

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
MISC APPLICATION NO. 613 OF 2013
(Arising from Civil Suit No. 208 of 1995)

GEORGE MWESIGE SHARP..... APPLICANT

VERSUS

COMMISSIONER LAND REGISTRATION..... RESPONDENT

RULING

BEFORE HONOURABLE LADY JUSTICE EVA K. LUSWATA

This application was brought by Notice of Motion under S. 177 RTA and Order 52 Rule 1 Civil Procedure Rules for the following orders:

1. That a consequential order be made directing the Registrar of Titles, Fort Portal to register Buraha Block 64 Plot 31 in the names of the applicant.
2. That the 2nd duplicate certificate of title for Block 64 Plot 31 in the names of Miss Kate Kabagahya Ochaki be cancelled and the register reflects George Mwesige Sharp as the registered proprietor of the suit land.
3. That the register be rectified in respect of Block 64 Plot 30, 31, 32, 33 to reflect the applicant as the registered proprietor of the suit land.
4. That the caveats lodged by Miss Kate Kabagahya Ochaki on Block 64 Plot 31 on 21/6/2000 under instrument No. FP9014 of 24/9/2002 be removed.
5. Costs of the application be provided for.

The motion was supported by the affidavit of the applicant George Mwesige Sharp and it was his case that he was the successful party against the Administrator General (then defendant) in both Civil Suit No. 208 of 1995 and Civil Appeal No.6 of 1997. That an attempt by the defendant to appeal the decision of the Court of Appeal in Appeal No.6 of 1997 was unsuccessful when on 24/8/99 the notice of appeal was struck off by the Supreme Court for being filed out of time.

The applicant averred in his affidavit, that on the basis of the above judgments, a consequential order was made by the High Court on 20/11/02 directing the Registrar of Lands at Fort Portal to register all the land comprised in Buhara Block 60 Plot 14, Block 44 Plot 3 and Block 64 Plot 33 from the names of the Administrator General to the names of George Mwesigwa Sharp, the applicant. This order was put into effect by the Registrar of Titles and the applicant was registered on the above lands and all the duplicate certificates of title are in his possession.

The applicant further averred that he subsequently procured registration with respect to Block 64 Plot 31 (hereinafter referred to as the suit land) on 16/9/02 and has the duplicate certificate of Title in his possession. That his search conducted on 2/11/12 revealed that one Kate Kabagahya Ochaka had lodged two caveats on the land and the respondent declined on request to remove them. The applicant was also able to see an area schedule which indicated that Block 64 which was decreed to him, had been sub divided into five plots which were registered in different names and he challenged the disposition of thereby the Administrator General.

Despite having been served with the motion, the respondent never opposed the application and no reasons were ever advanced for their absence from court proceedings. Therefore on 18/12/13, I allowed the application to proceed *ex parte* against them under Order 9 rule 20(1) CPR.

Tumwesigye Loius Learned counsel for the applicant in his oral submissions relied on **Section 177 (1)** of the **Registration of Titles Act CAP 230** which provides as follows:

“ Upon recovery of any land, estate or interest by any proceedings 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 substitute such certificate of title or entry as the circumstances of the case require, and the Registrar shall give effect to that order. Emphasis mine.

The above section was considered in the case of **Andrea Lwanga Vs. Registrar of Titles [1980] HCB 24** where Odoki J (as he then was) held that;

“before a person who has obtained judgment for recovery of land against a registered proprietor could be registered as a proprietor, he first has to apply to court to make an

order under Section 185 (now 177) of the RTA. Such an order is referred to as a consequential order since it is consequent upon recovery of land.”

It was also held in **Re Ivan Mutaka [1980] HCB 27** that in order to rely on Section 185 (now 177) of the RTA, the applicant must satisfy court that he has recovered land, estate or interest in question by any proceedings from the person already registered as proprietor thereof.

Going by the above law, in order to receive a consequential order with respect to Burahya Block 64 Plot 31,(hereinafter referred to as the suit land) and a rectification of the register in respect of Block 64 Plots 30, 31, 32 and 33, the applicant must prove to this court that he has recovered the land by court order against the registered proprietor thereof and that such proceedings are not expressly barred by statute.

I have read the judgment of Justice Berko (as he then was) of 16/4/1996. Judgment was made on the specific prayers of the plaintiff (present applicant) against the Administrator General that:-

- a) The distribution made by the clan elders in 1962, according to the Toro Custom, of the estate of the late Erifazi Buchekenya Ocaki (hereinafter referred to as the deceased) was upheld.
- b) The appointment of Charles Sharp Ochaki as the customary heir of the deceased was upheld.
- c) The Letters of Administration in favour of the Administrator General was declared null and void.
- d) The distribution of the deceased’s estate by the Administrator General was declared null and void.
- e) The plaintiff (as administrator of the estate of the late Charles Sharp Ochaki) was declared as entitled to the principal residential house of the deceased measuring 295 acres, situate at Ibanda, Bukuru, Buraha, Kabarole District.

To my mind, the decree that was extracted from the judgment of Justice Berko did not give the full import of the final decision. It was very brief and expressed only that the land comprised in Burahya block 60 Plot 14, Burahya block 44 Plot 3 and Burahya Block 64 Plot 33 be registered

in the plaintiff (now applicants) names. An appeal by the Administrator General against that decision was dismissed by the Court of Appeal in Civil Appeal No.6/1997 on 20/11/98. An attempt to appeal the dismissal was thwarted by the Supreme Court when the Notice of appeal was struck off in the order of Civil Application No.7/1999 on 25/8/99. Subsequent to the order of the Supreme Court, the applicant sought and was on 20/11/02 granted a consequential order by the High court in which Burahya Block 60 Plot 14, Burahya Block 44 Plot 3 and Burahya Block 64 Plot 33 were to be registered into his name. According to paragraph 16 of his affidavit, the Registrar of Titles declined to register him as proprietor of the suit land.

In the judgment of Justice Berko, it is mentioned that the applicant is entitled to the principal residence of 295 acres at Ibanda, Bukuru Buraha, Kabarole District. However, no specifics were given as to the Block and Plot numbers to which the land is known. Again, no mention was made of the suit land in the consequent order by Justice Kagaba made on 20/11/12. The Registrar of titles declined, rightly in my view, to register as proprietor the applicant with respect to the suit land for the reason that the court had not pronounced itself on that particular land.

Unfortunately, the applicant failed or at least did not satisfy this court that Block 64 Plots 30, 31 and 32 were ever decreed to him by court or that any of the actions previous to this one, were filed against the persons named as the proprietors of Block 64 Plots 29, 30, 31 and 32 which is a requirement under Section 177 RTA. In paragraph 13 of his affidavit, the applicant states that he is in possession of the title with respect of the suit land of which he became registered proprietor on 16/9/02 after the ruling of the Supreme Court. He does not explain how he came to have possession of the title or be registered on it, since clearly, there was no consequential order with respect to the suit land specifically. In paragraph 18 of his affidavit, he explains that Block 64 was subdivided into several plots (one of which is Plot 31) but does not show how those plots are connected to the residential home at Ibanda, Bukuru Buraha, Kabarole District that was mentioned in the judgment of Justice Berko. Annexure "H" to his affidavit, which is the schedule form, is not conclusive. It shows that a Block 64 measuring a total of 121.0 hectares was sub divided into Plots 29, 30, 31, 32 and 33. None of those plots is registered in the name of **George Mwesige Sharp**. The land itself is stated to be at "Ntabago" of 'Bunyangabu County' yet the land decreed to him is at Ibonde, Bukuru, Buraha, in Kabarole District. It is also strange

that it was a block and not a plot that was sub divided by the district staff surveyor, and yet, there is no mention in the affidavit that this was a sub division originating from a blue page.

My reservations are further strengthened by the judgment of Justice Berko in which it was stated that in 1962, the deceased's estate was distributed according to Toro custom among his several children. I note that the registered proprietors of the contested plots all bear the name of "**Ochaki**" and it could be that the current registered owners of plots 29, 30, 31 and 32 were part of the beneficiaries who benefited from that distribution, which in fact, was upheld by the High Court. Again, the Registrar of Titles by their communication of 2/11/12 indicated that the suit land has two certificates of title one which is in the names of Kate Kabagahya Ochaki, the caveator. It is not explained how Kabagahya Ochaki obtained the other title, and I would think its cancellation can only be prompted by showing that she procured registration by fraud or through a mistake by the Registrar of Titles. Therefore, more was needed to be shown that that particular sub division or survey was one which was contrary to the distribution made by the clan elders in 1962. Although this application was never contested, I am reluctant to make an order that would disentitle the proprietors of land when the evidence on record is not of the required standard, or sufficient to merit such cancellation, and especially when the alleged proprietors have not been heard on their purported ownership.

In my view, the above observations would also equally apply to the caveats lodged by Ms Kabagahya Ochaki on Block 64 Plot 31. According to Annexure "F", she lodged the second caveat on 24/9/02 as a beneficiary of the estate. According to Section 140 (2) RTA such caveats can only be removed by order of court. It may well have been necessary to make Ms Kabagahya Ochaki a party to this application so as to allow her a fair hearing on her purported claim to the suit land.

In summary, I have not been satisfied that Block 64 Plot 31 was ever expressly decreed to the applicant. I am also not satisfied that sufficient evidence has been placed before me to merit the removal of caveats on Block 64 Plot 31 or to rectify the register with respect to Block 64 Plots 30, 31 and 32 for the applicant to be reflected as registered proprietor thereof. I note that in the decision of Justice Kagaba in Civil Suit No.208 of 1995, an order was made directing the Registrar of Titles to register the applicant as proprietor of Burahya Block 64 Plot 33. I will therefore make no further order in respect of that particular plot.

This application is therefore dismissed. However, since the respondent did not contest it, I make no order as to costs.

I so order.

EVA K. LUSWATA
JUDGE
30/4/14