

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA**

**(LAND DIVISION)**

**MISCELLANEOUS APPLICATION NO.1974 OF 2022**

**(Arising from Miscellaneous Cause No.79 of 2021)**

**AGA KHAN FOUNDATION**

**(UGANDA):::APPLICANT**

**VERSUS**

**1. NANTEZA ELIZABETH**

**2. COMMISSIONER LAND REGISTRATION:::RESPONDENT**

**Before: Lady Justice Alexandra Nkonge Rugadya.**

**Ruling.**

This application brought by way of motion under the provisions of **Section 33 of the Judicature Act cap.13, Sections 82 & 98 of the Civil Procedure Act cap.71, and Order 46 rules 1, 2, 4, & 8 of the Civil Procedure Rules SI 71-1** seeking orders that;

**1. That this court's ruling in HCMC No.0079 of 2021, Nanteza Elizabeth vs Commissioner Land Registration of 16<sup>th</sup> August 2021, compelling the Commissioner Land Registration to register the Applicant on the certificate of title of land comprised in Kyadondo Block 258 Plot 1 land at Bulinguge Island, and to also issue a special certificate of title in respect of the same land be reviewed and set aside;**

**2. Costs of the application be provided for.**



**Grounds of the application.**

The grounds in support of the application are contained in the affidavit in support thereof deposed by **Ms. Meralyn Mungereza**, the applicant company's country manager. She stated that the applicant is the registered proprietor of land comprised in **LRV 3483 Folio 12 Kyadondo Block 258 plot 1** (hereinafter referred to as the 'suit land') having been gifted the same by a gift deed dated 21<sup>st</sup> March 2005, by a one **Mr. Amirali Karmali**, who upon gifting the said land to the applicant, retained the reversionary interest in the suit land, and that in the said gift deed, Mr. Amirali Karmali declared that in the event that the government of Uganda permitted non-citizens to own freehold property, the said reversionary interest should be conveyed to the applicant.

That while the applicant received a notice from the Registrar of titles inviting her for a public hearing to show cause why her certificate of title in respect of the suit land should not be cancelled, upon receiving the same, she has since discovered that this court delivered a ruling on 16<sup>th</sup> August 2021 in **HCMC No. 79 of 2021** which affects the applicant's interest.

Further, that she was not party to the application under which the ruling of this court affected his non-derogable right to a fair hearing having been in possession of the suit land as a lessee since she was gifted the land, thus making him an aggrieved party.

This to her was a clear error apparent on the face of the record, as she could not reasonably disclose any evidence showing that she was the property interest holder of the lease over the suit property. Thus the orders arising from the said suit should not be binding on her.

That the same shows that there is sufficient reason for this court to review, and set aside its ruling and orders in **Miscellaneous Cause No. 79 of 2021**.

The 1<sup>st</sup> respondent however opposed the application through her affidavit in reply wherein she stated *inter alia* that she is the surviving administratrix and



beneficiary of the estate of the late James Hannington Bukulu Kiwanuka Mukasa.

Prior to his death, he was the registered proprietor of private mailo land formerly comprised in **Mailo Register Volume 737 Folio 10 Kyadondo** which on 24<sup>th</sup> October 1967 was brought under the new register and is now described as **Kyadondo Block 258 plot 1 land at Bulinguge measuring approximately 87.9100 hectares.**

That before she commenced the process of having her name noted on the certificate of title in 2019, the respondent through her lawful attorney Musisi Nicholas made a search in the 2<sup>nd</sup> respondent's office which confirmed that the suit land was still registered in the late James Hannington Bukulu Kiwanuka Mukasa who passed on in 1985, and that the land had remained unadministered until 22<sup>nd</sup> February 2022 when it was registered in the 1<sup>st</sup> respondent's name in her capacity as the administratrix of the deceased's estate.

That the search report clearly indicates that the suit land belongs to the 1<sup>st</sup> respondent's late father without any incumbrance in the form of a lease and that when the respondent through **M/s AF Mpanga Advocates** conducted an investigation to establish the proprietorship of the said land, a survey conducted by **M/s Survey Tech Solutions Ltd** revealed, and confirmed that the suit land forms part of the estate of the late James Hannington Bukulu Kiwanuka Mukasa.

That there is no way that Mr. Amirali Karmali could have given a lease to the applicant on land that he did not own and it was not therefore necessary to include the applicant as a party to the application for judicial review seeking orders of mandamus since the purported lease was not reflected on the original certificate of title.

Since the alleged lease is not reflected on the original certificate of title, the purported possession of the suit land by the applicant constitutes trespass.



Furthermore, the order sought to be set aside in this application has been implemented and it would be an exercise in futility to it set aside.

The respondent is now the registered proprietor whose certificate of title cannot be impeached based on affidavit evidence and accordingly, this application is misconceived, and ought to be dismissed because the respondent only dealt with the mailo interest in the suit land which the applicant has no interest in.

**Consideration of the issues:**

I have carefully perused the pleadings and submissions from each side and taken all points raised into consideration.

This being an application for review the following are the grounds under which it can be considered, as enunciated in the case of **F. X. Mubuke Vs UEB High Court Misc. Application No.98 of 2005:**

***a. That there is a mistake or manifest mistake or error apparent on the face of the record;***

***b. That there is discovery of new and important evidence which after exercise of due diligence was not within the applicant's knowledge or could not be produced by him or her at the time when the decree was passed or the order made;***

***c. That any other sufficient reason exists.***

For an application for review to succeed, the party applying for it must show that he/she suffered a legal grievance and that the decision pronounced against him/her by court has wrongfully deprived him/her of something or wrongfully affected his title to something. **(See: Busoga Growers Co-operative Union Ltd vs Nsamba & Sons LTD HC (Commercial Court) Misc. application No. 123 of 2000).**



Although the applicant's claim for mailo ownership is a subject of contention, the applicant is a lessee on the suit land. To that extent therefore he is an aggrieved party.

The issue of fraud however as implied against the 1<sup>st</sup> respondent by the applicant is a grave matter that vitiates all transactions. A party who wishes to have another's title impeached must not only plead fraud but must also be able to satisfy court, to a standard of proof which is higher than in any ordinary suit that fraud was committed.

It is therefore the finding of this court that the issues raised by the applicant cannot be dealt with in an application of this nature which is based on affidavit evidence.

These are matters of evidence which need proof in court by the calling of evidence as deponed to by the parties in their respective affidavits. There are issues to do with illegalities in obtaining the title, which a blanket notice of motion supported by affidavit evidence cannot sufficiently prove.

It is now settled law that where a matter is contentious, and involves a considerable need to call oral evidence to prove further the facts in controversy, then the procedure by affidavit evidence either by originating summons or other motions as in this case becomes improper. (*See: Hon. J. Namundi in Zalwango Elivason and Nakalema Mariam v. Dorothy Walusimbi and Henry Bijjumuko Or. Sum..3/2013*).

The matters raised in this application can only finally resolved by way of an ordinary suit.

**Section 33 of the Judicature Act, Cap.13** gives this court the power to grant remedies, legal or equitable so that all matters in controversy are completely and finally resolved.

In the circumstances, an order issues prohibiting any further dealing/transactions in respect of the suit land until all the issues arising herein



are determined in the suit, to be filed within a period of 30 days from the date of delivering this ruling.

Each party to meet its own costs.

**I so order.**

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**Alexandra Nkonge Rugadya**

**Judge**

**9<sup>th</sup> March, 2023**

*Delivered by email*

*A. Nkonge*

*G.*

*9/3/2023*