

1. The Registrar of Titles cancels the registration of Kirabira Paul on land comprised in Kyadondo Block 142 Plot 48 land at Kasozi Wakiso District and have it registered in the name of the applicant; Senjala Ahmed.
2. A special certificate of title for land/ property comprised in Kyadondo Block 142 Plot 48 land at Kasozi Wakiso District be issued in the name of the applicant; Senjala Ahmed.
3. The 2nd respondent effects the changes/orders accordingly.

4. Costs of this application be provided for.

The application is supported by the affidavit of Senjala Ahmed; and opposed through the affidavit in reply of Kirabira Paul.

The applicant averred that he purchased land comprised in Kyadondo Block 142 Plot 48 land at Kasozi, Wakiso District, (hereinafter the suit land) and measuring approximately 3.3 acres from the 1st respondent. That the 1st respondent refused to hand over the duplicate certificate of the suit land; and he successful sued him in the Chief Magistrates Court of Nabweru at Kasangati vide Civil Suit No.27 of 2014 and a judgment was delivered on the 6th of October 2016. In support of that, he attached a copy a judgment as annexure "A". That the 1st respondent appealed against the said judgment vide Civil Appeal No.0109 of 2016 and the same was dismissed. He attached a copy of the said dismissal order as annexure "B".

That he has since lodged a caveat on the title of the suit land to protect his interest. That he is in possession of the suit land having purchased it from the 1st respondent, the registered proprietor. **A copy of the search report was attached as annexure "C"** and this shows that the suit land is registered in the name of Kirabira Paul as an administrator of the estate of the late Yayiro Bewayo.

Further, that he has been advised by his Lawyers that this a proper case for this court to issue consequential orders to enable him realise the fruits of the lower court's judgment.

In reply, the respondent averred that whereas the applicant was a successful party, he appealed the decision and an application to reinstate the appeal was filed to that effect. That whereas the applicant filed **Civil Suit No.27 of 2014** against him, the suit land is not registered in his personal name but he is registered as an administrator

of the estate of the late Yayiro Bewayo. That as such, the orders in Civil Suit No.27 of 2014 cannot be executed against the estate of the late Yayiro Bewayo.

That this application is misplaced and should be struck out with costs. That whereas the applicant lodged a caveat on the land, it is the beneficiaries of the estate of the late Yayiro Bewayo who are in actual possession. That he has no personal interest in the suit land since he is registered thereon as an administrator of the estate of the late Yayiro Bewayo.

Counsel for the applicant and the 1st respondent filed written submissions whose contents are reproduced below.

Counsel for the applicant cited **Section 177 of the Registration of Titles Act Cap.230** which 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 registrar 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 registrar shall give effect to that order.

Counsel also cited the case of **Nantongo Harriet & 2 Others vs. Namuyiga Rose Misc. Appln. No.64 of 2016** and quoted a statement to the effect that:

Section 177 of the Registration of Titles Act is self-regulating. It clearly provides that once there is proof that (1) there was recovery of land, estate or interest from the registered proprietor and (2) the proceedings leading to such recovery is not barred.

Further, Counsel cited the case of **Darlington Kampama vs. Registrar of Titles Misc. Cause No.12 of 2013** where court stated that:

*For a party to rely on the provisions of **Section 177 of the Registration of Titles Act** and have the register book rectified, the applicant has to satisfy court that he/she has recovered land, estate or any interest in question by any proceedings from a registered proprietor.*

Further, Counsel for the applicant referred to the paragraphs of the applicant's affidavit and submitted that the applicant has satisfied the conditions necessary for the application to be granted.

In reply, Counsel for the 1st respondent supported the 1st respondent's averments. He acknowledged that for applicant to succeed under **Section 177 of the Registration of Titles Act**, he or she must prove that (1) there was recovery of land, estate or interest from the registered proprietor and (2) the proceedings leading to such recovery is not barred.

In this case, Counsel for the 1st respondent submitted that there has never been a proceeding where the applicant recovered land against the registered proprietor of the suit land, that is; Kirabira Paul as administrator of the estate of the late Yayiro Bewayo. Counsel argued that the 1st respondent, Kirabira Paul, and Kirabira Paul as an administrator of the estate of the late Yayiro Bewayo are distinct persons with independent capacities to sue or be sued; and that proceedings against one cannot be executed against the other.

Further, Counsel for the 1st respondent cited **Section 180 of the Succession Act**, which provide that an administrator holds property of the deceased intestate in trust; and quoted statements from the case of **Anecho vs. Twalib & Others High Court Civil Suit No.9 of 2008** to support that section. Counsel also cited the case of **Rev.**

Onesifolo Ngaaga & Anor vs. Moses Matovu HCCS No.107 of 2003 where court relied on **Section 191(1) of the Succession Act** to observe that:

Except as hereinafter provided but subject to Section 4 of the Administrator General's Act, no right to any part of the property of a person who died intestate shall be established in any court of justice, unless letters of administrator have first been granted by a court of competent jurisdiction.

Relying on the above observations of Court, Counsel submitted that the dealings between the applicant and the 1st respondent on the suit land are barred by law and cannot be used to sustain this application.

Counsel for the 1st respondent also submitted that the suit land is being possessed by the beneficiaries of the estate of the late Yayiro Bewayo who are neither parties to this application nor were they parties to the proceedings in the lower court yet they are the true owners of the suit land. To support this, Counsel cited the case of **Anecho vs. Twalib & Others (supra)** where court observed that *"equity regards the beneficiary as the true owner and will not allow a statute to be used as a cloak for fraud."* Further, that the suit land is not property of the 1st respondent but is held by him in trust for the benefit of the beneficiaries of an estate. Ultimately, Counsel submitted that the application does not meet the requirements of **Section 177 of the Registration of Titles Act**, and prayed that it be dismissed.

In rejoinder, Counsel for the applicant argued that the judgment of the lower court is clear that the applicant/plaintiff bought the suit land together with a beneficiary of the estate of the late Yayiro Bewayo. That the judgment goes further to state that letters of administration were obtained by the same heir.

Further, that the respondent does not dispute the fact that he sold the suit land to the applicant. Relying on **Section 192 of Succession Act**, Counsel for the applicant

submitted that letters of administration entitle the administrator to all rights belonging to the intestate as effectual as if the letters of administration had been granted at the moment of his or her death. In support of that, Counsel cited the case of **Mariam Nanteza & Others vs. Nsani Rwamunono Court of Appeal Civil Appeal No.28 of 2013** where court stated that:

Section 192 of the Succession Act has to be read together with section 134 of the Registration of Titles Act Cap 230 (RTA) which provides for the registration of probate or letters of administration to the estate of a deceased person...There are two crucial elements that are disclosed in section 134 of the RTA. -These are firstly- that the executor or- administrator by -virtue of a grant of court upon being registered under section 134 (1) of the RTA is deemed to be the proprietor of the registered land. Secondly, as a transferee by virtue of the grant of probate or letters of administration, the title of the grantee relates back to the date of death of the proprietor of the land.

It follows that as the registered proprietor, the grantee of letters of administration or probate becomes the legal owner of the suit property with all the rights of the intestate or testate as the case may be. Upon becoming the proprietor of the legal estate, the grantee of letters of administration or probate after due registration under section 134 of the RTA, may transfer the title to the property to the beneficiaries, or to a purchaser for value....

Counsel also referred to the principle of approbation and reprobation; and submitted that the 1st respondent sold the suit land as an heir and beneficiary and promised to hand over its title to the applicant upon acquiring the grant. That he cannot turn around now to say that he is registered as an administrator and not in his personal capacity. That the 1st respondent benefited from the sale transaction and is he estopped from denying its validity.

Further, that the 1st respondent did not adduce evidence to prove the existence of other alleged beneficiaries; and gave a false statement that it is the beneficiaries in actual possession of the suit land whereas he stated himself, as per the judgment of the lower court, that the applicant is in possession of the suit land since 2006. That it is, therefore, unfortunate that the 1st respondent turns out to commit perjury contrary to **Section 94 of the Penal Code Act Cap.120**. Lastly, Counsel referred to the case of **Makula International vs. Cardinal Nsubuga Wamala & Anor (1981) HCB 11** and stated that an illegality cannot be ignored once brought to the attention of court.

I have carefully appreciated the evidence of the parties and submissions on record and decide as follows.

As it appears in the submissions of Counsel, the applicant must prove the following two conditions in order to succeed, that is;

1. That there was recovery of land, estate or interest from the registered proprietor; and
2. That the proceedings leading to such recovery is not barred (**See Section 177 of the Registration of Titles Act Cap.230 and Nantongo Harriet & 2 Others vs. Namuyiga Rose, supra**).

The only contention, in this case, concerns the first condition.

Proceedings in the lower court were against the 1st respondent in his individual capacity. On the other hand, the suit land is registered in the name of the 1st respondent as an administrator of the estate of the late Yayiro Bewayo. It is for this that the 1st respondent and his Counsel contend that the judgment of the lower court can be enforced against the 1st respondent in his individual capacity. This is not the first time the 1st respondent has raised this contention.

The same contention was also raised by the 1st respondent in the lower court, as Counsel for the applicant pointed it out. According to page 2 of the judgment, the learned trial Magistrate considered it and stated that:

...The claims of the defendant that he had no right to sale are rejected by this court because the plaintiff bought with the beneficiary of the estate of the late Bewayo and in the agreement P(1) it was stated that he bought with the heir of the same. It was further stated that I have bought but not yet been given the title. This implies that the fact [that the beneficiaries] to the estate of late Bewayo were in full knowledge of the parties at the time of sale. Further, the letters of administration were got by the same heir and that gave him rights to do and deal with the property of the deceased. However, this does not mean that the letters of administration invalidated the agreement between him and the plaintiff. And in this case they were held by the same person who made the agreement. All in all, I find that the defendant failed to put up a proper defence to his claim his reasons for failure to give the plaintiff the right to have a copy of his title got it from the mother title are lacking and rejected by this court.

The quoted statements from the judgment imply that the fact that the suit land is registered in the name of the 1st respondent as administrator of the estate of the late Yayiro Bewayo, and not in his individual capacity does not matter, especially since 1st respondent is the holder of letters of administration. That what matters is that the 1st respondent is in the position to effect the transfer of the suit land to the applicant being the holder of letters of administration. The 1st respondent is uncomfortable with this. But unfortunately, he has no subsisting appeal against the lower Court's decision, since his appeal was dismissed for lack of prosecution. The lower Court's findings in the judgment and their implications are, therefore, still valid and binding upon him (**Geoffrey Opio vs. Felix Obote & 2 Ors H.C.M.A No.81 of 2018**).

Further, as it was alluded to by his Counsel, “*equity regards the beneficiary as the true owner....*” (**Anecho vs. Twalib & Others (supra)**). In this case, it is undisputed that the 1st respondent is a beneficiary of the estate of the late Yayiro Bewayo. The 1st respondent stated that there are other beneficiaries of the same estate that would be affected if court grants this application. But he did not prove the truth of this assertion. As such, the court find him to be the true owner of the suit land, in equity. In otherwords, equity regards the 1st respondent to be the same as the proprietor of the suit land.

The 1st respondent entreated the Succession Act Cap.162 in order to deny being liable to the applicant notwithstanding having executed and benefited from a sale agreement with him. This is tantamount to using a statute as a cloak for fraud; and equity does not permit that (**Rochefoucauld v Boustead, 1897, 1 Ch.550**: ‘*equity will not allow a statute to be used as an instrument of fraud*’). This being a court of equity as well, it is constrained to shun the 1st respondent in respect to his denial; the overriding factor being that he is in the position to perfect the transaction he executed with the applicant without affecting any other person/ beneficiary, if any, in view of the Court of Appeal’s observations in **Mariam Nanteza & Others vs. Nsani Rwamunono (supra)** to the effect that “*the grantee of letters of administration or probate after due registration under section 134 of the RTA, may transfer the title [to the property to the beneficiaries, or] to a purchaser for value....*”

Corollary to the preceding paragraph, the 1st respondent claimed that the beneficiaries of the estate of the late Yayiro Bewayo are in possession of the suit land. This is contrary to his admission in the written statement of defence which he filed in the lower court, as Counsel for the applicant pointed it out. In the judgment, at page 1, the lower court states that the his defence was, among others, that the applicant was in possession of the suit land since 2006. In the court’s view, the

contradiction renders the whole evidence of the 1st respondent suspect. All it demonstrates is that the 1st respondent is a dishonest person with respect to the applicant.

In view of the above findings and observation, this court is in agreement with Counsel for the applicant with respect to the conditions the applicant needed to prove. It, is therefore the finding of this court that there was recovery of the suit land from the registered proprietor, and that the proceedings leading to recovery were not barred. Consequently, I find that the application satisfies the provisions of **Section 177 of the Registration of Titles Act Cap.230** and Its granted with the following orders:

1. An order that the Registrar of Titles cancels the registration of Kirabira Paul on land comprised in Kyadondo Block 142 Plot 48 land at Kasozi Wakiso District and have it registered in the name of the applicant; Senjala Ahmed.
2. An order that a special certificate of title for land/ property comprised in Kyadondo Block 142 Plot 48 land at Kasozi Wakiso District be issued in the name of the applicant; Senjala Ahmed.
3. An order that the 2nd respondent effects the changes/orders accordingly.
4. An order that the 1st respondent pays costs of this application.

Delivered at Kampala this...11th... day of ...November..... 2022.

In the Presence of:

1. Wanjai Zakaria Badra for Applicant
2. Lory Luan for Respondent 1

HENRY I. KAWEEESA