

UGANDA / JUDGMENT

Lwanyikirira v Administrator General (Miscellaneous Application No. 2298 of 2024) [2025] UGHC 247 (30 April 2025) [2025] UGHC 247

COURT
High Court of Uganda

BEFORE
Kazaarwe, J

CASE / FILE NUMBER
Miscellaneous Application No. 2298 of 2024

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA (LAND
DIVISION) MISCELLANEOUS APPLICATION No. 2298 OF 2024 (ARISING FROM CIVIL
SUIT No.477 OF 2019)

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1. GIDA LWANYIKIRIRA
2. SSERUBUGO MUHAMMAD SALONGO-----APPLICANTS

VERSUS

ADMINISTRATOR GENERAL-----

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

RULING

- This application was brought under Order 6 rule 19 and 31, Order 1 rule 13, Order 20 52 rules 1 and 3, Order 1 rule 10 (2) of the Civil Procedure Rules and Section 98 of the Civil Procedure Act and all other enabling laws seeking for orders that the Plaintiffs be allowed to amend their plaint, the Commissioner Land Registration be added as a necessary party or Defendant to Civil Suit No. 477 of 2019 and all other
- applications arising therefrom and lastly, costs deferred until final determination of the 25 main suit.

Background

The claim in Civil Suit in 477 of 2019 is for a declaration that land on which the certificates of title comprised in Kyadondo Block 124 Plots 4 and 17 that were created by the Administrator General, in the capacity of administrator of the estate of the late

30 Yasiya Bwangalaga Kizza Tabula, belong to the estate of the late Musa Musoke Kiwumumpu. Further claims thereunder are for cancellation of the titles, a permanent injunction from any interference in the suit land, general and aggravated damages plus costs of the suit. The suit was filed on the 28th May 2019.

Grounds for this Application

- Mr. Sserubugo Muhammad Salongo, the 2nd Applicant in his affidavit in support of this $\mathcal{S}$ application avers that;
- 1. There are facts which ought to have been specifically pleaded in the Complaint in regard to the unlawful creation of certificates of title which amounts to fraud and are crucial for the proper and just determination of the matter.
- 2. The Applicant seeks among others for the cancellation of the certificates of title 10 that were unlawfully and or fraudulently created on the suit land by the Respondent but in doing so all was done together and/or in connivance with the office of the Commissioner Land Registration.
- 3. His lawyers Messrs. Bbaale & Partners Advocates & Legal Consultants omitted to include the Commissioner Land Registration as among the Defendants to the suit yet he or she is an important and necessary party to the suit if all matters in controversy are to be effectively dealt with by this Honourable court.
- 4. He was advised by his lawyers Messrs Bbaale & Partners Advocates & Legal Consultants that it is trite law that mistake of counsel ought not be visited on T
- 5. The amendment is necessary in order for the Court to determine the real questions in controversy between the parties.
- 6. The Commissioner Land Registration is a necessary party to this suit for the proper determination of all matters in controversy.
- 7. The Respondent will not be prejudiced by the amendment if allowed especially since the trial of the case has not commenced.
- 8. The proposed amendments are therefore, necessary for clarity and in order for the court to be able to adjudicate upon the real questions in controversy between the parties. A copy of the amended complaint is attached and marked "B".
- 9. The Application was brought Bonafide and for the benefit of all the parties in the suit.

- 10. It is in the interest of justice that this application be allowed and the orders sought granted.

The Reolv

Senior State Attorney in the Ministry of Justice and Constitutional Affairs' attached to the Defendant Directorate, Mr. Muyomba Simon Peter, averred in his affidavit in reply' as follows:

- 1. He is aware of Civil Suit No 477 of 2019 from which this application arises and has immense knowledge of the facts constituting the main suit and the instant application with capacity to swear the affidavit in reply'
- 2. He perused the original plaint and fraud was not attributed to the Respondent in processing and acquisition of the suit land comprised in Kyadondo Block ¹²⁴ plots 4 and 17, thus the amendment sought is not permissible in law'
- 3. In reply to paragraphs 4, 5 and 6 of the supporting affidavit' there are no facts pleaded and particularized in the original plaint which constitute fraud against the Respondent or any other party in the original plaint'
- 4. The suit land belongs to the estate of the late to the estate of the late Yosiya Bwangalaga Kizza Tabula (herein after 'the deceased') and the same is registered in the names of the Administrator General as the Administrator of his estate. (see copies of titles to Kyadondo Block 124 Plots 4 and '17 attached as annexures '4" and '8").
- 5. The deceased acquired his property by way of purchase and was the registered proprietor of 1 7.47 acres under instrument No 1 61 5 of 1 8/8/1 ⁹⁵⁸
- 6. The Administrator General processed the certificates of title for the suit land in due compliance with the law and carved out the portion which constitutes the suit land and created titles which now form the suit land captioned above'
- 7. In reply to paragraphs 4, 5 and 6 of the supporting affidavit' the Applicant having not pleaded and or particularised facts that constitute fraud against the 1st Defendant Respondent and the intended 2nd Defendant' allowing the sought amendment premised on fraud is a departure from the original cause of action 30

and as such the instant application introduces a new cause of action premised on fraud that was never part of the original plaint'

- 8. The instant application is brought in bad faith with intention of defeating justice for being made after lapse of five years from the date of filing the instant suit and being made after the trial Judge dedicated three days for completion of the hearing of the main suit

- 9. In response to paragraphs 7,8 and I of the supporting affidavit the beneficiaries in the instant suit shall be extremely prejudiced since allowing the addition of the intended defendant after five years of litigation automatically means the case starts afresh in circumstances where all parties had already filed their respective evidence to wit witness statements and the trial bundles'
- 10. The intended defendant is not a necessary party to the instant suit but the Plaintiff can call any of the officials of the intended defendant to be their witness' 15
- 11. The Applicant's main suit is not maintainable in law on the account that the Applicants have no cause of action, the suit is barred, the applicants have no locus standi to institute the instant fle
- '12. The Respondent intends to raise the above points of law and the instant application for amendment is intended to deprive the Respondent of his right to do so.
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13. That it is in the interest of justice that this application is not granted'

Repre on:

30 MrMukiibiAllenfromM/SBbaale&PartnersrepresentedtheAppllcantswhilethe Respondents were represented by Ms' Grace Dusabe from the Directorate of the Administrator General.

^Iam grateful for the submissions filed by Counsel and these have been considered'

Dete ination the AoDI tion

I have had the opportunity to peruse the original pleadings, the Joint Scheduling Memorandum filed by the parties and the proposed amended plaint These documents reveal that the subject matter land is;

- 5 a. Unregistered.
- b. Claimed to be the property estate of the late estate of the late Musa i'Lrsoke KiwumumPU who died intestate.

IJnder section 187 ot the Succession Act cap 268,

187. Right to intestare's Propetty, when established

Except as provided in thls sect/on, but subiect to section 4 ot the Administrator Generat's Act, no ight to any part of the propeiy of a person who has died intestate shall be established in any coult of iustice, unless letters of administration have tirsI been granted by a coult of competent iurisdiction 10

It is a fact that when the original plaint was filed in 2019, the Respondent in paragraph

5(e) and (f) of its Written Statement of Defence advised the Applicants to obtain letters of administration in order to be clothed with the authority to establish the rights of their deceased relative in this Court as provided under section 187 of the Succession Act. No such step was taken. Five years have passed' 15

This leaves the applicants with no locus standi not only to bring this application nor the main suit Civil Suit No. 447 of 2019, their claim being expressly barred by law'

In conclusion, for reasons stated, and in the interests of justice, this application and the main suit out of which it arises, are hereby dismissed with costs to the Respondent/Defendant.

25 Olive Kazaarwe Mukwaya

JUDGE

30th April 2025

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