

UGANDA / JUDGMENT

Sengendo v Bank of Uganda (Miscellaneous Cause No. 0327 OI.'2023) [2025] UGHCLD 102 (24 June 2025) [2025] UGHCLD 102

COURT

HC: Land Division (Uganda)

BEFORE

Kaahwa, J

CASE / FILE NUMBER

Miscellaneous Cause No. 0327 OI.'2023

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

MISCELLANEOUS CAUSE NO. 0327 OF 2023

SENGENDO DAVID ::::::::::::::::::::::::::::::

VERSUS

BANK OF UGANDA ::::::::::::::::::::::::::::::

BEFORE LADY JUSTICE CHRISTINE KAAHWA RULING

Introduction

This application is brought under Section 98 of the Civil Procedure Act, Cap 282, and Order 52 Rule 1 of the Civil Procedure Rules for orders that;

- 1. The Respondent avail the Applicant certified copies of the following documents;
- a. Mortgage deed between former Uganda Credits and Savings Bank and the Late Bumbakali Lutakome
- b. Land transfer documents relating to property comprised of Mailo Register Volume 356 Folio 6 to the Late Hamu Walusimbi
- c. Bank default notice to the late Bumbakali Lutakome

- 2. Costs of this Application be provided for.

The grounds of the application are that;

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- L That the Applicant and 10 others are the beneficiaries to the estate of the late Hamu Walusimbi who were sued by Nakawooza Mastula and Kabanda Ahmed, the beneficiaries of the estate of the late Bumbakali Lutakome in filed Civil Suit No. 40 of 2016 for cancellation of the certificates of titles for property comprised of Mailo Register Volume 356 Folio 6.
- 2. The bank records herein asked for inspection are crucial to the Applicant who will use the same as evidence in HCCS 40 of 2016.
- 3. The Respondent as a Regulator of Financial Institutes is in the custody of the said bank records and is able to avail them for inspection upon a court order from this cour1.

The grounds of this application are premised in the affidavit of the Applicant which I shall not repeat.

REPLY.

The Respondent filed an affidavit in reply deposed by Margaret K. Kasule, the Director of the Legal Department. The Respondent Bank avers that she was established in 1966, 11 years after the creation of the mortgage mentioned in the Applicant's affidavit; that she does not have any records relating to the impugned mortgage and did not take over the Uganda Credit and Savings Bank; the Commissioner Land Registration maintains a register of particulars of all dealings and matters affecting registered land including mortgages and mailo register volumes and folio and that the respondent is not a proper party to the application.

Representation and hearing.

The applicant was represented by M/S Karamagi, Magezi and Co. Advocates while the Respondent was represented Eric Mugarura from its Legal Department. When this matter was called for hearing the Applicant did not appear.

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Counsel for the Respondent asked the court to dismiss the application majorly on the ground that the Applicant should have called to aid the provisions of section 37 of the Registration Titles Act, Cap 240. That the Applicant's remedy would lie in seeking to caveat the mortgage entry basing on the extinction of the mortgage rights due to the effluxion of time.

Additionally, that the Respondent is not in custody or control of the document sought and therefore the application cannot succeed. He relied on Misc. Application 583 of 2022 Simbamanyo Estates Ltd and Anor. versus Equity Bank and others and invited the court to dismiss the application.

Issue for determination.

Whether there are sufficient grounds for the grant of the application.

Resolution of the issue.

Section 22 (a) of the Civil Procedure Act, Cap 282 provides that;

" subject to such conditions and limitations as may be prescribed, the Court may, at any time, either on its own motion or on the application of any party;

- (a) Make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, or admission of documents and facts and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence. "

Order 10 rule 12 (1) of the Civil Procedure Rules stipulates that;

"Any party may, without filing an 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."

fut*, DOJ

The pre requisites for the grant of an order for discovery were laid down in the case of Simbamanyo Estates Ltd and Peter Kamya (supra) to include;

- 1. Relevancy and materiality
- 2. Not otherwise privileged or protected by law
- 3. The document is in the Respondents possession, custody ,control or power and
- 4. Attempts to obtain the same voluntarily were futile.

In this application, the Applicant seeks three documents being; a Mortgage deed between former Uganda Credits and Savings Bank and the Late Bumbakali Lutakome; land transfer documents relating to property comprised of Mailo Register Volume 356 Folio 6 to the Late Hamu Walusimbi and the bank default notice to the late Bumbakali Lutakome. This are said to be necessary documents in prosecuting Civil Suit 40 of 2016. It is averred in affidavit in support of the application that the late Bumbakali Lutakome mortgaged the property and when he defaulted on the mortgage repayment the Bank (Uganda Credit and Savings Bank) sold off the property to Hamu Walusimbi. The Applicant now needs to prove acquisition of the suit property by his father and that since the Respondent Bank took over from the defunct Bank, the records can be

inspected.

On the hand, the application is opposed by the Respondent Bank for the reason that they are not in control or custody of the said documents and she never took over Uganda Credit and Savings Bank.

I observe that the Applicant has not indicated anywhere that he tried to get the records from the Respondent Bank and failed. Secondly, Civil Suit 40 of 2016 in which the inspected documents would assist in prosecuting bears the names of Nabwama Sanday versus Kanoonya Stanley and 6 others. The suit land in the said

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case is land at Rubaga, Private Mailo Kibuga Block 17 Plot 894 and Plot 985. The judgement in that case was delivered by Lady Justice Susan Kanyange in December 2023. It is possible that Civil Suit 40 of 2016 was filed in another court and not in Land Division, in a nutshell this court is not able to determine the usefulness of inspection without proper details submitted to it.

The defence of the Respondent Bank is that it does not control or have custody of the documents that are sought to be inspected and that she did not take over the Uganda Credit and Savings Bank.

If the Respondent Bank did not take over Uganda Credit and Savings Bank then it cannot be said to be in custody of the defunct bank's records. I am of the considered view and buttressed by the ann. "B" to the affidavit of the Applicant that the Commissioner Land Registration would be the appropriate office or person to seek inspection of the records.

In the premises, I find that this application does not meet the prerequisites of inspection as discussed above. I therefore dismiss the application with no order to costs.

Dated at Kampala this 24th day of June 2025.

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Christine Kaahwa

JUDGE.

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