

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION NO.690 OF 2022
(ARISING FROM CIVIL SUIT NO.180 OF 2005)

1. MUSIIME JAMES
2. KASULE SAMUEL ::: APPLICANTS
VERSUS

1. MUBEZI JAMES
2. NTUNGIRE STEPHEN
3. MISAKI KAVIGI ::: RESPONDENTS

BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA

RULING

1. MUSIIME JAMES & KASULE SAMUEL (*hereinafter referred to as the Applicants*) brought the present application against **MUBEZI JAMES, NTUNGIRE STEPHEN & MISAKI KAVIGI** (*hereinafter referred to as the Respondent*) by way of notice of motion under Sections 14(2)c & 39 of the Judicature Act cap.13, Section 98 of the Civil Procedure Act Cap.71, Order 6 Rule 30 & Order 52 rule 2 of the Civil Procedure Rules S.I.71-1 for orders that;

- i)** A consequential order be issued that the applicants/plaintiffs be given vacant possession of the land sub-divided from bulemezi Block 981 Plots 16 & 17 formerly plot 4 respectively



of the 2nd & 3rd respondents as ordered in the judgements delivered on the 19th-08-2011 in favor of the 2nd applicant and on the 30th-03-2022 in favor of the 1st applicant

ii) Costs of the application be provided for.

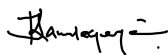
Background;

- 2.** The applicants sued the respondents in civil suit No.180 of 2005 for declarations that the respondents/defendants obtained the suit land fraudulently, cancellation of title and be given vacant possession.
- 3.** The first applicant/plaintiff entered into a consent judgement with the respondents/defendants in respect to civil suit No.180 of 2005 and the suit proceeded with the 2nd applicant/plaintiff which was determined in his favour against the respondents/defendants on the 19th of august 2011 with orders that the defendants fraudulently acquired the certificate of title to the suit land comprised in plot 4 Block 981 Bulemezi.
- 4.** This land partly belonged to the 2nd applicant/plaintiff therefore the 2nd applicant/plaintiff was entitled to 255 hectares out of 900 formerly in plot 4 Block 981 Bulemezi which was to be curved out

of the 2nd and 3rd defendants/respondents plots which are Plot 16 & 17 and a certificate of title be issued in the names of the 2nd applicant/plaintiff from the subdivided Plots.

5. In 2009, the 1st applicant/plaintiff applied for review and setting aside the consent judgement he entered into with the respondents/defendants vide misc.app No.673 of 2009 which application succeeded and the suit proceeded with only the 1st plaintiff/applicant against the defendants/respondents.
6. The same suit was determined on the 30th of march 2022 by Justice Henry Kawesa with orders that; the defendants fraudulently acquired certificate of title to the suit land formerly plot 4 block 981 Bulemezi partly belonging to the 1st applicant/plaintiff, a declaration that the 1st plaintiff/applicant is entitled to 255 hectares out of the 900 hectares to be curved out of the 2nd & 3rd defendants/respondents Plots 16 & 17 and a certificate of title in the names of the 1st plaintiff/applicant be issued upon subdivision of the plots , Hence this application.

Applicants evidence;



7. The application is supported by affidavits deponed by Mr. Musime James & Mr. Kasule Samuel the 1st & 2nd applicants respectively which briefly state as follows;

- i) That the 1st applicant was the successful party in the head suit, civil suit No.180 of 2005 judgment delivered on 30-03-2022 by Hon Justice Henry I. Kawesa whereof he granted several consequential reliefs.
- ii) That the High Court decided and ordered that a certificate of title in the names of the 1st applicant as the administrator of his father's estate be prepared and issued by the Registrar of Titles for 255 hectares out of 900 hectares formerly in Bulemezi Block 981 Plot 4 to be carved out of the 2nd& 3rd Defendants/ Respondents' Plots 16 and 17 respectively.
- iii) That the 2nd applicant is the judgment holder in civil suit No.180 of 2005 delivered on 19-08-2011.
- iv) That court decided and ordered that a certificate of title in the names of the 2nd applicant as the administrator of the estate of the late Christopher Kasule be prepared and issued by the Registrar of Titles for 255 hectares from sub division



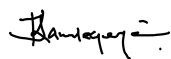
of Bulemezi Block 981 Plots 16 and 17 of the 2nd and 3rd
Defendants/ Respondents

- v) That the entire Plots 16 and 17 are occupied by the 2nd and 3rd Respondents or their agents, servants, employees, tenants and licensees
- vi) That to give effect to the decisions of court which were in favor of the 1st applicant & 2nd applicant respectively, it is necessary that consequential orders be issued giving the applicants vacant possession of the land and certificates of title be issued to the applicants.

Respondent's evidence;

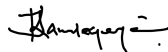
8. The application is responded to by an affidavit in reply deponed by Mr.Ntungire Steven the 2nd respondent which briefly states as follows;

- i) That I took possession of Plot 16 following a subdivision of Plot 5, and the 3rd respondent/Defendant took possession of Plot 17.



- ii) That I then sold my interest in Plot 16 to four (4) other individuals that is; Rwebibunda, Kalulu, Kyafunene and Ntalo and these are the ones in physical possession.
- iii) That it is rather surprising how the Applicants chose to sue respondents, rather than suing the third Parties who are in physical possession of the land.
- iv) That the applicants are now seeking for consequential Orders to be granted in their favor for vacant possession on the land on which the Respondents/ Defendants are no longer in physical possession.
- v) That further, having heard Civil Suit No. 180 of 2005, His Lordship Hon. Mr. Justice Henry Kaweesa entered a judgment in favor of the 1st applicant/Plaintiff on the 30th of March 2022, and the 1st & 2nd respondents/defendants being dissatisfied with the judgment, preferred to lodge an appeal to Court of Appeal.

9. The application is further responded to by an affidavit in reply deponed by Mr. Elly Kubakulungi the lawyer to the 3rd respondent which briefly states;



- i) That the 3rd respondent intends to appeal against the decision of Justice Henry. I Kaweesa delivered on the 30/03/2022 and has since filed a Notice of Appeal,
- ii) That one of the grounds to be relied on by the 3rd respondent in the appeal is the error made by Hon. Justice Henry I. Kawesa, when he ordered that 255 acres be carved out of Plot 16 & 17, after failing to evaluate the Evidence.
- iii) That it is true that the 3rd respondent is in possession and occupation of Plot 17.
- iv) That the intended appeal has an implication on which of the plots to carve out the land for the 1st and 2nd applicants if any.
- v) That it is for purposes of interests of justice that the said application be dismissed such that the appeal is not rendered nugatory.

Representation;

10. The applicants were represented by Mr. Atwine Muhwezi of M/S Muhwezi law chambers advocates whereas the 1st & 2nd respondents were represented by Mrs. Apili Fiona of M/S



Ntambirweki Kandebe & Co. advocates, the 3rd respondent was represented by Mr. Able Beinomugisha of M/S Mushabe advocates. Parties filed submissions which I have considered in the determination of this application.

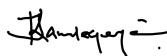
Issues for determination;

- i) Whether the applicants are entitled to the consequential orders in this application?
- ii) What remedies are available to the parties?

Determination & resolution of the issues;

Issue 1. **Whether the applicants are entitled to the consequential orders in the instant application.**

11. The term consequential orders denote an order of court giving effect to the judgement or decision to which it is consequential or resultant there from. Such an order is normally traceable flowing from a decision duly prayed for or granted by court. **(See; kalibbala & anor vs Attorney general MA 70 of 2015)**



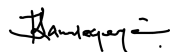
12. In the instant application, the applicants hold two judgements determined in their favor one issued in 2011 and the other issued in 2022 by his lordship Henry Kawesa with the following orders;

i) A certificate of title in the name of the first plaintiff (1st applicant) as Administrator of the Estate of the Late Zekyeri Lubenika be prepared and issued by the Registrar of titles from the Sub-Division of the above plots 16 and 17.

ii) A certificate of title in the names of the 2nd Applicant as Administrator of the Estate of the Late Christopher Kasule be prepared and issued by the Registrar from the Sub Division of Plot 16 and 17.

13. In this case, it is the applicant's case that the 2nd and 3rd respondents or their agents and Servants who occupy the entire plot 16 and 17 should vacate part so as to give effect to the Judgment of Court.

14. It is also the 2nd and 3rd respondents' case that the order sought herein shall render the appeal nugatory and that there is a likelihood of success of the Appellant's appeal.

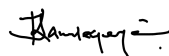


15. I need to emphasize that it is the long standing position of the law that an appeal does not operate as an automatic stay of execution. *(See; the Court of Appeal in PK Sengendo Vs Busulwa Lawrence and Anor Civil Application No. 207 of 2014)*

16. If the respondents so desired to protect the status of the appeal they were and still at Liberty to apply for stay of execution pending appeal.

17. The court in Civil Suit No 180 of 2005 made various declaratory orders and also vested a portion of the property in the administrators of the Estate of the deceased persons. It is to that end that the Applicants seek orders of court in respect of the allotted portions of land so as to give effect to the judgments of this Court, the said land being in occupation of 2nd and 3rd respondents or their agents and servants.

18. This court also takes cognizance of Direction 5 (a) of the Constitution (Land Evictions) (Practice) Directions 2021 for the

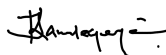


position that every eviction shall be preceded by a valid court order.

19. This is therefore a proper application for the grant of a consequential order albeit being conditional. This Court now therefore issues a consequential order in the following terms;

- i) That the Applicants/Plaintiffs be given vacant possession of land sub-divided from Bulemezi Block 981 Plots 16 and 17 (formerly Plot 4) respectively as ordered in the judgment delivered on 19th -08-2011 in favor of the 2nd Applicant and on the 30th-03-2022 in favor of the 1st Applicant.
- ii) That the order for vacate possession shall only take effect upon the said sub-divisions being done to ascertain the portion of land so vested and titles issued by the Registrar of titles to the 1st and 2nd applicant.
- iii) I make no orders as to costs

I SO ORDER.



NALUZZE AISHA BATALA

JUDGE
21st /12/2023

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