

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS APPLICATION NO. 607 OF 2009 (Arising out of civil suit NO.
179 of 2009)

<p>1. CHARLES KIGGUNDU 2. KYEYUNE HENRY 3. HENRIETTA KABATAIZIBWA 4. MARIA GORRETE MUSIMENTA 5. CYPRIAN KAIRUMBA KAGABA 6. MARIA KENJEYO NANKUNDA 7. MUHEEKI CONCEPTAR 8. MUSIIME JOSEPH</p>	}	<p>..... APPLICANTS</p>
<p>VERSUS</p>	}	<p>..... RESPONDENT</p>
<p>JOHN KAWESI</p>	}	

RULING BY HON. MR. JUSTICE JOSEPH MURANGIRA

The above named applicants through M/s Bamwe & Co. Advocates brought this application against the respondent. The respondent is represented by Mukasa, Lugalambi Advocates and Solicitors.

The application is by way of chamber summons, supported by an affidavit sworn by the 3rd applicant, Henrietta Kabataizibwa, brought under Order 10 rules 12, 14, 21 and 24 of the Civil Procedure Rules and section 98 of the Civil Procedure Act. The respondent filed an affidavit in reply to the application. The applicants filed an affidavit in rejoinder to the application and reply to the averments by the respondent in his affidavit in reply.

The application seeks the following orders; that:-

1. The respondent produces the original of the owner's copy and certified copy of:

- (a) The land title comprised in Bukalasa District Registry Mailo Register Block 12 Plot 542 Volume 6566 Folio 5 FC N0. 17962, Head Title Volume 253 Folio 11 in the names of Maria Nakabarengenge.
- (b) A certified copy of the Registry copy of the above Title by Bukalasa District Registry.
- (c) Originals of annextures “D” to the plaint.
- (d) Certified copies by the issuing Authority of the annextures to the plaint marked “D”.

2. The costs of this application be provided for.

The brief facts of the application are that:

On 3rd July 2009 the respondent, John Kawesi, filed civil suit N0. 179 of 2009 against the Chief Registrar of Titles and the 8 applicants to this application. The main cause of action arises from the Certificate of Title of the suit land, Block 12 Plot 542, marked annexure “B” to the plaint.

In their Written Statement of Defence the 8 applicants, inter alia contended and averred that the Title of the subject matter presented by the plaintiff/respondent as annexure “B” to the plaint is a forgery.

On 10th August, 2009 the 8 applicants served the respondent/plaintiff through his lawyers with a Notice to produce the documents which are the subject of this application but the respondent/plaintiff failed or refused to do so hence this application.

The grounds for the application are stated in the supporting affidavit and rejoinder of Henrietta Kabataizibwa, the 3rd applicant on her own behalf and on behalf of other applicants, sworn on 9th September, and 15th October, 2009, respectively.

The respondent swore an affidavit in reply dated 12th October 2009.

It should be noted that the respondent in paragraph 4 in his affidavit in reply deponed that:

“That I do not possess the original certificate as requested by the applicants because it was lost when I was taken to prison at the instance of the 2nd applicant, and after coming out of prison I found most of my documents missing from home and my home was razed to the ground and thereafter the applicants constructed new homes in my land.”

Then in paragraph 5 thereof the respondent deponed that :-

“ on several occasions I have tried to obtain a certified copy of this title in the land office at Bukalasa and I have been frustrated because the records at Bukalasa were tampered with”

In essence the respondent is saying he cannot comply with orders sought in the application. Yet the interpretation of his pleaded cause of action against the applicants/defendants in paragraph 12 (a) of the plaint whereby the respondent/plaintiff attached a copy of the Certificate of Title as annexure “B” presupposes that the said copy was copied from the Original certificate of title of the suit land which must be in his possession. There is no where in the plaint where the plaintiff/respondent pleaded that the original certificate of title was lost. Therefore, the respondent has the original Certificate of Title in his possession. He must produce the same in court for inspection and any other necessary evidential value that could be attached to it.

Further, if annexure “B”, the copy of the Certificate of Title is genuine, the respondent must have it certified by its authors that is, Bukalasa Land District Registry. In his affidavit in reply he deponed that the Land Registry in Bukalasa office frustrated him. He did not pursue the matter any further by seeking the writ of mandamus to issue against the officials of Bukalasa Land District Registry to do their statutory duty. More to that, if the original Certificate of Title got lost as the respondent alleges then he would have applied for the duplicate Certificate of the suit land. This was not done by the respondent, which shows that he has his original owner’s copy of the Certificate of Title of the suit land.

Further still, the respondent did not produce evidence to show that he applied for a duplicate certificate of title of the suit land nor is there any evidence that he ever applied

for certified copies of the Original Certificate of Title to the suit land and that he was not assisted. The original document and the certified copies being demanded are vital in the proceedings of the main suit.

Furthermore, I have also considered the affidavit evidence of both parties, their respective submissions and the authorities cited and found that this is a proper application whereby the sought for orders ought to be granted.

In the result, therefore, the application is allowed with the order sought therein. The respondent shall pay the costs of this application to the applicants. The respondent is to produce in court the original of the owner's copy and certified copies of annexures "B" and "D" to the plaint, within 10 days from the date of this ruling.

Dated at Kampala this 3rd day of November, 2009.

JOSEPH MURANGIRA
JUDGE