

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
LAND DIVISION
MISC. APPLICATION NO. 223 OF 2019
(ARISING OUT OF CIVIL SUIT NO. 500 OF 2013)

WILBERFORCE SSEKUBWA :..... APPLICANT

VERSUS

COMMISSIONER, LAND REGISTRATION & 7
ORS.....RESPONDENTS

Before: Lady Justice Lady Alexandra Nkonge

RULING:

Introduction:

This application was filed by Mr. Wilberforce Ssekubwa on 20th February, 2018, against the Commissioner, Land Registration, seeking orders that:

1. *the respondent be summoned to court to show cause why he should not be committed to civil prison for a term not exceeding 6 months for breach/disobedience of a decree of this court dated 27th February, 2014 issued under CS No. 500 of 2013-
Wilberforce Ssekubwa vs Miriam Kuteesa & 5 others;*

2. *a consequential order that all dealings, transactions and undertakings in respect to the suit land consequent to the*

issuance of this decree of this court dated 27th February, 2014 be reversed and cancelled;

5 3. *the title to the suit land be accordingly restored to Kibuga Block 28 plot 540, Makerere in the names of the applicant as per the decree of court dated the 27th February, 2014;*

 4. *costs of this application.*

10 **Background to this application:**

The application was supported by the affidavit of Mr. Wilberforce Ssekubwa, the applicant, averring that the property comprised in **Kibuga Block 28 plot 540, Makerere** was property that he had legally acquired for valuable consideration and in part land received as gift *intervivos* by former legal owners (**see: Annextures ‘A’**)
15 **collective sale agreements.**)

That prior to that acquisition the 2nd respondent, Miriam Kuteesa had litigated its ownership with the 3rd-5th respondents vide **Civil Suit No. 95 of 2009**, but later Miriam Kuteesa and other respondents in connivance and utter disregard of the decree of court purportedly entered into a settlement in a bid to reverse the clear
20 terms of that decree.

This matter has gone through a chequered history, details of which I need not repeat here. Initially as per memorandum of sale dated 18th December, 2013 Miriam Kuteesa through her then attorney Kabali Asumani had sold an acre to the applicant’s mother Teopista Mpindi Namakula, who acquired an equitable interest
25 in that land.

A series of other transactions followed thereafter by which the applicant claimed to have lawfully purchased portions of the suit land from other equitable interest holders.

30 The present application had been originally been filed by him against the Commissioner, Land Registration alone for contempt of consent orders issued **vide**

Civil Suit No. 500 of 2013, which the applicant had filed, for the transfer of his interests into his names.. The said decree entitled him to an area of 1.5 acres out of the suit land, which the 1st respondent had allegedly failed to hand over.

This court however on 16th August, 2019 directed that the rest of the parties who had purportedly acquired interest in that land be notified about this application, before the matters raised therein could be addressed.

Analysis of the evidence:

From a brief background underlying the history of this case, the uncontroverted evidence is that Ms Mariam Kuteesa the 2nd respondent, is the administrator of the estate of her late father, the late Musa Muganzi Kalanzi having been granted letters of administration vide: **AC No. 141 of 1986**.

She filed a suit **vide: HCCS No. 95 of 2009** against the respondents, Ms. Edith Nantumbwe, Jimmy Kizito, Joshua Mukalazi, Daudi Kiwuuta Kizito. An *exparte* judgment was entered against them.

Court made a declaration that the land comprised in **Kibuga Block 28, plot 540**, land at Makerere formed part of the estate of the late Musa Muganzi Kalanzi and issued orders restoring the land into her names as the administrator of the estate.

It thereupon issued consequential orders to the commissioner, land registration to prepare and issue to a special certificate of title into her names. The said title was issued to her on 1st January, 2010 under *Instrument No. KLA 479500*. The respondents who were dissatisfied with the orders made, filed an appeal in the Court of Appeal and subsequently in the Supreme Court.

The Supreme Court vide **MA No. 20 of 2014**, confirmed the decision of this court stating that the judgment of this court had been fully executed on 1st January, 2010. (**Refer also to MA No. 1863 of 2012**).

Upon a subsequent request by the applicant for directions, the Superior Court forwarded this matter back to this court for delivery of the judgment in this application, which had been put on hold, pending the hearing of **MA No.163 of**

2015. MA No.163 of 2015 had also been filed by the respondents in the Court of Appeal, and I will refer to it later.

All details relating to this dispute are available on court record and I need not repeat the various transactions made in respect of the suit land or the numerous court actions taken by the various parties who claimed interest therein.

Suffice to state here that following the decree made by this court **vide: HCCS No. 95 of 2009**, duly confirmed by the Supreme court, the applicant purchased the land comprised in **Kibuga Block 28 plot 540 (suit land)** from the administrator of the estate, Ms Miriam Kuteesa.

Upon his failure however to access the suit land he filed **Civil Suit No. 500 of 2013: Wilberforce Ssekubwa vs Mariam Kuteesa & 5 others** upon which a consent was entered between them on 26th February, 2014 before the deputy registrar of court.

Of specific interest to this application however was the order made under that decree, directing the commissioner to: *issue a special certificate of title for the entire Kibuga Block 28, plot 540; and to execute the judgment order by passing the mutation form for the subdivision of land and issue duplicate certificate of title to the applicant herein for the land ceded and transferred; and to give residue to the 1st defendant for further estate management.*

In that consent order the applicant also withdrew criminal proceedings which he had instituted against Miriam Kuteesa, in respect to that land, **vide: Criminal Case No. 951 of 2013.**

The record indicates that through his counsel, **M/S KMT Advocates**, the applicant had written to the 1st respondent on 17th July, 2017 enclosing the orders, the basis upon which the applicant lay his claim.

However without providing any good reason, the 1st respondent did not comply with the order of court in **Civil Suit No. 500 of 2013**, prompting the applicant to file this action for contempt of court. **(Annexure G).**

As indicated in the affidavit of service filed on 8th October, 2019, the 1st respondent on 24th September, 2019 had acknowledged receipt of the court directives together with the application and written submissions.

5 The 3rd, 4th and 5th respondents counsel, Mr. Kabundama Simon who had personal conduct of the case however refused to acknowledge service. On that same day service was duly effected to the 6th respondent through the Secretary of the company.

10 The 6th respondent also refused to endorse on the court documents. None of the respondents therefore filed any response to demonstrate any opposition to this application.

Liability of Miriam Kuteesa:

15 Miriam Kuteesa, the 2nd respondent in this application never denied having received **Ugx 520,000,000/=** from the applicant in respect of the suit land, the basis of which the consent had been made vide **HCCS 500 of 2013**. She never challenged the decree.

She even took steps to effect the land transfer to the applicant by signing the transfer and mutation forms (**Annexure A, sale agreement dated 6th August, 2015**). That had been the position obtaining, as at 27th February, 2014 when the decree from the consent was extracted.

20 The sale agreement signed by Miriam Kuteesa, had as at 6th August, 2015, upon receiving from the applicant of the full purchase amount settled *all the claimants, beneficiaries of block 28 plot 540 (suit land)*.

25 If there were any other adverse interests acquired, or transactions, and/or commitments made prior to that in respect to this suit land (with or without her knowledge) those were never brought to the attention of this court. The beneficiaries of that estate never challenged the transaction between the applicant and the administrator of the estate..

In a strange twist of events, Miriam Kuteesa on 30th August, 2016 however under **EMA NO. 1838 of 2016**, as an administrator yet again received another payment

of **Ugx 750,000,000/=**, from the judgment debtors, again purporting to settle *all claims on the subject and all beneficiaries and claimants to the estate of the late Musa Kalanzi Muganzi*, administered by Miriam Kuteesa. The applicant who had already acquired interest in the property was never involved in the second transaction.

5 Subsequently, this court's attention was also drawn to yet another consent judgment entered on 10th October, 2019 in **Civil Appeal No. 163 of 2015**. Upon notification of the application at that time still pending before the Court of Appeal, the ruling in this very application had been put on hold by this court.

10 In **Civil Appeal No. 163 of 2015** which was heard by a single justice of the Court of Appeal, Miriam Kutesa allegedly bound herself not to enforce the original judgment and decree of this court granted to her under **Civil Suit No. 95 of 2009**.

But then again later she sought to challenge the said consent in an application she filed in the Court of Appeal: **Civil Reference No. 85 of 2020**. By that time subdivisions on the land had already been made on the suit land, creating plots:
15 **1244 to 1247**.

While the above was taking place the applicant who had not been party to any of the various actions and transactions subsequent to his purchase of the land, was still holding onto the consent he obtained under **Civil Suit No. 500 of 2013**, which had neither been challenged nor discharged.

20 Ms Miriam Kuteesa entered into two transactions between different parties over the same property, and it is the conclusion by this court that this partly explained the mess that was created relating to the suit estate, part of which the applicant claimed.

Whether the 1st respondent committed contempt of court:

25 The applicant's contention in this application is that the 1st respondents failed to act as directed by court, in utter disregard of a valid and undischarged consent order duly entered on 27th February, 2014, *vide*: **Civil Suit No. 500 of 2013: Wilberforce Ssekubwa vs Miriam Kuteesa**.

He alleged that the 1st respondent instead relied on a purported settlement of the decree (**EMA No. 1838 of 2016**), **Annexure E**, which came in after the applicant

had purchased the land, resulting in the creation of **plots 1244, 1245, 1246, and 1247.**

Four elements, must be satisfied in order for a complainant to prove contempt of court, namely: *existence of a lawful order; the potential contemnor's knowledge of the order; the potential contemnor's ability to comply; and the potential contemnor's failure to comply with the order.* (See; **Hon Sitenda Sebalu vs Secretary General of East African Community Ref. No. 8/2012**). The standard of proof in any such proceedings must be higher than proof on the balance of probabilities and almost, but not exactly beyond reasonable doubt.

According to **Halsbury's Laws of England, 4th edition**, it is civil contempt to refuse or neglect to do an act required by a judgment or order of the court within the time specified in that judgment, or to disobey a judgment or order requiring a person to abstain from doing a specific act.

Furthermore, according to case law, it is the plain and unqualified obligation of every person against or in respect of whom an order is made by a court of competent jurisdiction to obey it, unless and until it is discharged.

Contempt of court has been held to exist where there is a court order which the person is aware of, but which he chooses to disobey. Refer: **Semanda David. Fred Mawagi and Isaac Kabito Vs Kaheebwa Geofrey and Ayebwa Benon Misc. Appl. No. 1625 of 2016.**

The uncompromising nature of this obligation is demonstrated by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. **See: Hadkinson vs Hadkinson [1952] ALL ER 567 cited in Kisaakye vs Kadama MA No. 739 of 2016.)**

Thus in **LC Chuck and Cremier [1896] ER 885** it was held that such person should apply to court so that it is discharged, but as long as it exists it must be obeyed. The party who elects to disobey such order does so at the risk and pain of committing contempt of court.

In this case, **Annexure "G"** was the applicant's evidence that the decree was served onto the 1st respondent on 1st August, 2017. By that date however another transaction had been made vide: **No. 1838 of 2016** and apparently executed, resulting in the creation of several plots.

5 As per the amended decree dated 19th October, 2010 vide: **Civil Suit No. 95 of 2009, Annexure D**, by consent order, it was decreed:

a) *That all the instruments for and registration of the 2nd to 7th defendants on the purported photocopy certificate of title for the suit land,.....are invalid and of no legal consequence;*

10 b) *That the 1st defendant reconstructs the record enters name of the late Musa Muganzi Kalanzi in the register book as proprietor of the suit land, makes a substitute certificate of the title for the suit land in lieu of the original certificate of title and registers thereon the deceased's names as proprietor;*

15 c) *That the 1st defendant issues to the plaintiff a special certificate of title for the suit land and enter her in the register and on the certificate of title as an administrator of the estate of the late.....*

20 On 16th September, 2016, the commissioner Sarah Kulata Basanngwa having detected some anomalies in these transactions, applied her powers by virtue of **section 91 of the Land Act, Cap. 227** (special powers of the commissioner) when she issued notification to the respondents of her intention to have the register rectified by cancelling: the entries made in respect to the suit land, subdivisions and transfer to **Nina Interiors Ltd.**

25 As per **section 91(2)**, she specifically requested the parties in that notice to notify her of any objection to the proposed actions within 21 days from the date of service of that notice.

By law, that office is also required to conduct a hearing giving the interested party an opportunity to be heard in accordance with the rules of natural justice. (**section 91(2a)**). The law also requires that the office communicates its decision in writing, with reasons, and may call the title for cancellation.

- 5 Under (**section 91(3)**), thereof, if a person holding a certificate of title or instrument fails or refuses to produce it to the commissioner within reasonable time, the commissioner is under obligation to amend the registry copy and where necessary issue a special certificate of title to the lawful owner.

10 Without giving any reason however, the 1st respondent who had apparently not registered any objection from the respondents abandoned this course of action; refused to take up any of the actions as spelt out in the law, leaving in circulation the four titles which are the subject of this dispute.

The office holds special powers under **subsection (4) of section 91** and various sections under the **RTA**, namely **sections 165, 167, 173** among others, to take
15 corrective action of errors in the register book or duplicate certificates or instruments did not take any such step. She did not notify the applicant as one of those *likely to be affected by any decision* under that section.

She did not conduct any hearing in accordance with the rules of natural justice or if she did, she did not avail to this court any such proof which she could have done
20 by responding to the matters raised in this application.

Thus as at 21st July, 2015 as per the Supreme court ruling vide: **SCMA No. 20 of 2014** which struck out **SCCA No. 11 of 2014**, after the execution of the decree, all other subsequent efforts by the respondents to change the *status quo* by connivance, using *consent orders*, had been declared as futile.

25 It is clear therefore that at the time when the applicant purchased the land in contention, Miriam Kuteesa who by declaration of court was still held to be the registered owner of the property as the administrator of the estate, she had not disposed of the land to the respondents. The applicant's interest acquired in that land as per the decree made in **Civil Suit No. 500 of 2013** rendered made all other



subsequent transactions over the same land invalid. The 1st respondent's failure and/omission to take corrective action after the anomaly had been drawn to her attention therefore amounted to contempt of the court order.

Issue No. 3: Remedies:

- 5 **Section 98 of the Civil Procedure Act, Cap.71** empowers this court to make such orders to meet the ends of justice and to prevent abuse of court process.

The applicant sought that the 1st respondent be committed to civil prison. The jurisdiction to commit for contempt should be carefully exercised, and with the greatest reluctance and anxiety on the part of the court to see whether there is no
10 other mode which can be brought to bear on the contemnor. **See: Mutikika vs Baharini Farm Ltd [1985] KLR 227.**

It is properly ordered where the defendant has refused to do an affirmative act required by the provisions of an order, which in form or substance was mandatory in character. **(Re: Contempt of Dougherty 492, Michigan 81, 97 (1987)).**

- 15 An order for imprisonment can only be issued against the officer who acted in violation of the order. Court in this matter takes judicial notice of the fact that changes have since taken place in the office of the Commissioner, Land Registration and that Ms Sarah Kulata Basangwa, who failed to take action when the red flag was drawn no longer holds that office. She was not however party to this application.

- 20 Accordingly, taking into account the above observations, findings and conclusions the following are the consequential orders granted by this court:

1. *All dealings, transactions and undertakings by the respondents or their agents in respect of Kibuga, block 28, plot 540 Makerere land made in contravention of the decree in Civil Suit No. 500 of 2013, dated 27th February, 2014 are null and void;*

2. *The title of the land duly acquired by the applicant, Wilberforce Ssekubwa is to be restored by the 1st respondents and transferred in*

the names of the applicant as per the decree of court issued vide: **Civil Suit No. 500 of 2013**, dated 27th February, 2014.

5 3. The titles created out of the suit land from the land comprised in **Kibuga, block 28, plot 540 Makerere for plots 1244, 1245, 1246, and 1247** were irregularly created and therefore cancelled.

4. The 1st and 2nd respondents to meet the costs of this application.



10 **Alexandra Nkonge Rugadya**

Judge

9th November, 2020.