

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA
AT KAMPALA (LAND DIVISION)
MISCELLANEOUS APPLICATION NO. 347 OF 2013

(Arising out of Civil Suit No. 181 of 2013)

GEORGE WILLIAM KATEREGGA :::::::::::APPLICANT/ PLAINTIFF

VERSUS

- 1. COMMISSIONER FOR LAND REGISTRATION**
 - 2. UGANDA NATIONAL ROADS AUTHORITY**
 - 3. KACHWANO FRED**
 - 4. NAKAFEERO JOYCE**
 - 5. KAFEERO FRED**
 - 6. EDWARD ZIMULA**
 - 7. WAMALA EDWARD**
 - 8. KASEKENDE MEDIE**
 - 9. NAMIREMBE JANE**
 - 10. NAMAKYIKA RONA**
 - 11. SSEBUYINDI RONARD**
 - 12. MUGISHA JOHN BOSCO**
 - 13. TURAHABWE GODFREY**
- : RESPONDENTS**

BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW

RULING

GEORGE WILLIAM KATEREGGA (*hereinafter referred to the “Applicant”*) brought this application seeking an order of a temporary injunction to issue restraining the 3rd, 4th, 5th, 7th, 8th, 9th, 10th, 11th, 17th and 13th Respondents for their purported *kibanja* claim as a result of the ongoing Entebbe Southern Highway compensation, and stopping the 3rd, 4th, and 5th, 7th, 8th, 9th, 10th, 11th, 12th and 13th Respondents, their agents servants and/or employees from further selling, alienating or interfering and or in any way dealing with the Applicant’s land comprised in **Busiro Block 380 Plot 18** measuring 1.680 Hectares (*hereinafter*

referred to the “suit land”) until the final determination of the main suit; and that costs of this application be provided for.

At the commencement of the hearing Mr. Eric Muhwezi, Counsel for the 3rd and 4th Respondents, raised a preliminary point of law that the Applicant has no interest in the suit land because under paragraph 6K of his plaint he concedes that his certificate of title, among various others, was cancelled and revoked by the High Court in **Civil Suit No. 85 of 2005**, even though the Applicant contends that the order of cancellation was erroneous. Relying on the case of **Saroji Gandesha v. Transroad Ltd. S.C.Civ.Appeal No. 13 of 2009**, Mr. Muhwezi submitted that a judgment of court is judgment *in rem* in that it binds all persons even when they were not parties to the case.

Applying the principle to the instant case, Counsel submitted that the Applicant is bound by the judgment in **Civil Suit No. 85 of 2005**, even though he was not a party to the suit, and that since his certificate of title was cancelled he has no claim and cannot competently bring this application under a cancelled and revoked title because it does not exist, and that for the same reason the Applicant has no cause of action in the main suit. Counsel submitted that both actions ought to be simultaneously dismissed under **O.6 rr.28 and 29 CPR**.

In reply, Counsel for the Applicant Mr. Mudyobole submitted that **Civil Suit No. 85 of 2005** was settled by consent agreement of the parties thereto, and that the Applicant was not a party to the said consent agreement, hence cannot be bound by the judgment. Counsel further submitted that the consent judgment binds only parties privy to it and cannot be a judgment *in rem*. Relying on **Caroline Turyatema and 4 Others v. Attorney General and Uganda Land Commission, Constitutional Petition No. 15 of 2006**, Mr. Mudybole submitted that where a person is not party to the suit his/ her constitutional rights to own property could not be cancelled by consent agreement where he was not a party.

To buttress the proposition further, Counsel cited the case of ***Eleko Balume & 2 Others V Goodman Agencies Ltd and 2 Others H.C Misc. Appl. No. 12 of 2012 (Commercial Court)*** where Madrama J. held *inter alia*, that the consent judgment can form the basis of a new suit to enforce the principal/agency relationship as against the agent who allegedly wants to appropriate the money under the consent judgment. Counsel submitted that the principle of a judgment *in rem* does not extend to a consent judgment which is essentially a contract binding only the parties who are privy to the contract.

Counsel also submitted that the Applicant has a cause of action since his rights were violated by consent agreement of parties to ***Civil Suit No. 85 of 2005*** and that he has no remedy of appeal under ***Section 67 CPA*** because only parties to the suit have right of appeal. Further, that the Applicant could not apply for review because that option under ***O.43 r.1CPR*** accrues only to a person who is a party to the suit, hence the remedy was to bring a fresh suit from which this application arises. He prayed that the preliminary point of law be overruled.

In rejoinder, Mr. Muhwezi Erick submitted that the orders in ***Civil Suit No. 85 of 2005*** were not as a result of a consent judgment, and that even if they were, they would be still be binding on all parties including the Applicant. Counsel sought to distinguish the ***Eleko Balume case (supra)*** arguing that it was decided *per incuriam* and never addressed provisions of ***Order 43 r.1 CPR*** which give any person aggrieved by the decision of a court to file for review of the decision.

Consideration.

In paragraph 6 K of his plaint, the Applicant (Plaintiff therein) avers as follows:

“The Plaintiff has also discovered that the High Court of Uganda through a suit filed by PATRICK LWANGA VERSUS EDWARD ZIMULA AND COMMISSIONER FOR LAND REGISTRATION VIDE CIVIL SUIT NO. 85 OF 2005 erroneously ordered the cancellation of all certificates of

titles carved out of Busiro Block 380 Plot 1 including the Plaintiff's title comprised in Busiro Block 380 Plot 18 without giving the Plaintiff a chance to be heard. (See a photocopy of the said Decree attached hereto as Annexure "H").

No copy of the said decree was attached to the plaint on court record, and Annexure "H" referred to has no relation to the said decree. I have, however, had the benefit of fully appraising myself with contents of the judgment and decree in ***Civil Suit No. 85 of 2005, Patrick Lwanga v. Edward Zimula & the Commissioner for Land Registration*** supplied by Mr. Muhwezi Counsel for the Respondent on direction of this court. The High Court in the said judgment cancelled and revoked the Applicant's certificate of title for land comprised in ***Busiro Block 380 Plot 18*** along with various other titles, and restored ***Busiro Block 380 Plot 1*** as trust land created by the registered proprietor Mika Nsimbe Mulyankota to the trustees named therein. Of particular note is ***item 3*** of the decree which provides as follows;

"That all the purported transfers and registration of land carved out of Block 380 Plot 1 Makandwa and transferred into the names of the Plaintiff or 1st Defendant and/or into the names of third parties are null and void and are cancelled and revoked, and be reverted to Mika Nsimbe Mulyankota."[Emphasis added].

The decree evidently affected even third parties, including the Applicant, and they were bound by the orders of the court in the suit. Thus it would be futile to argue that the Applicant is not bound by the judgment just because he was not party to the suit.

Apart from the above, the judgment in ***Civil Suit No. 85 of 2005*** was as a result of consent agreement between the parties to the suit. The court therein conducted a full trial, heard the evidence adduced by the plaintiff and the defendants and

arrived at its own decision and gave its reasons in the judgment. At no time did the parties to the suit ever agree or reach consent or that any consent formed the basis for the court's judgment.

Even if the judgment was as a result of the parties' consent agreement, which it is not, still the Applicant would be bound by the resultant consent judgment for as long as it received the sanction of the court; for then it would be regarded as judgment of the court. The definition of "consent judgment" in ***Black's Law Dictionary (8th Edition)*** is quite instructive on the matter. It states as follows;

"Consent judgment – A judgment, the provisions and terms of which are settled and agreed by the parties to the action."

"Agreed judgment" which is analogous to "consent judgment" is also defined in the same dictionary as;

"A judgment entered on agreement of the parties, which receives the sanction of the court; and it constitutes a contract between the parties to the agreement, operates as an adjudication between them and when court gives the agreement its sanction, becomes a judgment of the court."

Therefore, in the instant case even if parties other than the Applicant crafted a consent agreement over the suit land which was sanctioned by the court, it necessarily became judgment of the court. The effect was that the Applicant would be bound by it notwithstanding that he was not privy to the consent agreement or suit; which renders the judgment in that case a judgment *in rem*.

A judgment *in rem* invariably denotes the status or condition of property and operates directly on the property itself. It is judgment that affects not only the thing but also all persons interested in the thing; as opposed to judgment *in personam* which only imposes personal liability on a defendant. See: ***Black's Law Dictionary (supra)***.

Going by the authoritative definition above, it would seem clearly that the judgment in **Civil Suit No. 85 of 2005** amounted to a judgment *in rem* because it determined the rights of persons in respect of the suit land and as a consequence determined the status of the same suit land by cancelling and revoking all titles created therefrom including that of the Applicant. The proprietary status of the suit land was thus affected as were all persons interested in the suit land regardless of whether they were parties to the suit or not.

The effect of a judgment *in rem* is well articulated in the **Saroji Gandesha v Transroad Ltd case (supra)**. Citing the South African case of **Nicholas Francois Martemns & Others v. South African National Parks, Case No. 0117** the Supreme Court of Uganda held that a judgment *in rem* binds all person even when they are not parties to the proceedings and are stopped from averring that the status of persons or things, or the right to title to property are other than what the court has by its judgment declared it to be. Similarly, in the instant case, since the judgment in **Civil Suit No. 85 of 2005** amounted to a judgment *in rem*, logically it was binding as against all parties to the suit and third parties, including the Applicant, and conclusive as against the whole world that the entities ordered as affected by order of court were so entitled or disentitled, as the case may be, regardless of whether they were parties to the suit or not.

Mr. Mudyobole argued that the Applicant has no remedy in appeal under **S.67 CPA** because only parties to the suit have such a right, and that the Applicant could not apply for review of the judgment because he was not privy to the consent agreement **Civil Suit No. 85 of 2005**. That his only option was in filing a fresh suit; which he has done out of which arises the instant application for temporary injunction.

While appreciating that only a party to a suit has a right of appeal under **S. 67 CPA**, it is not correct to state that only a party to the suit may apply for a review of

judgment. **O.46 r.(I) CPR**, provides that any person considering himself or herself aggrieved by decree or order from which an appeal is allowed but from which no appeal has been preferred, or from which no appeal is allowed may apply for a review of the judgment to the court that passed the decree or made the order. [See also: **Section 83 CPA**]. The expression “any aggrieved person” has been interpreted to mean such a person who is aggrieved who may be a party to the suit or any third party with interest in the subject matter of the suit. See: **Adonia v. Mutekanga [1970] EA 429**. Furthermore, a third party filing for review must be prepared to demonstrate that he or she has suffered legal grievance. See: **Mohamed Albhai v. E.E Bukenya, S.C.Civ.Appeal No. 56 of 1996**.

Applying the same principles to the instant case, the Applicant seeks an order of temporary injunction over the suit land which he states in his pleadings that the certificate of title was cancelled and revoked by order of the High Court. Even though he contends the order was erroneous, with greatest respect he is bound by the judgment until it is lawfully set aside or overturned.

That being the case, the Applicant simply did not take advantage of the option of open to him of applying for review but choose to move by filing a fresh suit. This was well within his right, but he ought to have known that based on particular facts of the instant case he risked disclosing no cause of action to sue on basis of a cancelled and revoked certificate of title. Equally, it would be futile to seek orders in the present application relation to land comprised in **Busiro Block 380 Plot 18**, because no land by such a description exists as belonging to the Applicant as of the date the titles were cancelled and revoked.

The final point relates to whether an order of a temporary injunction can issue given the circumstances. The answer is in the negative based on the Applicant’s averments in the plaint that his certificate of title was cancelled and revoked by order of the High Court. It would follow logically that he has no legal basis to

bring this application since he cannot claim under a cancelled and revoked title; which is the *status quo* that obtains for the suit land that would require preservation.

Similarly, there would essentially be no *prima facie* case or a case with a serious question to be investigated; let alone one with a reasonable chance of succeeding in the main suit. In addition, there would be absolutely no irreparable loss to be suffered by the Applicant by not granting the order because one logically cannot lose what one does not have. Ultimately, the issue of balance of convenience would not arise. The fact that the decree has not yet been executed in itself is of no consequence. A court order takes effect from the time it is issued, which is basically why it is mandatory under **Order 21 r.7 (1) CPR** that a decree must bear the date on which the judgment was rendered in court even when the decree might be extracted subsequently.

Mr. Eric Muhwezi prayed that the main suit and the application be dismissed simultaneously under **Order 6 rr.28 and 29 CPR**. I am alive to the fact that there must be a cause of action to sustain the suit from which the application would be derived. See: ***In Re Theresa Kaddu [1987] HCB115; SCOUL v. Muhamud Tejan, H.C.C.S. No.39 of 1993 (UR)***. It is nonetheless a general principle governing temporary injunctions that an order which has the effect of entirely disposing of the main suit ought not to be granted in an application for temporary injunction. Accordingly, only this application would be; and it is hereby dismissed with costs.

BASHAIJA K. ANDREW
JUDGE
14/11/13