

**THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
[LAND DIVISION]
MISCELLANEOUS APPLICATION NO. 0081 OF 2024
(ARISING FROM CIVIL SUIT NO. 842 OF 2020)**

**NORAH KOBUSINGYE KAHUMA ::::::::::::::::::::: APPLICANT
VERSUS**

**1. RONALD MUZITO
2. MARY NABATANZI MUZITO:::::::::::::::::::RESPONDENTS**

BEFORE: HON. LADY JUSTICE NALUZZE AISHA BATALA

RULING.

Introduction:

1. This was an application by notice of motion brought under Sections 33 and 39 of the Judicature Act and Order 52 rules 1 & 2 of the Civil Procedure Rules (CPR) for orders that: -
 - i) The consent order entered in the Civil Suit and in Miscellaneous Application No. 1366 of 2023 be declared null and void.
 - ii) Costs of this Application be provided for.

Background:

2. The Respondents filed HCCS No. 824 of 2020 against the Applicant and the 3rd Respondent for breach of contract seeking for orders of specific performance, damages, interest and costs of the suit. Both the Applicant and the 3rd Respondent filed their

written statements of defense to which the 3rd Respondent admitted to the plaintiffs' claims and Counsel for the Plaintiffs filed MA No. 1366 of 2023 for a judgement on admission to be entered against the 3rd Respondent.

3. The third Respondent did not defend the application but rather opted to enter into a consent judgement which was dully executed on the 28th of September 2023.
4. The Applicant seeks to have the consent order set aside hence this application.

Applicants' Evidence;

5. The grounds of the application are contained in the affidavits in support of the application deposed by **NORAH KOBUSINGYE KAHUMA** and are briefly that:-

- i) That I and the 3rd respondent (My husband) purchased land at Kireka and built there our matrimonial home.
- ii) That the 3rd Respondent without my consent or approval purported to sell a portion of the suit land to the 1st and 2nd Respondent and when I learnt about the purported sale I refused to give them vacant possession.
- iii) That the 1st and 2nd Respondents sued me and my husband to recover the portion of the land they purportedly bought

and my defence was that the sale transaction was illegal as my consent as a joint owner was not obtained.

- iv) That the 3rd Respondent in his defense admitted to having sold and instead of Court entering a judgement on admission, the 1st and 2nd Respondents filed MA No. 1366 of 2023 against the 3rd Respondent without making me a party and consented to orders among others, that the 3rd Respondent grants the 2nd Respondent ownership and uninterrupted possession of the piece of our land they had purportedly bought from the 3rd defendant without my consent and also subdivide the land and give them a certificate of title.
- v) That the consent order is illegal, null and void in as far as it seeks to deprive me of my interest in the suit land hence the same should be set aside.

1st Respondent's evidence;

6. The application is opposed to by an affidavit in reply deposed by **RONALD MUZITO**, the 1st respondent and briefly states as below;

- i) That the consent order was not procured through any fraud, collusion, material misrepresentation,



misapprehension or ignorance of any material facts on the part of either party.

- ii) That the consent order executed between the parties and endorsed by Court was only in respect of the 3rd Respondent's interest in the suit land and it did not relinquish, assign or transfer the applicant's interest in the suit land as alleged.
- iii) That the Applicant's claim to the suit land survives the contract entered between the Respondents and the consent order duly executed and endorsed in MA No. 1366 of 2023.
- iv) The Applicant and the 3rd Respondents acted independently as litigants that's why she was not a party to MA No. 1366 of 2023.
- v) That the Applicant can still ably prosecute her defense/ interest in land if any in Civil Suit No. 824 of 2020 in the absence of the 3rd Respondent with who the consent judgement was executed.



2nd Respondent's evidence;

7. The 2nd Respondent also opposed the application by filing an affidavit in reply deposed by **MARY NABATANZI MUZITO** and briefly states as follows;

- i) That the consent order was not procured through any fraud, collusion, material misrepresentation, misapprehension or ignorance of any material facts on the part of either party.
- ii) That the consent order executed between the parties and endorsed by Court was only in respect of the 3rd Respondent's interest in the suit land and it did not relinquish, assign or transfer the applicant's interest in the suit land as alleged.
- iii) That the Applicant's claim to the suit land survives the contract entered between the Respondents and the consent order duly executed and endorsed in MA No. 1366 of 2023.
- iv) The Applicant and the 3rd Respondents acted independently as litigants that's why she was not a party to MA No. 1366 of 2023.



v) That the Applicant can still ably prosecute her defense/ interest in land if any in Civil Suit no. 824 of 2020 in the absence of the 3rd Respondent with who the consent judgement was executed.

3rd Respondent's evidence.

8. The application is opposed to by an affidavit in reply deposed by **GODFREY KAHUMA**, the 3rd respondent in which preliminary objections were raised as stated below;

i) That I purchased the entire land alone and the Respondent did not make any contribution.

ii) That the Applicant gave her consent to the sale of the suit property and was fully involved in the construction of the rental units on the suit land, received as consideration from which she currently collects rent.

iii) That the 1st and 2nd Respondents sued the Applicant and me because upon handing over the consideration for the suit land the Applicant withdrew her consent for the sale and they sought to enforce the specific performance of the contract to recover money.

iv) That the Applicant has not argued nor proved any ground required by law for Court to exercise its power to set aside or in

any way interfere with the consent judgement and as such the application should be dismissed.

Representation;

9. The Applicants was represented by Mr. Lawrence Tumwesigye of M/s Lawrence Tumwesigye & Co. Advocates whereas the 1st and 2nd Respondents were represented by Wasswa Emmanuel of M/s AF Mpanga Advocates and there was no representation from the 3rd Respondent. The parties filed written submissions which I have considered during the determination of this Application.

Issues for determination;

10. The parties framed issues in their submissions however for proper determination of this application this Court shall reframe issues in accordance with **Order 15 Rule (1)(5) of the Civil Procedure Rules** as follows;

- i) Whether the consent order entered by the parties vide Miscellaneous Application No. 1366 of 2023 should be set aside?**
- ii) What remedies are available for the parties?**



Resolution and determination of the issue;

Issue one

- i) **Whether the consent order entered by the parties vide Miscellaneous Application No. 1366 of 2023 should be set aside?**

11. The law on consent judgments is now well settled. Parties to civil proceedings are free to amicably settle a dispute and consent to a judgment being entered. The parties may do so in writing, affix their signatures and place the same for endorsement by the Court (***Order 25 rule 6 of the CPR and the case of Betuco (U) Ltd & Anor V Barclays Bank & others, HCMA No. 243 of 2009 as Cited by Justice Boniface Wamala in Krone Uganda Limited v Kerilee Investments Limited Miscellaneous Application No. 306 of 2019.***

12. Once a Consent Judgment is entered, it is a final Judgment and can be enforced like any other judgment however there are grounds based on which it can be vitiated, varied reviewed and or set aside.

13. Where it is proved that it was entered into without sufficient material facts or in misapprehension or in ignorance of material facts, or it was actuated by illegality, fraud, mistake,

contravention of Court policy or any reason that would enable Court to set aside an agreement. ***See Attorney General & Uganda Land Commission V James Mark Kamoga & James Kamala SCCA no. 8 of 2004***

14. Counsel for the Applicant submits that the consent order followed the application for a judgment on admission and that the consent was entered into by collusion between the respondents without the Applicant.
15. The Applicant in her affidavit in support of this application and in the submissions alludes to the fact that the suit property is family land on which they built their matrimonial home with the 3rd Respondent and she did not consent to the transaction between the 1st, 2nd and 3rd Respondents.
16. **Section 38A (4) (a) of the Land Act** defines family land to mean land on which is situated the ordinary residence of a family; and ordinary residence means the place where a person resides with some degree of continuity apart from accidental or temporary absences; and a person is ordinarily resident in a place when he or she intends to make that place his or her home for an indefinite period.



17. Paragraph 2 of the Applicant's affidavit in support; she states that she jointly with the 3rd Respondent purchased land at Kireka and built their matrimonial home thereon a fact which has not been disputed by any of the parties in their affidavits nor in the submissions.
18. This brings me to an understanding that this is in fact family land where the Applicant and the 3rd Respondent ordinarily reside as a family and the 3rd Respondent transacted in the same without consent from the Applicant.
19. **Section 39(1) of the Land Act provides;**

1) A person shall not-

- a) sell, exchange, transfer, pledge, mortgage or lease any family land;***
- b) enter into any contract for the sale, exchange, transfer, pledging, mortgage or lease of any family land; or***
- c) give away any family land intervivos, or enter into any other transaction in respect of family land,***

except with the prior consent of his or her spouse.



20. From the reading of the memorandum of understanding and the sale agreement which forms the 1st and 2nd Respondents basis of claim, the Applicant's name is not reflected anywhere to have been a party to the transaction.
21. Transactions undertaken on family land without written consent of a spouse are null and void.
22. The dealings between the 1st, 2nd and 3rd Respondent in the suit land were void ab intio and the parties could not have consented to an illegality and override the principles of law.
23. The law on illegalities is well settled. The case of **Makula international Ltd v His Eminence Cardinal Nsubuga & Anor [1982] HCB 11** "A court of law cannot sanction what is illegal, an illegality once brought to the attention of Court, overrides all questions of pleading, including any admissions made thereon.
24. Despite the fact that the 3rd Respondent made admissions in his written statement of defence which prompted the 1st and 2nd Respondents to make an application for a judgment on admission, it is a settled principle that a judgment on admission is not a matter of right but rather a matter of discretion of court.
(See; The Board of Governors Nebbi Town S.S.S Vs Jaker



***Food stores Limited MA No. 0062 of 2016 arising from HCCS
No. 0018 of 2016)***

25. It is from the application for a judgment on admission that the 1st, 2nd and 3rd Respondent entered into a consent order which the Applicant now challenges since she did not consent to the transactions on the suit land which happens to be family land.
26. It's quite clear that the consent order not only affects the Applicant's interest in the land, but it also seeks to validate an illegal transaction on family land between the 1st, 2nd and 3rd Respondents in total exclusion of the Applicant's right or interest in land.
27. Before I take leave of this matter, I find it pertinent to briefly address the issue of MA No. 1366 of 2023 (an application for judgement on admission) from which the impugned consent judgment arose, it is this Honorable Court's considered view that since the subject matter of admission is the transaction between the 1st, 2nd and 3rd Respondents in light of the findings of this Honorable court, it would be superfluous to consider the said application on its merits. Instead, it is in the interest of justice that parties are heard in the main suit to finally settle all controversies surrounding this matter.



28. For the foregoing reasons therefore, the instant application succeeds with the following orders;

- i) The consent order vide Miscellaneous Application No. 1366 of 2023 is hereby set aside.
- ii) Costs of the application shall abide the outcome of the main cause.

I SO ORDER.



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NALUZZE AISHA BATALA

JUDGE

5/04/2024