

UGANDA / JUDGMENT

Kamoga v Bugingo (Miscellaneous Application 701 of 2023) [2023] UGHCLD 425 (11 October 2023)

[2023] UGHCLD 425

COURT

HC: Land Division (Uganda)

BEFORE

Nkonge, J

CASE / FILE NUMBER

Miscellaneous Application 701 of 2023

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THE REPUBLIC OF UGANDA**IN THE HIGH COURT OF UGANDA AT KAMPALA****(LAND DIVISION)****MISCELLANEOUS APPLICATION NO.701 OF 2023**

(Arising from Execution Miscellaneous Application No.078 of 2021)

(Arising from Civil Suit No.2036 of 2015)

MUHAMADI KAMOGA:.....

VERSUS

BUGINGO ANDREW NGANDA:.....

Before: Lady Justice Alexandra Nkonge Rugadya. 10

Ruling.

This application brought by way of notice of motion under the provisions of Section 33 of the Judicature Act cap. 13, Section 98 of The Civil Procedure Act cap.71 and Order 50 rule 8 of the Civil Procedure Rules SI 71-1 seeks orders that the execution issued against the applicant and his attorney be set

15 aside, and that costs of the application be provided for.

Grounds of the application.

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The grounds upon which this application/appeal is premised are contained in the affidavit in support thereof deponed by the applicant but briefly they are that

he filed Civil Suit No.2036 of 2015 wherein a settlement was reached and a 20 consent judgment entered on 3rd May, 2018.

That the said consent required the applicant who was the plaintiff's lawful attorney, and the plaintiff to compensate the respondent for his plots of land at Rubaga and that the same consent judgement made reference to 19 other

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beneficiaries who were to be compensated by the applicant and the plaintiff in the main suit.

That the applicant started compensating the beneficiaries by identifying their areas of interest, marking out the boundaries thereof, identifying and settling adverse interests, causing surveys, and processing various certificates of titles for the beneficiaries as per the terms of the aforementioned consent judgment,

But before the applicant could finalize the compensation process, he learnt that the respondent had issued a notice to show cause why execution should not issue against the applicant herein who was the plaintiff's lawful attorney.

That before the applicant could answer the notice, and continue with the \$10\$ compensation process, a one Fredrick Kwatakunsawo Ssengooba Kiwanuka on whose authority the applicant herein acted withdrew the powers of attorney.

The applicant was therefore stripped of his powers to deal with the land, compensate the respondent, and power to enforce his obligations under the consent judgment. That the same was not taken under consideration by the learned Registrar.

That where a party fails to perform their obligations under a consent judgement, the ideal procedure ought to have been by contempt of court proceedings as opposed to a notice to show cause why execution should not issue. This was a procedural aspect which the learned registrar had overlooked.

That not only did the respondent use the wrong procedure which is barred by law, she also termed the applicant a beneficiary for purposes of liability yet a beneficiary does not per se cloth the applicant with powers to enforce the obligations under the consent judgment where the powers have been withdrawn and that the applicant does not have any interests registered in his names.

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Additionally, that the applicant has been informed by his lawyers that setting aside the wrong procedure does not affect the consent judgment but rather seeks to cure the procedure impropriety that the learned registrar did not take into

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account, and that since the applicant no longer has powers to compensate the respondent, the order of execution issued against him amounts to an injustice.

Further, that it is in the interest of justice and fairness that this appeal is granted.

$\$S$ Respondent's reply.

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earned effort.

The respondent opposed this application through his affidavit in reply wherein he stated that on 3rd May and 31st August 2018, this court entered a judgment and decree in Civil Suit No.2036 of 2015 and that the same imposing obligations and awarding benefits to the plaintiff therein to wit; Kwantakunsawo Fredrick Ssengooba Kiwanuka, his attorney Muhamad Kamoga, as well as the respondent.

That in fulfilment of his obligations, the respondent handed over duly executed mutation forms and transfer instruments to the applicant to enable him acquire 8.92 acres from **plot 131** as per the consent judgement.

That the appellant/applicant herein being in possession of the certificate of title 15 of the suit land as well as the mutation forms handed over to him, the applicant proceeded to subdivide the suit land to wit plot 131 at Bugabo into several plots, some of which were sold.

That the appellant fraudulently and with impunity deliberately refused to return the residue title of *plot 131* to the respondent until the respondent instituted 20 execution proceedings. That he curved out 15.863 acres instead of the 8.92 acres which had been awarded to him under the judgment.

In addition, that the applicant has never handed over to the respondent the one acre of land free from any squatters as per the obligation imposed on him under paragraph \$d\$ of the judgment; and that although the applicant is in possession of the said one acre, he simply intends to defraud the respondent of his hard

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That because the applicant has not fronted any reasonable cause indicating why he has not fulfilled the obligations imposed on him by the judgment and decree of this court, he has not shown any cause why execution cannot issue against his person in execution of the decree; and that this vexatious appeal/application

\$\mathsf{S}\$ is brought in bad faith, intended to prevent the respondent from enjoying the fruits of his judgment without merit, and the same should be dismissed with costs.

That because the consent judgement of this court imposes obligations on the applicant which obligations the applicant has deliberately refused to fulfil, the warrant of arrest was properly issued against his person in execution of the decree.

That it is in the interest of justice that a judgment entered into by this court in 2018 be executed so that the respondent can realize the fruits of his judgment by dismissing this appeal with costs.

Applicant's rejoinder. \$15\$

The applicant also filed an affidavit in rejoinder wherein he stated **inter alia** that at all times, he was an attorney to the plaintiff in **Civil Suit No.2036 of 2015** and as such all the benefits that were advanced to him were as a result of the works he executed as Mr. Fredrick Kwatakunsawo's attorney.

- That the respondent never availed to the applicant the title of the parcel \$20\$ constituting his entitlement as alleged but it was a one Mr. Nagombwa Kayemba Ben who availed the same, and that upon receipt of the same, the applicant undertook to create certificates of title for land that belonged to the said Mr. Nagombwa, and have the same surrendered to him.
- That upon parcelling off his entitlement, and the land that belonged to Mr. 25 Nagombwa, the applicant surrendered the residue title to the respondent thus the applicant has never refused to surrender the same to the respondent as alleged.

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That the applicant is not party to **Execution Miscellaneous Application No.78** of 2021 from which the said arrest warrant emanates which is in the names of David Bukenya vs Commissioner Land Registration.

That because the applicant was just the plaintiff's attorney in Civil Suit

No.2036 of 2015, whatever he executed in the said suit was for, and on behalf $\$S$ of the plaintiff, Mr. Fredrick Kwantakunsawo Kiwanuka Ssengooba who has since revoked the said powers of attorney and that the applicant executed whatever he was supposed to perform as per the said decree as he caused the removal of the caveats on the suit land, and advanced to the plaintiff all his entitled titles as per the directives of court. 10

That the applicant duly fulfilled and complied with all the obligations imposed on him in the consent thus the warrant of arrest was improperly issued against the applicant because he executed all the compulsions under the said decree and that **Execution Miscellaneous Application 78 of 2021** from which the arrest warrant emanates is of different persons.

That although the applicant was obligated to hand over the said acre to the respondent on condition that the respondent had advanced the applicant clean land, the land comprised in **Busiro Block 432 plot 111** which was advanced had a squatter by the names of Mugerwa Simon, against whom the applicant had to institute a case in order to have him removed.

That even after entering the consent judgement with the said squatter, and paying him what he demanded, the squatter has continued to utilize the suit land on the respondent's advice and instructions.

That this appeal was brought in good faith and is not in any way intended to frustrate the respondent so as to attain justice and that the right procedure for 25 the respondent was to file for contempt if he felt that the applicant herein never obeyed the directives of court.

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Representation.

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The applicant was represented by *M/s Muganwa Nanteza & Co. Advocates* and $\$m/s$ Bbaale & Partners Advocates & Legal Consultants, while the respondent was represented by *m/s Zack Olowo Advocates & Solicitors*. Both counsel filed written submissions in support of their respective clients' cases as directed by this court.

Consideration by court.

I have carefully read the evidence and submissions of both counsel, the details of which are on court record, and which I have taken into account in determining whether or not this application discloses sufficient grounds warranting the grant of the prayers sought herein.

The main issue for determination in this application is whether or not the application discloses sufficient grounds for setting aside the execution proceedings in *Miscellaneous Application No.078 of 2020* be set aside.

In dealing with this matter however the primary consideration for this court lies 15 on the question of the applicant's locus to file this action. *Miscellaneous* Application No.078 of 2020 which the applicant seeks to set aside was filed against the applicant's principal but not against the applicant as an individual.

In that application, the applicant appeared only as an attorney for Mr. Fredrick Kwantakunsawo Kiwanuka Ssengooba who was the plaintiff in the main suit 20 under which both the consent and subsequent application arose. As a matter of fact, when the applicant signed the consent he did so as an agent of the plaintiff, and not in his individual capacity.

The orders granted in *Miscellaneous Application No.078 of 2020* could only have been made therefore against the principal, not his agent who was later \$25\$ stripped of his powers. I could also add here that the decision by the applicant to strip the powers of his agent could not have affected the terms of the consent.

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It is also worth noting that at the time the application was filed, the applicant was still the agent of the plaintiff. The agent had a role as the implementer of the terms of the consent, the basic rule governing such relationship being that the principal was bound by every contract or disposition of property made by his

agent. \$\mathsf{S}\$

The claim therefore that the principal had on 19th January, 2022 revoked his powers of attorney only strengthened the point that the principal/plaintiff was still under an obligation to ensure execution of the consent between him and the respondent, regardless of whether or not the applicant remained as his agent.

- In effect, the applicant as indeed pointed out was never party to **EMA No. 78 of 10 2019**. In the view of this court, it would therefore seem improper for the applicant who had neither been party to the main suit nor to the execution application, to file an appeal against orders issued in the names of the plaintiff, his former principal, without his authority.
- It all zeros down to one aspect which goes to the root of the case, that the 15 applicant had no locus standii to file this application. His failure to follow the correct procedure to challenge the orders issued in the names of another party bars this court from delving further into the merits of the application.
- I therefore decline to grant it. Costs awarded to the respondent. 20

Alexandra Nkonge Ruaadua

Judge

11th October, 2023 25

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