

UGANDA / JUDGMENT

Ian Henderson v Kisakye and 6 Others
(Miscellaneous Application 1433 of 2021)
[2025] UGHCLD 26 (7 February 2025)
[2025] UGHCLD 26

COURT

HC: Land Division (Uganda)

BEFORE

Basaza Waswa, J

CASE / FILE NUMBER

Miscellaneous Application 1433 of 2021

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****(LAND DIVISION)****MISC. APPLIC. NO. 1433 OF 2021****(ARISING FROM HCCS NO. 339 OF 2020 AT KAMPALA)****IAN HENDERSON****APPLICANT** **$\mathbf{v}$**

- 1. KISAKYE ABBEY
- 2. NAKATO JOYCE LUKWAGO (Administrator of the estate of the late Benon Lukwago)
- 3. KALULE DAVID (Administrator of the estate of the late Asafu Tamale)
- 4. FREDRICK MASEMBE
- 5. THE COMMISSIONER LAND REGISTRATION
- 6. BUWEMBO AKAYA
- 7. NUCIA INVESTMENTS LTD

RESPONDENTS

Scanned with CS CamScanner

BEFORE: HON. LADY JUSTICE P. BASAZA - WASSWA

RULING**Representation:**

Ms. Acham Harriet of M/s OS Kagere Advocates, for the Applicant.

Mr. Busingye Vicent of M/s Probata Advocates, for the 1st - 3rd Respondents.

No appearance was made for the 4th Respondent c/o Kaganzi & Co. Advocates.

Mr. Ssekabira Moses (Registrar of Titles) for the 5th Respondent.

Mr. Kalyango Mark and Mr. Kakaire Suleiman of M/s Kalyango & Partners,
for the 6th Respondent

Mr. Mukiibi Paul of M/s Mukiibi & Kyeyune Advocates, for the 7th Respondent.

Introduction:

The subject of the application for review before this court is a consent order in the Head 1st suit: HCCS No. 339 of 2020. The Consent Order dated 11 February 2021 (hereinafter Meschellamme 7/2 $\mathbf{1^{st}}$)

Scanned with CamScanner

referred to as 'the impugned Consent Order'), was entered into between the 1st - 4th Respondents and was endorsed by the then Deputy Registrar of the Court.

- The impugned consent order concerns: 2nd
- Land comprised in Busiro Block 400 known as Plot 55 at Nganjo. Hereinafter (i) referred to as 'the suit land'
- Land formerly comprised in Plot 56 Busiro Block 400 at Nganjo, which was ii) later changed to Plot 301, and subsequently sub-divided into numerous plots numbering as Plots 771 - 802 .
- The Application was brought against the Respondents by the Applicant: Mr. Ian 3rd Henderson, a British National, by motion under Section 82 of the Civil Procedure Act¹, and Order 46 Rules 1 & 2 of the Civil Procedure Rules². He seeks for Orders that the impugned Consent Order be reviewed and set aside, and that the Head suit be heard on its merits. He also seeks that six (6) acres, which he states are now comprised in Plots 771 - 802 , formerly known as Plot 301, be returned to the suit land

(Plot 55) and that the costs of his application be provided for.

Background:

- The head suit: HCCS No. 339 of 2020 was filed in this court on 19 June 2020 jointly [4] by Mr. Kisakye, Ms. Nakato and Mr. Kalule (the 1st – 3rd Respondents herein), against Mr. Masembe, the Commissioner Land Registration (the 4th and 5th Respondents herein), and Mr. Henderson (the Applicant herein).
- In their plaint, Mr. Kisakye and the others sought for a Declaration that Mr. Masembe [5] and the others had committed acts of fraud in respect of the suit land and of Plot 301. They also sought for an order for the cancellation of Mr. (formerly Plot 56). Henderson's lease on the suit land, an order that the certificates of title be recalled, and that the same be registered in the names of the Administrators of the Estate of the late Asafu Tamale. They also sought for a permanent injunction, general damages, interest and the costs of the suit.

Missillamme 7/2

¹ Cap. 282 of the Laws of Uganda
GEARN-IEC With CamScanner

2

- [6] They (Mr. Kisakye and the others) alleged in their plaint that Mr. Masembe fraudulently and illegally created the suit land and registered it in his name in 1994, and that the suit land belonged to the estate of the late Asafu Tamale. They claimed further that the late Asafu Tamale had bequeathed it to the late Benoni Lukwago, who died in 1985.
- In answer, in his written defence to the plaint, Mr. Masembe (the 4th Respondent herein) [7] denied the allegations of illegality and fraud, but admitted to buying only one acre from the late Benoni Lukwago.
- [8] Also in answer, in his defence to the plaint, Mr. Henderson (the Applicant herein) denied the allegations of fraud and illegality. He contended that he is a *bona fide* purchaser for value of a leasehold interest comprised in leasehold Register Volume 3536 Folio 20 plot 55, whose term is 99 years with effect from 1st January 2003. He further contended that the head suit was time barred and frivolous.
- [9] At the stage of mediation in the head suit, (before the commencement of the conference scheduling and trial), the impugned consent Order was entered into between the Plaintiffs (1st, 2nd & 3rd Respondents herein) and Mr. Masembe the 1st Defendant therein (also 4th Respondent herein).
- [10] For the sake of clarity and completeness, the contents / terms of the impugned consent order are laid down below, verbatim:

THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (LAND DIVISION)

CIVIL SUIT NO 339 OF 2020

$\mathbf{v}$

KISAKYE ABBEY 1. NAKATO JOYCE LUKWAGO 2 (Administrator of the estate of the late Benon Lukwago) **3. KALULE DAVID** (Administrator of the estate of the late Asafu Tamale)

Scanned with CamScanner

- **FREDRICK MASEMBE 1.**
- **IAN HENDERSON \$2.\$**

Mandum 7/2

THE REGISTRAR OF TITLES 3.

Consent Order

By consent of the Plaintiffs and the 1st Defendant and their respective counsel, it is hereby agreed as follows;

That the Plaintiffs' claim against the 1st Defendant is hereby resolved in the following terms; 1.

PLAINTIFFS

DEFENDANTS

- That the 1st Defendant bought from the late Benoni Lukwago and is the lawful owner a) of 1 (one) acre of the suit land described as MRV 853 Folio 16 land at Ngajo.
- That the Commissioner Land Registration rectifies the certificate of title for land $\mathbf{b}$) described as Block 400 Plot 55 land at Ngajo by removing 6 (six) acres which belong to the estate of the late Benoni Lukwago, therefore leaving Plot 55 with the 1(one) acre which the 1st Defendant bought from the late Benoni Lukwago.
- That the Commissioner Land Registration rectifies the certificate of title for land c)\$ described as Block 400 Plot 56 at Ngajo by adding the six (6) acres which belong to the estate of the late Benoni Lukwago.

That each party shall bear its own costs of the suit. \$2.\$

Dated at Kampala this 11 day of Feb 2021

Signed

1st PLAINTIFF

Signed

3rd PLAINTIFF

Signed

Signed

\$2nd PLAINTIFF

For; M/s Kaganzi & Co. Advocates (Kampala Branch)

Counsel for the 1st Defendant

Given under my hand and the seal of this court this 11th Day of 03 2021

Signed DEPUTY REGISTRAR

- The impugned consent order was implemented by the Commissioner Land Registration \$[11]\$ (the CLR) and six acres were removed from the suit land (Plot 55) and entered on the title to Block 400 Plot 56 (renamed plot 301). Plot 301 was subsequently acquired by the 6th Respondent, and later by the 7th Respondent, and was subsequently subdivided into numerous plots numbering Plots \$771 - 802\$.
- Aggrieved by the impugned consent order, the Applicant filed the present application. \$[12]\$ and hence this Ruling.

Grounds of the application by the Applicant:

The salient grounds are; \$\\lceil 13 \\rceil\$ nasamblumne 72

Scanned with CamScanner

\$\\overline{4}\$

- i) That the Applicant has a leasehold interest in the suit land described as LRV 3536 Folio 20, for a 99 - year term with effect from 1 January 2003, and that for sixteen (16) years he enjoyed quiet, uninterrupted possession thereof.
- ii) That there is an error apparent on the face of the impugned Consent Order.
- iii) That the impugned consent order was entered into fraudulently without the consent or involvement of the Applicant and it had the effect of disposing of the Head suit, and of depriving the Applicant of six \$(6)\$ out of seven \$(7)\$ acres in the suit land.
- iv) That the impugned order was executed and Block 400 plot 301 was acquired by the 6th & 7th Respondents, and the latter subdivided Plot 301 into 22 plots numbering \$771 - 802\$.
- v) That if the impugned consent order is not reviewed, he will suffer irreparable loss.

Answer to the application by the \$1^{st}\$ – \$3^{rd}\$ Respondents:

- The gist of the answer by the \$1^{st}\$ \$3^{rd}\$ Respondents, in an affidavit in reply sworn by Mr. \$[14]\$ Kisakye (the \$1^{st}\$ Respondent), is;
- i) That the impugned consent order was lawfully entered into before the learned Registrar and there is no apparent error on the record.
- ii) That Mr. Masembe (the 4th Respondent) could not grant a lease to Mr. Henderson on six acres of the suit land since they did not belong to him. That he (Mr. Masembe) could only lawfully lease out one acre to Mr. Henderson.
- iii) That they are not aware of any possession of six acres of the suit land by Mr. Henderson, save for the one acre belonging to Mr. Masembe.
- iv) That the essence of the consent was to sever off what Mr. Henderson wrongfully obtained from Mr. Masembe who undertook to compensate him.

Answer to the application by the 4th Respondent:

- The gist of Mr. Masembe's affidavit in reply, is; \$[15]\$
- That Mr. Henderson obtained a lease interest: known as LRV 3536 Folio 20 in (i) the suit land, and attempted to get a greater interest through trickery.
- ii) That the lease between him (Masembe) and Mr. Henderson is illegal and unenforceable. By virtue of being non-Ugandan, Mr. Henderson cannot and did not acquire an interest greater than a 99 year lease in the suit land.

Masseull umme 7/2

cs Scanned with CamScanner

Scanned with CS CamScanner[®]

- That clauses 4 (a) and (c) of the lease agreement between him (Mr. Masembe) $\frac{1}{2}$ iii) and Mr. Henderson purport to give the latter rights and interests in the suit land that are greater than a 99\$ - year lease.
- That he (Mr. Masembe) leased land to Mr. Henderson under a mistaken belief (iv) that he (Masembe) had purchased and owned 7 acres thereof.
- That during the mediation in the Head suit, he informed the mediator and the 1st / 3rd Respondents, and Mr. Henderson 's lawyers; that he intended to remedy the situation *(sic)* by refunding to Mr. Henderson the money that he had paid for the six (6) acres which legally belonged to the \$1^{st}\$ – \$3^{rd}\$ Respondents. That he did not get a response from Mr. Henderson's lawyers.

- That in order to avoid unnecessary litigation and wastage of time, and money, vi) he (Masembe) decided to settle the case with the \$1^{st}\$ – \$3^{rd}\$ Respondents and the impugned consent order was signed. That he formally accepted to refund to Mr. Mr. Henderson his money for the six acres that were returned to the \$1^{st}\$ - \$3^{rd}\$ Respondents as the rightful owners.
- That he is not aware of the creation of plots 777 to 802 on Busiro Block 400. vii)
- That Mr. Henderson lawfully acquired a lease over one (1) acre which he viii) (Masembe) validly owned and acquired from the late Benon Lukwago.
- That Mr. Henderson was fully aware of what transpired during mediation as his \$ix)\$ lawyers attended and were informed of the position as set out in the impugned consent order, and promised to revert to him (Masembe), but never did. They actively participated in the mediation proceedings that led to the impugned consent order, and that Mr. Henderson cannot say he was not involved.
- That no grounds for review are disclosed. \$x)\$

Answer to the application by the 6th Respondent:

- In an affidavit in reply, the 6th Respondent; Mr. Buwembo, stated; \$[16]\$
- That he was never a party to the head suit No. 339 of 2020 and was not aware \$i)\$ of any leasehold interest, and that the certificate of title to the suit land did not reflect any lease. mash mill annual 7/2

Scanned with CamScanner

Scanned with CS CamScanner[®]

- That prior to the purchase of the suit land, he was availed a copy of the ii) impugned consent order which indicated that the head suit No. 339 of 2020 had been settled.
- iii) That no fraud can be attributed to him.
- That the suit land has changed hands twice ever since the impugned consent \$iv)\$ order was entered and this application is moot.

Answer to the application by the 7th Respondent:

- The gist of the answer by M/s Nucia Investments Ltd; the 7th Respondent, by way of an \$[17]\$ affidavit in reply sworn by its Director: Mr. Numembi, is:
- That it was neither a party to the lease, nor did it witness the transaction between \$i)\$ the Applicant and the 4th Respondent, or knew of any deprivation of the Applicant's interest in the suit land.

- That it wrote to the court verifying the authenticity of the impugned consent ii) order and that the court wrote back verifying its authenticity. That it also conducted a search in the lands registry and confirmed that the suit land was registered in the names of the 6th Respondent and it had no encumbrance whatsoever.
- That it is not aware of any alleged fraud and is not a party to the head suit, but iii) is a *bona fide* purchaser for value without notice of any fraud, and is protected by the law.
- That by the time it acquired interest in the suit land, the impugned consent order iv) was in place, valid and not challenged. That on 3 March 2021 the CLR (5th Respondent) created an instrument of amendment of the register and effected the memo of registration on 5 May, 2021.
- v) That after it purchased the suit land from the 6th Respondent, it applied for, and was registered on the certificate of title to the suit land, still without any incumbrance.

\$\overline{7}\$

Scanned with CS CamScanner[®]

Rejoinder by the Applicant to the answer of the 7th Respondent:

By way of rejoinder, Mr. Hendersen contends; (the gist) [18] Cullum 7/2

CS Scanned with CamScanner

- That in response to the letter dated 14 May 2021 by the 7th Respondent to the i) court, the Applicant wrote a letter dated 19 May 2021 to the 7th Respondent advising it not to deal in the suit land, but the 7th Respondent ignored the letter and proceeded to acquire the suit land on 26 July 2021. That the 7th Respondent is not a *bona fide* purchaser for value without notice.
- That while the 7th Respondent was not a party to the head suit: 339 of 2020, it ii) was at all material times aware of the impugned consent Order and facilitated its execution as set out in the memorandum of understanding dated 16 April 2021 with the 1st and 2nd Respondents.
- That the 7th Respondent actively participated in and financed the illegal iii) deprivation of the suit land from the Applicant and has no protectable interest therein.
- That the memorandum of Registration by the CLR was made in error on the iv) basis of the impugned consent order which was illegal.

Submissions of Counsel:

Learned Counsel for each party filed written submissions, save Counsel for the 6th Respondent who, by letter, associated himself with the submissions of Counsel for the 7th Respondent. I have duly considered each set of submissions, and for brevity, I will only make reference to their arguments, where and if necessary.

Preliminary Objections:

Learned Counsel for the 4th & for the 7th Respondents each raised preliminary [20] objections, albeit only in their submissions, and not at the time when this matter was called for hearing. I will nonetheless address them.

Objections by learned Counsel for the 4th Respondent:

Learned Counsel for the 4th Respondent raised three (3) objections in his written [21] submissions. His main objection, he argued; that the Applicant's affidavit in support of the application, and his affidavit in rejoinder to the 4th Respondent's affidavit in reply, are incurable defective. He submitted that the donor of the Powers of Attorney dated 31 August 2021, a one 'Ian Hazlitt Henderson', who gave powers to a one Shiv maginally many 7/2

cs Scanned with CamScanner

Arora to swear affidavits for and on behalf of the Applicant, is not one and the same person as the Applicant: 'Ian Henderson'.

He submitted further that; if the Applicant wished to change his name, he should have done so by following the mandatory requirements under section 36 (1) of the Registration of Persons Act No. 4 of 2015 (now Cap. 332), to publish such intended change in the Gazette in the prescribed form. That in the absence of compliance with that provision, the present Application should be struck out for being incurably defective.

- Learned Counsel also argued, as his second objection, that the said Powers of Attorney [22] do not list the present Misc. Application No. 1433 of 2021 among the matters for which authority was allegedly given to Shiv Arora to act for and on behalf of Ian Hazlitt Henderson. That therefore Shiv Arora acted ultra vires the said Powers.
- The third objection of Counsel was; that the said Powers of Attorney, and the statutory [23] Declaration by Ian Henderson to the effect that he is one and the same person as Ian Hazlitt Henderson, are both unregistered documents and cannot be relied upon in a court of law.
- In rebuttal to these objections, in her submissions in reply, learned Counsel for the [24] Applicant submitted that the preliminary objections of the 4th Respondent refer to documents filed in an earlier application for an injunction No. 1434 of 2021, which she stated, was resolved in the applicant's favor. That Counsel has merely repeated his

submissions made in that application M. A No 1434 of 2021, and that she therefore maintains, as stated in the Statutory Declaration, that her client Mr. Ian Henderson is one and the same person as Mr. Ian Hazlitt Henderson, and that her client authorized Mr. Shiv Arora to swear those affidavits on his behalf.

- I have carefully looked at both the Powers of Attorney and the Statutory Declaration [25] referred to, and I note from the Statutory Declaration, that the Applicant: Ian Henderson declared that he is one and the same person as Mr. Ian Hazlitt Henderson. That position has not been rebutted nor challenged in any way. I also see that both documents, which are both dated 31 August 2021, were registered in September 2021 with the Uganda Registration Services Bureau (URSB). Such registration was made prior in time to the date this matter was first called for hearing in October 2022. That being the case, I therefore see no merit in the [1st] & [3rd] objections. Machelelming 7/2

Scanned with CamScanner

- I further note, contrary to the 4th Respondent's second objection, that in clause 1 of the [26] Powers of Attorney, this present application No. 1433 of 2021 is listed among the matters for which authorization was given by the Applicant: Ian Henderson to Mr. Shiv Arora. In addition, on the face of each document there is an indication from the stamps thereon, that stamp duty was duly paid. There is nothing on the court record to contradict or counter that position.
- Accordingly, I find no merit in all the three (3) objections raised by learned Counsel for [27] the 4th Respondent, and thus overrule them.

Objections by learned Counsel for the 7th Respondent:

Learned Counsel for the 7th Respondent submitted that the present application was [28] wrongly brought against the 6th and 7th Respondents and cannot be sustained. That the duo are merely 3rd Parties who were never parties to the Head suit: No. 339 of 2020, and that neither were they parties to the impugned consent Judgment, and nor did they, or the applicant, apply to add them to the present application under order 1 Rule 10 (2) of the CPR. That the doctrine of *privity of contract* applies to consent Judgments, and since the consent Judgment was between the [1st] - [3rd] Respondents and the [4th] Respondent, and implemented by the 5th Respondent, the same was wrongly brought against the 6th and 7th Respondents.

For their proposition learned Counsel relied on a decision by Musota J., (as he then was), in *Turyagumanawe Moses & 6 Ors v Attorney General & Anor* [3].

- In reply, learned Counsel for the Applicant submitted that the submission on privity of [29] *Contract* by Counsel for the 7th Respondent is misconceived. She argued that from the wording of Order 46 of the CPR, a stranger or 3rd party to a suit from which a consent order arises can make an application to court for review. That

such an application for review is an independent / fresh claim in itself and can be brought by or against persons who were not parties to the suit from which the issue for determination arises. For her proposition Counsel cited O. 1 Rule 3 of the CPR and *Ismail Abdalla v Abdu*⁴.

- While I agree that the doctrine of **privity of contract** may apply to some cases involving *Consent Judgments and orders*, I opine that it does not apply to all cases. I am in

Missimulation 7/2

³ HCMA No. 559 of 2016 ⁴ (1977) HCB at 271

Scanned with CamScanner

agreement with the submissions of learned Counsel for the Applicant that the said doctrine does not apply to the present case.

- In the *Turyagumanawe* case (*supra*), although the Attorney General was sued together *with Uganda Wildlife Authority (UWA) as Co-Defendant*, the duo was sued in their own individual capacities, and to the exclusion of UWA, the Attorney General decided to negotiate a settlement with the Plaintiffs by which that office assumed liability for the suit. Indeed, Musota J., (as he then was) held, and correctly so, that there was no way that UWA could be party to that application for review from that consent Judgment as the doctrine of **privity of contract** applied in that case.
- Unlike the **Turyagumanawe** case which was based on a chose in action⁵, that involved *compensation claims (rights in personam)* by the claimants therein, in this present application, the action by the Applicant is an action based on alleged rights in rem⁶, enforceable against the whole world. The Applicant claims to be the registered proprietor of a leasehold interest in the suit land (Plot 55), and as such this application is clearly distinguishable from the nature of claims made in the **Turyagumanawe case**.
- The difference between the two kinds of rights (in personam and in rem) was articulated *in the old celebrated case: John Katarikawe v William Katwiremu*⁷, in which it was stated that in a land system based on registration [...], the registered interest / estate is known as rights **in rem** and bind the whole world. That before a transfer (registration) is effected, the purchaser acquires an equitable interest in the nature of a right in personam, enforceable only against a vendor.

- Accordingly, with all due respect, I reject the submissions of learned Counsel for the \$[34]\$ 7th Respondent. I find that not only did Counsel cite the *Turyagumanawe case (supra)* out of context, but his objection simply lacks merit. It is my Ruling therefore, that the \$6th\$ and \$7th\$ Respondents were rightly joined as parties to this application. Resultantly, I overrule the said objection.

Marine 7/2

CS Scanned with CamScanner

5 A right *in personam*, a personal right to recover debts, money, shares in a joint stock company or a claim for damages in Tort or for breach of contract. See Black's law Dictionary, 9th ed. at 33, 275 & 1438. 6 A right *in rem* applies to specific property and is exercisable against the whole world at large, rather than against a particular person. It is also termed as a 'real right which includes ownership, use, habitation, pledge and real mortgage rights. See Black's law Dictionary, 9th ed. at 1437 & 1438. 7 [1977] HCB at 211.

Scanned with CS CamScanner[®]

- Be that as it may, if procedurally the Applicant was required to first obtain the leave of \$[35]\$ court before joining the 6th and 7th Respondents as co-respondents to this suit, such omission can still be remedied by the Court at any stage.
- I will, and do hereby remedy that by validating the said joinder of the 6th and 7th \$[36]\$ Respondents as co-respondents to this suit. I do so in exercise of my inherent and discretionary powers under Order 1 Rule 10 (2) of the CPR and section 98 of the CPA. I find that indeed, the duo ought to be parties to this application as their presence in court is necessary to enable court effectually and completely settle the questions involved in this application. (Order 1 rule 3 of the CPR also applied).
- \$[37]\$ I will now turn to address the substance of the application.

Issues for determination:

The questions for determination are:

- 1. Whether the Applicant has shown sufficient cause to warrant the grant of an order of review of the impugned consent Order?
- 2. Whether there are any remedies available to the parties

Analysis by Court:

- To warrant the grant for review of a Decree or an Order in an application brought under [38]§ Sec. 82 of the Civil Procedure Act, and Order 46 Rule 1 of the Civil Procedure Rules, the grounds that must be established are;
- That there is Discovery of new and important matters or evidence, which after (i)§ the exercise of due diligence was not within the Applicant's knowledge, or could not be produced by him or her at the time when the decree was passed or the order made.
- That there is some mistake or error apparent on the face of the record. ii)
- That any other sufficient reason exists. iii)

Maguel Dumme 7/2

Also see the above grounds re-echoed in the decisions in *Tanitalia LTD. V Mawa* Handels Anstalt⁸ and in DAPCB v. Waris Ali Fadhul & Anor⁹.

For the third ground of 'any other sufficient reason', that expression "sufficient" should be read as meaning sufficiently analogous to (i) and (ii) above.

- In the present application the ground raised by the applicant is; that there is an error or [39] mistake apparent on the face of the record. He contends that the impugned consent order was entered into fraudulently without his consent or involvement, and that it had the effect of disposing of the Head suit: No. 339 of 2020, and of depriving him of six \$(6)\$ out of seven \$(7)\$ acres of the suit land.
- The concept of 'an error apparent on the face of the record', was well expounded by [40] Oder JSC., in the case: Edson Kanyabwera v. Pastori Tumwebaze¹⁰. Citing A. I. R Commentaries; The Code of Civil Procedure by Manohar and Chitaley¹¹, the learned Justice stated that:

... In order that an error may be a ground for review, it must be one apparent on the face of the record, i.e. an evident error which does not require any extraneous matter to show its incorrectness. It must be an error so manifest and clear that no court would permit such an error to remain on the record. The 'error' may be one of fact, but it is not limited to matters of fact, and includes also error of law'.

- In that *Kanyabwera appeal (supra)*, the absence from the record of an affidavit of [41] service on the Defendant or his Counsel was an error or mistake on the face of the record that justified a review as the defendant was not properly served with hearing notices.
- Similarly in another case: Nyamogo and Nyamogo Advocates vs. Kogo¹², that was [42] decided by the court of Appeal of Kenya, the Justices reasoned that:

'There is a real distinction between a mere erroneous decision and an error apparent on the face of the record. Where an error on a substantial point of law stares one in the face, and there could reasonably be no two opinions, a clear case of error apparent on the face of the record could be made out...an error which has to be established by a long drawn process of reasoning or on points where there may be conceivably two opinions, can hardly be said to be an error apparent on the face of the record'.

\$[43]\$ Guided by the above authorities, the question to be answered in this present application is: 'whether there is an evident error on the record that is so manifest that it does not

Negally mm 7/2

⁸ [1957] E. A at 215 - 218 ⁹ HC Misc. Applic. No. 716 of 2017 ¹⁰ / ¹¹ SCCA No. 6 of 2014 ¹² Volume 5, 1908 ¹³ [2001] 1 E. A at 173-5

Scanned with CamScanner

require any extraneous matter to show its incorrectness'. Or put differently; 'whether there is an error on a substantial point of law that stares one in the face?'

- \$[44]\$ Learned Counsel for the Applicant argued that the absence of the Applicant's signature on the impugned consent order yet the order affects his interests in the suit land, is an error apparent on the face of the record justifying a review of the impugned consent order, and setting it aside. Citing Robert Migadde v Musoke Tadeo and Others¹³ and Article 44 of the Constitution of Uganda, Counsel submitted that a consent Judgment entered into by a few parties to the suit to deprive another person, not a party to the consent, of his property, is a nullity at law for violating that person's constitutional right to be heard, which right cannot be derogated from.
- In reply, learned Counsel for the \$1^{st}\$ \$3^{rd}\$ Respondents acknowledged that the Applicant \$[45]\$ did not sign the impugned consent order, but argued that setting it aside would infringe several other people's right to be heard and would result in endless litigation.

Counsel further argued that the 4th Respondent conceded that he had wrongly leased the suit land to the Applicant, and undertook to compensate him, and that therefore the Applicant would not suffer irreparable loss.

- For the 4th Respondent, his Counsel argued that there is no error apparent on the face \$[46]\$ of the record. That it is not true that the Applicant was not heard. That rather, he voluntarily withdrew from the mediation process and cannot blame anyone as he sat on his own rights. That the issues raised in the present application require court to delve into questions of ownership of the suit land *vis a' vis* the Applicant's lease interest, and the relationship between lessor, lessee and 3rd parties. That all those questions would require examination of evidence and arguments, all of which cannot be dealt with

under an application for Judicial (sic) review.

- Learned Counsel for the 7th Respondent, and by implication also learned Counsel for \$[47]\$ the 6th Respondent¹⁴, was silent on the question of whether or not there is an error apparent on the face of the record.

Marahalummet 7/2

¹³ HCMC No. 109 of 2017 ¹⁴ Learned Counsel for the 6th Respondent associated himself with the submissions of learned Counsel for the 7th Respondent.

Scanned with CamScanner

- I have carefully looked at the impugned consent Order, and at all the documents \$[48]\$ presented by each party, and I find that clearly there are two glaring errors or flaws on the face of the record that need no extraneous matter to show their incorrectness.
- The first glaring error is that Mr. Henderson, who was a Defendant in the head suit No. \$[49]\$ 339 of 2020, was neither a party to, nor did he sign the impugned consent Order, yet its terms deprived him of six \$(6)\$ out of seven \$(7)\$ acres in the suit land (Plot 55) to which he indisputably had a registered leasehold interest known as LRV 3536 Folio 20 for 99 years with effect from 2003. See copies of both the leasehold certificate of title, and the mailo certificate of title to the suit land (Plot 55). In the former, he is registered thereon as the proprietor, while in the latter his lease interest is registered as an encumbrance.
- A similar observation was made by the Supreme Court in similar circumstances in: \$[50]\$ Mulewa Isebahasa & 14 Ors v Western Uganda Importers & Distributors Ltd & Anor¹⁵. In that appeal, the Supreme Court observed that the Justices of Appeal and the High Court were correct in their conclusion that on the face of the consent Judgment, the consent Judgment was irregular on account that it left out the input of the 2nd Respondent yet it was a party to the original suit: HCCS No. 003 of 2003. They further observed that Counsel Sserunjogi of M/s A. N Sserunjogi Advocates who signed on the consent Judgment as a lawyer for the 1st Respondent, signed as such, yet neither he, nor the Firm he purported to represent, were lawyers for the 1st Respondent. The Justices of the Supreme Court further concurred with the Justices of Appeal, who had in turn concurred with the High Court, that it was correct to recall that wrong consent Judgment.

- The second glaring error is that the consenting parties neither had the authority nor the power known in law to reach the terms that they reached in the impugned consent order. To wit; the terms 'that the CLR rectifies Block 400 Plot 55 by removing six acres and leaving Plot 55 with one acre, and that the CLR rectifies the register for Busiro Block 400 Plot 56 at Nganjo by adding the six acres',
- It is trite law that the power and authority to direct cancellation of titles, or to make any instrument, entries or memorial in the Register book relating to land, is a preserve of

Macalel ammy 7/2

Scanned with CamScanner

Scanned with CS CamScanner the High Court *(see sec. 161 of the RTA)* and the higher appellate courts, or by the CLR after due process, under the special / limited powers of that office that are provided for under section 88 (formerly 91) of the Land Act.

It is also trite, that a registered proprietor of any land under the RTA is protected against ejection except for fraud, illegalities, and the other circumstances listed under section 160 of the RTA. Specifically on illegalities, as one of the exceptions, see the decision of the Court of Appeal in *Uganda Broadcasting Corporation (UBC) v. Sinba (K) Ltd* & 2 Ors, approved by the Supreme Court in *Sinba (K) Ltd & 4 Ors v Uganda Broadcasting Corporation*. In that application, Kakuru JJA, stated that:

"...a certificate of title can be cancelled where it contains an illegal endorsement, is illegally or wrongfully obtained or is illegally or wrongfully retained...and courts of law can order cancellation of registration and transfers of title on account of illegalities without the parties necessarily having to first plead and prove fraud...a purchaser's title can be defeated on account of an illegality alone without proof of fraud'

- Save for the exceptions stated above, a title, estate or interest of a person named in a certificate of title to land as proprietor, cannot be ejected, more specifically so, by lay persons without legal authority or basis, and in the manner done; by way of the impugned consent order.
- Accordingly, the impugned consent order that is drenched and soaked in illegality, and which had the effect of ejecting Mr. Henderson, the registered proprietor of the lease described as LRV 3536 Folio 20, from six (6) out of seven (7) acres of the suit land, is void ab initio*, and of no legal effect.

Remedies:

It is a well settled principle of law that: 'a Court of law cannot condone, sanction or \$[56]\$ enforce an illegality once the illegality is brought to its notice'. See **Kisugu Quarries* Ltd v Administrator General*²⁰ and *Active Automobile Spares Ltd v Crane Bank Ltd & \$Anor*²¹/sup>\$.

:amScanner

Maghelumme 42

21 SCCA No. 21 of 2001

20 1999 1 F. A at page 162-174

Scanned with CS CamScanner[&]

^{&/sup>lt;sup>16} Cap 236 of the Laws of Uganda

^{&/sup>lt;sup>17} The Registration of titles Act, Cap 240 of the Laws of Uganda.

^{&/sup>lt;sup>18} COA Civil Application No. 12 of 2014 [2014] UGCA 12. ¹⁹sup> SCCA No. 3 of 2014 [2015] UGSC at 21

- In the *Kisugu Quarries* case (supra), the lease that was the subject of that case was held \$[57]\$ by the Supreme court to be invalid, prohibited, and void **ab initio**, on the basis that it lacked the mandatory Ministerial Consent required under sec. 2 of the Land Transfer Act, Cap. 202 (now repealed). The Court consequently held that there was no property owned by the alleged former owner in accordance with the law, and that nothing subsequently done could convert what was void **ab initio** into an enforceable contract.
- Similarly, having found that the impugned consent order is illegal and void **ab initio**, \$[58]\$ and of no legal effect, it follows that nothing consequently, and subsequently done could convert what was void **ab initio** into an enforceable order. Thus all the actions taken by the Commissioner Land Registration (CLR) pursuant to the illegal void order, are also illegal and void, and must be set aside.
- It is evident from the wording and structure of the memorandum of Registration dated [59] 3 March 2021 (see that memorandum attached as annexure NIL3 to the affidavit in reply of the 7th Respondent), that the actions of the CLR in rectifying the Register Book, when he transferred six (6) acres from the suit land (Plot 55), leaving it with only one (1) acre, and added the said six (6) acres to Plot 56 (renamed Plot 301 and later Plots 771-802), were actions that were done pursuant to, and based on, the impugned consent Order.
- For the reasons given, and fortified by the decisions in the cases already cited: **Uganda* [60] Broadcasting Corporation (UBC) v. Sinba (K) Ltd* (supra) and the *Kisugu Quarries* case (supra), both the impugned consent order and the actions of the Commissioner Land Registration that flow from that illegality cannot stand and must be set aside.

- However, in their affidavits in answer to this application, the \$6th and \$7th Respondents \$[61] averred that they were not aware of the leasehold interests of the Applicant, and that they are *bona fide* purchasers for valuable consideration, without notice of any fraud or error.
- Learned Counsel for the 7th Respondent also submitted that the court does not have [62] power to cancel a title of any person on account of fraud before the allegations of fraud are proved against them in a full trial. That the 7th Respondent's titles cannot be

Macambamma Hz

cs Scanned with CamScanner

impeached by an application of this nature except through a formal suit. He cited the case: Elizabeth Nanteza Nabeta v Dr. Anthony Konde²².

- In rebuttal, learned Counsel for the Applicant submitted that the 7th Respondent is not \$[63] a bona fide purchaser for valuable consideration without notice. She argued that the 7th Respondent had actual notice prior to the purchase of the suit land when it inquired of court by its letter and response from the court marked as NIL 1 and NIL 2 attached Further that notice was also given to the 7th to its affidavit in reply, respectively. Respondent in a letter dated 19 May 2021 (annexures BB1 – BB3 to the Applicant's affidavit in rejoinder to the 7th Respondent's affidavit in reply) which prior notice disentitles the 7th Respondent to claim that it is *bona fide*. Counsel further argued that the 7th Respondent undertook in a memorandum of understanding dated 16 April 2021, executed between the \$1st – \$3rd Respondents and the 7th Respondent, to facilitate the process of executing the impugned consent order, and as such, has no protectable interest in the suit land.
- The concept of a *bona fide* purchaser for valuable consideration is embodied in *section*. [64] 165 (formerly 181) of the Registration of Titles Act²³. Under that section, a purchaser bona fide for valuable consideration of land under the operation of the Act is protected against an action of ejectment, or for recovery of damages, or for deprivation of the estate or interest in respect to which he / she is registered as proprietor, on the ground that the proprietor through or under whom he / she claims, was registered through fraud or error or has derived from or through a person registered as proprietor through fraud or error.
- The words 'bona fide' and 'Bona fide Purchaser' are respectively defined in Black's Law \$[65] Dictionar \$v\$ ²⁴ as:

"Made in good faith; without fraud or deceit"

And as:

"One who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller's title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims...a *bona fide* purchaser for value is not affected by the transferor's fraud against a third party and has a

INCG Mul umme

- ²³ Cap 240 of the Laws of Uganda
- ²⁴ 9th edn. at 199 and 1355 respectively.
- Scanned with CamScanner

²² HCCS No. 391 of 2010.

superior right to the transferred property as against the transferor's creditor to the extent of the consideration that the purchaser has paid" (Underlining mine).

- Guided by the above definitions, 'prior knowledge of adverse claims against the seller's \$[66]\$ *title*' obtained through 'error', 'illegality' or 'fraud', disqualifies one from being treated as *a bona fide* purchaser of property for value.
- I have carefully studied the documents listed below that were *inter alia* referred to by [67] both Counsel (are also attachments to their client's pleadings), and I have no doubt in my mind that the \$6^{th}\$ and \$7^{th}\$ Respondents had '*prior knowledge of the adverse claims* cum interests of the Applicant before they purchased plot 56 (later named plot 301). They cannot therefore be allowed to feign ignorance or no notice of his leasehold interest on the suit land. They were fully aware from the start, and cannot be treated as *bona fide* purchasers for value without notice. The arguments of learned Counsel for the 7th Respondent in this respect are therefore rejected.
- The unrebutted letter of the Applicant's lawyer to the 7th Respondent dated 19 \$i\$ May 2021, together with the courier papers of Aramax that show delivery of that letter to the \$7th\$ Respondents' lawyers. (See annexures BB1 – BB3 to the Applicant's affidavit in rejoinder to the 7th Respondent's affidavit in reply).

In that letter the 7th Respondent was cautioned not to buy the suit land on account that the Applicant: Mr. Henderson had a lease on the suit land, and that the question of ownership remained unresolved.

- The un rebutted memorandum of understanding dated 16 April 2021, executed ii) between the \$1^{st}\$ - \$3^{rd}\$ Respondents and the 7th Respondent, attached to the Applicant's affidavit in rejoinder as annexure 'CC'. That memorandum of understanding shows that the 7th Respondent was in the picture from the get go. The 7th Respondent is described therein as a 'facilitator and financier of the process of transferring the six acres of land from Plot 55 to plot 56'. To wit; the 7th Respondent was in the picture way before 21 May 2021, the time that the 6th Respondent was registered as proprietor of the Plots in issue vide instrument WBU-00287643. (See the search statement marked as Annexure NIL 5 to the affidavit in reply of the 7th Respondent).
- The memorandum of registration by the Commissioner Land Registration dated iii) 3rd March 2021 by which he effected the illegal impugned consent order. See

Scanned with CamScanner

Scanned with CamScanner[®] annexure NIL 3 to the affidavit in reply by the 7th Respondent, in which the lease of the Applicant is expressly mentioned in clause 3 thereof.

- The certificate of title to the Applicant's leasehold interest described as LRV \$iv)\$ 3536 Folio 20 Plot 55 (Annexure C to the Applicant's affidavit in support)
- The Reversionary title to the suit land (Plot 55) that shows that the leasehold \$v)\$ interest of the Applicant was registered thereon as an encumbrance.
- The pleadings in the head suit No. 339 of 2020, which explicitly show that the \$v_i\$) Plaintiffs therein (the \$1^{st}\$ - \$3^{rd}\$ Respondents in this application), were battling inter alia, the existence of the Applicant's lease interest on Plot 55, for which they sought in their plaint for the cancellation of that lease. (See paragraphs 6 and \$7(i)\$ of the Complaint)
- That being the case, as stated earlier, both the impugned consent order and the actions [68] of the Commissioner Land Registration that flow from that illegality cannot stand and must be set aside. It is settled that nothing subsequently done on the basis of an illegal void order can convert what was void ab initio into an enforceable order, (see Kisugu *Ouarries Ltd case).*
- I am duty bound to reverse the status quo to the status quo *ante* that existed before the [69] said illegalities occurred. I will do so taking it into account that all the plots 771 - 802 are still in the names of the 7th Respondent by virtue of the order of an injunction in M. A. 1434 of 2021.

- I am fortified in this position by the decisions made in the cases cited earlier: *Uganda* [70] Broadcasting Corporation v. Sinba (K) Ltd & 3 Ors (Supra) and Kisugu Quarries Ltd v. Administrator General (supra) to the effect that courts of law can order cancellation. registration and transfer of titles, on account of illegalities alone, without the parties necessarily having to first plead and prove fraud.
- The rationale for the above position, as pointed out by Kakuru, JA., in the Uganda \$[71]\$ Broadcasting Corporation v. Sinba case, is the gist in the: Makula International Ltd v. Cardinal Nsubuga^{>25} case, and other cases, that emphasize illegalities as opposed to</sup>

MESHWUMM 72
25 SCCA No. 4 of 1981

Scanned with CamScanner

Scanned with CamScanner^{>®} fraud; An illegality overrides all questions of pleadings, including any admissions made.</sup>

Decision of this court:

- In the final result, this application succeeds and is allowed in the following terms: \$[72]\$
- The consent order in HCCS No. 339 of 2020 dated 11 February 2021, is 1. reviewed, declared null and void and hereby set aside.
- The actions of the Commissioner Land Registration (5^{>th} Respondent) that were \$2.\$ done on the basis of, and pursuant to the illegal consent order: of making changes to, and amending the Register Book by transferring six (6) acres from the suit land (Plot 55), and leaving it with only one (1) acre out of seven (7) acres, and adding the said six (6) acres to Plot 301 (formerly Plot 56), and making further changes of sub-dividing that plot 301 into numerous plots, are all declared illegal and void actions, and are hereby set aside.</sup>
- The Commissioner Land Registration is directed to cancel all the certificates of \$3.\$ title to plots Nos. 771 - 802 that were created and mutated from Plot 301 (formerly Plot 56), and to reinstate to the suit land (Busiro Block 400 Plot 55), all the six \$(6)\$ acres that were wrongly removed from that plot and wrongly added to Plot 301 (formerly described as Busiro Block 400 Plot 56).
- Accordingly, the Commissioner Land Registration is further directed to amend \$4.\$ the Register book relating to all the affected Plots of land to give effect to this Ruling. (sec. 161 of the RTA, applied).
- \$5.\$ The costs of this suit shall abide the outcome of the Head suit. (Sec. 27 (1) & \$(2)\$ of the CPA applied).

I so Order,

Macmh)umme 7/2

P. Basaza - Wasswa Judge

February 7, 2025 Scanned with CamScanner

Judgment delivered electronically on the Judiciary ECCMIS portal and via email to the parties.

Emails to: hacham@osk.co.ug and os@osk.co.ug for the Applicant, and to vicentbaala@gmail.com for the 1st – 3rd Respondents, and to info@kacadvocates.com for the 4th Respondent, and to kalyangomark2013@gmail.com for the 6th Respondent, and to mukadvocates@gmail.com for the 7th Respondent.

Massell mm 7/2

CS Scanned with CamScanner

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/ug/judgment/ughcld/2025/26/eng@2025-02-07>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/ian-henderson-v-kisakye-and-6-others-miscellaneous-application-1433-of-2021-2025-ughcld-26-7-february-2025-unknown-topic-unknown-court-2025--6a3ea4db3b1caa91297e814b>

Prepared on 14 October 2026 · Esheria