

UGANDA / JUDGMENT

Mpanga v Twabaje and 3 Others (Miscellaneous Cause No. 55 of 2020) [2022] UGHCLD 105 (9 March 2022) [2022] UGHCLD 105

COURT

HC: Land Division (Uganda)

BEFORE

Kawesa, J

CASE / FILE NUMBER

Miscellaneous Cause No. 55 of 2020

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA**[LAND DIVISION]****MISCELLANEOUS CAUSE NO.55 OF 2020****MPANGA JOHN MUSISI ALIAS MAYOR..... APPLICANT****VERSUS**

- 1. TWABAJE EDWARD
- 2. TWABAJE PENINA
- 3. BARIGYE ANGELLA
- 4. NAAVA OLIVIA NABAGUZI.....RESPONDENTS

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA**RULING**

This application was brought by notice of motion under Section 177 of the Registration of Titles Act Cap 230, Section 33 of the Judicature Act Cap 13, Section 98 of the Civil Procedure Act Cap 71, and 0.52 rr.1 2 and 3 of the Civil Procedure Act SI 71-1.

It seeks for orders that:

1. A consequential order cloth issue directing the Commissioner Land Registration to cancel the names of Twabagye Edward and Twabagye Peninah in respect to **land comprised in Busiro Block 458 plot 185**, the names of Babirye Angela in respect of **land comprised in Block 458 Plot 184 at Wabusanke** and the names of Naava Olivia Nabaguzi in respect to **land comprised in Busiro Block 458 Plot 187 at Wabusanke all in Wakiso District**.
- 2. An order directing the Commissioner Land Registration to register/restore the names of Mpanga John Musisi in respect to land comprised in **Busiro Block 458 plots 187, 184 and 185 at Wabusanke Wakiso District**.
- 2. An order directing the Respondents to surrender the certificates of title for land comprised in **Busiro Block 458 Plots 187, 184 and 185 at Wabusanke** to the Commissioner Land Registration to effect the Registration of Nsamba Micheal as the proprietor of the land.
- 3. Costs of the suit be in the cause.

I shall state the brief background of the application.

The Respondents instituted Civil Suit No.059 of 2014 at Chief Magistrates Court of Entebbe at Entebbe against the Applicant for trespass to **land comprised in Block 458 plots 187, 184 and 185 at Wabusanke, Wakiso District** and prayed for an eviction order against them, among others.

The Applicant filed a defence denied all the Respondents' allegations, and counterclaim wherein he prayed for a declaration that he owns a Kibanja on the suit land comprised in Block 458 plots 184, 185 and 187 at Wabusanke, and that the Respondents are not bonafide purchasers of the suit land.

The said suit was determined in the Applicant's favour and the following orders were made, that is; that;

1. The 1st Defendant/counterclaimant is the rightful owner of a Kibanja comprised in Block 458 plots 184, 185 and 187 situated at Wabusanke Kitale, Bukwenda in Wakiso District.
2. The plaintiffs/counter Defendants are ordered not to interfere with the counterclaimants' quiet possession, occupation and utilization of the suit until his interest therein is settled/compensated.
- 3. No award of general damages against the counter Defendants.
- 4. Each party to bear own costs.

The application is supported by an affidavit by Mpanga John Musisi. Despite being served, the Respondents did not enter appearance. The application therefore proceeded **ex parte**.

Counsel for the Applicant filed written submissions which I shall consider accordingly.

MISC CAUSE NO.55 OF 22-MPANGA J MUSISI VS TWBAJJE E & 2 ORS (RULING)

I have carefully perused the averments in the affidavit and appreciated the respective submissions.

Before delving into the merits of the cause, and issues proposed by Counsel in his submissions, I find it appropriate to first reveal the principles of law applicable to applications of this nature.

Section 177 of the Registration of Titles Act Cap 230 vests the High Court with powers to order the cancellation of a certificate of title upon recovery of land in any proceedings. Court in the case of **Nabukeera versus Nansikombi & Others I-ICMC No. 42 of 201**¹, further elaborated that where land has been recovered in proceeding in a lower Court, the successful party may apply to the High Court for a consequential order under the aforesaid section.

It suffices to states that one has to prove that he or she has recovered land by any proceedings against the registered proprietor. This is well supported by the case of *Re Ivan Mutaka 119811 1-ICB 28, Andrea *Lwanga versus Registrar of Titles**, as cited in **Darlington Kampama versus The Registrar of Titles HCMC No.12 of 2013; and Re Habib Lubwama 119911 HCB 74**.

On the issue of recovery of land, Counsel for the Applicant cited the case of *Ssetuba Misairi versus The Registrar of Titles I-ICMA No. 55 of 2011*, wherein it was observed that in order to rely on Section 177 of the Registration of Titles Act, the Applicant has to satisfy court that he or she has recovered the land, estate or any interest in question from any person registered as the proprietor of the land, to submit that the Applicant got judgement in his favour for orders that he is the rightful owner of a kibanja.

I conceive that the Applicant's Counsel, by this application, equates a kibanja to registered land under the Registration of Titles Act. This, in my view, is erroneous. Section 177 of the Registration of Titles Act and the principles highlighted above apply only to governed by the Registration of Titles Act. It means that only a person who has recovered land, estate or interest registered under the said Act can apply for a consequential order. A kibanja is not one of the interests recognised under of the Registration of Titles Act. The implication, therefore, is that a person who has recovered a kibanja, be it from a registered proprietor, cannot seek for a consequential order under the **MISC CAUSE NO.55 OF 22-MPANGA J MUSISI VS TWBAJJE E & 2 ORS (RULING)**

Registration of Titles Act. Consequently, this court finds that this application is without merit. It therefore dismisses it summarily.

The remedy is for the kibanja owner to seek compensation or paying off the interest.

Costs are not awarded to the Respondents having not entered appearance.

I so order.

..... Henry I. Kawesa **JUDGE**

9/03/2022

9/03/2022: Mpagi Sande for the Applicant.

Applicant present.

Respondent absent.

Court: Ruling delivered.

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Henry I. Kawesa **JUDGE** 9/03/2022

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