

UGANDA / JUDGMENT

Kigayaaza v Kakooza & Another (Miscellaneous Application 12 of 2019) [2019] UGSC 83 (12 December 2019) [2019] UGSC 83

COURT

Supreme Court of Uganda

BEFORE

Buteera, JSC

CASE / FILE NUMBER

Miscellaneous Application 12 of 2019

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THE REPUBLIC OF UGANDA IN THE SUPREME COURT OF UGANDA AT KAMPALA**[(CORAM: HON. JUSTICE R. BUTEERA, JSC) (SINGLE JUSTICE)]****MISCELLANEOUS APPLICATION NO.12 OF 2019**

(Arising from Supreme Court Civil Appeal No.14 of 2010 between Kasaala Growers Cooperative Society and 1. Kakooza Jonathan, 2. Kalemera \$Edson\$)

BETWEEN**KIGAYAZA ELDADI SSENTONGO 15 AND**

| 1. KAKOOZA JONATHAN | |

|-----|---|

| 2. KALEMERA EDSON | } |

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RULING OF BUTEERA, JSC.

This is an application by Notice of Motion brought under Rule 35(2) of The Judicature (Supreme Court) Rules.

The applicant sought for orders that:

1. That this Honourable Court declares that the execution in S. C. C. S. No.14 of 2010 was done contrary to the decree arising from the judgment of the Court.
2. That the illegal and erroneous execution be set aside.
- 3. That the Court Bailiff a one Zairahuka Herbert be ordered by this Honourable Court to reinstate the applicant into possession of land which he was unlawfully/erroneously deprived of.
- 4. Costs of the application be provided for.

The application supported by an affidavit of applicant was on the following grounds:-

- 1. That on the 8th Day of July 2015, the Supreme Court delivered its judgment in Supreme Court Civil Appeal No.14 vide Kasaala Growers Cooperative Society vs. Kakooza Jonathan & Kaleemera Edson and the appellant was successful.
- 2. That the applicant is a third party to the above mentioned matter.
- 3. That the applicant was unjustly affected by an error of court and unlawfully evicted from his land by a Court Bailiff a one ZAIRAHUKA HERBERT acting upon an erroneous and baseless execution order.
- 4. That upon occasioning this injustice, the applicant approached Kiyonga & Co. Advocates who caused a letter dated the 18th day of October, 2019 to the learned Deputy Registrar of the Supreme Court.
- 5. That the learned Deputy Registrar of the Supreme Court indeed admitted that there was an error with the order that was executed.

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- 6. That the applicant after waiting for over a year to get justice, he desperately wrote a letter dated the 28th day of January, 2018 to the same learned Deputy Registrar of the Supreme Court seeking for justice but up to date he has not received any feedback pertaining to the same.
- 7. That the applicant moves this Honourable Court in a quest to order the same Court Bailiff mentioned above in Para 3 who carried out the illegal execution order to restore him to his property to ensure that justice is realized.
- 8. That it is in the interests of justice that this application be granted."

Background

- This application arises from Supreme Court Civil Appeal No.14 of 2010 which was between Kasaala Growers Cooperatives Society as appellants and Kakooza Jonathan and Kalempera Edson as respondents. The background to the dispute between the parties in Supreme Court Civil Appeal No.14 of 2010 was as follows:-
- On 24th April, 2001 the parties executed a sale agreement (EXP 2) in which the appellant, Kasaala Growers Cooperative Society, sold to the respondents a piece of land known as Block 3, Plot 3 measuring 1000 hectares, located at Nampiki, Luwero District, at an agreed price of UGX 34,000,000/=. At the time of the agreement, the lease of the land had expired and the appellant was in the process of renewing it. Under the terms of the agreement, the respondents paid \$2,500,000/= \$25 upon execution of the agreement to facilitate the renewal of the lease. The balance

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of UGX 31,500,000/ \$=\$ was to be paid immediately the vendor obtained the renewed title to the land.

The respondents had paid a total of \$UGX14,300,000/= under the agreement leaving a balance of UGX19,750,000/ \$=\$. A dispute arose between the parties amidst counter allegations of breach of the agreement. The respondents alleged breach by the appellant who they claimed sold out to a third party, one Kigayaza. (who is the applicant in this application), one square mile of the land, the subject of the agreement without the respondents consent. The appellant denied any breach but retorted that it was the respondents who breached the agreement when they failed to pay the balance of the purchase price as required in the term of the agreement.

As the parties failed to resolve the dispute amicably, the respondents sued the appellant in the High Court in Kampala vide HCCS No.602/2002 in breach of contract.

The High Court heard the suit and dismissed it with costs to the defendant (appellant) for want of merit. On appeal, the Court of Appeal, reversed the decision of the High Court and gave judgment for the respondents.

Kasaala Growers Cooperative Society appealed to this Court which heard and determined the appeal on 8th July 2015. The Court allowed the appeal, set aside the decision and orders of the Court of Appeal. The Court ruled that Kiyagaza (the applicant in the instant application), had validly purchased one square mile from Kasaala Cooperative Society after the respondents failed to pay the agreed purchase price. The respondents would, therefore, remain with only three square

miles of the original four square miles that they had wished to purchase from the appellants. The Court also made the following orders:-

- \$1. The respondents are to pay the balance of UGX11.5 million of the three square mile suit land within four months from the date hereof and take possession of the land; or
- \$2. The respondents are to be refunded all the monies they had paid under the agreement within five months from the expiry of four months marking their refusal to pay the balance on the purchase price and forfeit the land.
- \$3. The monies to carry interest at the rate of 6% per annum from the date of expiry of the four months marking the refusal by the respondents to pay the balance until payment in full.
- \$4. I would award costs of this appeal to the appellant here and in the courts below."

The applicant alleges that after the Court's judgment by an error of Court the applicant was unlawfully evicted from his one square mile of land by a Court Bailiff, Zairahuka Herbert, acting upon an erroneous and baseless execution Court Order. That is the bases of this application.

Representation

At the hearing of the application, the applicant who was in Court was represented by Ms. Babirye Cleopra who was holding brief for Shamina Zahura counsel for the 25 applicant.

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The respondents were not in Court and there was no counsel representing them although there was proof of service by an affidavit of service sworn by a Court Process Server. Counsel for the applicant applied and was allowed by Court to proceed ex parte.

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According to the Notice of Motion, the supporting affidavit of the applicant and submissions of counsel for the applicant, the applicant's case as I understand it is as follows:-

- 10 The Supreme Court in its judgment in Civil Appeal No.14 of 2010 between Kasaala Growers Cooperative Society and Kazoora Jonathan and Kalempera Edson ruled that Eridadi Kiyagaza Ssentongo, the applicant purchased one square mile of land from Kasaala Growers Cooperative Society while Kazoora Jonathan and Kalempera Edson purchased 3 square miles from the same Cooperative Society. All
- that land comprised in Buruli Block 153 LRV 2293 Folio 22 Plot 5 and LRV 3665 15 Folio 22 Plot 4 Land at Nampiki in Nakasongola District.

According to the applicant, by the time of the Supreme Court judgment the applicant was the owner and was in possession of his one square mile of land.

In its judgment the Supreme Court never ordered for eviction of the applicant.

On 10th September 2015, after the Supreme Court judgment, advocates for the parties in Supreme Court Civil Appeal No.14 of 2010 agreed to and signed what they called a "consent settlement/decreed". This was endorsed by the Registrar of the Supreme Court on 15th September 2015.

Following the consent settlement/decreed the Registrar of the Supreme Court issued a warrant for vacant possession dated 27th July 2018 to Zirahura Herbert a Court Bailiff. The warrant was for the Court Bailiff to hand over to the respondents (Kakooza Jonathan and Kalemera Edson) land described in Buruli Block 153 LRV 2993 Folio 22 Plot 5 and LRV 3665 Folio 22 Plot 4 Land at Nampiki,

Nakasongola.

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The applicant, Kigayaza Eldadi Ssentongo was evicted from his one square mile of land by the Court Bailiff in error. The Supreme Court never decided that he should be evicted from his property which is the one square mile he purchased from Kasaala Growers Cooperative Society.

The applicant has now filed this application for an order that the same Court Bailiff who carried out the illegal execution order should reinstate him into possession of the land from which he was unlawfully/erroneously evicted.

The case of the applicant was uncontroverted since the respondents who were served chose not to attend court to present their case.

Court Decision

This application was brought under Rule 35(2) of the Judicature (Supreme Court) 20 Rules.

The Rule provides:-

Rule 35 correction of errors $\$(1)$

- (2) An order of the court may at any time be corrected by the court. either of its own motion or on the application of any interested

person, if it does not correspond with the order or judgment it purports to embody or, where the judgment has been corrected under subrule (1) of this rule, with the judgment as so corrected.

According to this rule an order of Court may at anytime be corrected at the $\$S$ initiative of the Court itself or at the initiative of any interested party if the Court Order does not correspond with the order or judgment it purports to embody.

In the instant case, the applicant alleges that he was unlawfully evicted from his land erroneously since there was no Court Order for his eviction.

In the circumstances of this application I find that the applicant is an interested party and he has a right under Rule 35(2) of the Rules of this Court to raise the application and the Court has the jurisdiction to handle it.

The next question then is whether there was a Court Order that did not correspond 15 with the judgment it purports to embody.

I have carefully read the judgment of this Court in Civil Appeal No.14 of 2010. The Court found that Kakooza Jonathan and Kalemera Edson had entered into an agreement to purchase 4 square miles of land from Kasaala Growers Cooperative Society. They did not pay in time. The two parties agreed that Kasaala Growers Cooperative Society could sell one square mile of the property to a third party. Kasaala Growers Cooperative Society sold the one square mile of land to Kigayaza (the applicant). Kasaala Growers Cooperative Society and the original purchasers (Kakooza Jonathan and Kalemera Edson) never agreed on which part of land the one square mile was to be carved out of the suit land. Kigayaza selected and carved out the one square mile of land he bought from Kasaala Growers

portion that Kakooza Jonathan and Kalemera Edson later realised "is the most suitable, without it the whole land is useless".

The Court held:-

"In my opinion, the acts or conduct of the appellant complained of in carving out and sale to Kigayaza of the 1 square mile of land from the subject land did not amount to fraud because the respondents had consented to them in Exh D1. Similarly the respondents' actions taken against the appellant and Kigayaza in relation to the alleged trespass were part of the scheme by the respondents of attempt to wriggle out of the bad situation."

Clearly the Court ruled that the one square mile Kigayaza purchased from Kasaala Growers Cooperative Society was lawfully purchased. He took possession after the purchase.

Kakooza Jonathan and Kalemera Edson were to take the balance of 3 square miles of land that remained after Kigayaza (the applicant) took possession of the one square mile of land he purchased.

The Court then set aside the decision and orders of the Court of Appeal and made further orders as follows:-

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\$661. The respondents are to pay the balance of UGX11.5 million of the three square mile suit land within four months from the date hereof and take possession of the land; or

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- \$2. The respondents are to be refunded all the monies they had paid under the agreement within five months from the expiry of four months marking their refusal to pay the balance on the purchase price and forfeit the land.
- 3. The monies to carry interest at the rate of 6% per annum from the date of expiry of the four months marking the refusal by the respondents to pay the balance until payment in full.
- \$4. I would award costs of this appeal to the appellant here and in the 10 courts below."

I find it was in error that the applicant, Kigayaza Eldadi Ssentongo, was evicted from the one square mile of land that he had purchased from Kasaala Cooperative Society. The Supreme Court did recognise his purchase of the land from Kasaala Cooperative Society as a valid lawful transaction. He was evicted in error by Zirahuka Herbert, a Court Bailiff.

The error arose from a warrant for vacant possession issued by the Deputy Registrar of the Court. The warrant did not correspond with the Judgment of the 20 Supreme Court in Civil Appeal No.14 of 2010 which it purported to be in execution of. The erroneous execution resulted into an injustice being committed against the applicant who has come to Court for remedial action.

25 I hereby correct the error. I order that the applicant, Kigayaza Eldadi Ssentongo be put back into possession of the specific one square mile of land he purchased from

Kasaala Cooperative Society. This is the land he was in possession of before eviction by Zirahua Herbert, a Court Bailiff.

The costs of this application are awarded to the applicant to be paid by the two respondents. $\$ \mathbf{S}$

I so order.

\$12th December 2019. \$ \dots\$ day of Dated in Kampala this.....

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Justice Richard Buteera JUSTICE OF THE SUPREME COURT

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