

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]
MISCELLANEOUS APPLICATION NO. 2374 OF 2021
[ARISING OUT OF CIVIL SUIT NO 211 OF 2018]

GRACE KYOKUNDAAPPLICANT

VERSUS

1. HAJI ISSA MALE
2. BIRUNGI JAMES
3. DR. WILLIAM NGANWARESPONDENTS

BEFORE: HON. JUSTICE BERNARD NAMANYA

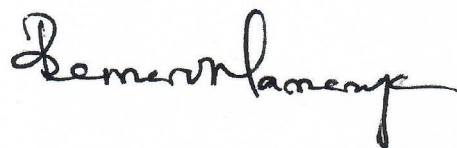
RULING

1. The applicant seeks to set aside a consent judgment and decree entered into between the respondents on the 30th day of July 2020. The application is brought under Sections 82 & 98 of the Civil Procedure Act, Section 33 of the Judicature Act, Order 46 rule 1 and Order 52 rule 1 & 3 of the Civil Procedure Rules.
2. The application is supported by an affidavit sworn by *Grace Kyokunda*, the applicant. The applicant claims ownership of the suit land comprised in Wakiso, Busiro Block 394 Plot 758 situated at Sekiunga. She asserts that the impugned consent judgment affects her interest in the suit land to the extent that the 1st respondent (*Haji Isa Male*) was decreed to the lawful owner of the suit land.
3. The application was opposed by the 1st respondent through an affidavit in reply sworn by *Issa Male*. It is alleged that the 1st respondent on the 27th day of June

Bernard Namanya

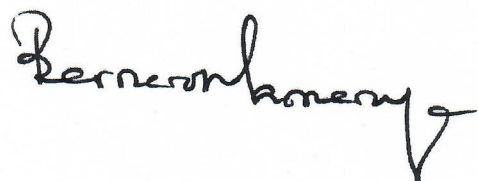
2015, entered into a contract of sale of land with the 3rd respondent (Dr. William Nganwa), wherein he purchased 0.407 hectares of land at Sekiunga at a consideration of Uganda shillings 130 million. He claims that the 2nd and 3rd respondents were meant to hand over the duplicate certificate of title in a period of one month from the date of execution of the agreement, but they failed to deliver the same as agreed. Upon this default, the 1st respondent instituted a High Court Civil Suit No. 211 of 2018 against the 2nd and 3rd respondents for among others, a declaration that the 1st respondent is the rightful and lawful owner of the suit land. The parties subsequently negotiated the impugned consent judgment that decreed that the 1st respondent is the lawful owner of the suit land.

4. The application was also opposed by the 3rd respondent through an affidavit in reply sworn by *Samantha Jacqueline Ndema Rukandema*. She stated that her together with her brother Mr. Brian Collin Nganwa were appointed by court to be the legal manager of Estate of Dr. William Nganwa on the 20th day of December 2019 pursuant to the Administration of the Estates of Persons of Unsound Mind Act (Cap 155) which court order remains in force to date. This was after consideration of the 3rd respondent's diagnosis with dementia, a medical condition that renders him to be a person of unsound mind. She states that the purported consent is null and void, as the 3rd respondent (Dr. William Nganwa) had no legal capacity to enter into the impugned consent judgment in light of the legal management order.
5. At the hearing of the application, the applicant was represented by *Mr. Bazira Anthony*, *Mr. Ssebutta Hamza* appeared for the 1st respondent, *Mr. Ezekiel*

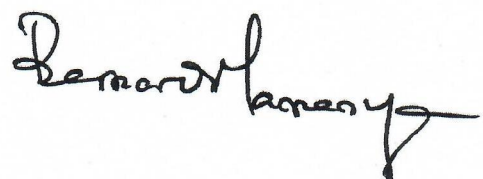


Nsubuga Mubiru appeared for the 3rd respondent, and the 2nd respondent was un-represented.

6. The main issue for determination is whether the consent judgment and decree in High Court Civil Suit No. 211 of 2018 entered into between the respondents on the 30th day of July 2020 should be reviewed and set aside.
7. The applicant was not a party to High Court Civil Suit No. 211 of 2018 but has suffered a legal grievance since the impugned consent judgment affects her *alleged* interest in the suit land. The applicant claims to have purchased the suit land from the 3rd respondent on the 12th day of January 2018 as per the sale agreement attached to the 3rd respondent's affidavit in reply at a consideration of Uganda shillings 180 million. She accordingly has locus standi to bring the present application under the law (*see the case of Mohamed Allibhai v. W.E. Bukenya Mukasa & Departed Asians Property Custodian Board, Supreme Court Civil Appeal No. 56 of 1996, per Benjamin Odoki, JSC*).
8. The sworn affidavit evidence of Ms. Samantha Jacqueline Ndema Rukandema proves that the 3rd respondent suffers from a medical condition known as dementia, and for this reason, he was deemed be unfit to be of unsound mind, and unable to manage his personal affairs.
9. The 3rd respondent's estate was accordingly placed under the management of Mr. Brian Collin Nganwa and Ms. Ms. Samantha Jacqueline Ndema Rukandema (the 3rd respondent's children) on the 20th day of December 2019 by a court order pursuant to the provisions of the Administration of the Estates of Persons of Unsound Mind Act (Cap 155).



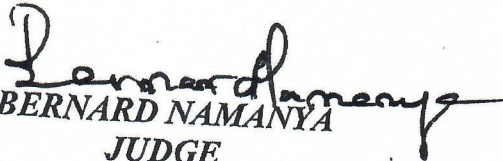
10. According to affidavit evidence adduced by the 3rd respondent, the legal management order was briefly set aside in ex parte proceedings on the 14th day of April 2021. The legal managers of the 3rd respondent subsequently took legal action, and had the legal management order over the estate of the 3rd respondent reinstated on the 29th March 2022.
11. In light of the evidence before me, I am satisfied that at the time the consent judgment was entered into between the respondents on the 30th day of July 2020, the estate of the 3rd respondent was already effectively under the legal management of his children, Mr. Brian Collin Nganwa and Ms. Ms. Samantha Jacqueline Ndema Rukandema, and the legal management order was in force at the material time of signing the impugned consent judgment, considering that it was interfered with, only in the period between the 14th day of April 2021 and the 28th day of March 2022. In view of this, the 3rd respondent (Dr. William Nganwa) had no legal capacity to enter into the impugned consent judgment on the 30th day of July 2020. Under the provisions of section 11(1) (b) of the Contracts Act (2010), a person of unsound mind has no legal capacity to contract.
12. The legal principles governing the setting aside of a consent judgment are well settled, and they were stated in the case of Attorney General & Uganda Land Commission v. James Mark Kamoga & James Kamala, SCCA No. 8 of 2004, where the Supreme Court of Uganda held that:
- "It is a well settled principle therefore, that a consent decree has to be upheld unless it is vitiated by a reason that would enable a court to set aside an agreement, such as fraud, mistake, misapprehension or contravention of court policy."*



13. I am satisfied that the signature of the 3rd respondent (Dr. William Nganwa) was fraudulently procured because of my finding above. Accordingly, this application is allowed with the following orders:

- i). The consent judgment dated the 30th day of July 2020 High Court Civil Suit No. 211 of 2018 is set aside; and
- ii). The costs of this application shall abide the outcome of High Court Civil Suit No. 211 of 2018.

IT IS SO ORDERED.


BERNARD NAMANYA
JUDGE
27th April 2023