

UGANDA / JUDGMENT

Nakisirinya Betty v Bruno Sentaktuuka Serunkuuma and Others (Miscellaneous Application No. 2186 of 2024) [2025] UGCommC 186 (20 June 2025)

[2025] UGCommC 186

COURT

Commercial Court of Uganda

BEFORE

Dr. Ginamia Melody Ngwatu, J

CASE / FILE NUMBER

Miscellaneous Application No. 2186 of 2024

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA
(COMMERCIAL COURT DIVISION) MISCELLANEOUS APPLICATION NO. 2186 OF
2024 5 (ARISING OUT OF CIVIL SUIT NO. 1253 OF 2024)

NAKISIRINYA BETTY:.....APPLICANT

VERSUS

- 1. BRUNO SENTAKTUUKA SERUNKUUMA
- 10 2. NSAMBA TRADING GROUP (U) LIMITED:.....RESPONDENTS
- 3. ECO BANK UGANDA LIMITED
- 4. COMMISIONER LAND DREGISTRATION

Before: Hon. Lady Justice Dr. Ginamia Melody Ngwatu

RULING

The applicants brought this application by way of chamber summons under section 98 of the Civil Procedure Act, section 33 of the Judicature Act, section 32 of the Evidence Act and section 5 and 6 of the Evidence (Bankers' Books) Act and Order 10 Rules 12, 14 and 24 of the Civil 20 Procedure Rules S. I. 71-1, as amended. The application seeks orders that:

- 1. The Managing Director of the 3rd respondent be directed to make discovery on oath of copies of the Survey and Valuation report subject to land comprised in Busiro lock 429 plot 439 situate at Bugiri that were carried out prior to disbursing the mortgage facility to the 1st respondent.
- 2. The Managing Director of the 3rd 25 respondent be directed to make discovery on oath of certified copies of the Dollar Account Statement for Account Number 0121036104824301 and the Uganda Shillings Account Statement for Account Number 0120266204824301 both operated by the 2nd respondent with the 3rd respondent for the period from 1st February 2015 to 28th February 2015.
- 3. The 4th 30 respondent and or the Registrar of Lands at Wakiso Registry Busiro be directed to provide certified copies of the transfer and consent forms that were used to transfer land comprised in Busiro Block 429 plot 439 situate at Bugiri from the 1st respondent to the 2nd respondent.
- 4. The 4th respondent and or the Registrar of Lands at Wakiso Land Registry Busiro be directed to provide certified copies of the mortgage agreement between the 2nd 35 respondent and the 3rd respondent that was used to Register the mortgage on land comprised in Busiro Block 429 plot 439 situate at Bugiri.
- 5. Costs of the application be provided for.

The grounds of the application were stated in the affidavit of the applicant, Ms. Nakisirinya Betty, and are briefly that:

- 1. She attached some of the documents on her pleadings in the main suit but it may not be possible to tender them in since the defendants that would have tendered the documents did not file a defence;
- 2. Much as the 3rd respondent filed its defence, it intentionally omitted mentioning or attaching the documents that the applicant is applying to discover.
- 3. The entries in the Banker's books for the 2nd and 3rd respondents are necessary for the proper determination of matters arising in the main suit.
- 4. It is fair and in the interests of justice that the application is granted

The respondent opposed the application on the grounds contained in the affidavit in reply of Mr. Dickson Kawooya, the acting Head of Legal at the 3rd respondent bank, wherein he stated among 15 others that:

- 1. The applicant jointly with 6 others instituted *Civil Suit No. 1253/2024 Kugonza Betty & 6 Others vs Bruno Senkatuuka Serunkuma & 3 Others claiming that they jointly and severally are bonafide and lawful occupants on land comprised in Busiro Block 429 Plot 439 situate at Bugiri.

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- 2. The suit property was mortgaged by the $\$2^{\text{nd}}$ respondent in favour of the bank and in the circumstances, the bank is a bonafide mortgagee.
- 3. The issue in controversy in the main suit is whether the applicant is a lawful occupant and whether the bank is a bonafide mortgagee
- 4. The applicant seeks disclosure of US Dollar and Uganda shillings account statements for $\$25$ specified accounts operated by the $\$2^{\text{nd}}$ respondent for the period between 1st February 2015 and 28th February 2015 as well as the survey and valuation report in respect of the suit property.
- 5. The account statements and survey and valuation report are not connected to the issue of whether the applicant is a lawful occupant of the suit land or whether the 3rd respondent is a bonafide mortgagee.
- 6. The applicant has not demonstrated how the account statements and the survey and valuation report sought will assist in determining her lawful occupancy or their 3rd respondent's interest as a bonafide mortgagee.
- 7. In respect to the survey and valuation report, the value or dimensions of the property are 35 not in issue in the main suit and the said document is not mentioned in the 3rd respondent's written statement of defence.
- 8. The request for disclosure of the account statements and the survey and valuation report amounts to a fishing expedition intended to solicit information with an expectation to support a case the applicants are not aware of.
- 9. The application should be dismissed with costs awarded to the $\$3^{\text{rd}}$ respondents as it is misconceived and lacks merit.

Representation at the hearing

The applicant was represented by Mr. Jonathan Mugaga Kayima of M/s Sekidde Associated Advocates; while the 3rd respondent was represented by Mr. Ernest Sembatya of MMAKS Advocates. The 1st, 2nd and 4th respondent were not represented, although this application specifically pertained to the third and fourth respondents. The third respondent replied to the 5 submissions while the fourth respondent did not. The written submissions that were filed are on the Court record.

Issue for determination

The main issue for determination in this application is whether the applicant has proved the 10 grounds to warrant a grant of an order for discovery of the documents sought?

Determination of court

15 The submissions of the parties have been taken into consideration. The submissions will, however, not be reproduced here. This matter is decided as follows:

Discovery is a medium through which evidence that is not accessible to the applicant for use at trial is made available. Such evidence is also sought as it may be introduced as evidence during

- 20 trial. Discovery is provided for under Order 10 rule 12 of the Civil Procedure Rules SI 71-1, as amended, which states that any party may, without filing any affidavit, apply to the court for an order directing any other party to the suit to make discovery on oath of the documents, which are or have been in his or her possession or power, relating to any matter in question in the suit.
- 25 Here, court will make an order for discovery if it is satisfied that the discovery is necessary. In such an instance, court may make an order, either generally or limited to certain classes of documents, as it may, in its discretion, deem fit (see **Dresdner Bank Aktiengesellschaft vs Sango Bay Estate and Others* [1971] HCB 80*; **Kenyi Juma vs Grindlays Bank (U) Ltd* [1982] HCB 116; *B vs B (Matrimonial Proceedings: Discovery)* [1978] Fam 181, [1978] 3 WLR 624* and **Taj* 30 *Deen vs Dobrosklonsky* [1957] E. A. 379*).

Court will, however, not order for discovery if it is of the opinion that it is not necessary either for the fair disposal of the suit or for purposes of saving costs (see Order 10 rules 12 and 14 of The Civil Procedure Rules). This order for discovery is, therefore, a discretionary one; and an

35 order for discovery may be granted if it is proved that it is relevant. (see *Dresdner Bank Ag. vs Sango Bay Estates Ltd (No. 3)* [1971] 1 EA 326 and *Dresdner Bank Ag. vs Sango Bay Estates Ltd (No. 4)* [1971] 1 EA 409).

Here, the document or information sought must be shown to be relevant since evidence must be 40 relevant to be admissible. In the case of **Simbamanyo Estates Limited & Peter Kamya vs Equity Bank Uganda Limited & 4 Others* Miscellaneous Application No. 0583 of 2022,* the applicant is only required to demonstrate that there is a sufficient prima facie basis for believing the evidence sought exists, it is material and relevant to the issues at the trial.

The applicant submitted that the survey and valuation report sought for discovery is in the possession of the 3rd 45 respondent as it conducted a due diligence before disbursing the mortgage

facility to the to the first respondent. Further, the certified copies of the Dollar Account Statement sought are for accounts operated by the 2nd respondent with the 3rd respondent from 1 st to 18th February 2018; and that the documents sought are in line with standard bank practices for mortgage transactions.

With regard to the discovery of transfer and consent forms from the 4th respondent, these were transfer and consent forms that were used to transfer land comprised in Busiro Block 429 plot 439 situate at Bugiri from the 1st respondent to the 2nd respondent; and were part of the mortgage agreement between the 2nd and 3rd respondent

The 3rd respondent raised a preliminary objection that the plaint should be struck out as the applicant's/plaintiff's claim is barred by the limitation Act. This objection will not be delved into as it is one that ought to be raised during the determination of the main suit.

- The 3rd respondent submitted that the documents sought are irrelevant and immaterial to the determination of the issues in the suit including the alleged claim of the applicant's being a lawful or bonafide occupant and their having acquired mailo interest. The 3rd respondent further submitted that the bank statements and valuation report sought by the applicant are immaterial as the financial records relate to the internal dealings of the 3rd respondent with its customer and
- 20 have no bearing on the applicant's occupancy rights or the validity of the mortgage. That the transfer and consent forms sought by the applicant are public documents which can lawfully be obtained by conducting a search under the Registration of Titles Act rather than through discovery.
- 25 This court finds that pursuant to Order 10 of the Civil Procedure Rules, the applicant is entitled to the production of relevant documents sought in the possession of the 3rd and 4th respondents, respectively. This is on the basis of the reasonable belief, that the applicant has demonstrated, that the evidence so sought is relevant to the suit at hand, a suit hinged on alleged fraudulent mortgage transactions. Much as the 3rd respondent submitted that the transfer and consent forms
- 30 are public documents that can be obtained by conducting a search under the Registration of Titles Act, it should be observed that the applicant submitted that they did not only want to discover the said documents but to also have them tendered in as evidence through the persons cited, since the defendants that would have tendered them in did not file a defence; and much as the 3rd respondent filed its defence, it did not mention or attach the documents that the applicant 35 is applying to discover.

In the premises, in this instant application, court finds that it is necessary for the fair hearing and disposal of Civil Suit No. 660/2024 that:

- 1. The application is allowed.
- 40 2. It is directed that:

- a) The Managing Director of the 3rd respondent makes discovery on oath of copies of the Survey and Valuation report subject to land comprised in Busiro lock 429 plot 439 situate at Bugiri that were carried out prior to disbursing the mortgage facility to the 1st respondent.
- b) The Managing Director of the 3rd respondent makes discovery on oath of certified copies of the Dollar Account Statement for Account Number 0121036104824301 and the Uganda Shillings Account Statement for Account Number 0120266204824301 both operated by the 2nd respondent with the 3rd respondent for the period from 1st February 2015 to 28th 5 February 2015.
- c) The 4th respondent and/or the Registrar of Lands at Wakiso Registry Busiro provides certified copies of the transfer and consent forms that were used to transfer land comprised in Busiro Block 429 plot 439 situate at Bugiri from the 1st respondent to the 2nd respondent.
- d) The 4th 10 respondent and/or the Registrar of Lands at Wakiso Land Registry Busiro provides certified copies of the mortgage agreement between the 2nd respondent and the 3rd respondent that was used to Register the mortgage on land comprised in Busiro Block 429 plot 439 situate at Bugiri.
- 3. The costs of this application will abide the results of the suit.

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I so order.

Dr. Ginamia Melody Ngwatu Ag. Judge 20 th June 2025

25 *Ruling delivered via ECCMIS*

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