

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

CONSOLIDATED MISC. APPLICATION NO.576 AND 1029 OF 2020
[ARISING FROM MISC. CAUSE NO. 076 OF 2018]

- 1. BEN KIWANUKA**
- 2. SENSUWA HANNY**
- 3. MULONDO MARIAM**
- 4. NALIKA NORAH:.....:APPLICANTS**

VERSUS

- 1. KANTINTI EDWARD MBAZIIRA**
- 2. KIWANUKA WABBI ROBERT**
- 3. COMMISSIONER LAND REGISTRATION**

BEFORE: HON. MR. JUSTICE HERNY I KAWESA

RULING

The Applicants brought this application by notice of motion under Section 98 and 82 of the Civil Procedure Act Cap 71; Section 77 and 177 of the Registration of Titles Act Cp 230; Section 33 of the Judicature Cap 13; O.46 rr1 & 8 and O.52 rr1 & 3 of the Civil Procedure Rules SI 71-I.

The application seeks orders that;

1. This Honourable Court reviews the Ruling delivered on May 30, 2019 and the order extracted on May 19, 2019 which were to the effect that; the 3d Respondent cancels and deregisters Ben Kiwanuka from **Block 271 Plots 729,729, 928, 927, 926, 925 and 919** and replaces him with the 3rd and 4th Applicants and that the caveats lodged on the suit property be vacated.
2. The Respondent cancels the certificate of title issued to Kiwanuka Ben for land **comprised in Kyadondo Block 271 plot 73 at Birongo** (*the suit property*) as the same was procured fraudulently.
3. The Respondent cancels the registration and certificates of titles of the title issued to Kiwanuka Ben for pieces of land comprised in;
 - a) Kyadondo plot 659 at Birongo,
 - b) Kyadondo block 271 plot 917 at Birongo,

- c) Kyadondo block 271 plot 919 at Birongo,
- d) Kyadondo block 271 plot 920 at Birongo,
- e) Kyadondo block 271 plot 921 at Birongo,
- f) Kyadondo block 271 plot 922 at Birongo,
- g) Kyadondo block 271 plot 923 at Birongo,
- h) Kyadondo block 271 plot 924 at Birongo,
- i) Kyadondo block 271 plot 925 at Birongo,
- j) Kyadondo block 271 plot 926 at Birongo,
- k) Kyadondo block 271 plot 927 at Birongo,
- l) Kyadondo block 271 plot 928 at Birongo,
- m) Kyadondo block 271 plot 929 at Birongo,
- n) Kyadondo block 271 plot at Birongo

The grounds of the application while I shall not reproduce are supported by the affidavit of Hanny Ssensuwa, Mulondo Mariah and Nalika Norah and opposed by the affidavit in reply of Kantinti Mbaziira. The Applicant also filed an affidavit in rejoinder.

Counsel for both parties filed written submission which I shall consider.

The Applicants Counsel raised issues in his written submissions which I shall adopt and these are;

- 1. Whether the Applicants are aggrieved by the ruling and orders in MA NO.76 of 2018.**
- 2. Whether there is sufficient cause to warrant the ruling and orders in MA NO. 76 of 2018.**
- 3. What remedies are available to the parties.**

Before I handle the issues, I shall first express my disappointment by Counsel for both parties as regards the whole application.

The manner in which the motion on notice was drafted is regrettable. It contains a lot of unnecessary grounds. I want to suppose that Counsel of the Applicant knows what the law

of principles of review of judgment are and expect that they should have guided him in drafting the application.

But the manner in which the application was drafted makes me think that he never paid attention to them and this is why it contains 21 grounds, seem to be evidential matters in unsurprising that most of them are replicated in the affidavit in support of Hanny Sensuwa. It was really difficult to detect the grounds of review upon which the application is based.

The above observation similarly applies to be 1st and 2nd Respondents as well. First of all, their affidavit in reply contains 42 paragraphs, most of which are not only irrelevant to the application, but also argumentative. I can confess that for the first time I have witnessed a paragraph of an affidavit with 15 lines and more. I found a really hard time to understand what the deponent avers in the said

paragraphs as most of them are unpunctuated, and therefore the difficulty to tell the beginning of one sentence.

The right remedy would have been to reject the whole affidavit in reply for being too argumentative and containing unnecessary matters. But for the ends of justice, I shall sever some of those matters and consider others.

Counsel for the 1st and 2nd Respondents raised a preliminary objection which needs to be addressed as well. This is to the effect that the Applicants lacked *locus standi* to file this application.

It suffices to the state that Counsel for the parties on record properly referred to the law applicable to the applications of this nature, which is Section 82 of the Civil Procedure Act and O.46 r(1) of the Civil Procedure Rules.

According to the provision of the aforesaid Section and Rule, a person considering himself or herself aggrieved by a decision of Court, may apply for review of the judgment of Court on several grounds. So as per the law, any person considering himself or herself as aggrieved by a decision of Court has the *locus standi*.

Among the issues raised and noted above, I see that; *one of them is weather the Applicants are aggrieved persons*. It is my view therefore, that the preliminary objection be and shall be, resolved as part of the fist issue.

Issue No 1:

Whether the Applicants are aggrieved by the ruling and order in MA NO 76 of 2018

To define who an aggrieved person is, both Counsel cited the *Supreme Court* decision of *Muhammad Hussein*

versus Griffiths Isingoma Kakiiza and Others; S.C.C.A NO. 8 of 1995 where it was established that;

“A person is aggrieved if he or she has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully affected his title to something”.

I shall briefly state the background of the application, as per the record, before relating the Applicants to the aforesaid definition.

It is rightly revealed in the affidavit in support that the 1st and 2nd Applicants were charged before the *Chief Magistrates Court of Wakiso at Wakiso vide; Criminal Offence No.264 of 2015 on several counts*, among which was obtaining registration of a certificate of title by false pretenses contrary to Section 312 of the Penal Code Act Cap.120, and intermeddling with the estate of the deceased/; the late

Yakobo Sekubwa. Court tried the said Applicants and convicted them as charged on the 8th of September, 2017. However, according to annexure "C" of Mulondo Mariah's affidavit, the said Applicants appealed their conviction to the *High Court vide H.C.CA No.0145 of 2017*; and on the 22nd day of May 2018, the 2nd Applicant was acquitted of all charges, but the 1st Applicant's conviction of obtaining registration of a certificate of title by false pretense and intermeddling with the estate of the deceased was upheld.

Prior to the trial of the 1st and 2nd Applicants, land **comprised in Kyadondo Block 271 Plots 729,928,927,926,925, and 919** was registered in the name of the 1st Applicant and caveated by the 2nd Applicant. The predecessor of the said land and the said land was the late Yakobo Sekubwa.

On June 25 2018, the 1st and 2nd Respondents claiming as administrators of the estate of the late Yakobo Sekubwa applied for a *consequential order vide Misc. Application.*

No.76 of 2018, which application was against the 3rd Respondent. On the 30th of May, 2019, this Court, being aware of the 1st and 2nd Applicants' conviction, and unaware of the 2nd Applicants' acquittal on appeal, made *orders in Misc. Application No.76 of 2018* that:

1. The Respondent (3rd Respondent) should cancel and deregister from the certificates of title of land comprised in Kyadondo Block 271 Plot 929, 928, 927, 926, 925, 93 and 919 (*hereinafter the suit land*) in the name of Kiwanuka Ben (1st Applicant) and register the Applicants (1st and 2nd Respondents herein) as proprietors of the same in their capacity as Administrators of the estate of the late Yakobo Sekubwa.
2. The Respondent should vacate the caveat lodged on land comprised in Kyadondo Block 271 Plot 929, 928, 927, 926, 925, 93 and 919 registered in the name of Sensuwa Hanny (*the 2nd Respondent herein*).

The evidence of the Applicants shows that the 1st and 2nd Respondents are still the Administrators of the estate of the late Yakobo Sekubwa, but that their Letters of Administration are being contested by the 3rd and 4th Applicants in the High Court, Family Division; vide Civil Suit No.419 of 2016.

Further, paragraph 21 of the affidavit of Mulondo Mariah also shows that the 2nd Applicant obtained Letters of Administration of the estate of the late Yakobo Sekubwa Nsanja vide Administration Cause No.854 of 2013, and which the 3rd and 4th Applicants also contested in the High Court, Family Division, vide Civil Suit No.466 of 2017. It is apparent that the said late Yakobo Sekubwa Nsanja is the same as the late Yakobo Sekubwa, whose estate; the 1st and 2nd Respondent also has Letters of Administration.

It suffices to note that paragraph 6 and annexure "Kl" of the Respondents' affidavit in reply, indicates that the 2nd

Applicant's Letters of Administration were recalled by the High Court Family Division vide Citation No.245 of 2017 pending the hearing of Civil Suit No.466 of 2017.

Resolution

The point to find here is whether the decision of this Court in Misc. Application. No.76 of 2018 wrongfully deprived the Applicants of the suit land or wrongfully affected their title in the suit land. I shall start with the 1st and 2nd Applicants.

As regards to the 1st Applicant, his conviction alone for obtaining registration of certificates of title, disentitles him from having any legal interest in the suit land in any capacity.

For that reason, I find that the decision of this Court in Misc. Application. No.76 of 2018 never wrongfully deprived the 1st Applicants of the suit land.

Next is that the 2nd Applicant. This one has never been registered on the suit land as proprietor of the same in any capacity. He however, holds Letters of Administration of the estate of the late Yakobo Sekubwa Nsanja. These were recalled, but not cancelled and await the decision in Civil Suit No.466 of 2017. If his letters are eventually cancelled, it would have no registrable interest in the suit land in the capacity of an administrator and therefore, a further implication that the order in Misc. Application. No.076 of 2018 would have deprived him of nothing in the suit land. But such, remains a supposition until the determination of Civil Suit No.466 of 2017.

In view of the above, this Court finds that it cannot ascertain the standing of the 2nd Applicant as far as that estate of the late Yakobo Sekubwa and the suit land at the moment. This logic similarly applies to the 3rd and 4th Applicants. These are challenging Letters of Administration of the 1st and 2nd

Respondents, upon which Court issued a *consequential order*; *vide Civil Suit No.419 of 2016* above. Should they fail in that suit, that would defeat their prospects of becoming future administrators of the estate the Yakobo Sekubwa and their claim that the order in Misc. Appl. No.076 of 2018 deprive them of something in the suit land.

At the moment therefore, Court is unable to determine whether its decision in Misc. Application No.76 of 2018 wrongfully deprived the 1st, 3rd and 4th Applicants of the suit land or wrongfully affected their title in it. The best it can do is to say and hereby stays the determination of this application under Section 6 of the Civil Procedure Act Cap 71, pending the hearing and determination of Civil Suit No.419 of 2016 and Civil Suit No. 466 of 2017.

In the meantime, Court also orders that any dealings on land comprised in **Kyadondo Block 271 Plots 929, 928,927, 926,**

925, 93 and 919 by the Respondents be and are hereby halted until further orders of Court.

Costs of the application shall abide in the final decision.

I so order.

.....
Henry I. Kawesa

JUDGE

10/03/2022

10/03/2022:

Katongole Arthur for the Respondents.

1st Respondent in Court.

Counsel for the 3rd Respondent.

Applicants and Counsel absent.

Dorothy: clerk.

Court:

Ruling delivered in the presence of Counsel for the 1st and 3rd Respondents and in the absence of the Applicants and the rest of the parties.

Sgd:

Ayo Miriam Okello.

DEPUTY REGISTRAR

10/03/2022