

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS CAUSE NO.101 OF 2021

5 **1. SIIMA ARTHUR LULE**

2. TWESIGYE NIXON:.....APPLICANTS

VERSUS

1. STELLA NAMIRO

2. COMMISSIONER LAND REGISTRATION

10 **3. BAKOJJA RICHARD**

4. MUHANGI JUSTUS

5. NAKIBUKE HARRIET

6. TINDAMANYIRE TUMUSIIME TEDDY:.....RESPONDENTS

15 **Before: Lady Justice Alexandra Nkonge Rugadya.**

RULING:

Introduction:

The applicants filed this application under **section 177 of the Registration of Titles Act Cap.230, Section 33 of the Judicature Act Cap.13, and Section 98 of the Civil**
20 **Procedure Act Cap.71** seeking orders that;

a. The 2nd respondent cancels and deregisters from the certificates of title of land comprised in Buwekula Block 363 plots 36, 37, 38 & 39 Mubende District (suit land) in the names of 3rd, 4th, 5th, & 6th respondents;

25 **b. Costs of the application be provided for.**

Grounds of the application:

The grounds upon which this application is premised are contained in the affidavit in support deponed by **Mr. Twesigye Nixon**, the 2nd applicant wherein he states *inter alia* that the 1st respondent while working as a Senior Land Management officer of Mubende District, without
30 following procedure influenced the Kitega county area land Committee leading to the creation of title for customary land; and processed the certificates of title for the 3rd, 4th, 5th, & 6th respondents at the detriment of the applicants' rights of ownership of the said land.



That the 1st respondent was charged with the offence of influencing and peddling and convicted of the same by the Buganda Road Chief Magistrates Court vide **Criminal Session Case No. 0117 of 2015**, and the procedure for conversion and creation of the certificates of title over the customary land in favor of the 3rd, 4th, 5th & 6th respondents was adjudged to be illegal.

In addition, that the applicants have for a long period of time been in occupation of the suit land whereon they have set up their family homes, burial grounds, as well as plantations and the current registration of the 3rd, 4th, 5th, and 6th respondents are an impediment on their right to use the suit land.

Further, that pursuant to the judgement issued earlier, this court has the powers to issue consequential orders directing the 2nd respondent to cancel the freehold certificates of title issued in the names of the 3rd, 4th, 5th, 6th respondents.

The 1st, 3rd, 4th & 6th respondents opposed the application through their respective affidavits in reply. The 1st respondent in her affidavit objected to the application on grounds that the same is the same is not only incompetent, frivolous and vexatious but it also has no merit and is not maintainable in law.

That the affidavit in support of the application contains falsehoods that the 1st respondent was acquitted on the charge of abuse of office by the trial court, convicted of the offence of influence peddling but the conviction was overturned on appeal by the High Court. (**Ref: High Court Criminal Appeal No.016 of 2019.**)

In addition, that the other respondents who are the registered proprietors of the land issue were never party to any of the criminal charges or the proceedings in the above criminal trial and that no order as to ownership or recovery of the land was ever issued despite the 1st respondent's conviction since the charges were never related to ownership or recovery of land.

Furthermore, that the 1st respondent is not the registered proprietor of the land in issue for the applicants to seek the orders herein since there are no grounds for a consequential order to issue and that the inclusions of the 1st respondent in the application is tainted with malice and ill will as the applicants have no claim against her.

The 3rd respondent on his part objected to the application on grounds that the same was bad in law, incompetent and abuse of court process and prayed that it should be dismissed with costs because court cannot cancel his certificate of title without giving him a fair hearing.

He also denied knowledge of any of the acts allegedly committed by the 1st respondent as mentioned by the applicants and went on to state that because the 1st respondent's conviction of the offence of influence peddling at the Anti-Corruption Court was quashed by the High Court, the same does not support the applicants' case.



In addition, that since the applicants have no interest in the suit land and that no court has ever made any such pronouncement adjourning the procedure for conversion, the applicants shall be put to strict proof thereof and that the applicants cannot therefore be granted any consequential orders to cancel the certificate of title by way of this cause as the same would not only be unconstitutional, but also against the doctrine of fair hearing especially where allegations of fraud come into play.

In his affidavit in reply, the 4th respondent averred that he has at all material times been the registered proprietor of the land comprised in **Buwekula Block 362 plot 37** and that while the applicants have filed the instant application seeking consequential orders against him in respect of the same, the same can only be issued upon the applicants presenting to this court an order of recovery of land against him.

That his constitutional right to own property can only be taken away upon being accorded the right to defend himself through a fair hearing and a just court process which was not the case in the criminal trial which is the basis upon which the applicants want to take the land. That he was neither a party or a witness to the said criminal proceedings which the applicants are relying on to deprive him of his land.

Further, that the applicants are taking advantage of the court process to acquire the said land because the said criminal proceedings and subsequent judgement relied on by the applicants never decreed that the suit land belonged to them and that since no judgement has ever been entered strictly or specifically for recovery of land against him, depriving him of the suit land on the basis of the said court proceedings and judgment, to which he was not party is unconstitutional and that it is just, fair and equitable that the instant application is not granted.

The 6th respondent equally opposed the application through her affidavit in reply wherein she stated *inter alia* that while she is the registered proprietor of land comprised in **Buwekula Block 362 Plot 39**, there has never been any legal proceedings against her, whether civil or criminal in any court of law or any order for recovery of the said land against her.

That a consequential order for cancellation of her certificate of title and deregistration of her name from the register can only be done if there is an order for recovery of land issued against her as the registered proprietor, in favor of the applicants.

That the criminal proceedings and subsequent judgment referred to by the applicants in their application were never against the 6th respondent and since no legal proceedings have ever been commenced in regard to her title to land, depriving her of the land on the basis of court proceedings or subsequent judgment to which she was never a party is unconstitutional as the same would deprive her of the right to own property and the rules of natural justice.



Further, that the applicants have never been decreed in any court to be the legal owners of the suit land and just want to use this court to acquire what has never been decreed to be theirs and that it is just, fair and equitable that this application is denied.

The applicants did not file any affidavits in rejoinder to the affidavits in reply deposed by the 1st, 3rd & 6th respondents.

Representation:

The applicants were represented by **M/s Maldes Advocates** while the 1st, 3rd, 4th and 6th respondents were represented by **M/s Rwakafuuzi & Co. Advocates, M/s Muwema & Co. Advocates and Solicitors, M/s Serwadda & Co. Advocates** and **M/s Najjuma, Nakalule & Co. Advocates** respectively.

Counsel for the parties filed their respective written submissions in support of their respective clients' cases as directed by this court.

Although the 5th respondent did not file an affidavit in reply opposing the application, through her lawyers **M/s Ruhundi & Co. Advocates** she filed written submissions wherein a preliminary point of law was raised.

Consideration of the application by Court.

I have carefully read and reviewed the pleadings above, evidence and the arguments on record. I am persuaded that this application raises a point of law which must be determined before divulging into the application itself. The issue for consideration is whether or not this application is properly before this court.

Resolution of the preliminary objection.

The applicants brought this application under the provisions of **Section 177 of the Registration of Titles Act Cap.230** which grants the High Court powers to cancel a certificate of title, as sought presently. It provides that;

“Upon the recovery of any land, estate or interest by any proceeding from the person registered as proprietor thereof, the High Court may in any case in which the proceeding is not herein expressly barred, direct the Commissioner to cancel any certificate of title or instrument, or any entry or memorial in the Register Book relating to that land, estate or interest, and to substitute such certificate of title or entry as the circumstances of the case require; and the Commissioner shall give effect to that order.”

The above provision was considered in the case of **Park Royal Ltd vs Uganda Land Commissions Miscellaneous Cause No.46 of 2014** wherein it was observed that while the above legal provision provides for cancellation of a certificate of title, the same would be


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incidental to the recovery of land by an applicant pursuant to proceedings that are not otherwise expressly precluded by the Act.

It was also held in **Re Ivan Mutaka [1981] HCB 28** it was held that in order to rely on the provisions **of section 185 (now section 177) of the RTA** and have the register book rectified by cancellation, the applicant who invokes it has to satisfy court that he/she has recovered the land, estate or any interest in question by any proceedings from any person registered as proprietor of the land.

In **Re Habib Lubwama [1991] HCB 74** it was held that an order stemming from a criminal case can form a basis for a consequential order.

Going by the above law, in order to receive a consequential order with respect to the suit land, and a rectification of the register, the applicants must prove to this court that they recovered the land by court order against the registered proprietors thereof and that such proceedings are not expressly barred by statute.

In the instant case, the application has not established that there was recovery of the suit land following a due process of law as required by **section 177 of the RTA**. Furthermore, save for the 1st respondent, the rest of the respondents were not party to the criminal case which the applicants seek to rely on.

The circumstances of this case therefore warrant proof of actual ownership of the suit land by the applicants, which would call for a formal determination of all the issues in contention herein prior to any decision that would result in the cancellation of the 1st, 3rd, 4th, 5th & 6th respondents' legal interest in the suit land.

Issues concerning possible fraud and illegalities are matters of evidence which need proof in court by the calling of evidence as deposed to by respondent in the affidavit in reply. There are issues to do with illegalities in obtaining the title, fraud, injunctions which a blanket notice of motion supported by affidavit evidence cannot sufficiently prove.

The supreme court held in the celebrated case **of Fredrick J.K. Zaabwe vs. Orient Bank Ltd and Others: Civil Appeal No. 4 Of 2006** that **"an allegation of fraud needs to be fully and carefully inquired into. Fraud is a serious matter."**

The import of all this to the proceedings before court now is that where a matter is contentious, and involves a considerable need to call oral evidence to prove further the facts in controversy, then proceeding by affidavit evidence either by originating summons or other motions as in this case becomes improper. (**Zalwango Elivason and Nakalema Mariam v. Dorothy Walusimbi and Henry Bijjumuko Or. Sum..3/2013**).

The instant application in my opinion raises serious allegations of illegalities that ought to have particularized and in respect of which the applicants should have adduced cogent


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evidence, which cannot be done by affidavit evidence and therefore, the procedure adopted has been found improper.

All in all, the instant application which raises triable issues is improperly before this court. It is accordingly dismissed with costs to the 1st, 3rd, 4th, 5th and 6th respondents.

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Alexandra Nkonge Rugadya

Judge

10 **9th August, 2022.**

Delivered by email
Alexandra

9/8/2022