

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA

AT KAMPALA

LAND DIVISION

MISCELLANEOUS CAUSE NO. 12 OF 2013

DARLINGTON KAMPAMA.....APPLICANT

VERSUS

THE REGISTRAR OF TITLES.....RESPONDENT

BEFORE LADY JUSTICE PERCY NIGHT TUHAISE

RULING

This was an application by notice of motion brought under section 177 of the Registration of Titles Act, section 98 of the Civil Procedure Act and Order 52 rules 1 & 2 of the Civil Procedure Rules (CPR) for orders that:-

1. The respondent be ordered/compelled to cancel the name of Ibulaimu Kabanda Kironde on the certificate of title of land comprised in Block 486 Plot 9 at Mazi.
2. The respondent recalls the said certificate of title from the said Ibulaimu Kabanda Kironde and/or cancels it and issues a new title to the applicant.
3. The costs of this application be provided for.

The grounds of the application are contained in the affidavit of **Darlington Kampama** the applicant, and are briefly that:-

- i) The said land has been successfully recovered from one Ibulaimu Kabanda Kironde who was the 1st defendant in Mpigi Chief Magistrate's court Civil Suit No. 009/2012 holden at Wakiso upon proving that the 1st defendant had obtained it fraudulently.
- ii) The said magistrate's court ordered the respondent to cancel the name of Ibulaimu Kabanda Kironde on the said title and that its orders be forwarded to this honourable court for implementation.
- iii) It is in the interests of justice that this application is allowed.

The respondent did not file any affidavit in reply though he/she was served with both the application and the hearing notices, as per the affidavits of service on the court record. The respondent did not also appear at the hearing of the application. The application was therefore heard *ex parte* on the application of the applicant's counsel.

In his submissions, learned counsel for the applicant, Ssebugwawo Andrew, reiterated the affidavit of **Darlington Kampama** the applicant. He relied on **Re Ivan Mutaka [1981] HCB 28; Andrea Lwanga V Registrar of Titles [1980] HCB 24; and Uganda Blanket Manufacturers Ltd V Chief Registrar of**

Titles Miscellaneous Application No. 55/1993 to justify the applicant's prayers. He availed photocopies of the said case decisions at this court's request.

I have carefully addressed the application and the entire record of the lower court, as well as the submissions of counsel and the authorities he cited.

On the issue of not filing a defence, in this case an affidavit in reply to the application and its supporting affidavit, Order 9 rule 11(2) of the CPR provides that where the time allowed for filing a defence has expired and the defendant has failed to file his or her defence, the plaintiff may set down the suit for hearing *ex parte*. In such circumstances, the defendant will not be allowed to participate in the proceedings though he or she may be present in court. In **Kubibaire V Kakwenzire [1977] HCB 37**, court held that since the appellants had been served with summons and failed to enter appearance, they had by that failure put themselves out of court and had no *locus standi*. It is in that respect that this suit proceeded *ex parte* against the respondent who did not file an affidavit in reply to the application or appear at the hearing of the same despite being duly served. However, whether a suit proceeds *ex parte* or not, the burden of the party filing the suit to prove his/her case to the requisite standards still remains, as was held in **Yoswa Kityo V Eriya Kaddu [1982] HCB 58**.

In this case the applicant has adduced affidavit evidence to the effect that a one Ibulaimu Kabanda Kironde fraudulently transferred the applicant's land comprised in Busiro Block 486 Plot 9 into his names using forged transfer forms and signatures. The applicant filed civil case number 009/2012 in Mpigi Chief Magistrate's court against Ibulaimu and the respondent, which was determined in the applicant's favour. This is evidenced by the certified copies of the proceedings, judgement and decree attached to his supporting affidavit as annexures **A, B and C** respectively. The annexures show that trial court ordered that the name of Ibulaimu Kabanda Kironde be cancelled from the certificate of title to the said suit land and that the said order be forwarded to this court for implementation.

The facts as stated on oath by the applicant have neither been denied nor rebutted by the respondent. On the authority of **Samwiri Massa V Rose Achieng [1978] HCB 297** they are presumed to be admitted. Besides, Order 9 rule 10 of the CPR is to the effect that where the defendant has not filed a defence on or before the date fixed in the summons, the suit may proceed as if he had filed a defence. A party who has not filed a defence is deemed to have admitted the allegations, as was held in **Agard Didi V James Namakajjo HCCS No. 1230 of 1998**, unreported.

Section 177 of the Registration of Titles Act (RTA) provides as follows-

“Upon 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 proceedings is not herein expressly barred, direct the registrar to cancel any certificate of title or instrument, or any entry or memorial in the register book relating to that land, estate or interest, and to substitute such certificate or entry as the circumstances of the case require; and the registrar shall give effect to that order.”

In **Re Ivan Mutaka [1981] HCB 28** it was held that in order to rely on the provisions of section 185 (now section 177) of the RTA and have the register book rectified by cancellation, the applicant who invokes it has to satisfy court that he/she has recovered the land, estate or any interest in question by any

proceedings from any person registered as proprietor of the land. In **Andrea Lwanga V Registrar of Titles [1980] HCB 24** it was held that before a person has obtained judgement for the recovery of land against a registered proprietor could be registered as proprietor, he first had to apply to the court to make a consequential order, which is made consequent upon recovery of land; and that this was the only method prescribed by the RTA. In **Uganda Blanket Manufacturers Ltd V Chief Registrar of Titles Miscellaneous Application No. 55/1993, Ongom J**, it was held that in applications under section 185 (now 177) of the RTA, the Chief Registrar should be made respondent, and that it was pointless to make a person from whom land had been recovered the respondent.

In the premises, and on the foregoing authorities, I am satisfied that the applicant has proved the grounds of his application against the respondent. I allow the application and grant the following orders:-

- i) The respondent is ordered/compelled to cancel the name of Ibulaimu Kabanda Kironde on the certificate of title of land comprised in Block 486 Plot 9 at Mazi.
- ii) The respondent should recall the said certificate of title from the said Ibulaimu Kabanda Kironde and/or cancel it, and issue a new title to the applicant.
- iii) The applicant will meet the costs of this application.

It is so ordered.

Dated at Kampala this 11th day of July 2013.

Percy Night Tuhaise

JUDGE.