures reveal that the respondent confiscated the applicant's title and made changes supposedly under section 140 of the RTA. He submitted that she had no powers to make the changes that disentitle the registered proprietor of ownership of his land. He contended that the respondent had ignored court summons thereby rendering the first prayer in the motion unnecessary. He prayed court to exercise powers under section 182(3) of the RTA to order the registrar to release the applicant's certificate of title and re instate him on the register as registered proprietor, and for costs of the application.

Section 91(2) of the Land Act states as follows:-

"The registrar shall, where a certificate of title or instrument---

- (a) is issued in error;*
- (b) contains a misdescription of land or boundaries;*
- (c) contains an entry or endorsement made in error;*
- (d) contains an illegal endorsement;*
- (e) is illegally or wrongfully obtained; or*
- (f) is illegally or wrongfully retained,*

call for the duplicate certificate of title or instrument for cancellation, or correction or delivery to the proper party.” (emphasis mine).

Section 91(8) & (9) of the same Act requires the registrar, while exercising the said functions, to give due notice to the party likely to be affected by the decision, to provide such party with an opportunity to be heard, to conduct the hearing within the rules of natural justice, to give reasons for any decision, and to communicate the decision in writing to the parties, among other things.

The affidavit evidence and the court record reveals that the respondent by a notice dated 8th May 2008 (annexture **C** to the supporting affidavit) informed the applicant and a one Ssali Justice Justus of the intention to correct and amend the register by reinstating the caveat of Centenary Rural Development, cancelling all the transactions effected after the erroneous removal of the caveat, and re instating the names of Henry Andrew Sentongo as the registered proprietor. The same notice requested the applicant and the said Ssali Justice Justus to let the respondent know if there was any objection to the proposed action.

M/s Mwesigye, Mugisha & Co Advocates, on behalf of the applicant, wrote to the registrar in a letter dated 26th May 2008 (annexture **D**), objecting to all the actions proposed in the notice. They went on to elaborate the grounds of the objection, which, among others, questioned the registrar’s powers to make changes on the register, contending that short of fraud on his part the registrar could not impeach his title to the land. In the same letter they stated that the applicant was the registered proprietor in possession of the property in question, and that there was no error on the register book regarding the creation of the title or the caveat.

The applicant’s Counsel wrote another letter to the registrar dated 2nd September 2008 (annexture **E**) where they, among other things, expressed surprise that she had unilaterally cancelled the applicant’s names from the register disregarding his interest as a *bona fide* purchaser for value, and without notifying him, and conducting a hearing. The applicant’s letter of 2nd September 2008 was referring to the registrar’s letter of 21st August 2008 ref Kyd 257/202, 203.

Though this application is based on the respondent’s purportedly cancelling the applicant’s certificate of title, it is contradicted by the contents of the second last paragraph of annexture **E** where the applicant’s lawyers, in their communication to the respondent, state that the latest searches reveal that their client was still the registered proprietor of the property in issue. Moreover, annexture **D** to the same affidavit, which is a copy of the respondent’s correspondence to the applicant, merely shows that the respondent intended to effect changes in the register book. There is nothing adduced by the applicant to show that the changes were actually made. There is no certified copy of title or other form of evidence attached to show that the applicant’s names were removed from the title or that other names were substituted, or that a caveat lodged by Centenary Rural Development Bank was re instated. Annexture **A** to the applicant’s supporting affidavit, which protests the purported changes, refers to a letter Kyd/257/202, 203 dated 21st August 2008 which letter is not annexed as evidence. On the contrary, annexture **A** to the applicant’s supporting affidavit shows the applicant as the registered proprietor of the property comprised in Kyadondo Block 257 plot 875 at Munyonyo. This court cannot turn a blind eye to these contradictions and factors.

In my opinion, though this matter was heard *ex parte*, in the circumstances of this case, the applicant has not proved his case against the respondent on the balance of probabilities to justify his prayers.

In the premises, I find no basis to issue the orders prayed for by the applicant. I cannot order reinstatement of the applicant on the title or other related orders when it has not been established that his name was removed from the said title and substituted by another name in the first instance. It would be futile for this court to make useless orders based on speculation and not evidence.

The application is accordingly dismissed. The applicant will bear his own costs of the application.

Dated at Kampala this 6th day of June 2013.

Percy Night Tuhaise.

JUDGE.