

**Bunkedeko v Commissioner Land  
Registration (Miscellaneous Application 1453  
of 2024) [2024] UGHCLD 199 (29 July 2024)**  
[2024] UGHCLD 199

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- 1. This was an application by notice of motion brought under Section 33 of the Judicature Act, Section 98 of the Civil Procedure Act, Order 13 rule 6, Order 52 rules 1 & 3 of the Civil Procedure Rules (CPR) for orders that:
- i) A judgement on admission be entered against the respondent (20th defendant) in Civil Suit No. 302 of 2022
- ii) Costs of the application be provided for.

**\*Background;\***

- 2. The applicant filed Civil Suit No.302 of 2022 against the defendants including the respondent as the 20th defendant for several orders to which the respondent filed an amended written statement of defense and there in made several admissions.
- 3. The applicant contends that the said averments in the respondent's amended written statement of defence contain admissions, hence this application.

**\*Applicant's evidence;\***

- 4. The application is supported by an affidavit in support deponed by the applicant which briefly states as follows;
- i) That I filed Civil Suit No.302 of 2022 on the 28th of February 2022 against the defendants including the respondent (20th defendant for orders that;
- a) That the plaintiff is the registered proprietor of land comprised in Busiro Block 442 plot 1 land at Busambaga and Bunono, Wakiso District
- b) That land comprised in Busiro Block 442 Plot 1 Busambaga and Bunono Wakiso district was illegally and fraudulently

subdivided to create Plot 2 and the said subdivision is null and void ab initio.

- c) That subsequent subdivisions of the suit land to create Plots 491,492,493,494,495,496,497,498,499,500,501,502,503,504,505,506,507,508,509,510,511,512,513,514,515,516,517,518,519,520 and 521 were illegal and void ab initio.
- d) That the subsequent transfers of the said plots to the 1st 19th defendants were illegal and void ab initio.
- e) A consequential order directing the respondent to cancel the certificates of title illegal created by the 20th defendant against the existing certificate of title.
- ii) The respondent (20th defendant filed an amended written statement of defence where he made several averments and contentions that;
- a) That upon perusal of the register, it was revealed that under instrument number KLA 24862 OF 23/12/1959 Land comprised in Mailo register volume 194 folio 20 now Busiro Block 442 Plot 1 was transferred from Nasaneri Mamuli to Yokana Bunkedeko and is the current registered proprietor.
- b) That the perusal of the register in respect to land comprised in Busiro Block 442 Plot 2 reveals that it was initially registered in the names of Eli Kawunya Lule under instrument number KLA 115386 of 4/10/1985.

- c) That there is no evidence on record of transfer of ownership of the suit land from Yokana Bunkedeko to Eli Kawunya nor are there mutation forms to show that subdivision was done to create Block 442 Plot 2 from Block 442 Plot 1.
- d) That the office of the commissioner acknowledges that its erroneous to maintain two certificates of title over the same piece of land on the titles register for which reason ought to be cancelled.
- e) That the office of the commissioner land registration shall aver and contend that the instruments are entitled to priority according to date of registration.
- f) The 20th defendant shall aver that as far as the titles register is concerned the certificate of title comprised in Busiro Block 442 Plot 2 was erroneously issued over an already existing certificate of title.
- g) The office of the respondent shall aver and contend that this is a matter that can be handled by the office by virtue of its statutory mandate to rectify changes in the land register.

**\*Representation;\***

- 5. The applicant was represented by Muhangi George of MBS Advocates whereas the respondent was represented by Arinaitwe Sharon. The respondent did not file an affidavit in reply and submissions despite being served with the application and the hearing notice. There is an affidavit of service and if the respondent had any objection to this application, he would have filed an affidavit in reply to guide this court in reaching its decision therefore this matter stands unchallenged.
- 6. Only the applicant filed his affidavit and submissions, which I have considered in the determination of this application.

**\*Issues for determination;\***

- i) Whether a judgement on admission should be entered against the respondent?
- ii) What remedies are available to the parties?

**\*Resolution and determination of the issues;\***

- i) Whether a judgement on admission should be entered against the respondent?
- 7. After perusal of the affidavit in support of this application and the submissions of counsel for the applicant, emphasis being made to the fact that the respondent did not file an affidavit in reply therefore the application and affidavit of the applicant in the case stands uncontested. \*(See: Samwiri Massa Vs Rose Achen, 1978 HCB 297)\*

- 8. The procedure of entering judgment on admission is governed by **Order 13 r.6 of the Civil Procedure Rules** which provides as follows; *"Any party may at any stage of a suit, where an admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon the admission he or she may be entitled to, without waiting for the determination of the other questions between the parties; and the court may upon application make such order, or give such judgment, as the court may think just."*
- 9. These provisions have been amply expounded upon in various authoritative cases.
- 10. In particular, the Court of Appeal of Uganda in the case of **Kibalama vs. Alfasan Belgle [2004] EA 146** held that; *"Under Order 11 r.6 (now O.13 r.6) judgment can be entered at any stage of the suit where an admission of facts has been made. Such an admission, however, must be unequivocal in order to entitle the party to judgment of any other questions between the parties."*
- 11. Similarly, in the case of **Matovu Luke & Or's vs. Attorney General, HC Misc. Appl. No. 143 of 2003**, Musoke – Kibuuka J, citing Phipson on Evidence, Chapter 24, stated that in civil cases, statements made out of court by a party to the proceedings or by persons connected with him by any relationship are admissible in evidence against but not in favor of such party.
- 12. It is generally immaterial to whom the admission was made. An admission made to a stranger to the suit is as receivable and as relevant as one made to the opposite party.
- 13. Premised on the above authoritative decisions, it would appear clearly that where the admission of facts is clear and

unambiguous, the court ceases to have the discretion whether to enter a judgment or not. It must do so.

- 14. In the instant application, the applicant alleges that the respondent admits certain claims as stated in his amended written statement of defence. The said averments include the following;
- i) Upon perusal of the register, it was revealed that under instrument number KLA 24862 OF 23/12/1959 Land comprised in Mailo register volume 194 folio 20 now Busiro Block 442 Plot 1 was transferred from Nasaneri Mamuli to Yokana Bunkedeko and is the current registered proprietor.
- ii) The perusal of the register in respect to land comprised in Busiro Block 442 Plot 2 reveals that it was initially registered in the names of Eli Kawunya Lule under instrument number KLA 115386 of 4/10/1985.
- iii) That there is no evidence on record of transfer of ownership of the suit land comprised in Busiro Block 442 Plot 1 from Yokana Bunkedeko to Eri Kawunya nor are there mutation forms to show that subdivision was done to create Block 442 Plot 2 from Block 442 Plot 1.

- iv) That the office of the commissioner acknowledges that its erroneous to maintain two certificates of title over the same piece of land on the titles register for which reason it ought to be cancelled.
- v) That the office of the commissioner land registration shall aver and contend that the instruments are entitled to priority according to date of registration and in the circumstances the title registered in Busiro Block 442 Plot 1 was issued first in time.
- vi) The 20th defendant shall aver that as far as the titles register is concerned the certificate of title comprised in Busiro Block 442 Plot 2 was erroneously issued over an already existing certificate of title comprised in Busiro Block 442 Plot 1.
- vii) The office of the respondent shall aver and contend that this is a matter that can be handled by the office by virtue of its statutory mandate to rectify changes in the land register.
- 15. Counsel for the applicant submits that paragraphs 6(a,b,c,d,e,f,g and h) of the respondent's(20th defendant) written statement of defence shows the chronology of registration of the suit land until it is registered in the names of the

applicant(plaintiff) and thus that on the official record of the registrar of titles, the suit land is registered in the names of the applicant as there is no evidence on record of the transfer of the suit land from the applicant to any other person, further the respondent has the mandate to rectify the register to reinstate and maintain the true owner and registered proprietor of the suit land, who is the applicant.

- 16. The applicant relies on the decision in **The board of governors Nebbi town VS Jaker food stores limited Misc. App No.062 of 2016** cited with approval in *Mugema Francis vs Matovu Ibrahim HCCS No.686 of 2019* where Hon. Justice Stephen Mubiru held that the intent of the provision of order .13 rule 6 of the civil procedure rules is to enable a party obtain a speedy judgement to the extent of relief which according to the admission of the other party, he is entitled to, it is intended to prevent frivolous defences from standing in the plaintiff's way of obtaining expeditious judgement to the extent of the admission made by the defendant.
- 17. The perusal of the respondent's/20th defendant amended written statement of defence which is annexure "B" as attached on the applicant's affidavit in support, the said admissions as claimed

by the applicant are entailed in paragraph 6(e,f,g,h,I,j and k). which I would re-state as follows;

- \*e. The 20th defendant shall aver and contend that under instrument number KLA 24862 OF 23/12/1959 Land comprised in Mailo register volume 194 folio 20 now Busiro Block 442 Plot 1 was transferred from Nasaneri Mamuli to Yokana Bunkedeko and is the current registered proprietor.\*

- \*f. perusal of the register in respect to land comprised in Busiro Block 442 Plot 2 reveals that it was initially registered in the names of Eli Kawunya Lule under instrument number KLA 115386 of 4/10/1985.\*
- \*g. That there is no evidence on record of transfer of ownership of the suit land comprised in Busiro Block 442 Plot 1 from Yokana Bunkedeko to Eri Kawunya nor are there mutation forms to show that subdivision was done to create Block 442 Plot 2 from Block 442 Plot 1.\*
- \*h. That the office of the commissioner acknowledges that its erroneous to maintain two certificates of title over the\*

\*same piece of land on the titles register for which reason one ought to be cancelled.\*

- \*i. That the office of the commissioner land registration shall aver and contend that the instruments are entitled to priority according to date of registration and in the circumstances the title registered in Busiro Block 442 Plot 1 was issued first in time.\*
- \*j. The 20th defendant shall aver that as far as the titles register is concerned the certificate of title comprised in Busiro Block 442 Plot 2 was erroneously issued over an already existing certificate of title comprised in Busiro Block 442 Plot 1.\*
- \*k. The office of the respondent shall aver and contend that this is a matter that can be handled by the office by virtue of its statutory mandate to rectify changes in the land register.\*
- 18. The said averments are very clear as to the registration of the suit land, the current registered proprietor and the interest that comes first in time, further this court did not receive any evidence

to the contrary from the respondent despite being served with the application.

- 19. I also take note of the fact that the Respondent does not deny or challenge the averments in the affidavit in support of the application, the annexures or their authenticity. It is trite law that when facts are sworn to in an affidavit and they are not denied or rebutted by the opposite party the presumption is that such facts are accepted as the truth.
- 20. This honorable court deems it fit to grant a judgement on admission for the applicant against the respondent for the averments entailed under paragraph 6(e,f,g,h,I,j and k) of the respondent/20th defendant amended written statement of defense.
- 21. Therefore, the instant application succeeds and the same is hereby granted with no orders as to costs.

I SO ORDER.

NALUZZE AISHA BATALA

JUDGE

29th/07/2024

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