
UGANDA / JUDGMENT

Esther Ssempebwa v Andrew Babigumira and Commissioner Land Registration (Miscellaneous Application No. 505 of 2025) [2025] UGHCLD 86 (13 June 2025)

[2025] UGHCLD 86

COURT

HC: Land Division (Uganda)

BEFORE

Naluzze Aisha Batala, J

CASE / FILE NUMBER

Miscellaneous Application No. 505 of 2025

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS APPLICATION NO. 505 OF 2025

ARISING FROM MISC. CAUSE NO.076 of 2012

ESTHER SSEMPEBWA ::::::::::: APPLICANT

VERSUS

1. ANDREW BABIGUMIRA

2. COMMISSIONER LAND REGISTRATION ::::::::::: RESPONDENTS

BEFORE; HON. LADY JUSTICE NALUZZE AISHA BATALA RULING

Introduction;

1. The applicants brought this application against the respondents under Articles 26, 28 and 44 of the 1995 Constitution of Uganda as amended, Section 37 of the Judicature Act, Sections 82 and 98 of the civil procedure Act, Order 46 rule 1 and 8 of the civil procedure rules for orders that;
 - i) The ruling and orders of this honorable court in Misc. Cause No 076 of 2012 be reviewed and set aside
 - ii) For the reasons that the ruling and orders in Misc. Cause No. 76 of 2012 are reviewed and set aside, a declaration that all entries that were made on the certificate of title of land comprised in Kyadondo Block 194, Plot 44 (now Plots 3066,3067,3068,3069,3130,3129) land at Kungu pursuant to it were illegal.
 - iii) That all entries that were made on the certificate of title of land comprised in Kyadondo Block 194, Plot 44(Now Plots 3066,3067,3068,3069,3130,3129) land at Kungu pursuant to the orders in (i) above be cancelled.
 - iv) That the 2nd respondent vests land comprised in Kyadondo Block 194, Plot 44 (now Plots 3066,3067,3068,3069,3130,3129) land at Kungu in the Applicant as ordered by this court in Misc. Cause No.42 of 2014.
 - v) Costs of this Application be provided for

Applicant's evidence;

- 2. The Application is supported by affidavit deposed by the applicant which briefly states as follows;
- i) That on the 17th March 2003, I purchased land comprised in Kyadondo Block 194 Plot 44 situate at Kungu, measuring approximately 3 acres herein referred to as the suit land from Non-Performing Assets Recovery Trust (NPART).
- ii) That at the time of purchase, NPART was not in possession of a duplicate certificate of title to the suit land. NPART thus undertook to procure a special certificate of title in respect of the land but in vain.
- iii) That I was then approached by the 1st respondent who offered to assist me in obtaining my certificate of title from NPART.
- iv) The 1st respondent further proposed that my claim for a certificate of title be pursued by his lawyer's M/S Luba and Co Advocates who then drafted a memorandum of Understanding to that effect and the same was executed. (A copy of the M. O. U to that effect is attached hereto and marked annexure "B")
- v) That I know I did not sell, offer to sell, pledge or gift the suit land or any part thereof to the 1st respondent and that our agreement was only for sharing damages.
- vi) That I successfully filed HCCS No 954 of 2004 (Esther Ssempebwa vs NPART) in which the court on the 7th of June 2006 decreed that the suit land belonged to me "plaintiff" and ordered the defendant, NPART to provide me with a special certificate of title. (A copy of the judgment and decree are attached hereto and marked as Annexure "C1" and "C2")
- vii) That NPART failed to procure a special certificate of title and thus non was availed in accordance with the judgment of court in HCCS No 954 of 2004.
- viii) That I subsequently filed a Miscellaneous Cause No. 042 of 2014 (Esther Ssempebwa vs Registrar of land) to compel the registrar of titles to issue a certificate of title in my favor.
- ix) That on the 10th September 2014, Misc Cause No 042 of 2014 was determined in my favor and a vesting order was issued compelling the registrar to issue a certificate of title in respect of the suit land to me. (Copy of the application and the order are attached hereto and marked annexures "D1" and "D2")
- x) That however to date the registrar has failed/refused to issue the certificate of title despite efforts by my lawyers, M/S Kasimbazi, Kamazi & Co Advocates.

- xi) That however to my surprise and dismay, I learnt in about 2015 that the 1st respondent had illegally and fraudulently without my knowledge and approval filed in this court Misc Cause No 076 of 2012(Babigumira Andrew vs Commissioner Land Registration) wherein this court granted to him a vesting order in respect of the suit land. Copies of the illegal and fraudulent application and vesting order are attached and marked annexures "E1" and "E2"
- xii) That I know that the 1st respondent despite having been granted a vesting order in Misc Cause No 076 of 2012 was not registered on the certificate of title until 2022.
- xiii) That I had however, lodged a caveat vide instrument number KLA 490492 on the certificate of title with the office of the 2nd respondent but to my surprise, the respondents without any notice or consent lifted my caveat and a special certificate of title in respect of the suit land was issued in favor of the 1st respondent
- xiv) That the 1st respondent has since subdivided the suit land from Plot 44 now to Plots 3066,3067,3068,3069,3130 and 3129 to further defeat my interest and ownership of the suit land.
- xv) That the judgment in HCCS No 954 of 2004 is still valid and binding in respect of the suit land since it was not set aside or overturned by any court of competent jurisdiction.
- xvi) That the subsequent order of this honorable court vesting the land into the 1st respondent without setting aside or overturning the judgment in HCCS No 954 of 2004 is a matter of illegality.
- xvii) That I was neither party to nor was I notified of Misc Cause No. 076 of 2012 (Babigumira Andrew vs The commissioner land registration) in which the 1st respondent obtained the said vesting order against my interests.
- xviii) The orders in Misc. Cause No. 076 of 2012 deprived me of my interest and ownership of the suit land without being heard and I am accordingly aggrieved by the said orders.

1st respondent's evidence;

- 3. The application is responded to by an affidavit deposed by the 1st respondent which briefly states that;
- i) That there are pending suits before the honorable court affecting the suit land vide Civil Suit No. 783 of 2021, Mark Rwabizimbira and Anor vs Andrew Babigumira and Anor, C/S No. 407 of 2022, Paul Omara vs Andrew Babigumira and Anor wherein an injunction was issued vide Misc. Application No 700 of 2022. (A copy of the injunction is attached and marked annexure "A")

- ii) That having already purchased legal interest of the suit land from the applicant who at the time had not been registered on the certificate of title and NPART had failed to deliver the special certificate of title to her, I understood the reason why she was unable to hand over to me the duplicate title and duly signed transfer forms as agreed at the time of purchase and mutually agreed to sue NPART but through her who has directly dealt with them.
- iii) That the memorandum of understanding I signed with the applicant was because she had breached the purchase agreement by not delivering the certificate of title that and

she had no more interest in the land having sold the same to me and we agreed for the applicant to file a suit against NPART on my behalf since I did not transact directly with NPART but with the applicant.

- iv) That the applicant offered to sell and indeed sold the suit land to me which I accepted, purchased and took immediate possession and embarked on settling of the squatters who were on the said land including people who were doing stone quarrying and managed to secure vacant possession of the entire land and remained uninterrupted by the applicant. (A copy of the sale agreement is hereto marked annexure "C")
- v) That upon purchase I settled a number of squatters on the suit land and court did not order that the suit land belonged to the applicant in Civil Suit No. 954 of 2004.
- vi) That it is NPART that applied for and obtained a special certificate of title which was handed over to me by the lawyers who represented the applicant against NPART and upon receipt I applied to court for a vesting order which was granted to me.
- vii) That the order that was issued in Misc Cause No 042 of 2014 to the applicant came when there was an existing vesting order issued to me.
- viii) That the caveat lodged by the applicant was lapsed upon notice being issued and I was registered on the certificate of title on the basis of a vesting order issued to me by court.
- ix) That the applicant was not party to Misc Cause No 76 of 2012 because I had already purchased the land from her.

Rejoinder;

- i) That the applicant is not privy to any of the alleged ongoing litigation vide Civil Suit No. 783 of 2021 and Civil Suit No. 407 of 2022 or the respective application arising therefrom.
- ii) That the parties, facts, claims, cause of action and orders being sought in the instant application are substantially different from those in the aforementioned civil suits and therefore the same are not a bar.
- iii) That all the interests in the aforementioned suits are subsequent to mine in the instant application.

- iv) That I have never sold the suit land to the 1st respondent nor signed the impugned sales agreement dated 26th January 2004 and the said agreement was fabricated and backdated by the 1st respondent as an afterthought calculated to defeat this application.
- v) That the memorandum of understanding dated 17th September 2004 was only intended to sue NPART for its misrepresentations when selling to me Plots 44 and 45 and in payment we were only supposed to share damages/costs in the proportions indicated therein.
- vi) That at all material times, despite the numerous litigation and public hearings I have had against the 1st respondent, he has never presented the purported sales agreement anywhere and only presents our memorandum of understanding.
- vii) That the 1st respondent has always alleged and maintained that he purchased the suit land by way of an oral agreement.
- viii) That in his written statement of defence filed in this honorable court in Civil Suit No.575 of 2015, the 1st respondent under paragraphs 7 (a)(c)(g) averred that our

transaction was indeed by word of mouth. Copies of the plaint and the 1st respondent's written statement of defence in Civil Suit No. 575 of 2015 are attached hereto and respectively marked B1 and B2.

ix) That no notice of caveat lapse was ever issued or served on me, the respondents connived to get my caveat removed without notice.

Representation;

4. The applicant was represented by M/S Crane Associated Advocates whereas the 1st respondent was represented by M/S Kiprotich & Co Advocates. Both the applicant and the 1st respondent filed written submissions which I have considered in the determination of this application.

Issues for determination;

- i) Whether the instant application discloses grounds for review?
- ii) What remedies are available to the parties.

Resolution and determination of the issues;

- i) Whether the instant application discloses grounds for review?
- 5. Before I delve into the merits of this application, counsel for the 1st respondent raised preliminary objections in his submissions that state as follows;
 - i) That the applicant is guilty for inordinate delay in filing this application.
 - ii) That the application is barred by limitation.

- iii) That the application raises contentious matters/fraud which cannot be proved by affidavit evidence?
- iv) That the affidavit in rejoinder is defective for being argumentative.
- 6. I will proceed to resolve the first two preliminary objections jointly
- 7. The two objections are based on the fact that the applicant is guilty of inordinate delay and that the application is barred by the law on limitation.
- 8. It's the submission of counsel for the 1st respondent that the applicant is guilty of inordinate delay in bringing this application because the applicant alleges that he got to know

of the decision in Misc. Cause No 076 of 2012 in 2015 and filed the instant application in 2025. Counsel relied on the decisions in Rossette Kizito vs Administrator General CA No. 09 of 1986 and Combie services vs Attorney General HCMA No 200 of 2009.

- 9. Counsel for the respondent further submitted that the instant application is barred by the law on limitation on grounds that the decision the instant application seeks to review was delivered on the 30th of May 2013 and the said decision was to be challenged within a period of 12 years as per the provisions of sections 3(3) of the limitation act.
- 10. In reply counsel for the applicant submitted that the aspect of inordinate delay is a common law doctrine that is not provided for in the written laws and that section 82 of the civil procedure act and order 46 of the civil procedure rules that provide for review do not state about inordinate delay in bringing the said application.
- 11. It is the submissions of counsel for the applicant that the instant application is not barred by the law on limitation this is because the applicant learnt about the decision in Misc

Cause No 076 of 2012 in 2015 and filed the instant application on the 7th march 2025 and endorsed by court on the 20th of March 2025 making it 11 years and 8 months from 30th of May 2013 when Misc Application N0.076 of 2012 was decided.

- *12.* It's trite that section 3(3) of the limitation act states that *"an action shall not be brought upon any judgment after the expiration of 12 years from the date on which the judgment became enforceable".*
- *13.* It is the principle of law that where a statute provides for a limitation period within which a certain action is to be brought, it cannot be said that the said action is barred by inordinate delay if brought within the provided limitation period. *(See; Iga*

vs Makerere University 1957 EA 65)

- *14.* The instant application is one which is subject to the provisions of the limitation act specifically section 3(3) of the same act and the test before court is whether the application was brought within the provided limitation period or not.
- *15.* The applicant seeks to review the decision of court vide Misc Cause No. 076 of 2012 delivered on the 30th of May 2013. It's the evidence of the applicant that the instant application was

filed on the 7th of March 2025 and endorsed by court on the 20th of March 2025.

- *16.* From the 30th of May 2013 when the decision in Misc. Cause No 076 of 2012 was issued, 12 years later, stretches to the 30th of May 2025 and the instant application was filed on the 7th of March 2025 and endorsed by court on the 20th of March 2025. Going by the dates when the instant application was filed and endorsed by court, it cannot be said that the 12 years' limitation period had elapsed. Instead, the applicant was within the 12 years' period as provided for under section 3(3) of the limitation act at the time he filed the instant application
- *17.* This court is of the finding that the applicant is neither guilty of the inordinate delay nor barred by the law on limitation as alleged by counsel for the 1st respondent.
- *18.* Therefore, the 1st and 2nd preliminary objections are resolved in the negative by this court.

That the application raises contentious matters/fraud which cannot be proved by affidavit evidence?

- 19. It is the submission of counsel for the 1st respondent that the applicant raises allegations of fraud in her affidavit in support and affidavit in rejoinder, fraud is a contentious issue that cannot be addressed in an action of this nature and the best option would be initiating an independent suit where the said fraud will be thoroughly investigated by court.
- 20. Counsel for the 1st respondent relied on the decision in Pulle Kizito Herman and Anor vs Nakachwa Hanifa Semanda and 4 ors Misc Application No. 3794 of 2023 where this court dismissed an application for review and advised the applicants to bring an independent suit for court to investigate the matters in question.
- 21. In reply counsel for the applicant submitted that the instant application is based on a mistake/ error apparent on the face of the record since court in Misc. Cause No 076 of 2012 did not satisfy itself on whether the 1st respondent had actually paid the full/any purchase price for the suit land and that the court reached the decision in the said miscellaneous cause in total disregard of its own earlier judgement in HCCS No. 954 of 2004.

- 22. Counsel for the applicant further submitted that the instant application is not intended to impeach the respondent's titles on the suit land but rather brought to arrest the illegalities and irregularities in the orders in Misc Cause No. 076 of 2012 and there is no fraud required to be proved.
- *23.* My perusal of the affidavit in support of the application deponed by the applicant under paragraph 12, the applicant stated that "to my surprise and dismay, I learnt in about 2015 that the 1st respondent had illegally, fraudulently without my knowledge and approval filed in this court Misc Cause No. 076 of 2012 wherein this honorable court granted him a vesting order in respect of the suit land" further paragraph 15 of the said affidavit states that "again to my surprise and detriment, the respondents without any notice or consent lifted my caveat and a special certificate of title in respect of the suit land was issued in favor of the 1st respondent"
- *24.* Under paragraph 7 of the applicant's affidavit in rejoinder, the applicant states that "I have never sold the suit land to the 1st respondent nor signed the impugned sales agreement"

*dated 26th of January 2004, indeed for the following reasons I know it that the said agreement has just been fabricated and backdated by the 1st respondent as an afterthought calculated to defeat the application". Paragraph 13 of the said affidavit in rejoinder states that "until 2015, I had no knowledge, approval, consent or notice that the 1st respondent had actually illegally and fraudulently applied and obtained a vesting order in respect of the suit land vide Misc. Cause No.076 of 2012"

- *25.* My analysis of the averments in the affidavit in support and the affidavit in rejoinder deponed by the applicant relate to aspects of transfer of ownership of the suit land, issuance of certificate of title, the interest of both the applicant and the 1st respondent in the suit land, all coupled with fraud.
- *26.* Fraud is a serious matter that the party against whom it is alleged should be afforded sufficient notice to enable him or her answer the allegations. (*See; Fam International Limited and Anor vs Mohammed Hamid EL-faith, supreme court civil appeal no. 16 of 1993.*
- *27.* My understanding of the dispute between the applicant and the 1st respondent is that the lasting remedy cannot be sought in an application of such a nature because the applicant has made serious allegations of fraud and illegalities that cannot be resolved within an application for review but rather through an ordinary suit.
- *28.* Referring to my decision in **Pulle Kizito Herman Gerald and Anor vs Nakachwa Hanifa Semanda and 4 ors, (supra)** wherein I relied on the case of **Wandera Stephen vs Goodman Agencies Ltd and Ors MA 680 of 2021** where it was stated that "the court cannot permit the applicants to effectively mask an ordinary suit as an application for review, the evidence presented by the applicant's allegations cannot be conclusively dealt with by mere affidavit evidence and such serious allegations of fraud cannot be decided on the strength of

imagination"

- *29.* In the premises this court is of the finding that the applicant is entitled to initiate an independent suit against the respondents for court to thoroughly investigate all the matters in dispute. In the alternative the applicant can as well join the

pending suits (CS No 783 of 2021 and CS No 407 of 2022) before this court where the suit land herein forms the subject of dispute in the said suits to have all the questions regarding the suit land fully resolved by court.

- 30. Therefore, the \$3rd\$ preliminary objection is upheld by this court so no need to resolve the issues in the main application.
- 31. The instant application is hereby dismissed with no orders as to costs.

I SO ORDER

Hamleyey -

NALUZZE AISHA BATALA Ag. JUDGE. \$13^{th}/06/2025\$

Delivered Electronically via ECCMIS on 16th-day of June 2025.

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