

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

MISCELLANEOUS CAUSE NO.94 OF 2021

5 1. **KADDU SULAIMAN**
 2. **KIRYOWA HARUNA**
 3. **KIWANUKA MUGAMBE SANDE**
 4. **KIBIRANGO NOORDIN**
 5. **NADDULI IBRAHIM**

10 (*Administrators of the Estate of
 the late JUMA*

MUYUNGWE):.....APPLICANTS

VERSUS

COMMISSIONER LAND

15 **REGISTRATION:.....RESPONDENT**

Before: Lady Justice Alexandra Nkonge Rugadya.

RULING:

The applicants brought this application by way of Notice of Motion seeking orders that a substitute page of **plot 440 Block 82 Kyadondo** (hereinafter referred to as the 'suit land') be created by the Respondent, general damages/ compensation of **Ugx. 50,000,000/=** (**Uganda Shillings Fifty Million only**) and that costs of the application be provided for.

The grounds of the application are contained in the affidavit in support deposed by **Mr. Kibirango Noordin** wherein he states that the Late Juma Muyungwe (hereinafter referred to as the 'deceased') was the registered proprietor of **Plot 312 Block 82 Kyadondo measuring approximately 9 acres**, which he subdivided before his death in 1979 thereby creating **plots 439 and 440** for which certificates of title were processed.

That the certificate of title of **Plot 440**, the suit land, got lost and that the same could not be traced and that upon conducting a search on the white page for the suit land, it was established that the only existing white page was that of **plot 439** while the white page for the suit land cannot be retrieved from the land registry.

Further, that after having the suit land surveyed, the applicants applied to the respondent requesting for a substitute white page but it has without explanation failed to create the same since 2019 and yet the applicants are under a lot of pressure from the people who purchased the suit land and had been promised Certificates of title. In addition, the persons who purchased the suit land are not willing to pay the outstanding balance of the purchase price.

The respondent opted not to oppose the application despite the fact that it was effectively served with the application together with the applicants' submissions in support of their case as per the affidavit of service on the record.



The applicants were represented by **M/s Kivumbi Madinah Kikomeko Advocates & Solicitors**. Their counsel filed written submissions, the details of which are on court record and which I have taken into consideration in resolving the issue of whether or not the applicants merit the prayers sought.

- 5 Under **Section 91 of the Land Act Cap.227**, the office of the Registrar of Titles has the power to among others, issue fresh certificates of title, original or duplicate.

Section 37 of the Registration of Titles Act requires that office to keep a Register Book with the certificates of title therein. **Section 38 (2)** further stipulates that one of the certificates of title (white page) and the other original duplicate certificate of title shall be
10 issued to the person entitled to it. In light of the above provisions, the office has the obligation to issue titles as and when it is required to do so, with a justifiable reason.

It is trite law that where no affidavit in reply is filed as in the present case, the affidavit in support is taken to be unchallenged and truthful, subject to whether the contents pass the test of evidence and is cogent and of probative value. (**See: Tororo District Administration
15 v Andalalapo ltd [1997] KALR 126.**)

Since the respondent in the instant case did not challenge the facts as deponed in the affidavit in support of the application, the same shall be considered to have been admitted.

It is not in dispute therefore that the original certificate of title, also known as the white page in respect of the suit land was missing from the Land Registry and that the applicants
20 engaged the respondent seeking to have a fresh white page created.

It is settled law that an administrator is a legal representative for all purposes and all property of the deceased person vests in him or her as such. (**See: Section 180 of the Succession Act**). It therefore follows that the applicants being the lawful administrators of the deceased's estate had *locus* to file this application, having obtained a grant of letters of administration
25 in respect of the deceased's estate from the High Court on 4th November 2015. (**Annexure A**). They lodged an application to the respondent seeking to create a white page for the suit land. they relied on the area schedule: **Annexure B**, which proves that plots 439 and 440 had indeed been created out of **plot 312**. **Annexure B2** is a search certificate which shows that **plot 439** is registered in the names of Kirizestomu Nganda. There is no similar
30 information regarding **plot 440**.

The application to the respondent had been received by the respondent on 10th May, 2019. (Refer to **Annexure F.1**). The respondent however never offered any explanation as to why the same has never been granted or why the requirement under **section 91 (9) of the Land Act**, to communicate its decision in writing to the parties was never fulfilled.

- 35 Regarding their prayer for damages/compensation, **section 183 of the RTA (Supra)** provides for actions for recovery of damages where one sustains loss through any omission, mistake

or misfeasance of the Registrar or any other officer or clerk in the execution of their respective duties under the Act.

Counsel for the applicants in his submissions argues that the applicants have been following up on the matter since 2019 yet the respondent is mandated to act within a period of 3 months from the date of receipt of the application as per **Section 173 of the RTA**.

Under that section, the office is required to act within a period of three months and if it is a rejection to notify the rejection to the person lodging it; and thereupon half the fees paid on the lodging shall be forfeited and paid into the consolidated fund. The other half may be returned to the person lodging the document.

The respondent indeed failed to act within the period as envisaged under the law after receiving such notification on 10th May, 2019. However I do not see any evidence to prove that the applicants were entitled to **Ugx 50,000,000/=** based on that provision, as half the fees or as compensation to the applicants. I find that amount on the higher side.

Court however in exercise of its discretion would allow a sum of **Ugx 20,000,000/=** to atone for the more than two years delay occasioned by the respondent's failure to act, and for the inconvenience caused to the applicants.

The respondent's failure to file a reply to this application is further demonstration that it has no justifiable reason to deny the request made to it by the applicants.

In the circumstances, I hereby grant this application, on the terms below:

1. **The respondent shall create a substitute page of plot 440, Block 82, in the names of Juma Mayungwe.**
2. **Ugx 20,000,000/= to be awarded to the estate of the late Juma Mayungwe as compensation.**
3. **Costs are awarded to the applicants.**

I so order.

.....
Alexandra Nkonge Rugadya
Judge
20th December 2021.

Delivered through email
Ankonge
20/12/2021