

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

MISC. CAUSE NO.026 OF 2015

ASNAS ANDERA ALEW APPLICANT

VERSUS

COMMISSIONER LAND REGISTRATION RESPONDENT

RULING

BEFORE HON. LADY JUSTICE EVA K. LUSWATA

The application was brought under Section 182(1) RTA and Order 52 r.1. CPR seeking an order that the respondent unconditionally enters the name of the applicant as proprietor of land comprised in Kibuga Block 6 Plot 300 at Katwe in the register book as well as original and duplicate certificate of title, and for costs of the application.

The brief grounds advanced in support of the notice are that the applicant responded to an advert by Ume Court Bailiffs & Auctioneers advertising the sale of Block 6 Plot 300 (hereinafter referred to as the suit land) on behalf they client M/s Capital Finance Corporation (hereinafter referred to as the mortgagee). The bailiffs accepted her offer of Shs. 9million to purchase the suit property and thereafter the mortgagee's advocate handed over to her the duplicate certificate of title. The applicant was able to retrieve the transfer form after an order to that effect against the mortgagee in Mengo Civil Suit No.954 of 2008. She then lodged the transfer for registration with the respondent, who has with no justifiable or equitable reason declined to effect the transfer.

The application is supported by two affidavits by the applicant and one by Samuel K. Sewagudde, the bailiff's Chief Executive. In addition to the grounds aforementioned, Sewagudde stated that the applicant paid the purchase price of Shs.9 million and for which a receipt was issued. He confirmed that the sale was advertised in an unnamed Newspaper as required by law but he could not trace it due to lapse of time. The applicant further revealed that she had purchased the suit property together with her father the late Lamu Daktari who died before a transfer could be affected. She further deposed that the respondent insists that a copy of the advertisement must be produced before registration can be procured yet her efforts to retrieve it

from both the bailiffs and the New Vision Publication Ltd have proved futile. She claims to have enjoyed uninterrupted possession of the suit property since the date of purchase.

The respondent filed no reply to the notice and neglected to attend the hearing despite being served with the application and a hearing notice. *Exparte* proceedings were thereby permitted on 14/10/2015.

Applicant's counsel relying on the authority of **Eridad Tito Nsubuga & Anor Vs AG (1997) Kalr 599** rightly stated the law that where facts are sworn in an affidavit and they are not denied by the opposite party, the presumption is that such facts are accepted as true. That may be so, but it is still incumbent upon the applicant to satisfy the court that she is entitled in law to the order sought. I am also mindful of the fact that the order being sought if awarded, will deprive the current registered owner of his title for good.

The application is premised on Section 182 (1) RTA which provides as follows:-

“if upon the application of any owner or proprietor to have land brought under the operation of this Act, or to have any dealings registered or recorded or to have any certificate of title or other document issued or to have any act or duty done or performed which by this Act is required to be done or performed by the commissioner, the commissioner refused so to do, or if the owner or proprietor is dissatisfied with any decision of the registrar upon his or her application, the owner or proprietor may require the commissioner to set forth in writing under his or her hand the grounds for this or her refusal or decision and the owner or proprietor may, if he thinks fit, at his or her own cost summon the commissioner to appear before the High Court to substantiate and uphold those grounds”.

The applicant has by affidavit evidence shown that she purchased the suit property in pursuance to an advert by a firm of bailiffs. The latter have supported her arguments that the sale was legitimate as all steps leading to the sale were fulfilled and the requisite documents to support her registration are available. In particular, the applicant deposed that after the sale was concluded, the transfer and release of mortgage were presented for registration but declined, as the Registrar requested for the Newspaper advert which could not be produced by the applicant or the bailiff involved in the sale.

I do agree with counsel for the applicant that under Section 15 of the Mortgage Act, it is incumbent upon the Registrar to enter onto the register, a release of mortgage when presented. Likewise, she is empowered under the RTA to register an instrument of transfer and to issue certificates of Title. According to the applicant, she has declined to do so because a copy of the advert of sale of the property was not submitted. Counsel does concede that the commissioner has powers under Section 165 RTA to request for the production of certain documents. Excerpts of that section are reproduced here for clarity.

“The commissioner may, by summons under his or her hand in the form in the Twentieth Schedule to this Act, require the proprietor or mortgagee or other person interested in any land under the operation of this Act, in respect of which any transfer, lease, mortgage or other dealing, or any discharge of any mortgage is proposed to be transacted or registered, to appear at a time and place to be appointed in the summons and give any explanation concerning such land or any document affecting the title to the land, and to produce any grant, final mailo certificate, certificate of title, will, mortgage or other instrument or document in his or her possession or within his or her control affecting the land or the title to the land.”

The summons under Section 165 RTA were not made part of this application, thus it is not clear whether they were ever issued at all. However, the respondent by exempting herself from these proceedings could not throw any light of their existence or non existence. The applicant argued that the section would not apply in this case because the document requested for is no longer available, was never in her possession or control and more importantly, it does not affect the land or title to the suit property over which the applicant has had possession and control since 1998.

I am unable to give judgment on the assertion that the registration of the release of mortgage and transfer were refused by the Commissioner for the reasons given. No documentary evidence is available to support the allegations made against the commissioner. Whether or not she responded to the application, it was still incumbent on the applicant to produce that evidence. My belief in that line of argument stems from the provision in section 182 (1) RTA that where the commissioner has failed to carry out her duty, the owner must require the Commissioner to set forth in writing under his or her hand the grounds of her refusal or decision. The thrust of the application is that the Commissioner has without reason declined to register two instruments in favour of the applicant. It is stated in paragraph 13 in the applicant’s affidavit that she has so declined and requested for the advert of the sale of the suit property. Save for evidence that the two instruments could have been lodged for registration; it is not shown that the applicant ever

made any formal written request to the Commissioner to set forth reasons to decline registration, or any response ever being given by the Registrar to explain her refusal. I believe that process is vital to give a representation of the Commissioner's decision and guard against persons who wish to access registration, sometimes through fraudulent means. Thus, whether the Commissioner is part of these proceedings or not, that vital step could not be omitted.

Without adjudging the applicant as a fraudulent person or her proceedings as frivolous, I opine that it was important for her to have adduced the above mentioned evidence which she did not do. Her evidence of purchase, long occupation and grievance may have been unrebutted, but as I earlier said, the Land Register is a very important record in the process of land registration in Uganda and that must be protected. Entry on the Register by any person should happen only after all the required legal steps have been followed. I hasten to add that it is still open for the applicant to follow the provisions of Section 182 to the better.

I would thereby decline to grant the application, and it is thereby dismissed. However since it was uncontested, I order no costs as a result of the dismissal.

I so order.

Signed

EVA K. LUSWATA
JUDGE
27/1/2016