

UGANDA / JUDGMENT

Serwanga Yoweri v Hanifa Tamale and Another (CIVIL REVISION NO.3 OF 2024) [2025] UGHC 151 (31 January 2025)

[2025] UGHC 151

COURT
High Court of Uganda

BEFORE
Nabakooza, J

CASE / FILE NUMBER
CIVIL REVISION NO.3 OF 2024

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA LAND DIVISION

CIVIL REVISION NO.3 OF 2024

(ARISING FROM MISCELLANEOUS APPLICATION NO. 67 OF 2023)

(ALL ARISING FROM CIVIL SUIT NO. 84 OF 2007)

SERWANGA YOWERI ::::::::::::::::::::::::::::::

VERSES

1. HANIFA TAMALE

2. BULUHANE KAFEERO :::::::::::::::::::::::::::::: 3. ABUBAKER. T. KIGGUNDU

RULING

BEFORE: HON. LADY JUSTICE NABAKOOZA FLAVIA. K.

Background.

The Respondents sued the Applicant vide CS No. 84 of 2007 in the Chief Magistrates Court of Nabweru. The suit was heard interparty and the following orders issued:

- a. That the 1st and 2nd Defendants (\$f^t\$ and \$3^{rd}\$ Respondents herein) are the true owners of one acre bought on 6/08/1990 situated on Block 196 Plot 239 Komamboga;
- b. That the Defendant/ Applicant signs transfer and mutation forms in the Respondents' favor in respect of that one acre;
- c. A permanent injunction;
- d. General damages of 5,000,000/- for interference and denial of the land since \$2007\$; and
- e. Costs of the suit.

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Being aggrieved by the above orders, the ,r\pp.licant/ Serwanga yoweri then filed HCMA No' 403 of 2011 (in the default r\igh court of (}gaada at Nakavza) seeking to revise and set-aside the judgment and decree in CS No. 84 of 2007. However, the application was dismissed by Musene J (as he then was), in a ruling dated 25/05/2014, noting that the learned trial Magistrate exercised proper jurisdiction judiciously.

Subsequently, the respondents filed FICMR\ No. 131 of 2021 against the applicant (Serwanga Yoweri) and the commissioner for land legislation seeking the following reliefs; -

- a. A consequential order to be made against the respondents/applicant to reconstitute the sub-divided suit land comprised in Block 196 plot 239 at Komamboga following the judgment of the chief Magistrate's court Nabweru and the decrees vide CS No. 84 of 2011:
- b. An order directing the Commissioner to reconstitute, cancel sub-divisions to enable re-constitution of Plots 239 and cancel all entries in the register relating to the land division;
- c. An order directing the judgment debtor to sign transfer and mutation forms in favor of the respondents to the extent of 1 acre;
- d. An order directing the commissioner not to deal with the plots sub-divided from Plot 239 until satisfaction of the decree in favor of the applicant;
- e. Payment of the sum 5,000,000/- as decreed, and costs in both courts.

- f. -The above application was heard on merit, but was dismissed by Busingye J., in ^a/ruling dated 2/06/2023, noting that "the Applicant brought forth a bill of ordinary suit against the third parties who were registered in plots 24, ¹/25, 1 / 26, / / 27, 7 / 28, 1240 and 124/ which were mutated from Block I ⁹⁶/Plot 239 at Komamboga and all other subsequent subdivisions that have been created from the said subdivisions on Block 196 plot 2)9." ⁴⁰

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Upon receiving the ruling in the preceding paragraph, the respondents on 4/09 / 2023 filed another application vide Mr No. 67 of 2023 against the Applicant/ Respondent at the chief Magistrate's court of Nabweru at Nabweru seeking the following reliefs;

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- a That the Respondent be held in contempt of court for refusal to sign transfer forms in favor of the Applicants/plaintiffs vide CS No. 84 of 2007;
- b That the Respondent is by his non-compliant conduct in further contempt of court orders issued in CS No. 84 of 2007;
- c That the Respondent be found in contempt for continuously using the land/I(banja after the order of permanent injunction;
- d. An order directing the Respondent to immediately sign transfer and mutation forms in favor of the Applicants in respect of the one acre situated at I(bomamboga;
- e. An order directing the respondents to produce the duplicate title for purpose of identifying a surveyor for sub-division; and
- f. General and exemplary damages; penalty; commitment to civil prison, among others.

The application was also heard on merit and granted on 19/02/2024 with the following orders; -

- a. That the respondent/Applicant be committed to civil prison for a period of ⁴/months for disregard of court orders;
- b. That the respondent shall, immediately, after serving the above detention, pay ^a/sum of 1,000,000/-;

- c. A preliminary decree, against the respondents, to sign transfer and mutation forms in favor of the 1st and 2nd Applicant upon proof by the Applicants that the Respondent is the same person as Joel Selwanga, the registered proprietor of land comprised in Block 196 Plot 1124 and 1125 land situated at Komamboga;

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- d. That the Applicants, through the office of the Commissioner for Land Registration, shall avail court with certified entries from land registry, transfer forms, specimen signatures, copies of identification cards and passport photos used in respect of Kyadondo Block 196 Plot 1124 and 1125 to confirm the identity of the Respondent in the search reports attached, for which a final decree shall be entered; and
- e. General damages of \$6,000,000/- \$ and costs.
- Before putting the above orders into effect, the 1st and 3rd Respondents (*Abubaker* Tamale Kiggundu and Hanifa Tamale) sought to execute the orders in HC-Misc. Cause No. 131 of 2021 by filing HCCS No. 780 of 2023 against the Applicant together with Tumwebaze Ken, Doreen Tumwebaze, Robinah Tushemereirwe and Commissioner Land Registration on 19/07/2023, with the following prayers;-
 - a. A declaration that the Plaintiffs are the rightful owners of 1 acre out of land 80 comprised in **Kyadondo Block 196 Plot 239** and currently comprised in **Plots 1124, 1125, 1126 and 1127** at Komamboga;
 - b. A declaration that the 1st Defendant's/Applicant's parceling out, mutating or subdividing of the land comprised in **Kyadondo Block 196 Plot 239** into **Plots 1124, 1125, 1126 and 1127** was illegal, fraudulent and done in bad faith;
 - c. A declaration that the 2nd, 3rd and 4th Defendants' purported purchase of land comprised in **Kyadondo Block 196 Plots 1126 and 1127** was illegal and fraudulent;
 - d. An order directing the 5th Defendants to vest the certificates of title for land comprised in **Kyadondo Block 196 Plot 1124 and 1125** registered in the names of the 1st Defendant to the Plaintiff;
 - e. An order to sub-divide/mutate off the area encroaching on the plaintiffs' one acre from the certificate of title for land comprised in **Kyadondo Block 196 Plot 1126** registered in the 3rd and 2nd Defendant's names;

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- f. An order to sub-divide/mutate off the area encroaching on the plaintiffs' one acre from the Certificate of Title for land comprised in Kyadondo Block 196 Plot 1127 registered in the 4th Defendant's names;
- g. An order directing the 5th Defendant to merge and/or amalgamate the certificates of title for Kyadondo Block 196 Plots 1124, 1125 together with portions mutated off from Kyadondo Block 196 Plots 1126 and 1127 to constitute 1 acre being the plaintiffs' land;
- h. An order directing the 5th defendant to enter the Plaintiffs on the register as proprietors of one acre upon merging;
- i. A declaration that the 1st Defendant having disposed of one acre, had nothing left to sale and transfer to the 2nd, 3rd and 4th Defendants;
- j. An order directing the 1st to 4th Defendants and their agents to deliver vacant possession of the portion of the suit land in their occupation; and
- k. A permanent injunction, general damages and costs of the suit.
- All the Defendants in the above suit filed their written statements of defence, and other necessary documents for the hearing of the suit, whose contents I shall not reproduce. During pendency of the said suit, and being aggrieved with the orders in MA No. 67 of 2023, the Applicant filed the instant application under the provisions of Section 83 and 98 of the Civil Procedure Act, Section 14 & 33 of the Judicature Act Cap 13, and Order 52 rules 1 and 3 of the Civil Procedure Rules for orders that: The ruling and orders made by the learned Magistrate Grade One at the Chief i. 115 Magistrate's Court of Nabweru at Nabweru vide MA No. 67 of 2023 be revised.
- The ruling and orders made vide Misc. Application No. 067 of 2023 be set \$ \overset{\cdot}{\cdot}{11}.\$ aside.
- The costs of the Application be provided for. 120 iii.

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Address

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I have appreciated that the orders sought to be set aside in MA No. 67 of 2023 are about contempt of court, and touch on the proprietorship of property comprised in Kyadondo Block 196 Plot 239 which is the gist of prayers in HCCS No. \$0780/2023\$, which is pending in this court, before my brother Asimwe J.

Legal representation; the Applicant was represented by Counsel Mutyaba Benard while the Respondents were represented by Counsel Kidiya Herbert. Both Counsel filed written submissions, which are to be considered in this ruling.

In view of the background, the issue to resolve is: Whether the orders sought in Civil Revision No.003 of 2024 can be granted?

130 It is evident that the orders sought to be revised and set-aside include an order against the Applicant to sign transfer and mutation forms in favor of the 1st and 2nd Respondents for land comprised in **Block 196 Plot 1124 and 1125** land situated at Komamboga. I note that a similar order is being sought by the Respondents, according to paragraph 7 of their plaint in CS No. 780 of 2023. Therefore, there is a real possibility that deciding the merits of this application, without considering the merits of CS No.780 of 2023, can result into contradictory court orders over the same land.

I have considered the law and principles on consolidation of suits (Order 11 rule 1 of the Civil Procedure Rules; Mugisha Benon Grace & 3 Ors Vs Chwezi Properties Ltd Misc. Civil App No. 1053 of 2020; and Fountain Publishes Ltd & 2 Ors Vs Prime Finance Co. Ltd. HCMA No. 1066 of 2020). However, I found that the same do not apply in the circumstances at hand, since this application is not a suit. In the alternative to that, considering that the application and HCCS No.780 of 2023 is pending before the same court, this court will avoid delay, by invoking its inherent power under Section 17(2)(b) of the Judicature Act Cap.16 and orders that the questions raised herein be determined concurrently in civil suit no \$780/2023\$. Accordingly, the application is hereby sent to the Deputy Registrar

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for purposes of re-allocating the same to Judge who is handling civil suit no \$780/2023\$.

Let each party bear their own costs for this application.
 \$150 Signed, dated and delivered at KAMPALA this 10 \$2025.\$

Nabakooza Flavia. K Judge

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