

PARICK KATUNGI :::::::::::::::::::: APPLICANT

VERSUS

LUBEGA TWAHA YIGA :::::::::::::::::::: RESPONDENT

RULING.

- i) That this Honorable Court directs the Registrar to cancel the Respondents name as the registered proprietor of land comprised in LRV 3226 Folio 9 Block 273 plot 3697, as ordered under decree dated on 8th July, 2022 by the Ag.

Hammer.

Chief Magistrate His Worship Osauro John Paul in Civil
Suit No. 37 of 2017.

- ii) That the Registrar of titles/ Commissioner for Land
Registration enters the applicant herein as the registered
proprietor of the suit land.
- iii) Costs in this cause be provided to the Applicant.

Background;

2. In May 2017 the applicant was sued in the Chief Magistrate's
Court of Makindye at Makindye for trespass on land comprised in
LRV 3226 Folio 9 Block 273 Plot 3697 measuring 0.064 hectares
situate at Mutungo Kakoola Lubowa Akright Housing Estate in
Wakiso District. The Applicant/defendant filed his defence and
counter claim against the Respondent/plaintiff, Kamugisha
Anatoli and Akright Projects limited. The Respondent's/plaintiff
suit was dismissed and the Applicant's/defendant counterclaim
succeeded as judgement was entered in his favour.

3. That the judgement was entered with the following orders; The
plaintiff/ 1st counter defendant LUBEGA TWAHA YIGA's purchase
and registration of certificate of title to the suit land is illegal,
null and void and the defendant/counter claimant is declared the

rightful owner of land comprised in LRV 3226 Folio 9 Block 273 Plot 3697, hence this application.

Applicant's evidence;

4. The grounds of the application are contained in the affidavit in support of the application deponed by **PATRICK KATUNGI** the Applicant, and are briefly that: -

- i) The Applicant was sued by the Respondent for trespass vide civil suit No. 037 of 2017 in the Chief Magistrate Court of Makindye at Makindye.
- ii) The Applicant filed his defence and a counterclaim, the suit was dismissed against him and judgment on the counterclaim entered in his favor.
- iii) The decree dated 8th July, 2022 was entered with the following orders;

i. The plaintiff's claim is dismissed with costs.

ii. The plaintiff/1st counter defendant LUBEGA TWAHA YIGA's purchase and registration of



certificate of title to the suit land is illegal, null and void.

iii. The plaintiff's purchase of the suit land from the 2nd Counter defendant is illegal, null and void and the same is hereby set aside.

iv. The defendant/counter claimant is declared the rightful owner of land comprised in LRV 3226 Folio 9 Block 273 Plot 3697.

v. The plaintiff/1st and 2nd counter defendant is ordered to hand over the certificate of title and signed transfer forms to Plot LRV 3226 Folio 9 Block 273 Plot 3697 to the defendant within 30 days from the date of judgment.

vi. A permanent injunction doth issue restraining the plaintiff/ 1st and 2nd Counter defendants, their agents, assigns or any on claiming to

derive title from them from evicting or in anyway interfering with the defendant/ counter claimant's enjoyment/ use of the suit land.

vii. The defendant/ counter claimant is awarded Shs. 10,000,000/= (Uganda Shillings ten million only) as general damages to be paid by the counter defendants in equal shares of Shs. 5,000,000/= (Uganda Shillings five million only) each.

viii. The plaintiff/1st Counter defendant and the 2nd Counter defendants shall pay the costs of the suit and counter claim in equal shares.

Respondent's evidence;

5. The application is responded to by an affidavit in reply deposed by

LUBEGA TWAHA YIGA the respondent which briefly states as follows;



- i) That I wrote a letter requesting for the record of proceedings and letter was received by the Court on the 8th day of July, 2022.
- ii) That the Chief Magistrate's Court at Makindye has since delayed to avail the Record of proceedings to enable me proceed with the appeal.
- iii) That the Respondent still maintains his intention to appeal the decision of Court and that his Appeal has merit with high likelihood of success.

Representation;

6. The Applicant was represented by Mr. John Mary Mugisha of M/s Mugisha & Co Advocates whereas the Respondent was represented by Mr. Kivumbi Ibrahim of M/s Kivumbi Madinah Kikomeko (KMK) Advocates and solicitors. Both parties filed their affidavits which I have considered in the determination of this application.

Issues for determination;

- i) Whether there are sufficient grounds for this honourable court to direct the registrar of titles to cancel the respondent's names as the registered***



proprietor to the suit land and enter the applicant's names as the registered proprietor?

Resolution and determination of the issue;

7. I have carefully read the averments in the affidavit in support sworn by Katungi Patrick and the affidavit in reply sworn by Lubega Twaha Yiga which form the basis of determination of this application.
8. The High Court is vested with powers to order the cancellation of a certificate of title upon recovery of land in any proceedings this is evidenced in Section 177 of the Registration of Titles Act Cap 230 which provides as follows; ***Upon 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 proceedings 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 or entry as the circumstances of the case require; and the Registrar shall give effect to that order.”

9. Court in the case of **Nabukeera vs Nansikombi & Others**

Misc.Cause No. 42 of 2011, further elaborated that where land has been recovered in proceedings in a lower Court, the successful party may apply to the High Court for a consequential order under the aforesaid section. (***See also; Re Ivan Mutaka [1981]HCB 28, Darlington Kampama v The Registrar of Titles HCMC No. 12 of 2013, Mpanga John Musisi Alias Mayor v Twabajje Edward & ors) HCMC No. 55 of 2020.***)

10. The Applicant adduced evidence to show that he purchased the suit land in 2008, took possession, planted diverse crops and erected a structure for his care taker. However, Akright resold the land to the respondent in 2013 and he was registered onto the certificate of title on 09th January, 2012.

11. The Chief Magistrate in his judgement attached to this application found that the Respondent’s purchase and registration onto the suit land was illegal, null and void and declared the applicant as the right full owner of the same.



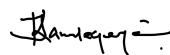
- 12.** The Respondent avers in his affidavit in reply that he wrote a letter to the Chief Magistrate Court at Makindye asking for a typed record of proceeding which has been delayed and that he still holds onto his intention to appeal.
- 13.** It should be noted that an appeal is a creature of a statute and Section 220 (1) (a) of the Magistrates Courts Act creates the right to appeal from decrees and orders of a Magistrate Grade one and a Chief Magistrate to the High Court. (***See; Pius Niwagaba v Law Development Centre COCA No. 18 of 2005***)
- 14.** Order 43 Rule 1 (1) CPR SI 71-1 provides that every appeal to the High Court shall be preferred in the form of a memorandum signed by the appellant or his/her Advocate and presented to the Court or to such officer as it shall appoint for that purpose.
- 15.** Court operates on well stipulated rules and principles and not unexpressed human intentions. There are mandatory steps that a person who wishes to appeal against a Court decision must undertake for which the respondent did none.
- 16.** Be that as it may that the Chief Magistrate Court delayed to avail the Respondent a typed copy of the record of proceedings, the respondent's intended appeal is already time barred as the law

stipulates 30 days from the date of judgment. **(See; Section 79 (1) (a) of the Civil Procedure Act Cap 71, Luzinda George v Edward Wasswa HCCA No .39 of 2009).**

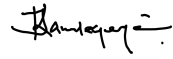
17. Therefore, the Respondent's letter requesting for a typed record of proceedings from the Magistrate Court could not suffice as to stop or bar the Applicant from taking steps to enjoy the fruits of his judgement.

18. In the premises, I am satisfied that the Applicant has proved the grounds of his application against the Respondent. I therefore allow the application for the following orders as prayed: -

- i) The Registrar should cancel and deregister from the certificate of land title of land comprised in LRV 3226 Folio 9 Block 273 plot 3697 in the names of LUBEGA TWAHA YIGA and register the Applicant PATRICK KATUNGI as the proprietor of the said land.
- ii) The Applicant will meet the costs of this application.



I SO ORDER.



NALUZZE AISHA BATALA

JUDGE

24/01/2024