

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
MISCELLANEOUS APPLICATION NO. 058 OF 2014

EVA MIREMBE SEKITOLEKO APPLICANT

VERSUS

COMMISSIONER FOR LAND REG. & ANOR RESPONDENTS

BEFORE: HON. MR. JUSTICE GODFREY NAMUNDI

RULING

This application has been brought under the provisions of the **Judicature (Judicial Review) Rules 2009** and **Section 98** of the **Civil Procedure Act**.

It seeks an Order of Certiorari to remove, set aside and quash the Order, decision and/instrument of the Ag. Commissioner for Land Registration/Chief Registrar of Titles contained in the letter of 5th August, 2014 addressed to the Applicant.

The directive informed the Applicant that her entry on the Certificate of Title comprised in Kibuga Block 3 Plot 578 had been cancelled. The application also seeks other prerogative reliefs e.g. Order of Prohibition, a declaration and an Order reinstating the Applicant's name on the Register as the co-registered proprietor and co-owner.

The background to this Application is that the suit land was originally in the names of the Applicant and the 3rd Respondent Victoria

Sekitoleko. The said Victoria Sekitoleko instituted High Court Civil Suit 141 of 2012 seeking to be declared the sole proprietor on the grounds that he Applicant never contributed to the purchase of the suit land. The said suit is still pending hearing before the court.

I will not go into the grounds of this application but suffice to say that one of the Applicants complaints is that the 1st Respondent usurped and abused the court process as there is an ongoing suit, Civil Suit 141/2012 seeking determination on the issue of ownership. It is apparent that the actions of the 1st Respondent were instigated by the 3rd Respondent who sought a short cut to the court process. While Judicial Review is a procedure in its own right seeking to check the legality or propriety of the actions of public servants/public bodies, they should not be used as an alternative to the ordinary court process.

In the instant application, the actions of the 1st Respondent arise out of a dispute which was already pending in court as a Civil Suit over the rights of ownership of the Suit property. Cancellation of the Applicant from the Title using the process adopted by the 3rd Respondent in a way determine or anticipate the decisions in that suit by bestowing the ownership of the suit property to the 3rd Respondent.

This in my view is an abuse of court process by both the 3rd Respondent and the 1st Respondent. Matters are not made any better by the actions of the Applicant in filing this Application well knowing that she could get the same remedies regarding ownership if she pursued the Civil Suit and proved the claims before that court. She could have done any or all of the following;

- a) Applied to add the 1st and 2nd Respondent to the Suit 141/12 under **Order 1** of the **CPR**.

- b) Applied to amend the Written Statement of Defence in view of the actions of the Respondents which were not within her knowledge before, under **Order 6** of the **CPR**.
- c) Could have filed an application to be allowed to file a counter-claim to the 3rd Respondent's suit.

In the circumstances, hearing and adjudicating on the merits of this application under Judicial Review is an exercise in futility in view of the pending Civil Suit.

I find that this application is brought before this court improperly and is an abuse of process. It is struck out. Let the parties instead pursue Civil Suit 141/2012 for the appropriate remedies.

Dated at Kampala this 8th day of **February, 2017**

GODFREY NAMUNDI
JUDGE