

UGANDA / JUDGMENT

Saula v Commissioner Land Registration (Miscellaneous Cause 14 of 2022) [2022] UGHCLD 282 (15 November 2022)

[2022] UGHCLD 282

COURT

HC: Land Division (Uganda)

BEFORE

Ojok, J

CASE / FILE NUMBER

Miscellaneous Cause 14 of 2022

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT MPIGI

MISCELLANEOUS CAUSE NO. 14 OF 2022

(Arising from Civil Suit No. 0038 of 2008)

5 ABUBAKER SAULA..... APPLICANT

VERSUS

COMMISSIONER LAND REGISTRATION..... RESPONDENT

BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE

10 Ruling

The applicant brought the instant application by way of Notice of Motion under Section 98 of the Civil Procedure Act, Section 33 of the Judicature Act, Section 177 of the Registration of Titles Act, and Order 52 Rules 1 and 3 of the Civil Procedure Rules against the respondent seeking the following orders;

- 15 a. A consequential order to be made upon the recovery of land following a judgment vide Civil Suit No. 0038 of 2008 of the trial Chief Magistrate in Mpigi Chief Magistrate's court and a decree directing the respondent to sign transfer forms to cancel the name on the Certificate of Title on land comprised in Butambala Block 59, Plot 37 land at Nyanama and substitute
- 20 it with the name of the applicant as the registered proprietor thereof.
- b. Costs of the application be provided for.

The application is supported by an affidavit sworn by the applicant and the grounds briefly are as follows;

- 1. That the applicant was the successful party in civil suit no. 0038 of 2008 at 25 the Chief Magistrate's court of Mpigi at Mpigi where court ordered that the respondent signs transfer forms in favour of the plaintiff.
- 2. That it is a requirement of the law that a consequential order is obtained to order cancellation of the names of Serwanga James from the title deed for land comprised in Butambala Block 59 Plot 37 and register therein the name 30 of Abubaker Saula to the effect of the claim.
- 3. That the Commissioner Land Registration cannot effect the orders of the Chief Magistrate unless consequential orders are made.
- 4. That it is in the interest of justice that this honourable court grants this application as the applicant is entitled to registration as the owner of the said land.

Representation:

5 Mr. Mugerwa Vincent appeared for the applicant. The application proceeded exparte. The respondent despite being served did not file a reply or appear in court. The applicant made written submissions.

Submissions:

Counsel for the applicant submitted that the procedure taken by the successful 10 litigant in a suit for recovery of land is established under Section 177 of the Registration of Titles Act which provides that;

"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 proceeding is not herein expressly barred, direct the registrar to 15 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 of title or entry as the circumstances of the case require; and the registrar shall give effect to that order."

And the case of Nantongo Harriet and 2 Others v. Namuyiga Rose, Miscellaneous 20 Application No. 64 of 2016 where it was noted that;

> "Section 177 of the Registration of Titles Act is self-regulating. It clearly proves that once there is proof that there was recovery of land, estate or interest from the registered proprietor, the proceedings leading to such is ⁿot barred."

- 25 Counsel noted that the applicant in his counterclaim against the plaintiff prayed for a declaration that the purported entry of the plaintiff's name on the Certificate of Title for Butambala Block 59 Plot 37 was illegal, null and void and prayed for a consequential order for cancellation of the plaintiff's name from the Certificate of Title for Butambala Block 59 Plot 37 which court granted in the defendant's
- 30 favour.

Counsel added that for court to grant the consequential orders under Section 177 of the Registration of Titles Act, the applicant must prove that there was recovery of land, the applicant got judgment in his favour. (See: Darlington Kampala v. The Registrar of Titles (1980) H. C. B 24). That in this case, the applicant recovered the

35 land as required by Section 177 of the Registration of Titles Act.

Secondly, that the applicant has to prove ownership of his legal interest in the suit land. That this has been proved by the applicant as he is the registered proprietor save for the fraudulent transfers that were made by Livingston Luyombya. (See: Ssentongo v. Mpalanyi & Another, Miscellaneous Application No. 410 of 2018 5 UGHCLD 61, where it was held that;

"An applicant in an application for a consequential order ought to prove ownership of legal interest as well."

Counsel concluded that, the applicant having labored to prove all the material requirements to warrant the grant of consequential orders, prays that this court 10 orders the commissioner Land Registration to cancel the existing illegal and fraudulent entries upon the register book and enter the applicant's name therein as a registered proprietor as per the order of the Chief Magistrate's court of Mpigi as regards land comprised at Butambala Block 59, Plot 37 land at Nyanama.

Resolution.

15 I have carefully considered the application, affidavit in support and the submissions with the authorities cited therein for the applicant in the resolution of this application.

The applicant in the instant case rightly cited Section 177 of the Registration of Titles Act as the Law governing consequential orders of this nature. The land also

20 has to be registered as in this case. The applicant has also proved to this court that he was the successful party in civil suit No. 0038 of 2008 for recovery of land in the Chief Magistrate's court of Mpigi at Mpigi and that he is the rightful owner of the suit land.

I accordingly, see no justification not to grant this application. The application is 25 here by allowed with orders that;

- 1. The respondent cancels the name of Serwanga James from the title deed for land comprised in Butambala Block 59 Plot 37 and substitute it with the name of Abubaker Saula as the registered proprietor thereof.
- 2. The applicant bears his own costs.
- 30 I so order.

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OYUKO ANTHONY OJOK

JUDGE

15/11/2022

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