

- Hampshire.

Mr. semwogerere isa katende (*hereinafter referred to as the Applicants*) brought the present application against **Ms. Semakula Annet**(holder of letters of administration limited to the suit of the late Setuba Herbert Semakula),**Mr. Mayombwe Muhammed** and **the Commissioner Land Registration** (*hereinafter referred to as the Respondents*) by way of notice of motion under Section 33 of the Judicature Act Cap.13,Section 98 of the Civil Procedure Act Cap.71,Section 177 of the registration of titles act cap.230, Order 52 Rules 1 and 3 of the Civil Procedure Rules S.I.71-1 for orders that;

- i) A consequential order doth issue directing the 2nd respondent to cancel the special certificate of title for the suit land comprised in busiro block 383 plot 7528 that was procured from the forged consent judgement which was set aside by this honorable court in miscellaneous application No.481 of 2023
- ii) A consequential order doth issue directing the 2nd respondent to cancel the entry of Muyombwe Muhammed as the registered proprietor of the suit land.



- iii) An order that the 2nd respondent reinstates the names of Semwogerere Isa Katende the 2nd applicant as the registered proprietor of the suit land
- iv) Costs of the application be provided for.

Background;

2. The applicants were sued by the 1st respondent in civil suit no.427 of 2013 in respect of land comprised in busiro block 383 plot 7528 on grounds of fraud and sought for orders that the applicant's name be cancelled from the title and reinstate the 1st respondent's name ,an order directing the applicants to compensate the 1st respondent, a permanent injunction refraining the applicants from dealing with the suit land. Unknown to the applicants that the suit ever existed, a consent judgement was fraudulently procured by the 1st respondent through the help of his lawyers by forging the applicant's signatures.
3. The forged consent judgement was used illegally and fraudulently to obtain a special certificate of title allegedly on grounds that the duplicate certificate of title was lost yet in actual realty the duplicate certificate of title has and is still in the applicant's



custody to date. Subsequently, upon obtaining the special certificate of title, the then 1st respondent (setuba Herbert semakula) fraudulently transferred the suit land to the 2nd respondent.

4. The applicant then applied to have the forged consent judgement set a side in misc. Application no.4081 of 2023 which court granted and civil suit no.427 of 2013 was reinstated, it should be noted that the suit even though reinstated shall only be for moot purposes because the status subject matter of the suit has since changed and was disposed fraudulently, hence this application.

Applicant's evidence;

5. The application is supported by an affidavit in support deposed by **Mr. Ssemwogerere Isa Katende** the applicant which briefly states as follows;


- i) That sometime in 2013, the applicants were sued by the 1st Respondent in HCCS No. 427 of 2013 in respect of land comprised in Busiro Block 383 Plot 7528 on allegations of fraud.



- ii) That without our knowledge, the 1st Respondent fraudulently obtained a consent judgment in HCCS No. 427 of 2073 by forging the Applicants signatures.
- iii) That based on forged consent judgment, the 1st Respondent defrauded the Registrar of Titles by purporting that the Duplicate Certificate of Title was lost and consequently obtained a Special Title which he registered in his own names and later sold the suit land to the 2nd Respondent.
- iv) That I applied to this honorable court for the impugned consent judgment to be set aside on grounds of forgery by the 1st Respondent vide High Court Misc. Applications. 1180 of 2016 & O481 of 2023 wherein the impugned consent judgement was set aside.
- v) That this honorable court's ruling in Misc. Application 481 of 2023 reinstated HCCS 427 of 2013 and the suit is due for hearing wherein the I have filed a Written Statement of Defense.
- vi) That I have been advised by my lawyers Apricus Advocates that since this honorable court has not yet determined the



rights of the parties in HCCS No. 427 of 2013, it necessitates this Honorable Court to grant consequential orders to cancel the special certificate of title of the suit land and cancellation of the entry where the 2nd Respondent is registered as the current registered proprietor

- vii) That I have been advised by my lawyers, Apricus Advocates that granting these consequential orders would restore the parties to civil suit no. 427 of 2013 to their respective positions that they were in at the commencement of the suit in 2013 thereby giving this honorable court an opportunity to properly and fairly determine the rights of the parties.
- viii) That I have been advised by my lawyers, Apricus Advocates that I can only have a fair hearing in civil suit no. 427 of 2013 if the consequential orders for cancellation of the special certificate of title and the entry wherein the 2nd Respondent is the current Registered Proprietor are granted and the parties restored to their original positions before civil suit 427 of 2013 was instituted. 

- ix) That it is in the interest of justice that this honorable court grants the application.

1st respondent's evidence;

6. The application is responded to by an affidavit in reply deposed by the Mrs. **Semakula Annet**(holder of letters of administration limited to the suit of the estate of the late setuba Herbert semakula) the first respondent which briefly states as follows;

- i) That the suit land is currently registered in the name of Mayombwe Muhammad and any attempt to cancel the certificate of title will automatically dispose off Civil Suit No. 660 of 2016 whose major prayer is to cancel the certificate of title for land comprised in Busiro Block 383 Plot 7528
- ii) That Mayombwe Muhammad is a third party and is not a party to civil suit no 427 of 2013
- iii) The Late Mayanja Semakula Mahad, father to the 2nd Applicant and the 2nd Applicant appended their signatures on the Consent Judgement and the same was sealed by Court.



- iv) That the late Setuba Herbert Semakula my husband did not forge any consent judgement, the certificate Title was lost at the time the Land Registry issued a Special certificate of title and the Applicants shall be put to strict proof thereof
- v) That there was no specific fraud pleaded and proved against my late husband or the 2nd and 3rd Respondents and a Certificate of title can only be canceled on fraud pleaded specifically and proved on merit before a competent court of law.
- vi) That the Applicant shall not be prejudiced if this Application is not granted since the Suit land has a Temporary Injunction Order vide Misc App No. 1275 of 2016 (Arising from Civil Suit No. 660 of 2016) Julius Birungi and Melanie Birungi vs Ssemwogerere Isa Katende, Mayanja Semakula mahad, Setuba Herbert Semakula and Mayombwe Muhammed concerning the suit land comprised in Busiro Block 383 Plot 7528.
- vii) This Application if granted will affect the parties in the Civil Suit No.660 of 2016 before Lady Justice Olive



Kazarwe which is at the stage of Defence hearing, which parties are not part of the present Application and yet Civil Suit No. 427 of 2013 has never kicked off for trial. This would be the actual definition of occasioning an injustice on parties.

2nd respondent's evidence;

7. The application is responded to by an affidavit deposed by **Mr. Mayombwe Muhammed** the 2nd respondent which briefly states as follows;

- i) That the 2nd respondent is the current registered proprietor of the suit land having purchased the same from the late Setuba Herbert Semakula and got registered on the 23rd of September, 2016.
- ii) That I am not a party to proceedings in civil suit no. 427 of 2013
- iii) That I have never been a party to the execution of the consent judgement in civil suit no. 427 of 2013 and I have never acquired the land comprised in busiro block 383 plot 7528 pursuant to the consent judgement.



- iv) That currently I'm a co-defendant in civil suit no.660 of 2016 together with the applicants and the 1st respondent where my ownership of the suit land is under contestation before justice Olive Kazaarwe.
- v) That the among the orders sought by the plaintiffs in civil suit no.660 of 2016 is to have my registration as a proprietor cancelled where I also counter claimed against the plaintiffs and prayed for declarations that I'm the rightful owner of the suit land.
- vi) That there is an existence consent order sanctioned by court in maintaining the status quo of the suit land comprised in busiro block 383 plot 7528 pending the determination of civil suit no.660 of 2016 which the applicants were party to.
- vii) That since the applicants are party to Misc. Application no.1275 of 2016(arising from civil suit no.660 of 2016) they are bound by the consent order maintaining the status quo of the suit land comprised in busiro block 383 plot 7528.



- viii) that I have never been a party in misc. Application no.0481 of 2023 and misc.appliacion 1188 of 2023 as such I have never been afforded an opportunity to be heard in the same applications in the defense of my rights and interests in the suit land.
- ix) That at the time of the ruling in misc. appliacion no.0481 of 2023 was delivered, I was already the registered proprietor of the suit land and the applicant was vividly aware of this basing on the caveat he lodged on the suit land on the 23rd of November 2016.
- x) That whatever I have stated is true and correct to the best on my knowledge.

Representation;

8. The Applicants were represented by **Mr. Ezra Mugabi** of M/s Apricus Advocates whereas the 1st Respondent was represented by **Mr. steven ssozi of m/s galac advocates and the 2nd respondent by mr. sekenge gilbert of M/s kityo and co.advocates**. only the Applicants filed submissions which I have considered in the determination of this application.



Issues for determination;

- i) Whether the application is properly before this honorable court?**
- ii) Whether there are sufficient grounds for the grant of the consequential order?**
- iii) What are the remedies available to the parties?**

Resolution and determination of the issues;

Issue 1; whether the application is properly before this court;

9. The applicant states under paragraph 10 of the affidavit in support of the application and paragraphs 10 & 11 of the affidavits in rejoinder to the 1st and 2nd respondents affidavits in reply respectively, that if the consequential order is not granted in this application then hearing of civil suit no.427 of 2013 will be for moot purposes since the suit land was already fraudulently disposed off before determination of the rights of the parties in civil suit no.427 of 2013.

10. The 1st respondent in his affidavit in reply under paragraph 4 & 5 that the suit land is currently registered in the names of the 2nd



respondent who is not party to civil suit no.427 of 2013 where this application arises but rather the 2nd respondent together with the applicants are party to civil suit no.660 of 2016 before justice olive kazarwe where among the orders sought is cancellation of the certificate of title to the suit land as evidenced in the pleadings adduced in this honorable court

11. Further the 1st respondent states under paragraph 11 of his affidavit in reply to the application that the applicant shall not be prejudiced if this Application is not granted since the Suit land has a Temporary Injunction Order vide Misc App No. 1275 of 2016 (Arising from Civil Suit No. 660 of 2016) Julius Birungi and Melanie Birungi vs Ssemwogerere Isa Katende, Mayanja Semakula mahad, Setuba Herbert Semakula and Mayombwe Muhammed concerning the suit land comprised in Busiro Block 383 Plot 7528.

12. This is supported by the averments stated in paragraphs 8 & 9 of the affidavit in reply deposed by the 2nd respondent where he states that there is an existing temporary injunction order maintaining the status quo of the suit land vide misc. application 1275 of 2016 arising from civil suit no.660 of 2016 where the applicants and the 1st respondent are party and it was reached at



by consent of all the parties to the application, he also states under paragraph 11 of the affidavit in reply that the applicant lodged a caveat over the suit land on the 23rd of November 2016. These are facts not disputed by the applicant anywhere in the affidavits in rejoinder.

13. I will proceed to discuss the law on the doctrine of mootness which states that courts should not determine cases for academic purposes because court order should have a practical effect and capable of being enforced. **(See; *Abdu Katuntu Vs Mtn ug.ltd & ors, civil suit no.248 of 2012*)**

14. Parties should take note that courts do not decide cases where there is no live disputes between the parties, courts may decline to decide a case which merely raises a hypothetical or abstract question. Situations where a decision of court does not have the effect of resolving a controversy affecting or potentially affecting the rights of the parties, then the said proceedings are said to be a moot.

15. There should be a live controversy present not only when the action or proceedings is commenced but also when the court is called upon to reach a decision. Accordingly, if subsequent to the



initiation of the action or proceedings, events occur which affect the relationship of the parties so that no present live controversy exists which affect the relationship of the parties so that no present live controversy exists which affects the rights of the parties, the case is said to be a moot. **(See; Pine pharmacy ltd & 8 ors Vs National drug authority, Misc application no.0142 of 2016 before Justice Stephen Musota)**

16. In the instant application, I'm persuaded by the arguments of the respondents as stated in their affidavits in reply, that speak to the fact that this honorable court proceeding to grant this application for consequential orders will render the temporary Injunction order vide misc. Application no.1275 of 2016 and the proceedings in civil suit no.660 of 2016 a moot since there will not be no dispute between the parties to the said suit anymore

17. I am of the view that the applicants intentions of applying for consequential orders over the suit land are prejudicial to the proceedings in civil suit no.660 of 2016 where the applicants are party to and further the claims of the applicants are to be settled in civil suit no.660 of 2016 which is before Justice Kazarwe.

18. Therefore, this issue is resolved and determined in the negative.



Issue 2. **Whether there are sufficient grounds for the grant of the consequential order?**

19. Consequesntial orders flow naturally the judgement and they are inevitable and consequent upon the judgement, it must not be granted if it amounts to a fresh and unclaimed or unproved relief. The rationale of a consequential order is to give effect to the judgement or decision of court. (***See;Mugerwa John Bosco & Another vs Mss xsabo power ltd H.C.MA No.273 of 2018***)
20. The registration of titles act cap.230 under section 177, the high court is vested with powers to order for cancellation of a certificate of title upon recovery of land in any proceedings.
21. In the decision in **Ssetuba Misairi vs The registrar of titles, Misc.App no.55 of 2011** it was held that for a litigant to rely on section 177 of the registration of titles act cap.230, the applicant has to satisfy court that he or she has recovered the land, estate or any interest in question from any person registered as the proprietor of the land.

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22. In the instant application, I have carefully looked at the decision the applicants desire to obtain the consequential orders from by my learned brother justice Benard Namanya vide misc. Application no 481 of 2023 delivered on the 25th of April 2023 in setting aside the consent judgement, the learned justice of the high court made the following orders in his ruling;

- i) The consent judgment entered into on the 8th day of October 2015 between Setuba Herbert Semakula, on the one hand and Mayinja Semakula Mahad and Semwogerere Isa katende, on the other hand is set aside.**
- ii) the applicants are granted leave to file their written statement of defense in HCT-00-LD-CS -0427-2013 outside the time allowed by the law.**

23. By the reading of the said orders vis-à-vis the applicants claim in the instant application, it is my understanding that there is nothing the applicants want to effect through applying for consequential orders. The applicants rather desire to misdirect this honorable court by applying for what was not granted to them in the first instance.



24. Further misc. Application no.481 of 2023 was an action for setting aside a consent judgement obtained fraudulently but not an action for recovery of land by the applicant, therefore I find the applicants move very strange in the circumstances.
25. This honorable court proceeding to grant the consequential orders would be effecting orders of court that are non-existence something prejudicial to the parties in the main suit.
26. An application for consequential orders would be brought best after the determination of civil suit no.660 of 2016 before justice Olive Kazarwe and civil suit no.427 of 2013 before this honorable court upon determination of the rights of the parties.
27. In the final result, it is to the findings of this honorable court that the application lacks merit and is here by dismissed, costs to be in the cause.

I SO ORDER.



NALUZZE AISHA BATALA

JUDGE

29th/11/2023