

5 THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS CAUSE NO. 78 OF 2015

AYISA NAMIRO ::::::::::::::::::::::::::::::::::::::::::::::::::::::: APPLICANT

10 VERSUS

1. UGANDA MARINES PRODUCTS LTD

2. COMMISSIONER FOR

LAND REGISTRATION::::::::::::::::::::::::::::::::::::::::::::: RESPONDENTS

15 **BEFORE: HON. MR. JUSTICE BASHAIJA K. ANDREW**

R U L I N G:

The Applicant herein brought this application under Section 98 of the Civil Procedure Act Cap. 71 (CPA); and Section 33 of the Judicature Act, Cap.13, seeking orders that;

1. *The monies loaned out to the Applicant's Attorney, Kusasira William by the 1st Respondent pursuant to an equitable mortgage be deposited by the Applicant in a manner as directed by Court.*
2. *A Special Certificate of Title for land comprised in Kyadondo Block 213 Plot 404 at Bukoto be issued to the Applicant in respect of the same.*
3. *The caveat lodged on the land by the 1st Respondent pursuant to the equitable mortgages registered be vacated*
4. *Costs of this application be provided for.*

The application is supported by affidavit sworn by the Applicant, Ayisa Namiiro, on 6th November, 2015. The 1st Respondent was served with the application by substituted service through the *Daily Monitor* newspaper on 20th November, 2015. The 2nd Respondent was also served with the application which she duly acknowledged on 13th November, 2015. None of the Respondents filed any affidavit in reply. The 2nd Respondent, however, filed written submissions essentially acknowledging and confirming the facts as stated by the Applicant in respect of the subject land. The application was thus heard and determined *ex parte* in respect of the 1st Respondent to whom the certificate of title for the subject land was pledged as security for a loan by the donee of Power of Attorney one Kusasira William as will be elaborated in the background facts below.

Background:

The Applicant, in 2002, donated a Power of Attorney to one Kusasira William in respect of her land comprised in Kyadondo Block 213 Plot 404 at Bukoto. The title was pledged as security for a loan facility of UGX 6,000,000 from the 1st Respondent which was to be used in the fish supply business
40 between the donee and the 1st Respondent. The loan was apparently disbursed and the duplicate certificate of title was deposited with the 1st Respondent, which on 25th February, 2002 registered a caveat thereon pursuant to the equitable mortgage. From then the Attorney Kusasira William's whereabouts are unknown. Also the 1st Respondent could be traced at its known address or anywhere else. It would appear that the 1st Respondent wound up its operations and closed its offices. That
45 compelled the Applicant to file this application seeking the remedies mentioned above.

Issues:

The main issues for determination are;

1. ***Whether the Applicant as donor of a Power of Attorney can under the law be permitted to discharge the loan obligations incurred by her donee.***
- 50 2. ***Whether the caveat lodged by the 1st Respondent pursuant to the equitable mortgage can be vacated in the circumstances.***
3. ***What remedy is available to the Applicant regarding the certificate of title for the subject matter land which cannot be retrieved because the 1st Respondent cannot be traced?***

Resolution:

55 ***Issue No.1: Whether the Applicant as donor of a Power of Attorney can under the law be permitted to discharge the loan obligations incurred by her donee.***

From the facts presented by the Applicant in her application and confirmed by the 2nd Respondent in its submissions, it is apparent that the donee of the Power of Attorney after pledging as security the title for the subject matter land never got in touch again with the Applicant. It is also apparent from
60 the depositions of the Applicant that the 1st Respondent cannot be traced at its known address for the Applicant to pay whatever amount is outstanding on the loan and redeem the certificate of title which was pledged as security for a loan. The Applicant has demonstrated her readiness and wishes to pay the amount owing under the equitable mortgage in order to recover the title of her land.

Worthy of note is that this application is brought under Section 98 CPA and Section 33 of the
65 Judicature Act respectively, as the enabling provisions. Under Section 33(supra), the High Court is vested with very wide general powers to grant remedies. It provides as follows;

70 *“The High Court shall, in the exercise of the jurisdiction vested in it by the Constitution, this Act or any written law, grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it, so that as far as possible all matters in controversy between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided.”*

Under Section 98 CPA, the inherent power of court is saved in the following terms;

75 *“Nothing in this Act shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”*

80 These provisions vest the High Court with wide discretionary and inherent powers respectively to grant absolutely or on such terms and conditions as it thinks just, all such remedies as any of the parties to a cause or matter is entitled to in respect of any legal or equitable claim properly brought before it.

In my considered view, in a situation where the donee’s whereabouts are unknown, and the 1st Respondent cannot be traced at its known physical address, that would invariably render this application a proper case in which the court would invoke its wide power under the above cited provisions to meet the ends of justice. The Applicant therefore, can obtain the remedies sought on 85 such terms as court may consider just. Issue No.1 is answered in the affirmative.

Issue No.2: Whether the caveat lodged by the 1st Respondent pursuant to the equitable mortgage can be vacated in the circumstances.

90 At the risk of repetition, the 1st Respondent cannot be traced at its assigned and known physical address for it to vacate the caveat it lodged on the title to the property. This court would therefore invoke its power under the cited law to direct that the caveat so registered be vacated on such terms as will be specified in the orders below. Issue No.2 is also answered in the affirmative.

95 The remaining issue concerns the amount to be paid in lieu of the equitable mortgage by the Applicant. From the unchallenged evidence of the Applicant, the donee of the Power of Attorney one Kusasira William was advanced the amount of UGX 6 million. This is also discernible in the affidavit sworn by one F.K. Makubuya the Managing Director of the 1st Respondent in support of a caveat forbidding registration of any person on the land in order to protect the company’s interest therein.

It is also the evidenced of the Applicant that the property is still registered in her names according to a search report from the Lands Office. This fact was duly confirmed in the submissions of the 2nd Respondent's counsel. The Applicant is also in possession and no attempts to have ever been made to dislodge her from the subject property. Further still, no attempts to have been made by the 1st Respondent to vacate the caveat lodged thereon or to return the Applicant's certificate of title. This invariably has posed difficulties for the Applicant to retrieve her certificate of title, yet she is unaware of 1st Respondent's and Kusasira William's whereabouts despite all attempts to trace them. Even the status of the loan she intends to clear is unknown. It is against that background that the application is allowed.

Issue No.3: What remedies are available to the Applicant?

1. ***The Applicant shall pay the amount of the loan owing under the equitable mortgage deemed to be UGX 6,000,000/= as at the date of this ruling, and the loan of the 1st Respondent shall thereby be deemed to have been discharged.***
2. ***The amount in (1) above shall be paid to the Deputy Registrar (Land Division) for safe keeping until when the 1st Respondent appears and claims the same.***
3. ***If and when the 1st Respondent appears, and the actual amount is confirmed as varying from the amount deemed as owing in (1) above, the Applicant and the 1st Respondent shall adjust the figure accordingly.***
4. ***Upon payment of the money by the Applicant to the Deputy Registrar as ordered under (2) above, the Registrar of Titles shall issue a Special Certificate of Title to the Applicant in respect of the subject land.***
5. ***The Registrar of Titles is directed to vacate the caveat lodged by the 1st Respondent.***
6. ***The Applicant shall meet costs of the process of obtaining a Special Certificate of Title.***
7. ***The Applicant shall bear costs of this application.***

BASHAIJA K. ANDREW

JUDGE

19/12/2016

Mr. Amanya Joseph holding brief for Mr. Alvin Jabo for the Applicant in court.

Parties are absent

Mr. G. Tumwikirize – Court Clerk present

130 Court: Ruling Read in open court.

BASHAIJA K. ANDREW

JUDGE

19/12/2016

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