

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION**

**MISC. APPLICATION NO. 1274 OF 2013
(ARISING FROM HCCS NO. 454 OF 2008)**

YOKANA TALLIKWA..... APPLICANT

VERSUS

**COMMISSIONER LAND REGISTRATION
(REGISTRAR OF TITLES WAKISO).....RESPONDENT**

RULING

BEFORE HONOURABLE LADY JUSTICE EVA K. LUSWATA

This application is brought by Chamber Summons under **Order 10 rules 12 & 24 of the Civil Procedure Rules** and **Section 98 of the Civil Procedure Act** seeking for order that the respondent makes discovery on oath for the production of the mutation and transfer instruments and certificates of title to show the current registered owners of land comprised in Busiro Block 405-406 Plots 734, 735, 736, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1529,1530, formerly all plots comprised in Busiro Block 405, Plot 139 and Busiro Block 405-406 Plot 140 land at Wamala Bukasa. He in addition sought costs of the suit. The application was supported by the affidavit of Muwanga Patrick an attorney practicing with Mukiibi & Kyeyune Advocates, counsel for the applicant.

On 19/3/14, I allowed the applicant to proceed ex parte in this application after being satisfied that the respondent had neither responded to the application nor appeared in court when it was called up for hearing.

The applicant relied on six grounds that were substantiated in the affidavit and briefly expounded on by counsel Kyeyune in his oral submissions.

Under Order 10 Rule 1, any party may apply to court for an order directing the other party in the suit to make discovery on oath of the documents relating to any

matter in question in the suit. To my mind, and upon reading Order 10 Rule 2, in order to be entitled to an order of discovery, the applicant should fulfill the following conditions:-

- 1) The document being sought should be, or has previously been in possession or power of the other party.
- 2) The party stated to be holding the document(s) should have been previously requested to avail them, but she/he declined to release them to the applicant.
- 3) The production of such documents should be necessary for the court to achieve a fair and final determination of the suit or for saving costs.

It was submitted for the plaintiff that in the head suit, he sought recovery of land formerly comprised in Busiro Block 405 Plots 139 and 140. That after filing the suit, he discovered that the suit land was fraudulently transferred into the names of third parties not party to the suit. For that reason he found it necessary to amend his pleadings to bring on board those third parties which he could not do before obtaining the current status of the suit land in the land registry. He in particular needed to refer to instruments with respect to mutations and transfers that lead to the change in proprietorship. In his affidavit, Muwanga Patrick admitted that he did manage to obtain a copy of the area schedule but failed to obtain search reports that would give the report of the current status of the suit land. His formal efforts to obtain the same have proved fruitless because the files are reported missing at the land registry. Muwanga further avers that the documents he seeks are in the possession of the respondent and that the applicant cannot proceed to amend his pleadings without first making reference to the particulars on those documents. Kyeyune concluded by stating that an order for discovery would be in the interests of justice as an amendment would introduce the current issues in controversy and help the court to fully adjudicate this matter.

It is trite that matters of land registration are the reserve of the Commissioner for Land Registration at her various departments and district branches. According to Section 37RTA, the Commissioner Land Registration is authorized to maintain a

Register book into which she shall enter all certificates of title bearing all particulars of dealings on the land they represent. In the premise, I am persuaded that the documents being sought are in the possession of the respondent and it is in her powers alone to produce them. Indeed, the applicant states that he was able without much difficulty, to obtain the area schedule form from the offices of the respondent and I suspect that it is from that document that he discovered that the suit land had at some point been sub divided into smaller plots. The same office should be in a position to produce further and better particulars about the current citations of those plots and their owners.

The applicant showed by affidavit that he did (through his lawyers) make an application for a search report(s) in respect of the information sought. That his lawyer Muwanga paid the requisite fee and was told to return after a few days to collect the search reports. It appears that at that point, the files for the land that he was interested in were available. However, they were later reported missing and since then, the search reports have never been issued to the applicant. The respondent did not file a response to the application and did not appear to defend it, leaving it uncontroverted. Nothing was stated in rebuttal by the respondent to deny the averments in Muwanga's affidavit or to give any explanation as to why they failed when requested to produce the documents requested for. It is therefore taken that all the averments in Muwanga's affidavit were admitted in their form. See for example the case of **Ahmedriasin Ahdikadir & Co., Advocates Vs National Bank of Kenya (2006) 2 EA 6 (CCK)**. I am therefore persuaded that the respondent has the power but has willfully omitted to provide the documents required by the applicant.

It was also submitted for the applicant that the documents being sought are necessary for the court to come to a fair and final adjudication of the dispute between the parties. I note that in the plaint, the applicant seeks recovery of land comprised in Block 405 Plot 139 at Wamala and Bukasa which he claims was fraudulently registered by the respondent into the names of Andrew Kalibbala Kalanzi and Joseph Kagimu Bazira. It is the same land that is the subject of this application, and the applicant claims that it has been further sub divided into several plots. I agree with applicant's counsel that the existence of those plots

and their proprietorship is a necessary fact that should be put before this court. Only with knowledge and inclusion of the supposed owners of those plots into these proceedings, can this court make a fair and final adjudication of the dispute. This will prevent future litigation and also save costs. This application accordingly succeeds.

I therefore order that the respondent shall make discovery on oath to produce and avail to the applicant and this court copies of certified copies of mutations and transfer instruments in respect of Busiro Block 405, Plot 139 and Busiro Block 405-406 Plots 734, 735, 736, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1529, 1530, formerly all plots comprised in Busiro Block 405, Plot 139 and Busiro Block 405-406 Plot 140 land at Wamala Bukasa.

However I need to point out that the current practice is for the Registrar of titles is to issue search reports instead of certificates of title in response to a search query of the Register Book. Therefore, in addition, the respondent shall make discovery in respect of original search reports with respect to all the land that is the subject of this application.

I also grant costs of this application to the applicant.

I so order.

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EVA LUSWATA K.

JUDGE

24/3/14