

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

[LAND DIVISION]

HCCS. NO. 0387 OF 2020

SSENKAALI GEORGE

PLAINTIFF

V

1. STANDARD CHARTERED BANK (U) LTD
2. COMMISSIONER LAND REGISTRATION

DEFENDANTS

BEFORE: HON. LADY JUSTICE P. BASAZA – WASSWA

J U D G M E N T

Representation:

Mr. Akampurira Jude Baks for the Plaintiff.

Mr. Ssekabira Moses and Ms. Arinaitwe Sharon for the 2<sup>nd</sup> Defendant.

Introduction:

- [1] The Plaintiff; Mr. Ssenkaali brought the present suit by ordinary plaint against M/s Standard Chartered Bank Ltd (**'the Bank'**) and the Commissioner Land Registration (**'the CLR'**), in respect of **Private Mailo land comprised in Kyadondo Block 5 Plot 249 at Mulago ('the suit property')**.

*Moses Ssekabira* 21/2

- [2] The suit property is registered in the name: **Joseph Mugerwa** vide instrument **No. KLA 73766 dated June 20, 1974**. See the certificate of title marked **(DE. 1)**.

Background:

- [3] The following facts are not in dispute. The Bank, as Mortgagee, held the certificate of title to the suit property pursuant to a mortgage between the Bank and the registered proprietor: a one Joseph Mugerwa. The Bank subsequently released the said mortgage and sold the suit property to Mr. Ssenkaali at a consideration of **UGX. 14,000,000/= (Fourteen Million)**. The mortgage release dated January 7, 1997 **(PE. 2)**, and a transfer instrument dated April 12, 2010 **(PE. 4), Refer.**

- [4] Further facts not in dispute are:

- i) That the CLR received the said transfer instrument **(PE. 4)** in the year 2011, and that fees of **UGX. 2,205,000/=** (See Government receipt **-PE. 5**) for that instrument were paid in that same year – 2011.
- ii) That the CLR declined to transfer the suit property into Mr. Ssenkaali's name on the ground that the Bank had no powers to transfer the suit land as a Mortgagee.

- [5] The Court records show that Mr. Ssenkaali brought two previous suits to this Court against the CLR; vide: Misc. Cause No. 103 of 2017 & Misc. Cause No. 106

*Masamba* 21/2

of 2018. In both suits, he sought for a vesting Order that the CLR be directed to effect registration of the suit property into his names. In his suits, he relied on **sec. 167 of the Registration of Titles Act (RTA)**<sup>1</sup>.

[6] In respect of the first suit: **Misc. Cause No. 103 of 2017**, Mr. Ssenkaali states; in paragraphs 11 – 13 of his witness statement in the present suit, that: **'he abandoned and closed the former suit No. 103 of 2017 for lack of enough evidence on account of the Bank's failure to cooperate'**.

[7] For the latter suit: **Misc. Cause No. 106 of 2018**, the matter was heard and determined by this court. In her Ruling (**PE. 12**), the learned trial Judge who heard that suit; Damalie Lwanga, J., declined to grant the said Order. She ruled that it was not explained how land on a mortgage of 11/06/90 which had been released by the Bank on 07/01/97, in acknowledgement of payment of all moneys due, could be transferred to Mr. Ssenkaali on 12/04/2010 under the same mortgage.

[8] In this present suit, in his plaint, unlike in the said two previous suits, Mr. Ssenkaali alleged *inter alia*, fraudulent misrepresentation and Breach of contract against the Bank. He contended, *inter alia*, that: **'the Bank concealed information from him to the effect that the Bank had no powers as a mortgagee to transfer the suit property since it had released the Mortgage'**. He contended further that: **'he**

 21/2

<sup>1</sup> Cap 230 of the Laws of Uganda.

was induced and relied on the false and misleading representation by the Bank to purchase the suit property'. That as a result of the Bank's false representation, he *inter alia*, failed to transfer the suit property into his name at the land registry. He seeks *inter alia*, a number of Declarations, and an order compelling the CLR to register his name as the proprietor of the suit property.

- [9] For clarity, and a more holistic background to this case, it is important that the said transfer instrument (PE. 4) by the Bank is laid down here. It reads, *verbatim*, that:

THE REGISTRATION OF TITLES ACT CAP 230

KYADONDO BLOCK 5

PLOT 249

AT MULAGO

**TRANSFER OF LAND BY MORTGAGE**

This Conveyance made this 12<sup>th</sup> day of April 2010

BETWEEN STANDARD CHARTERED BANK UGANDA LIMITED of

P.O. Box 7111 Kampala acting as vendor by Powers conferred on

it vide the Mortgage Deed and the Mortgage Act Cap. 229 of the first part,

AND

SSENKAALI GEORGE of P.O. Box 6423 Kampala

(hereinafter referred to as "Purchaser") on the other part.

The vendor is the registered and legal Mortgagee of the above

Mentioned land as per Mortgage registered on the 11<sup>th</sup> of June 1990

*Handwritten signature* 21/2



Under instrument No. KLA 141112 and the Mortgagor having defaulted and was unable to service the Mortgage in accordance with the terms of the Mortgage, the mortgagee exercised its rights of sale under the mortgage.

IN CONSIDERATION of the sum of UGX. 14,000,000 (Fourteen Million only) paid to the Vendor by the Purchaser receipt of which the Vendor hereby acknowledges the Vendor hereby DOES HEREBY TRANSFER the above described land to **SSENKAALI GEORGE**, to hold the same unto the Purchaser for all the Vendor's estate and interest therein.

Dated at Kampala this.....day of .....2010.

The COMMON SEAL of

STANDARD CHARTERED BANK

UGANDA LTD

Was affixed hereunto in the presence of

DIRECTOR (*not legible*)

EMILY GAKIZA

COMPANY SECRETARY

Signed by the said

SSENKAALI GEORGE

PURCHASER

In the Presence of

Name in full (*not legible*).

Drawn by:

Sebalu & Lule Advocates.

 21/2

[10] In its written statement of Defence, the Bank contended that it sold the suit property to Mr. Ssenkali pursuant to a Mortgage foreclosure and availed to him all the three basic documents; the title, the release of mortgage and the transfer instrument. That Mr. Ssenkaali's failure to effect the transfer into his names was solely attributable to his releasing the Mortgage before he lodged the transfer when the two (2) ought to have been done contemporaneously.

[11] By a varied consent settlement<sup>2</sup> dated June 10, 2023 the present suit was settled as between Mr. Ssenkaali and the Bank, in the following terms:

1. That the Bank sold the suit property to the Plaintiff.
2. That the Bank handed over to Mr. Ssenkaali the Duplicate certificate of title to the suit property and transfer instruments in his name, but that the transfer instruments were lost / misplaced by the latter's lawyers before the transfer was effected.
3. That the Bank is not liable for Mr. Ssenkaali's failure to transfer the suit property in his name. And, that the Bank had issued fresh transfer forms in Mr. Ssenkaali's favour, but that the CLR declined to effect the transfer.
4. That each party bears its own costs of the suit.

*Nash Williams 2/12*

---

<sup>2</sup> The initial consent dated March 3<sup>rd</sup>, 2021 was varied by court on January 24, 2023 after Counsel for the CLR complained that the CLR was not consulted and that it was not a party to the consent, yet there were Directions against it that left its office in jeopardy.

[12] Following the said settlement between Mr. Ssenkaali and the Bank, this suit proceeded only against the CLR.

[13] A locus visit was conducted by this court and the court made the following significant observations:

1. That there are four (4) buildings on the suit property that match the description of a former school.
2. That there is an existing graveyard on the suit property that belongs to a 3<sup>rd</sup> party family.

The Plaintiff's case against the CLR:

[14] Based on the allegations that were made against the Bank, Mr. Ssenkaali seeks *inter alia*, for a Declaration that he rightfully purchased the suit property. And, for an Order against the CLR directing the latter to register him as the proprietor of the suit property.

Defence by the CLR:

[15] In its written statement of defence, the office of the CLR contends, *inter alia*, that it has been sued only for purposes of implementing Court Orders. That Mr. Ssenkaali has no reasonable claim whatsoever against the office of the CLR.

*Handwritten signature* 21/2

Issues:

- [16] Following the said settlement between Mr. Ssenkaali and the Bank, the only issue left for determination is: **whether the Plaintiff is entitled to the Orders he seeks?** (Order 15 Rule 5 of the CPR, applied).

Determination of issue:

**Whether the Plaintiff is entitled to the Orders he seeks?**

- [17] Prior to the said consent settlement between Mr. Ssenkaali and the Bank, the Orders that Mr. Ssenkaali sought for in this suit, were principally Orders against the Bank. The only Order he now maintains against the CLR, is that the CLR be directed to register him as proprietor of the suit property.
- [18] As it is, the Orders that were initially sought against the Bank in the plaint, are Orders that were overtaken by the said consent settlement between Mr. Ssenkaali and the Bank. Of significance, is the clause in that settlement to the effect that: **'the Bank is not liable for Mr. Ssenkaali's failure to transfer the suit property into his name. And, that it was Mr. Ssenkaali's lawyers who lost / misplaced the transfer instruments before the transfer was effected'**.
- [19] That said, it is my view that; the Order now sought against the CLR, is an Order for which this court is barred by law from considering in a suit such as this.

*Handwritten signature* 21/2



I opine so on the account that the matter against the CLR is *res judicata* under sec.

7 of the Civil Procedure Act.

[20] This Court had only entertained the present suit upon fresh allegations by Mr. Ssenkaali, of alleged fraud and Breach of contract against the Bank. The said two allegations were not in issue in the two previous suits. However, upon the vindication of the Bank by Mr. Ssenkaali vide the said settlement, what is left of this matter, as it stands, is *res judicata*.

[21] The doctrine of *res judicata* is embodied in sec. 7 of the Civil Procedure Act. It is to the effect that:

'No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try the subsequent suit or the suit in which the issue has been subsequently raised, and has been heard and finally decided by that court'

[22] The test of whether a matter is barred by *res judicata* was interpreted *inter alia*, by the Court of Appeal in their decision in Maniraguha Gashumba v. Sam Nkundiye<sup>3</sup> to be that;

'the Plaintiff in the second suit is trying to bring before court in another way, and in the form of a new cause of action, a transaction which he has already put before a court of competent jurisdiction in earlier proceedings and which has been adjudicated upon. If so, the plea of *res judicata* applies not only to points upon which the first court was actually required to adjudicate but to every point which properly belonged to the

*Maniraguha Gashumba* 21/2

---

<sup>3</sup> COA Civ. Appeal No. 23 of 2005

subject of litigation and which the parties, exercising reasonable diligence, might have brought forward at the time'

Also see Kamunye & Ors vs. Pioneer General Assurance Society Ltd <sup>4</sup> & Posiyano Semakula vs. Magala & Ors <sup>5</sup>

[23] As already shown earlier in this judgment in paragraphs [5] & [7], by his suit vide Misc. Cause No. 106 of 2018, Mr. Ssenkaali sought for the same Order against the CLR that he now seeks in this present suit. In Misc. Cause No. 106 of 2018, the matter was heard and finally determined, and this court pronounced itself. **Damalie Lwanga, J., declined to grant the said Order on account that it was not explained how land on a mortgage of 11/06/90 which had been released by the Bank on 07/01/97, in acknowledgement of payment of all moneys due, could be transferred to Mr. Ssenkaali on 12/04/2010 under the same mortgage.**

[24] In the result, pursuant to Sec. 7 of the CPA, Mr. Ssenkaali cannot be allowed to bring a suit before this court, against the same party, in a different disguised way, the same matter he brought in an earlier suit that was heard and determined.

[25] His (Ssenkaali's) remedy lies not in the present suit, but rather, in either an Appeal against the said Ruling and Orders of Damalie Lwanga, J., or in an

*Handwritten signature: Ssenkaali 2/2*

---

<sup>4</sup> 1971 EA page 263

<sup>5</sup> 1979 HCB 90

application for review under sec. 82 of the Civil Procedure Act, provided he meets the requisite conditions, and or, is not barred in any way, by the Law.

Decision of Court:

[26] In the final result, pursuant to sec. 7 of the Civil Procedure Act, I hold that Mr. Ssenkaali's claims are *res judicata*, save for the contents of the varied Consent Order between Mr. Ssenkaali and the Bank. The hands of this court are tied and barred from revisiting the same issue and matter that my sister Judge had already made a pronouncement on. To that extent, this suit fails.

Each party to this suit shall bear its own costs. (Section 26 (2) of the Civil Procedure Act<sup>6</sup>, applied).

I so Order,

Handwritten signature in blue ink, appearing to read 'P. Basaza - Wasswa' followed by a flourish and the date '21/2'.

**P. BASAZA - WASSWA**  
**JUDGE**

February 21, 2024

Judgment delivered to the parties via email and uploaded on the Judiciary ECCMIS Portal. Email sent to: macbadvocates@info.com & ajudebaks@yahoo.com (For the Plaintiff), and to: (No email was provided for the Defendants).

---

<sup>6</sup> Cap 71 of the Laws of Uganda