

UGANDA / JUDGMENT

Batte & 5 Others v Buganda Land Board &
3 Others (Miscellaneous Cause 2 of 2024)
[2025] UGHCLD 25 (31 January 2025)

[2025] UGHCLD 25

COURT

HC: Land Division (Uganda)

BEFORE

Alividza, J

CASE / FILE NUMBER

Miscellaneous Cause 2 of 2024

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⁵ THE REPUBLIC OF'UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

MISCELLAITEOUS CAUSE NO. 002 OF 2024

[Arising from High Court Civil Suit No. 993 of 2018]

| | 1. BATTEVINCENT | 1STAPPLICANT |

|--|-----|-----|

| | 2. MUBIRU EDIRISA | 2ND APPLICANT |

| | 3. SSEMWANJABADRU | 3FD APPLICANT |

| | 4. NYANZI HUSSEIN | 4TH APPLICANT |

| | 5. KABULAMATHIAS | 5TH APPLICANT |

| | 6. GALIWANGO LAWULENSIO | 6TH APPLICANT |

VERSUS

| 1. BUGANDALANDBOARD | 19T RESPONDENT |

|-----|-----|

- | 2, JUUKOWALUGEMBE | 2nd RESPONDENT |
- | 3. NSEREKO KALAM. AZT | 3RD RESPONDENT |
- | 4. NASANGA Ir'ALAJiITAZI | 4TH RESPONDENT |

BEFORE: HON. LADY JUSTICE ELIZABETH JANE ALIVIDZA RULING

REPRESENTATION

The Applicants were represented by Counsel Aisu Isaac Nicholas of TIAM Advocates. The 1st Respondent was represented by Buganda Land Board Legal Department. 25

The 2nd - 4th Respondents were represented by M/S KAJEKE, MAGURU & CO. Advocates

INTRODUCTION

The Applicants filed this Application by way of Notice of Motion under Section 33 of the Judicature Act, Section 98 of the CPA and Order 52 Rules 1, 2 & 3 of the CPR seeking orders that;

- 35 1. A consequential order to evict doth issue against Respondents, therr agents, servants, workers, assignees, successors in title or any person claiming on interest through them to vacate the Usufruct/ Kibanja comprised on KYADONDO BLOCK 272 Land at Mutungo.
- 2. Costs of the Application be provided for.
- 40 The grounds of this Application are contained in the Notice of motion and Affidavit of Mubiru Edirisa the 2nd Applicant briefly stating that;
 - 1. On 7th December 2018 the Applicants liled High Court Civil Suit No. 993 of 20 18 for various orders against the Respondents for trespass in respect of a usufruct/ Kibanja they have been undeniably in occupation for a very long time with equitable Interest.
 - 2. Th,at on 6th Novembdr 2018, the 1st Respondent filed her defence as an entity holding mandate to manage land belonging to the Kingdom of Buganda clearly indicating that the subject Kibanja is located on Kyadondo Block 273 as land returned to the Kabaka of Buganda pursuant to the Traditional Rulers (Restoration of Assets & Property) Act, 2017.
 - 3. That on 2nd December 2018, the 2nd 4th Respondents filed their joint Written Statement of Defence stating that they were only in part occupation of the said disputed Kibanja as caretakers/ licensees of the disputed Kibanja located on Kyadondo Block 273, land that had been returned to the Kingdom of Buganda.
- 6V 4. None of the Respondents attached any document showing that the said disputed Kibanja/ usufruct was comprised on Kyadondo Block 273 whatsoever.

- 5. From the record, despite the Applicants having been in occupation of the said Kibanja for a very long time, it is apparent that the said Kibanja is not located on Kyadondo Block 273 as one of the properties returned to the Kabaka of Buganda but Kyadondo Block 272.
- 6. The Applicants being partly in occupation of the said Kibanja, clearly stated that their Kibanja now disputed was comprised on Kyadondo Block 272 and not Kyadondo Block 273 claimed by the Respondents.
- 7. That Kyadondo Block 273 is separate and distinct from Kyadondo Block 272 and the Applicants as fishermen having been in occupation of the subject land for a very long time utilizing it as a landing site knowing that the disputed Kibanja is located on Kyadondo Block 272 and not Kyadondo Block 273 that is claimed by the Respondents to have been returned to the Kingdom of Buganda.
- 8. That on 116 November 2022, the Applicants filed H. C. M. A No. 1927 of 2022 seeking Orders that the Chief Government Surveyor opens locational boundaries of Kyadondo Block 272 and Kyadondo Block 273 to establish the location of the disputed Kibanja and on 156 March 2023, the Learned Judge Hon Lady Justice Elizabeth Jane Alividza ordered that locational boundary for the disputed kibanja be opened.
- 9. The District Staff Surveyor has since opened boundaries of Kyadondo Block 272 & Kyadondo Block 273 and established that the disputed usufruct/ Kibanja does not form part of the official Mailo that was returned to Kingdom of Buganda comprised on Kyadondo Block 273.
- 10. That the 1st Respondent has since entered into a consent judgment/decreed clearly showing that the subject Kibanja doesn't form part of the land on Kyadondo Block 273 but Kyadondo Block 272.
- 11. Unfortunately, the Consent Judgment does not provide eviction of the Respondents from Kyadondo Block 272 and the Respondents have deliberately refused to vacate the subject Kibanja.
- 12. That it is imperative to give effect to the Consent Judgement by issuing a consequential order to evict the Respondents from the suit Kibanja comprised on Kyadondo Block 272 also since the 2nd - 4th Respondents as caretakers/ licensees have no interest in the subject land whatsoever.
- 13. That the 2nd 4th Respondents as caretakers/ licensees are estopped from claiming any other interest in Kyadondo Block 272 as land that was officially returned to the Kingdom of Buganda.
- 14. That it is just and equitable that the orders sought be granted in the interest of justice by allowing this Application.

The 1st Respondent also filed an Affidavit in reply deposed by Nattabi Florence Peninah stating that the claim against her in respect of the suit land was settled by the aforesaid consent judgment/decreed and it discharged her from the suit and in case there is any consequential order it can be issued in her absence as she is already bound by the consent judgement. The 1st Respondent further mentioned that the 2nd -4th Respondent were not parties to the consent judgment.

The 2nd -4th Respondent filed their Affidavits in reply that were similar mutatis mutandis stating inter alia that;

110 1. The suit property is situated in Bulubaale Mutungo Central LC1 zone is the cultural site of the princes Lineage of Buganda

- 2. That the said property constitutes the cultural site of King Kintu of Buganda; a central site of King Kintu of Buganda a central site for Ndawula and for the office of Kalemezi
- 115 3. That the structures on the said land were constructed for the benefit of the princes and princesses' lineage of Buganda.
- 4. That the Applicants who are fishermen have no interest in the suit land.
- 5. That they were not party to the consent judgment between the Applicants and the 1st Respondents.
- 6. That they were sued in their own right as individuals and hence need for the Applicants to prove their claim against them through a full trial. t20
- 7. That the survey report relied upon by the Applicants is not genuine and a report for location survey of land comprised in Block 272,273 and others in Wakiso District casts doubts on the validity of the said report.
- L25 8. That Buganda Land Board is not a legal entity and as such cannot sue or be sued and the consent relied upon by the Applicants is null and void and it is an illegality.
- 9. That the Application is frivolous and vexatious and an abuse of Court process.
- 130 10. That the status quo is that the Respondents and their agents are in possession and occupation of the suit land.
- ¹ . That the Applicants have since attempted to illegally evict the Respondents from the suit land pending the disposal of the main suit'
- 135 12. That the dispute between the parties concern land which is ^a sensitive matter and the same ought to be heard and be determined on merits interparty.

BACKGROUND.

1,40 The Applicants/ Plaintiffs filed civil suit No. 993 of ²⁰¹⁸ Respondents / Defendants seeking inter alia that the 1st Respo ownership rights in the suit Kibanja interest and cannot lawfully a and 3^d Respondents to be care takers of the same, declaration th against the ndent has no pprove the 2^d at the 2^d and

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3rd Respondents having occupied the Plaintiffs Kibanja interest without the will and consent of the Applicants and having failed to vacate the Kibanja are trespassers, an eviction and demolition order.

- 145 The 1st Respondent in the Written statement of defence briefly emphasized that the suit Kibanja forms part of the ofhcial Mailo comprised on Kyadondo Block 273 that belongs to the Kabaka of Buganda and she is an agent of the Kabaka with mandate to manage all land belonging to the Kingdom of Buganda. That the land in question was under the custody of the Princess Nakasolya and now the
- 150 lineal lineage is represented by Juuko Walugembe and Princess Nanjobe with Mr Nsereko the caretaker.

The 2nd - 4th Respondents in their defence stated that the suit land is an official Mailo belonging to the Kabaka of Buganda that was returned to the Kingdom pursuant to the Traditional Ruler [Restoration of Assets & Property] Acl247 ar,d that the occupy the land as caretakers for and on behalf of the Royai lineage.

on 1 le November 2022, ti,e Applicants filed H. C. M. A No. 1927 of 2022 seeking Orders that the Chief Government Surveyor opens locational boundaries of Kyadondo Block 272 and Kyadondo Block 273 to establish the location of the disputed Kibanja.

160 On 22\d March 2023, Court granted an order that locational boundary for the disputed Kibanja be opened by a government authorized surveyor to establish whether the disputed Kibanja occupied by both the Applicants and Respondents is located and situated on Kyadondo Block 273.

165 The Wakiso district Surveyor filed a survey report dated 25th May 2023 wherein its stated that the survey was carried out on 14^{ff} & 20th May 2023. According to the survey report, the survey was conducted in the presence of the Applicant's lawyer, the 2^d Applicant Mubiru Dirisa and the area LCI Chairperson, none of the Respondents attended. From the report, it was found that the disputed Kibanja entirely lies on Block 272 not Block 273. All measurements were l7o ascertained as well.

On the 17th August 2023, llr.e Applicants entered into a consent judgment with the 1st Respondent wherein it was agreed and decreed that;

- 1) The disputed Kibanja of land falls entirely on Kyadondo Block 272 and not Kyadondo Block 273.
- 2) Disputed Kibanja does not form part of the official Mailo comprised on Kyadondo Block 273 that was returned and belongs to the institution of the Kabaka of Buganda.
- 3) Plaintiffs claim against the 1st Defendant is settled and this consent judgment/decreed shall bind the Plaintiffs and the 1st Defendant
- The Applicants then filed this Miscellaneous Application MC 002/2024 seeking for pronouncement of consequential order to evict the Respondents, their agents, or any person claiming an interest through them to vacate the Kibanja, the Applicants contend that this order was omitted in the Consent judgment' 180

The 1st Respondent having entered into a consent judgment did not have any more interest in this matter. The 2nd and 4th Respondent objected to the Application. 185

ISSUES RAISED

Counsel for the Applicants raised the following issues;

- i. In light of the Consent Judgment entered between the Plaintiffs and the 1st Respondent on the 17th August 2023, whether 2nd - 4th Respondents as caretakers/ licensees have any proprietary interest in the subject land comprised on Kyadondo Block 272 meriting trial? 190
- ii. Whether a consequential order to vacate or evict doth issue against Respondents, their agents, servant, workers, assignees, successors in title or any person claiming an interest through them on the Usufruct/Kibanja comprised on Kyadondo Block 272 Land at Mutungo?
- iii. Whether the available remedies?

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SUBMISSIONS

200 Counsel filed detailed submissions and made reference to useful authorities. I thank them for their persuasive arguments. I shall summarize them here after carefully taking them into consideration.

Counsel for the Applicants' submission.

Issue one: In light of the Consent Judgment, whether the 2nd - 4th Respondents as caretakers/ licensees have any proprietary interest in the subject land comprised on Kyadondo Block 272 meriting trial.

Counsel submitted that this Application rests entirely on the Respondents' respective Written Statements of Defence and the Consent Judgment entered into between the Applicants and the 1st Respondent.

That the Respondents in their written statements defence stated that the subject matter in issue forms part of the mailo land that was returned to the Kabaka of Buganda. That they also pleaded that they were just caretakers of the suit land which makes them [1st Respondents] licensees and so without any proprietary interests in the Kibanja and so should fall under the principal's mandate. The principal being the 1st Respondent. 2nd

- That the Applicants are only claiming Kyadondo Block 272 not 273 that the Respondents are caretaking. That when the Applicants filed HCMA No. 1927 of 2022 arising out of HCCS No. 993 of 2018 seeking for boundary opening to clarify the boundaries of the two blocks since they are close to each other, Court granted the order and the exercise was done by a government surveyor with the 275
- knowledge of all the Respondents. 220

That it was established that the suit land was on Block 272 not 273 as the Respondents thought and that when a consent judgment was entered into with the principal Respondent [1st Respondent] unfortunately that the 1st Respondent had prior written letters to the other Respondents as caretakers to stay on the

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²²⁵ suit land without prior to knowing that it wasn't part of Block 273 where she has authority.

In concluding this issue, Counsel quoted the case of Ababii Muhamood & Others vs. Mukomba Ananstansia & Another H. C. C. S No. 22 of 2015 where Justice Eva Luswata (as she then was) observed that a License connotes the permission given

230 by the occupiers of land which without creating interest in land allows the licensee to do some acts which would otherwise be trespass.

He further quoted the case of Dina Okidi & Another vs. George William Odutuong C. A. C. A No. 233 of 2015 Court of Appeal citing Halsbury's Laws of England 4th Edition Reissue volume 27 (1) Paragraph observed that a mere license does

- 235 not create any estate or interest in property which it relates... Equally, in Inwards & others vs. Baker [1965] 2 WLR 212; [1965] 2 OB 29; [1965] 1 ALL ER 446: ¹¹ 9651 EWCA Civ 4, it was noted that in essence a license is a personal permission for someone to occupy land. It does not give the licensee a legal interest in (control over) the land.
- 240 Issue to Whether consequential order to vacate or evict doth issue against Respondents, their agents, servants, workers, assignees, successors in title or any person claiming an interest through them on the usufruct/ Kibanja comprised on KYADONDO BLOCK 272 Land at Mutungo,

245 The Applicants counsel submitted that the consequential orders sought by the Applicants naturally arises as a consequence of the consent judgment having established that the subject land partly occupied by the 2nd - 4th Respondents as " caretakers/ Licensees" is not owned as land that was returned to the Kabaka of Buganda comprised on Kyadondo Block 27 3 but the subject Kibanja suit land claimed by the Applicants is entirely comprised on Kyadondo Block 272 and as caretakers/ Licensees the 2nd- 4th Respondents have no proprietary interests in the same. 250

That having found that the subject disputed land partly occupied by the Applicants and partly by the Respondents falling entirely on Kyadondo Block App

255 272 claimed by the Applicants as their Kibanja and not Kyadondo Block 273 that had been returned to the Kabaka of Buganda by law, there was need to thus cause the Respondents to vacate or be evicted from the subject land claimed by the Applicants on Kyadondo Block 272 especially where it has been established by the consent judgment that actually the subject land claimed by the Respondents ought to be on Kyadondo Block 273 and not Kyadondo 272 claimed 260 by the Applicants.

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That unfortunately, the said orders are not captured to give the consent judgment effect that the 1st Respondent and the caretakers of land that had been returned to Kabaka of Buganda actually leave the same. Fortunately, Kyadondo Block 273 claimed by the Respondents is in place and they should look out for the same.

That the Respondents neither claim to own a Kibanja or any interest on Kyadondo Block 272 claimed by the Applicants but insist that the suit land is on Kyadondo Block 273 which ownership issue the consent judgment has resolved.

270 Counsel for the Applicants prayed for costs to be awarded to the Applicants against the 2nd - 4th Respondents who deliberately refused to vacate the subject land and also against the 1st Respondent who since 2018, continually authoring letters in support claiming that the suit land comprised of Block 273.

Counsel for the Respondents' submissions

275 The 2nd -4th Respondents through their Counsel Kajeke filed written submissions stating that the said consent judgement doesn't provide for eviction of anybody because the 1st Respondent doesn't occupy any part of the suit land.

That the 1st Respondent who was the 1st Defendant in the civil suit where the consent judgment comes from has no capacity to sue or be sued since the land

²⁸⁰ belongs to the Kabaka of Buganda and the 1st Respondent is a mere agent.

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Therefore, that the consent judgment the Applicant is seeking to enforce is a nullity as it was entered into by a non-existing party.

Counsel quoted the case of Ssimbwa and Afidra Milton Versus Trustees of Rubaoa Mirocle Centre and another HCMA No. 576 of 2006 it was held that a suit filed by ²⁸⁵ or against a non-existent person is illegal and a nullity and Makula International

- Ltd uersus His Eminence Cardinal Nsubuaa and Another 11982) where it was held that an illegality once brought to the attention of the Court overrides all issues in the pleadings and cannot be sanctioned. That the consent judgement/ decree sought to be enforced is a nullity. HCBH at 16,
- He further quoted Uganda Railwaus Corporation Versus Ekwaru and others Ciuil Application Number 185 of 2007 arisina from Ciuil Appeal No. 23 of 2007 wherc Nshimye JA as he then was held that it is settled law that higher Appeilate Courts would not ailow an illegality that escaped the eyes of the trial Court to liner and cause undesirable consequences. 290
- That a trial Judge therefore has a duty to use a judicial microscope to see all those illegalities that may not be seen by ordinary eyes of parties including those oftheir counsel who may not have seen it and that in Kelner uersus Baxter (1986) LRCO 174 quoted with approval in 44123 Ontario Ltd uersus Crispus KiAonqa and others HCCS No. 1038 of 1990 where it was held that there must be ^a competent principal at the time of the contract, the principal must have a legal personalitSz and there must be an act capable of ratification and therefore illegal 29s 300

The Respondents' Counscl concluded by stating that the impugned consent judgment can't be enforced. That the survey has to be tendered into Court so that a full trial is conducted.

and void contracts cannot be ratilied.

Finally, Counsel for the Respondents submitted that the Application is an abuse of Court process. That it lacks merit and should be dismissed with costs to the second, third and fourth Respondents cause undesirable consequences.

DECISION OF THE COURT

310 I shall start with procedural issues. Therefore I shall start with the second issue.

Issue 2; Whether a consequential order to uacate or euict doth issue against Respondents, their agents, seruant, utorkers, assignees, successors in title or ang person claiming an interest through them on the Usufruct/ Kibonja comprised on KYADONDO BLOCK 272 Land at Mutungo to issue.

- 315 I will start by outlining the consequential order sought by the Applicants. Which is ; "A consequential order to evict doth issue against Respondents, their agents, servants, workers, assignees, successors in title or any person claiming an interest through them to vacate the Usufruct/ Kibanja comprised on KYADONDO BLOCK 272 Land at Mutungo."
- 320 What is a consequential order? This is an order that assists in enforcement of Court orders especially when implementation is impossible without further orders.

The term consequential orders denotes an order of Court giving effect to the judgment or decision to which it is consequential or resultant there from. Such

325 an order is normally directly traceable to or flowing from the judgment of decision duly prayed for or granted by Court. (see *Kalibbala & another Vs Attorney General* MA 70 of 2015

330 The importance of an Application for consequential orders is to help enforce Court orders in a judgment or ruling. In essence an Application for consequential orders is made where the Court gives orders in a judgment or ruling implementation of the same is impossible without further Court orders. As such for an Application to be suitable for consequential orders it must be following a judgment or ruling of an already existing Application, cause or head suit'

In the case of *Registered Trustees of Apostolic Church v Okorolemi* (1990) 6 NWLR 15 at 15 it was stipulated that "a Consequential order denotes an order following naturally in terms of consistency and giving effect to the main judgment. 335

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Therefore, it is an order flowing from the judgment. It is essentially one which makes the principal order effective and effectual or which necessarily is being incidental to the principal order in the matter"

340 In this matter before Court, there were multiple parties sued by the Applicants. A Consent judgment was entered by the Applicants and one of the Defendants. The matter before the rest of the Defendants is still proceeding and the case is at conferencing stage pending fixing hearing date.

I am aware of section 3a (1) of the Civil Procedure Act that provides that, "All

345 questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge, or satisfaction of the decree, shall be determined by the court executing the decree and not by ^a separate suit."

350 This court is well aware that there has not been any judgment or ruling in regard to this land dispute made by this honorable Court that needs consequential orders for enforcement.

Therefore on the face of it, it is my conclusion that since this Court has never issued a judgment after conducting a trial involving the parties, the consequential orders to vacate or eviction that would affect the 2nd to 4th Respondents who were not party to the consent judgment between the Applicants and the 1st Respondent cannot be issued.

Issue 7: In light of the consent Judgment entered between the Plaintiffs and the 7th Respondent on the 17th August 2023, whether 2nd - 4th Respondents as caretakers/ licensees have any proprietary interest in the subject land comprised

360 on Kgadondo Block 272 meriting trial.

This Application was brought under S. 98 CPA which grants Court inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court.

365 S. 33 of the Judicature Act 16 empowers Court; '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, so that as far as possible all matters may be conclusively between the parties may be completely and finally determined and all multiplicities of legal proceedings concerning any of those matters avoided.'

- 370 According to The Constitution (Land Ejections) (Practice) Directions, ²⁰²¹ "proprietary interest" means a tangible or non-tangible right accorded to ^a property owner. Direction 5 (a) of the Constitution (Land Ejections) (Practice) Directions 2021 provides that every eviction shall be preceded by a valid court order.
- 375 Given that as a result of the survey report and the consent judgment wherein it now a proven fact that the disputed Kibanja of land falls on Kyadondo block 272 and not Kyadondo Block 273. Does this extinguish the alleged proprietary interest claimed by the 1st to 4th Respondents?
- 380 The 2nd to 4th Respondents in their written statement of defence contend that they occupy the land as caretakers for and on behalf of the royal lineage and carry out such cultural functions. That they hold and occupy the land in trust and not in their individual capacities.

Whether the 2nd to 4th Respondents /Defendants have a valid claim can only be done through evaluation of the evidence adduced. The consent judgment between the Applicants and the 1st Respondent does not amount to a trial.

It is an established judicial practice that the process of administering justice should be conducted procedurally to ensure both parties are satisfied. This is based on the principle of procedural justice that entails decision making based on fair processes and procedures. The opportunity to be heard ("voice) is paramount especially where decisions that concern rights of others are to be made.

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Procedural justice is based on the idea that processes and procedures used in making decisions should be fair and impartial to all parties involved' In Uganda, procedural justice is embedded in the 1995 constitution that provides for the right to a fair trial under Article 28. The right to a fair trial embeds the right to be heard that is a fundamental basic right.

It is one of the cornerstones of the concept of a fair and impartial trial. The principle of "Audi Alteram Partem" which is that one must hear the other side' It is derived from the principle of natural Justice that no man should be condemned unheard. Article 44 (c) of the Constitution provides that there shall be no derogation from the enjoyment of the right to a fair hearing.

Therefore I answer first issue in the affirmative. The 2nd to 4th Respondent deserve a right to be heard at trial.

CONCLUSION.

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This Application is dismissed. Each side bears its own costs. The main suit CS 998 of 2018 shall be heard in an expeditious manner. It is fixed for hearing on 17th March at 12.30pm of the Plaintiffs' case. The hearing will precede with marking of documents. 405

So ordered TVIC{,

Elizabeth Jane Alividza

Judge Date: Date 4L5 Judgment Elizabeth ailtlacps 6ltlzo2r I

Judge

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