

**IN THE HIGH COURT OF UGANDA AT HOIMA**  
**CIVIL SUIT NO. 162 OF 2022**  
**(Formerly Masindi C.S No.058 OF 2020)**

**COMMISSIONER LAND REGISTRATION :::::::::::::::::::::::::::::: DEFENDANT**

## JUDGMENT

- [1] The plaintiff claim against the defendant is for damages arising out of the defendant's illegal cancellation of his land title comprised in **FRV 469 Folio 17 Buhaguzi Block 3 plot 37** and for an order requiring the defendant to restore the plaintiff's land title.
- [2] The defendant was duly served with summons to file a defence on **13/11/2020** as per the affidavit of service on record dated **12/4/2021** but the defendant failed and or ignored to file a defence.
- [3] After a period of over 1 year, on 7/3/2022, vide **Misc. Application No.118/2021**, the plaintiff/Applicant sought a default judgment against the defendant/Respondent. The Application was duly served upon the Respondent as per the affidavit of service on record dated 13/12/2021 but again, the Respondent failed and or ignored to file a reply and as a result, the Applicant successfully obtained an order against the Respondent/Defendant, setting down the suit for hearing exparte for the defendant's failure to file defence in the main suit, **C.S No.58 of 2020**.
- [4] When main suit was set down for hearing, once again, the Defendant was on **13/6/2022** duly served with a hearing Notice of the suit for hearing on **20/6/22** at 10:00am as per the affidavit of service on record dated 7/6/2022. On **20/6/2022** neither a representative of the defendant or

official nor its counsel appeared in court for hearing of the suit. As a result, under **O.9 r.10 CPR** the suit was set down for hearing *ex parte*.

## **Background**

- [5] The suit land now comprised in **FRV 469 Folio 17, Block 37 land at Buhaguzi, Hoima measuring 140 hectares** was originally a Game Reserve under Wildlife Authority. In the year 2002, an official of Uganda Wildlife Authority (UWA) in charge of Kabwoya-Kaiso Tonya Wildlife area, a one **Mwesigye William** notified the chairman Land Board Hoima that the suit land ceased to become a game reserve, that it was degazetted and it had reverted to public land under Hoima District Land Board because the wildlife had come to extinction.
- [6] The plaintiff developed an idea of seeking permission from the District Land Board to allow him cultivate and practice grazing on the suit land. The District Land Board Officials advised him to apply for its lease and on 19/05/2003, he was granted a lease offer for a period of 49 years. In the due course, the District Land Board Officials advised him to apply for conversion from customary tenure to free hold under the Land Regulations 2004.
- [7] On the 29/9/2006, the Hoima District Land Board gave instructions to **Integrated Survey and Mapping Consultant** to survey only 350 acres out of the 650 acres of the suit land. Eventually the plaintiff was given a Freehold offer on 19/7/2007 under **Min.No.Ref. HOLB Min (62) 7 (2h) 182/2007** of 14/6/2007 and upon payment of all the necessary fees, on 30/8/2007 the Hoima District Land Board directed the Commissioner Land Registration to issue a Freehold Certificate of title comprised in **FRV 469, Folio 17, Block 3, plot 37 land at Buhaguzi measuring 140 hectares**.
- [8] However, to his surprise and shock, in around November 2020, upon a search on the suit land certificate of title, he learnt of and found that a formal report from the Masindi Ministry Zonal Office which was to the effect that the title was cancelled by the Commissioner for Land Registration for having been illegally procured. In cancelling the title, the plaintiff contends that he was neither notified of the intention to cancel

the subject title nor was he given an opportunity to be heard on the matter of the cancellation.

- [9] It is in the premises that the plaintiff filed this suit against the defendant for restoration of his title. The defendant did not file a defence despite being duly served with summons to file a defence and further failed or refused to participate in the further proceedings of the suit despite due service of the court process. He is however currently utilizing the land for commercial farming particularly growing of maize.

### **Issues for determination**

- [10] 1. Whether the plaintiff rightly acquired the freehold certificate of title of the suit land.  
2. Whether the Commissioner Land Registration rightly cancelled the plaintiff's title,  
3. Whether there are any remedies to the plaintiff.
- [11] The plaintiff was represented by **Mr. Kasirye Patrick** of **M/s Bukenya, Chemonges & Co. Advocates, Mukono**. He filed Written submissions for consideration in the determination of this suit.

### **Issue No.1: Whether the Plaintiff rightly acquired the Free hold Certificate of title to the suit land.**

- [12] As per the pleadings and evidence of the plaintiff (**PW1**), the Plaintiff's Certificate of title was cancelled by the Commissioner Land Registration on an allegation that it was wrongly procured (**P.Exh.7**).
- [13] Before acquiring the Freehold title in question, the suit land was initially a wildlife area but later degazetted in favour of the District Land Board (**P.Exh.1**) whereby it became available for leasing. On 19/05/2003, the Plaintiff was offered a lease on the suit land for a period of 49 years (**P.Exh.2**) thus, he became a lease interest holder.

[14] **S.28 of the Land Act (as amended)** provides for conversion of leasehold into freehold as follows;

*“(1) Any lease which was granted to a Ugandan citizen out of former public land and was subsisting on the coming into force of this Act may be converted into a freehold.”*

[15] In the instant case, on 19/5/2003, the plaintiff was granted a lease for approximately 350 acres of the suit land for a period of 49 years. Before the expiration of the period, he applied for a conversion of the lease hold interest into a freehold interest (**P.Exh.4** and **P.Exh.6**) from the Hoima District Land Board upon satisfaction of the relevant conditions for the lease.

[16] In absence of any evidence that the Board did not verify and or be satisfied that it is desirable in the public interest that the land should be converted into freehold as required by **S.28 (1) (f) of the Land Act**, I find that the plaintiff rightly acquired the freehold certificate of title in question. The fact that the Board sanctioned and gave instructions to survey the suit land in favour of the plaintiff (**P.Exh.3**) and directed the Commissioner Land Registration to issue the plaintiff a freehold title as per the Request dated 30/8/2007 (**D.Exh.5**), is ample evidence that the Board verified it and was satisfied that it is desirable in the public interest that the plaintiff's lease suit land be converted into freehold for the 140 hectares.

[17] In the premises, where the plaintiff complied with all the requirements for conversion of his lease to free hold under **S.28 of the Land Act**, I find the 1<sup>st</sup> issue in the affirmative. The plaintiff rightly acquired the Freehold Certificate of title.

## **Issue No.2: Whether the Commissioner Land Registration rightly cancelled the Plaintiff's title.**

[18] The power to cancel any certificate of title of a citizen is provided for under **S.91 of the Land Act (as amended)** and is as follows;

***“91. Special power of Commissioner***

*(1) Subject to the Registration of Titles Act, the commissioner shall,*

*without referring a matter to court or a District Land Tribunal, have powers to take such steps as are necessary to give effect to this Act, whether by endorsement or alteration or cancellation of certificates of title, the issue of fresh certificates of title or otherwise.*

*(2) The commissioner shall, where a certificate of title or instrument-*  
*a) is issued in error;*

*b) contains a wrong description of land or boundaries;*

*c) contains an entry or endorsement made in error,*

*d) contains an illegal endorsement;*

*e) is illegally or wrongfully obtained; or*

*f) is illegally or wrongfully retained;*

*give not less than twenty one day's notice of the intention to take appropriate action, in the prescribed form to any party likely to be affected by any decision made under this section.*

*(2a) The commissioner shall conduct a hearing, giving the interested party under (2) an opportunity to be heard in accordance with the rules of natural justice..." (Emphasis)*

[19] It is the uncontroverted evidence of the plaintiff (**PW1**) that the process of cancelling his certificate of title by the Commissioner Land Registration, he was neither notified of the intention to cancel his title nor was he given an opportunity to be heard before the defendant cancelled his title. Indeed, there is no evidence that before the cancellation of his certificate of title, the plaintiff was notified by the commissioner Land Registration of his intention to do so or accorded the plaintiff a hearing i.e, an opportunity to be heard.

[20] Under **Article 44(c) of the 1995 Uganda Constitution**, a right to a **fair hearing** is a non derogable right. Indeed, it is echoed by **S.91 of the Land Act (as amended)**. It follows therefore that a party cannot be deprived of land without being accorded an opportunity of being heard.

[21] In the instant case, it is evident that the Plaintiff's certificate of title was cancelled without giving the Plaintiff not less than twenty one day's notice of the defendant's intention to do so, and he was never accorded any hearing, an act that was contrary to **Article 44(c) of the Constitution** and

the rules of natural justice. The plaintiff only learnt of the cancellation of his title upon a search conducted around November 2020.

- [22] As counsel for the plaintiff submitted while relying on the case of **Marvin Baryahura Vs A.G, H.C.Misc. Cause No.149/2016** where the case of **Kampala University Vs Natural Council for Higher Education, H.C Misc. Cause No.053/2014** was followed,

*“the position of the law is that where a decision is arrived at without affording the victim an opportunity to be heard, such decision cannot stand. This is regardless of whether the same decision would nevertheless have been made.”*

- [23] In the premises, I find the 2<sup>nd</sup> issue in the negative. The decision of the defendant in cancelling the plaintiff's certificate of title without notice and a fair hearing, was wrong and the decision amount to a nullity.

### **Issue No.3: Whether there are any remedies to the plaintiff**

- [24] **a) Restoration of the plaintiff's certificate of title**

The defendant's conduct of cancelling the plaintiff's certificate of title without notice and without being accorded a fair hearing is a nullity and as such, the defendant is ordered to restore the plaintiff's certificate of title comprised in **FRV 469, Folio 17, Buhaguzi Block 3, plot 37, Hoima.**

#### **b) General damages**

It is trite that the law will presume damages to be the direct natural or probable consequence of the wrongful act; **Ronald Kasibante Vs Shell (U) Ltd (2008) HCB 163.** General damages are awarded at the discretion of court. The plaintiff testified that he has been psychologically tortured and suffered shock because of the defendant's wrongful cancellation of his title. Counsel for the plaintiff in the premises prayed for general damages of **Ugx 20,000,000/=**. Upon consideration of the psychological torture and shock the plaintiff sustained upon learning of the cancellation of his title, the defendant's unjustified conduct which I find was extreme leaning towards recklessness and the period the title has been under cancellation since 2019 to date, since the suit land ceased to be merchantable, I award the plaintiff the proposed **Ugx 20,000,000/=**.

**c) Costs**

Costs are awarded at the discretion of court and follow the event unless for good reasons the court directs otherwise, **S.27(2) CPA**. In the instant case, since the plaintiff is the successful party, he is awarded the costs of the suit.

**d) Interest**

Under **S.26 CPA**, the general damages shall attract interest at court rate from the date of the judgment until payment in full.

[25] Judgment is therefore entered in favour of the plaintiff with the following orders;

- a) Immediate restoration of the plaintiff's cancelled title comprised in FRV 469, Folio 17, Buhaguzi Block 3, plot 37, Hoima.
- b) General damages of Ugx 20,000,000/=.
- c) Costs of the suit.
- d) Interest at court rate for the damages and costs of the suit from the date of judgment till payment in full.

Signed, Dated and Delivered at Hoima this **8<sup>th</sup> day of December, 2022.**

**Byaruhanga Jesse Rugyema**  
**JUDGE.**