

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**  
**CIVIL REVIEW NO. 02 OF 2022**  
**ARISING FROM CIVIL SUIT NO. 143 OF 2010**

**1. MUKISA ROBERT ..... APPLICANT**

**Versus**

**1. MOSES KAAYA**

**2. ANNET KAGOLO**

**(Administrators of the estate of the Late Pulikeliya Namuddu)**

**3. CHARLES MATOVU**

**4. MARY NANTONGO DAMBA**

**5. AHMED KIGGUNDU MASAGAZI**

**6. CHARLES MATOVU (Guardian Ad litem of Alex Lubega)**

**7. REGISTRAR OF TITLES ..... RESPONDENTS**

**BEFORE: HON. JUSTICE DR. FLAVIAN ZEIJA**

**RULING**

This is an application for review brought by way of Notice of Motion under sections 82 & 98 CPA, Order 46 rules 1 & 2, Order 52 rules 1 & 3 CPRs S.I 71-1

It is seeking for orders that;

- 1. The judgment and orders in HCCS No. 143 of 2010 (Moses Kaaya & Anor vs Charles Matovu & Ors) be reviewed.*



2. *The judgment and Orders in HCCS No. 143 of 2010 be set aside*
3. *The Certificates of Title for land comprised in Kyadondo Block 265 Plots No. 7090, 7091 and 7092 land at Bunamwaya be reinstated in the names of the Applicant.*
4. *Costs of this application be provided for*

The grounds on which this application is premised are contained in the application and buttressed in Applicant's affidavit in support of the application. Briefly that;

1. *The Applicant is the registered owner of land comprised in Kyadondo Block 265 Plot 7090, 7091 and 7092 land at Bunamwaya.*
2. *The Applicant purchased the said land for valuable consideration from a one MUGUME SIMON who was the then registered proprietor and had acquired the same from MATOVU CHARLES who was registered thereon in the year 2020.*
3. *The Applicant's land been subdivided out of land comprised in Kyadondo Block 265 Plot 1134 land at Bunamwaya.*
4. *Upon the said purchase, the Applicant immediately took possession and greatly developed the same.*
5. *In about October 2021 the Applicant received information of cancellation of his Certificates of Title by court Order in HCCS No. 143 of 2010 to which he was not privy.*
6. *The Applicant not being party to Civil Suit No. 143 of 2010 was not given a hearing.*
7. *The Applicant is a bonafide purchaser for value without notice and his certificates of title are protected by law.*
8. *The effect of the said judgment was to deprive and orders of court was to deprive the Applicant of his proprietary rights in the land in which he has invested substantial sums of*

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*money without affording him a hearing which is not only against the principles of natural justice and equity but also against his constitutional rights.*

9. *That if the said judgment and orders are not reviewed and set aside accordingly, the Applicant will suffer great injustice and substantial loss.*
10. *It is in the interest of justice and equity that the said judgment and orders of court be reviewed and set aside*

In opposition to the grounds in support of the application, the 2<sup>nd</sup> Respondent Annet Kagolo deponed that;

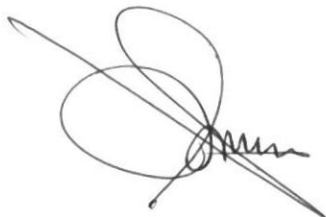
1. *In Civil Suit No. 143 of 2010, the registrar of titles testified in court that whereas it was a requirement that the identity of the buyer and seller should be presented before registration, he could not find the identity of 3<sup>rd</sup> respondent Charles Matovu on the file for Plot 7090 although it was a requirement.*
2. *For the above reason, the subsequent buyer, including the applicant should have noticed the anomaly.*
3. *Looking at the title to plot 7090 attached to the affidavit in support of the application as annexure "A" the address of the 3<sup>rd</sup> respondent and that of the applicant are identical as P.O Box 7056.*
4. *On the title for plot 7091, whereas the 3<sup>rd</sup> respondent Matovu Charles uses the address P.O Box 6392, the applicant still uses Matovu Charles' address P.O Box 7056 as his own.*
5. *Looking at the title of plot 7092 and transfers thereon, it is noticeable that the 3<sup>rd</sup> respondent Matovu Charles, his transferee Mugume Simon, and the applicant use the same address P.O Box 7056 Kampala*

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6. *The 3<sup>rd</sup> respondent having realized that he was losing the case purported to use proxies to transfer the suit land to them in order to defeat justice.*
7. *The purported sale and transfer of the said plots of land occurred on 24<sup>th</sup> July 2020 shortly after the case against the 3<sup>rd</sup> to 7<sup>th</sup> respondents was pending judgment. It is therefore clear that the purported transfers were meant to hide the properties and defeat justice.*
8. *This kind of application cannot be entertained where an appeal has been preferred. The 3<sup>rd</sup> and 4<sup>th</sup> respondents have both filed appeals against the decision of this Honorable Court.*

The 5<sup>th</sup> respondent Ahmed Kiggundu Masagazi also swore an affidavit in reply wherein he deponed that;

1. *The applicant is not the registered proprietor of land comprised in Kyadondo Block 265 Plot 7090, 7091 and 7092 land at Bunamwaya the certificates of title of the said land having been cancelled by Order of Court in Civil Suit No. 143 of 2010 Moses Kaaya & Anor –vs- Charles Matovu & Ors.*
2. *That the applicant and Mr. Mugume Simon have at all material times been aware of the proceedings of court as they used to accompany Mr. Matovu Charles to court starting the year 2010 when the matter was filed.*
3. *That it is a common denominator is all the three titles presented by the applicant that Mr. Matovu Charles first transferred the suit land to Mugume Simon who later transferred the same to the applicant.*
4. *The transfer of the land comprised in Kyadondo Block 265 Plots 7090, 7091 and 7092 land at Bunamwaya was deliberately calculated to defeat the orders of court in Civil Suit No. 143 of 2010 Moses Kaaya & Anor-vs- Charles Matovu & Ors.*



5. *It is noticeable that the transfer of title from Mr. Matovu Charles to Mr. Mugume Simon and later to the applicant happened within a period of 3 months for all the titles and one month to Mr. Mukisa Robert.*
6. *By the time entries on the titles happened, the commissioner land registration had already been summoned to court and through his officer Mr. Sekito Moses, a senior registrar of titles had testified highlighting massive fraud on the suit land.*
7. *There is no error apparent on the face of the record to warrant a review.*
8. *It is odd that the office of the commissioner land registration which highlighted fraud relating to the same suit land went ahead effected transfers well aware that the matter was pending court's decision.*
9. *The alleged developments on the land were made by Mr. Matovu Charles who is present day seen directing operations on the land.*
10. *The 3<sup>rd</sup> respondent and the applicant are merely colluding to defeat the judgment of court.*

In rejoinder, the applicant basically reiterated the earlier averments that he is a bonafide purchaser of the suit land for valuable consideration but added that he does not have a postal address and the postal address used in his certificates of title should not be relied on to attribute fraud to him. That at the filing of this application he did not know that there was a pending appeal.

The 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 6<sup>th</sup> and 7<sup>th</sup> did not file any affidavits in reply to this application.

### **Representation**

At the hearing of this application, the Applicant was represented by Baraka Legal Associated Advocates. The 5<sup>th</sup> respondent was represented by M/s Arcadia Advocates. The rest of the respondents did not file written submissions.

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## The Law


Applications for review and set aside are governed by the provisions of section 82 of the Civil Procedure Act, Cap 71 and Order 46 rules 1 and 2 of the Civil Procedure rules.

The grounds which an applicant must prove as affirmed in these provisions and confirmed by the courts of law are that;

- a) *There is a mistake or manifest error apparent on the face of the record*
  
- b) *There is a discovery of new and important evidence which after exercise of due diligence was not within the applicant's knowledge or could not be produced by him or her at the time when the decree was passed or the order made.*
  
- c) *That any other sufficient reason exists.*

## Consideration of court

This application is hinged on the assertion that the applicant was not privy to Civil Suit No. 143 of 2010. As such, he was never heard in respect to his interest in the suit land. The applicant attached certificates of title to his affidavit in support of this application to show that he is the registered proprietor of the suit land and therefore an aggrieved party within the meaning of the law. The 1<sup>st</sup> certificate of title marked as annexure 'C' is for land comprised in Kyadondo Block 265 Plot 7090. The applicant was registered thereon **11<sup>th</sup> September 2020** by instrument number WKY-00265057. The applicant's immediate predecessor in title is Mugume Simon registered on **9<sup>th</sup> July 2020** by instrument no. WKY-00261029. The said Simon Mugume obtained transfer from Charles Matovu who had been registered on 2<sup>nd</sup> July 2009 by instrument number KLA 420893. It is noted that applicant's postal address P.O Box 7056, Kampala is similar to that of Charles Matovu, the third respondent.

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As regards the certificate for Kyadondo Block 265 Plot 7091 marked 'D' annexed to the affidavit in support of the application, the 3<sup>rd</sup> respondent Charles Matovu was registered thereon on 11<sup>th</sup> August 2015 by instrument number WAK 00057669. A transfer was made to Mugume Simon on **24<sup>th</sup> June 2020** by instrument number WKY-00260252. A further transfer was effected to the applicant on **14<sup>th</sup> September 2020** by instrument number WKYA - 00265275.

Concerning the certificate of title for Kyadondo Block 265 Plot 7092 marked annexure 'E' attached to the applicant's affidavit in support of the application, Charles Matovu the 3<sup>rd</sup> respondent was registered thereon on **6<sup>th</sup> July 2009** by instrument number KLA 421352. A transfer was effected to Mugume Simon on **20<sup>th</sup> March 2020** by instrument number WKY-00259042 and later to the applicant on **11<sup>th</sup> September 2020** by instrument number WKY 00265052. It is noticed that on this particular title, the postal address P.O Box 7056, Kampala is similar for all the three proprietors at their respective dates of transfer and registration.

It is also common for all the three certificates of title that the applicant was registered thereon at a time when Civil Suit No. 143 of 2010 was being litigated in this court before its final determination and judgement on 24<sup>th</sup> May 2021. There, the applicant was not a party but the rest of the parties to this application were also parties in the civil suit where the 5<sup>th</sup> respondent was particularly faulted for having participated in the fraudulent subdivisions and claims over the suit land. It is therefore a blatant abuse of this court for the 5<sup>th</sup> respondent to suppose that this court can rely on his affidavit in this application in respect to the same subject matter. The 5<sup>th</sup> respondent's affidavit in reply is therefore expunged given that his hands are tainted with fraud per this court's findings in civil suit No. 143 of 2010. I will therefore only rely on the 2<sup>nd</sup> respondent's affidavit in reply.

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The 2<sup>nd</sup> respondent deponed that the registration of the applicant on plots 7090, 7091 and 7092 was effected when the matter over the same was pending court judgment. Further, that the applicant shares the same postal address with the 3<sup>rd</sup> respondent Charles Matovu and Mugume Simon who are both his predecessors in title. This according to the 2<sup>nd</sup> respondent is an indication that they fraudulently acted in concert to defeat her title to the suit land.

I have revisited my findings in civil suit No. 143 of 2010 and it is clear to me that the 3<sup>rd</sup> respondent in this application was rightly culpable for fraudulent dealings in the suit land. It is this same person from whom the applicant's immediate predecessor derives an already tainted title which he passes on to the applicant. In his rejoinder, the applicant offers no explanation as to why his postal address on the certificates of title are similar to those of the 3<sup>rd</sup> respondent who this court already found culpable for fraud. The applicant's only defense in this regard is that he paid full consideration to Mugume Simon and received duly signed transfer forms and other documents which he gave to his lawyer to effect transfer. He does not deny knowing the 3<sup>rd</sup> respondent and it cannot be a coincidence that he shares the same postal address with him.

The applicant further denies having knowledge of civil suit No. 143 of 2010 at the time he obtained title to the suit land in 2020. It is puzzling how three people share the same postal address, one of them battles court litigation for a period of over 10 years without the knowledge of the other two but eventually transfers the subject matter of a 10 year protracted litigation to the two within a period of a few months shortly before the determination of the suit which in the end finds him culpable of fraud.

It is now trite that for one to claim the protection of a bonafide purchaser for value without notice he must act in good faith and not be found guilty of sharp practice. The concept of a bonafide purchaser for value without notice was canvassed in the case of **David Sejjaka**

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**Nalima v Rebecca Musoke SCCA No. 12 /1995** quoting with approval the case of **Robert Lusweswe v G.W. Kasule & Another Civil suit No. 1010 of 1983 (unreported)**, Odoki JA (as he then was) stated in respect to section 189 of the Registration of Titles Act, Cap 230 thus:

***“The effect of this section is that once a registered proprietor has purchased the property in good faith his title cannot be impeached on account of the fraud of the previous registered proprietor. A bona fide purchaser therefore obtains a good title even if he purchases from a proprietor who previously obtained by fraud. However, before a purchaser can claim the protection of S. 189 of the Registration of Titles Act, he, must act in good faith. If he is guilty of fraud or sharp practice he will cease to be innocent and therefore lose the protection”***

The burden of proof to establish the status of a purchaser in good faith lies upon the one who asserts it. This burden cannot be discharged by merely invoking the legal presumption of good faith. It is also now trite that notice of fraud need not be actual. It can also be constructive or imputed. When a purchaser acquires knowledge of circumstances which would ordinarily put an honest and reasonable man on inquiry and yet he does not undertake the necessary inquiries but willfully closes his eyes to the possibility of finding out the existing defect, such a purchaser cannot claim to have bought in good faith. **See; Williams and Glyn’s Bank Ltd v Boland, [1981] AC 487**

In this case, the suit land was a subject of protracted litigation for over a period of 10 years and the office of the commissioner land registration was aware of the ongoing court dispute itself being a party. The suit land had prior been encumbered with a number of caveats. All of this should have interested the applicant to make further inquiries into the ownership of the suit land which would have inevitably opened his eyes to the ongoing litigation. The only

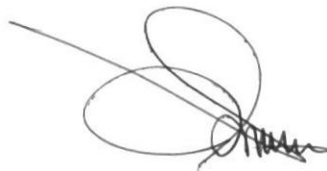


reasonable conclusion in the circumstances therefore, is that the applicant either knew the existing land dispute in civil suit No. 143 of 2010 or he deliberately closed his eyes from finding out for fear of finding out what would otherwise be an impeachment on his title. As a result, he cannot claim to be innocent.

I am certainly mindful of the non derogable right to a fair hearing. The same is however not available to a party who clearly files a vexatious application. Nonetheless, the 2<sup>nd</sup> respondent has, in her affidavit, clearly laid out particulars of fraud attributable to the applicant and the applicant has responded to the same by way of an affidavit in rejoinder. It is my finding that the applicant had constructive notice of the fraud orchestrated by his predecessors in title.

Consequently, this application lacks merit. It is hereby dismissed with costs to the 2<sup>nd</sup> Respondent.

Dated at Kampala this 25<sup>th</sup> day of November 2022.



Flavian Zeija (PhD)  
PRINCIPAL JUDGE