

UGANDA / JUDGMENT

**Peter Beyunga v The Registrar of Titles
(HC Miscellaneous Application 100 of
2023) [2024] UGHC 407 (31 May 2024)
[2024] UGHC 407**

COURT
High Court of Uganda

BEFORE
Wagona, J

CASE / FILE NUMBER
HC Miscellaneous Application 100 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT FORT PORTAL

MISC. APPLICATION NO. 100 OF 2023

(AIRISING FROM MFP – 036 OF 1987)

**IN THE MATTER OF LEASEHOLD REGISTER VOLUME 11000 FOLIO 17 KNOWN AS BURAHYA
BLOCK 141 PLOT 44 AT KATANDA**

AND

**IN THE MATTER OF AN APPLICATION FOR CONSEQUENTIAL ORDERS UNDER SECTION 177 OF
THE REGISTRATION OF TITLES ACT CAP. 230**

PETER BEYUNGA ===== APPLICANT

VERSUS

THE REGISTRAR OF TITLES ===== RESPONDENT

BEFORE: HON. JUSTICE VINCENT WAGONA

RULING

This application was brought under section 177 of the Registration of Titles Act, Section 98 of the Civil Procedure Act, Section 33 of the Judicature Act and Order 52 rules 1 and 2 of the Civil Procedure Rules for orders that; a consequential order issues against the Respondent to cancel Leasehold Register Volume 1100, Folio 17 known as Burahya Block 141, Plot 44 at Katanda being land recovered in Fort Portal Civil Suit No. MFP. 036 of 1987, Charles Makulima v Peter Beyunga.

The application is supported by the applicant's affidavit who deposed as follows:

1. That the late Charles Makulima instituted Civil Suit No. MFP – 036 of 1987, against the applicant for trespass on land comprised in LRV 1100, Folio 17 known as Burahya Block 141, Plot 44 at Katanda. That he filed a defense and counter claim where he sought a declaration that he was the owner of the land in dispute which was fraudulently included in the title.
2. That on 27th February 2002, court delivered its judgment in his favour where the suit by the late Makulima was dismissed with costs and the counter claim allowed with a declaration that his land was fraudulently included in the title. That the late appealed and the appeal was consequently dismissed on 25/10/2005 for want of prosecution.
3. That he instructed the surveyor to survey the land in issue however he was surprised to learn that the same is still within the titled land. That he was later advised to file the current application for consequential orders in this court since the learned trial court lacked the jurisdiction to order for the cancellation.
4. That he was in possession of the land in dispute without any interruption and the title in issue was fraudulently acquired and thus court should order for cancellation of the same. That he was not aware that a consequential order was required and this accounts for the delay in filing the same. That it is in the interests of justice that the application is allowed.

The Respondent was served per the affidavit of service on record deposed by Mr. Mwirutubi Godfrey and the return of service attached as an annexure with an acknowledgement by the Respondent. The Respondent did not file an affidavit in answer to the motion or offer an explanation why she was not able to do so within the required time. This is a clear indication that she did not intend to oppose the application at hand. I shall thus determine the same *ex parte*.

Representation and Hearing:

Mr. Robert Kyaligonza of M/s Kaahwa, Kafuuzi, Bwiruka & Co. Advocates appeared for the applicant. He addressed me on the merits of the application by way of written submissions which I have duly considered herein.

Issues:

1. **Whether this is a proper case for grant of consequential orders.**
2. **What remedies are available in the circumstances?**

Legal Arguments:

Mr. Kyaligonza for the applicant cited Section 177 of the Registration of Titles Act and the decision of **Darlington Kampama v The Registrar of title, HCMC No. 12 of 2013** for the position that in case of cancellation of title under Section 177, the applicant must prove that he or she recovered the land. Further that it is not necessary to make the party from whom the land is recovered a party to the application for consequential orders. (See: **Uganda Blanket**

Manufacturers Ltd v Chief Registrar of Titles HCMA No. 55/1993). He contended that the land in issue was recovered from the late Makulima by virtue of the judgment in Civil Suit No. MFP 036 of 1987. He further submitted that the delay to file the application on time was on account that the applicant did not receive proper advice from the previous counsel on the next step to take to rectify the title in issue after court making a finding that the applicant's land was fraudulently included in the title for the late Makulima. He asked court to allow the application since it meets the conditions for grant.

Consideration by Court:

Section 177 of the Registration of Titles Act (RTA) provides as follows:

“Upon recovery of any land, estate or interest by any proceeding from the person registered as proprietor thereof, the High Court may in any case in which the proceedings is not herein expressly barred, direct the registrar to cancel any certificate of title or instrument, or any entry or memorial in the register book relating to that land, estate or interest, and to substitute such certificate or entry as the circumstances of the case require; and the registrar shall give effect to that order.”

The above section vests the High Court with powers to direct the registrar of title (now Commissioner Land Registration) to rectify the title or an entry which is affected by a judgment of court. This provision was given extensive judicial consideration in **Lwanga . Vs. Registrar of Titles Reported (1980) HCB page 24.**, where it was observed that before a person who has obtained judgment for the recovery of land against a registered proprietor could be registered, he first had to apply to the court to make an order under S. 185 (now 177) of the R. T. A. Such order was referred to as consequential order since it was made consequent upon recovery of land. That was the only method prescribed by the RTA. for executing orders or decrees relating to registered land.

Section 177 of the RTA is anchored on three fundamental principles under the Torrens System of land registration that is - the Mirror principle, the Curtain Principle and the Insurance Principle. The Mirror principle emphasizes the fact that a register is deemed to be a perfect mirror of the state of title. That a register of title clearly identifies the land it refers to and any other dealings in relation thereto. The Curtain principle on the other hand holds that a purchaser need not investigate the history of past dealings with the land, or search behind the title as depicted on the register. The purchaser should ordinarily look at what is contained in the register and is not bound by any extrinsic matters. The insurance principle, is to the effect that the state guarantees the accuracy of the register and compensates any person who suffers loss as the result of an inaccuracy. In other words, a purchaser or any person who wishes to deal in titled land is not obliged to look beyond the register. (See: **Gibbs v. Messer (1891) AC 28 or 248 (Privy Council) & David Peterson Kiengo & 2 Others V Kariuki Thuo [2012] eKLR HCCC 180 & 220 of 2011**).

Therefore, the Registrar or Commissioner for Land registration as provided for under the law is deemed to be the custodian of the register who should ensure that the register is kept clean and reflects what appears on ground. Under this duty, court is meant to direct the registrar/

commissioner land to update the register to protect the subsequent purchasers and government from loses that may accrue as a result of the inaccuracies of the register maintained by the Registrar in case of any judgment that affect the register. In ***Uganda Blanket Manufacturers vs. Chief Registrar of Titles***, ***HCMA No. 55 of 1993***, Ongom J held that: ***“In an application under section 185 (now Section 177) RTA, the Chief Registrar should be made the Respondent. It would be pointless to make a person from whom land has been recovered the Respondent.”*** I entirely agree with the dicta by Ongom J that it is pointless to serve the person from whom the land was recovered since the duty to correct the register is shouldered by the registrar under the Torrens System of registration. The presence of such person serves no legal basis. However, where court is of the view that the presence of the person from whom land was recovered may assist it in reaching a fair and just decision, then it may order that such person be added as a party. I have not found any relevance adding the person from whom the land was recovered from in the current application. therefore find that this application is proper against the Respondent.

Further, it is trite, that an application for consequential order is intended to put into effect the spirit of the judgment whose implementation is infeasible without such further orders. Therefore, such application must be brought within the timeline provided for under the Limitation Act for enforcement of a judgment of court. Section 3(3) of the Limitation Act is to the effect that:

***An*[*action*](<https://ulii.org/akn/ug/act/ord/1958/46/eng%402000-12-31#defn-term-action>)*shall not be brought upon any judgment after the expiration of twelve years from the date on which the judgment became enforceable, and no arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due*.**

Section 1(8)(b) adds that in the case of an [action](<https://ulii.org/akn/ug/act/ord/1958/46/eng%402000-12-31#defn-term-action>) upon a judgment, be construed as references to the date on which the judgment became enforceable. Section 1(a) defines the term ‘action’ to mean and include any proceeding in a [court](<https://ulii.org/akn/ug/act/ord/1958/46/eng%402000-12-31#defn-term-court>). Therefore, an application for consequential orders arising from the judgment are proceedings within the confines of the Limitation Act and thus subscribe to the timelines provided for under the Limitation Act. That being the case, Section 25 of the Limitation Act provides for permissible exceptions which include fraud, illegality or mistake.

In the case before me, the judgment from where the application arises was delivered on 27th February 2002. There was an appeal against the said decision which per annexure B to the application was dismissed on 25th October 2005. Thus the judgment in Civil Suit No. MFP. 036 of 1987 become enforceable on the 25th of October 2005 when the appeal was dismissed. Therefore the 12 years within which the said judgment was to be executed expired on the 10th of October 2014. This application was thus brought beyond the 12 years provided for under the Limitation Act. The applicant however pleads mistake as an exception to have the application admitted outside the 12 years.

Section 25(c), provides that

Where, in the case of any*^[*action*](<https://ulii.org/akn/ug/act/ord/1958/46/eng%402000-12-31#defn-term-action>)*for which a period of limitation is prescribed by this Act, either—

(a)---

(b).....

(c) *the*^[*action*](<https://ulii.org/akn/ug/act/ord/1958/46/eng%402000-12-31#defn-term-action>)*is for relief from the consequences of a mistake, the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake, or could with reasonable diligence have discovered it...*

Therefore where a party seeks to rely on any exception to the periods of limitation, such exception must be specifically stated in the pleadings. If it is not, then the claim should be rejected. See **IgaVsMakerere University (1972) EA 65**. Since the Time begins to run from the time when the mistake was discovered or could with reasonable diligence have discovered the mistake, the time when such mistake was discovered should be indicated for purposes of computation of time.

Pearson J in of **Philips Highs VsHarper (1954) QB 411** commented on mistake as an exception and I have found his postulates persuasive and he stated thus:

“What is the meaning of provision (c)? The right of action is for relief from the consequences of a mistake. It seems to me that this wording is carefully chosen to indicate a class of action where a mistake has been made and has had certain consequences and the plaintiff is seeking to be released from those consequences ---

--- probably provision (c) applies only where the mistake is an essential ingredient of the cause of action, where the statement of claim sets out the mistake and its consequences and prays for relief from the consequences---“

Mistake may be understood as an error in action, calculation, opinion, or judgment caused by poor reasoning, carelessness, or insufficient knowledge. It may also be understood to mean an oversight, fault, erratum, inaccuracy, misunderstanding or misconception.

In the present application, the applicant indicated under paragraphs 9 and 10 of the affidavit in support of the motion that he was not aware that a consequential order was needed to have the title cancelled. That his former lawyer Mr. Musana Johnson did not advise him about the same. That this was a mistake that has a consequential effect on his right to have the orders of court enforced.

I have examined the exception pleaded and the history of the case. The applicant seeks to be relieved from the consequences of mistake since he is unable to cause a survey of his land since it is still within the titled land for the late Makulima whom he recovered the land from. Further,

taking into account the need to maintain a clear register and protect persons who may transact in the land, I believe it is in the interests of justice to have the register rectified in order to maintain a clean register in compliance with the requirements under the Torrens System. I therefore find that mistake as exception qualifies as a bonafide claim to cause the application to be brought outside the Limitation Act.

Further, taking into account the history of the claim and the facts of the matter, I find it is fair and just to have the orders sought herein granted so that the registrar can have the title for land comprised in LRV 1100, Folio 17, Burahya Block 141, Plot 44 at Katanda rectified to exclude land that was decreed to the applicant. This application therefore succeeds with the following orders:

1. **A consequential order is hereby issued directing the Commissioner Land Registration to rectify the register for land comprised in LRV 1100, Folio 17, BurahyaBlock 141, Plot 22 at Katandato and remove the land decreed to the applicant in Civil Suit MFP 036 of 2023.**
2. **The rectification shall be effected after a survey of the said land is done by the applicant and a report submitted to that effect.**
3. **The cost of the survey shall be borne by the applicant.**
4. **No order is made as to costs.**

I so order.

Vincent Wagona

High Court Judge, Fort Portal

Date: 31/05/2024

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