

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(Land Division)

MISCELLANEOUS CAUSE NO. 46 OF 2014

(Arising from Civil Suits No. 1589 of 2000 & 941 of 2004)

PARK ROYAL LTD
APPLICANT

VERSUS

1. UGANDA LAND COMMISSION
2. COMMISSIONER, LAND REGISTRATION
3. ATTORNEY GENERAL
4. IRENE KALIKWANI
RESPONDENTS

BEFORE: Hon. Lady Justice Monica K. Mugenyi

RULING

This application is brought under sections 177 and 179 of the Registration of Titles Act (RTA), section 98 of the Civil Procedure Act (CPA) and Order 52 rules 1 and 4 of the Civil Procedure Rules (CPR). The applicant, Park Royale Ltd, seeks the cancellation of the 4th Respondent's title to property comprised in LRV 4350 folio 7, plot 61 Yusuf Lule Road on account of a consent judgment in **Civil Suit No. 1589 of 2000** dated 25th April 2004, that purportedly recognised it as the rightful owner of the suit premises. Subsequently, in October 2004, the applicant was issued a certificate of title for a 13-year lease over the suit property, the term of which commenced on 1st June 1996. The applicant further contends that numerous attempts by the 1st respondent to reclaim title thereto were dismissed by the courts. On the other hand, the 4th respondent contends that she is the registered proprietor of the suit premises, having been so registered on 6th June 2012 pursuant to the sale of pool houses to civil servants (sitting tenants). It was her contention that, as the registered proprietor thereof, her title to the suit premises could only be cancelled

on account of fraud which has not been invoked by the applicant. She further denies having been party to the proceedings or consent judgment in **Civil Suit No. 1589 of 2000**. In the same vein, the 1st respondent contends that the present application is misconceived given that it seeks the cancellation of the 4th respondent's legal title in the suit property without pleading fraud.

For ease of reference, section 177 of the RTA provides as follows:

“Upon the 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 proceeding is not herein expressly barred, direct the Commissioner 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 of title or entry as the circumstances of the case require; and the Commissioner shall give effect to that order.” *(my emphasis)*

Clearly, section 177 does grant the High Court powers to cancel a certificate of title, as sought presently. However, my understanding of that legal provision is that such cancellation would be incidental to the recovery of land by an applicant pursuant to proceedings that are not otherwise expressly precluded by the RTA. This would raise two-faceted parameters that must be satisfied for an applicant to properly bring an application under section 177 of the RTA. First, there must have been a valid recovery of land by the applicant and, secondly, such recovery of the land should have been pursuant to an action or proceeding that is permissible under the RTA.

In the instant case, both the applicant and the 4th respondent have certificates of title to the suit land, and the applicant seeks the cancellation of the latter's certificate of title. Section 176 of the RTA expressly prohibits actions or proceedings for the recovery of land against a registered proprietor thereof save in the exceptions spelt out thereunder. The exceptions in section 176 would form the basis for actions for the cancellation of a registered proprietor's certificate of title that are permissible under the RTA. Section 176(e) provides for actions by a registered proprietor claiming under a certificate in title registered prior in date to another certificate of title in respect of the same land. It is clearly applicable to this

application in so far as it provides for an action for recovery of land by the applicant as against the 4th respondent.

In the instant application, the applicant's claim to recovery of the suit land appears to be premised on the consent judgment in **Civil Suit No. 1589 of 2000** that recognised it as the rightful proprietor thereof. With respect, I find the said consent judgment inapplicable to the present application. The parties to that suit were the present applicant, on the one hand, and the 2nd and 3rd respondents herein. The 3rd respondent apparently signed the consent judgment on behalf of the 2nd respondent. The 1st and 4th respondents were not party thereto, and do contest the said consent judgment. More importantly, no case was made for the recovery of land as against the 4th respondent who is now in possession of a certificate of title in respect of the same land. No such case was made in those proceedings and the resultant consent judgment because at the time the 4th applicant did not have the certificate of title that she now holds. However, given that she does now hold legal title, the consent judgment in **Civil Suit No. 1589 of 2000** does not address the question of which of the two (2) registered proprietors before this court has valid title to the suit land. That question remains undetermined and it cannot, therefore, be said of this application that there has been a valid recovery of land by the applicant pursuant to section 176(e) of the RTA, or at all; so as to evoke the provisions of section 177 of the same Act.

Further, it was deponed in paragraph 3 of the affidavit of one Alnasir Gulam Hussein Virani that the applicant company was allocated the suit property by the Kampala City Council on 29th April 1995 and the same allocation was renewed on 29th April 2004. In the meantime, on 25th April 2004 a consent judgment was executed between the applicant and the 2nd and 3rd respondents that purportedly recognised the legality of the said allocation. However, Annexure A to the affidavit in reference that was intended to reflect this position made no mention of such allocation but, on the contrary, referred to a 21st April 2010 letter by Kampala District Land Board that communicated the said Board's retrospective extension of the applicant's lease in respect of the suit property for a 6-year term effective 1st June 2009. Meanwhile, the applicant did avail as Annexure D to the same affidavit a certificate of title in respect of the suit property that was issued in October 2004 in respect of a 13-year lease, the term of which commenced on 1st June 1996. Conversely, the 4th respondent does also claim to be the registered proprietor of the

suit land and furnished a certificate of title in to that effect that was issued on 6th June 2012 pursuant to a formal offer from the 1st respondent dated 10th December 2010. In my judgment, these matters require investigation by a formal suit rather than cancellation of the 4th respondent's certificate of title on the sole basis of the present application.

A related situation arose in the case of **Hajji Numani Mubiakulamusa vs. Friends Estate Ltd Civil Appeal No. 209 of 2013** (Court of Appeal). In that case, the trial judge had made a finding of fraud on the basis of affidavit evidence attached to an application that sought to have immovable property released from attachment under Order 22 rules 55, 56 and 57 of the CPR. On Appeal, learned counsel for the appellant successfully argued that issues of fraud could only be determined in a regular suit arising from regular pleadings after the framing of issues. It was held:

“We agree with Mr. Kateeba, Counsel for the appellant, that the issues raised in the affidavit of reply could not have been properly resolved in an application of this nature. That they were serious issues of law and of fact that required proper pleadings upon which evidence would have been adduced.”

I do respectfully agree with the principle advanced in that case with regard to the need to have serious issues of law and fact properly investigated in a formal suit. I find it most applicable to the application before me. In my judgment, a matter involving 2 certificates of title in respect of the same land raises serious questions of law and fact that must be duly determined in a formal trial prior to the cancellation of one certificate in deference to another.

Indeed, in the case of **Re Ivan Mutaka (1981) HCB 27 at 28** that has been referred to by the applicant, it was held:

“In order to rely on the provisions of section 185 (now section 177) of the RTA and have the Register Book rectified by cancellation, an applicant who invokes it has to satisfy the court that he has recovered the land, estate or any interest in question by any proceeding from the person already registered as proprietor thereof.”

The decision in **Re Ivan Mutaka** (supra) posits the orders in section 177 as being incidental to the demonstration by an applicant that s/he had previously recovered the land in issue by due process. In the same vein, it is my considered view that an application under section 177 that necessitates the cancellation of a registered proprietor's certificate of title would be governed by the provisions of section 176 read together with section 177 of the RTA. In the instant case, I find that the application before this court has not established that the applicant did recover the suit land pursuant to due process as required by section 177 of the RTA. The circumstances of this case warrant a formal determination of all the issues in contention herein prior to the cancellation of the 4th respondent's legal interest in the suit land. Consequently, I find that this application is improperly before this court and the order of cancellation sought is legally untenable.

In the result, I would dismiss this application with costs.

I so order.

Monica K. Mugenyi
JUDGE

20th March, 2015