

UGANDA / JUDGMENT

Sserungoji v Ssekyanzi
(Miscellaneous Cause 28 of 2024)
[2025] UGHC 315 (22 May 2025)
[2025] UGHC 315

COURT

High Court of Uganda

BEFORE

Deepa Verma, J

CASE / FILE NUMBER

Miscellaneous Cause 28 of 2024

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THE REPUBLIC OF UGANDA IN THE HIGH COURT OF UGANDA AT MPIGI
MISCELLANEOUS CAUSE NO. 028 OF 2024

SSERUNJOGI BERNARD=====APPLICANT

VERSUS

=====RESPONDENT SSEKYANZI ADRIAN=====

RULING

BEFORE: HON. LADY JUSTICE DEEPA VERMA

This Application is brought under Articles 20(1) & (2), 26(1) & (2), and 50(1) of the 1995 Constitution of the Republic of Uganda (as amended) and Sections \$3(1)\$, \$4(1)(d)\$, and \$9(1)\$ of the Human Rights (Enforcement) Act, 2019. It is supported by the Applicant's affidavit and proceeding exparte, the order to do so having been granted by this Honourable Court on 5th November 2025

The Applicant seeks enforcement of his fundamental human rights and freedoms, alleging that the Respondent has violated his right to property by unlawfully withholding residual Certificates of Title for land comprised in Mawokota Block 162, Plots 711 and 720 at Mpambile, valued at approximately UGX 400,000,000.

The Applicant seeks a declaration that the Respondent's continued refusal to return the residual Certificates of Title for the above mentioned lands without his consent and or a valid Court order is illegal, unlawful, and violates his right to own property. He prays that this Honourable Court compels the Respondent to return his residual Certificates of Title.

He also prays for compensation and damages of Uganda Shillings Twenty Million (Ushs: 20,000,000) for psychological torture, emotional distress, humiliation, and economic loss. He further prays for an award of interest at 24% per annum from the date of judgment until payment in full and costs.

Issues for determination by this Court:

The Applicant's counsel filed written submissions, which raise preliminary points of law and substantive issues on the merits of the case for determination. The Respondent filed an affidavit in reply which the Applicant submits was filed out of time and without leave of court thereby rendering the application unopposed.

I have adopted the following issues as framed by counsel for the Applicant in their submissions:

- 1. Whether the Respondent's affidavit in reply was filed out of time and without leave of court and should be struck out with costs.
- 2. Whether the Application is unchallenged and should be granted as prayed.
- 3. Whether the Respondent's actions amount to a violation of the Applicant's human rights and freedoms enshrined under the Constitution and other international instruments
- 4. Whether the Applicant is entitled to the remedies sought.

Determination of Court:

Firstly, I want to emphasize that accurate citation of legal provisions is essential for clarity and precision in judicial proceedings. The Applicant's counsel cited and continuously referred to the Human Rights (Enforcement) Act of 2019, but following the revision of Uganda's principal laws effective 1st July 2024, this statute is now correctly cited as the Human Rights (Enforcement) Act, Cap. 12. Counsel are encouraged to reflect such changes to ensure legal accuracy.

Issue 1: Whether the Respondent's Affidavit in Reply was filed out of time and without leave of court and should be struck out with costs.

Order 8 Rule 1(2) of the Civil Procedure Rules (CPR), SI 71-1, provides that a defendant served with a summons shall file a defense within 15 days from the date of service, unless otherwise ordered by the court. This timeline applies analogously to affidavits in reply in applications, as established in *Stop and See (U) Limited v. Tropical African Bank* (HCMA No. 333 of 2010), where Madrama J. (as he then was) held that an affidavit in reply must be filed within 15 days from the date of service of the application. Failure to comply requires the party to seek leave of court to

file out of time.

The principle of procedural compliance is further reinforced in Uganda's jurisprudence that the Civil Procedure Rules exist to ensure an orderly and speedy administration of justice (see *Akena Jabina & Anor v. Odongo Benjamin* (Civil Appeal No. 35 of 2018)). Non-compliance with prescribed timelines is a fundamental defect, not a mere technicality. The timelines in the rules are intended to make the process of judicial adjudication and determination swift, fair, just, certain and even handed as held in *Ejab Family Investments and Trading Company Limited v. Centenary Rural Development Bank Limited* (HCCS No. 0001 of 2024). (See *Fitzpatrick V. Batgar & Co. Ltd* [1967] 2 ALLER 657)

Article 126(2)(e) of the 1995 Constitution, which mandates Courts to administer substantive justice without undue regard to technicalities, does not excuse noncompliance with statutory timelines. In *Ayub Suleiman v. Salim Kabambalo* (SCCA No. 32 of 1995), the Supreme Court held that Article 126(2)(e) is not a license for disregarding procedural rules (see *Utex Industries Ltd V Attorney General* SCCA no. 52of 1995)

In the instant application, the Applicant's affidavits of service deposed by Mubangizi George William a court process server, dated 25th October 2024 and filed in this Court on the same date confirms that the Notice of Motion with the supporting documents and the hearing notices were served on the Respondent's counsel, M/S Sserwadda, Muhereza & Co. Advocates on the 17th October, 2024, and the Respondent himself respectively. The Respondent was required to file an affidavit in reply by 6th November 2024 (15 days from the date of service).

I have perused the Court record and established that when the matter came up for hearing on 18th March 2025, the Respondent informed the court that an affidavit in reply had been

filed. The Applicant submitted that this was filed out of time, without leave of Court and it was not served on him. On the said date, this court granted the Respondent time to instruct an advocate file documents "required under the law" by 3rd April 2025, and the matter was then adjourned to 17th April 2025.

The Respondent failed to comply with this directive.

In the case of *Patrick Senyondwa v. Luck Nakitto* (HCMA No. 1103 of 2018), Justice Henry Kawesa struck out an affidavit in reply filed out of time without leave, noting that leniency would encourage sloppy behaviors and non-compliance with court procedure. Similarly, in *Namutebi Prossy v. Bumba John Livingstone* (Revision Cause No. 012 of 2023), Justice Naluzze Aisha Batala struck out an affidavit in reply filed out of time, emphasizing that parties must seek leave to validate late filings to avoid endless litigation.

The Respondent's affidavit in reply dated 14th March 2025, was filed out of time without leave of court, contravening Order 8 Rule 1(2) of the Civil Procedure Rules, rendering the affidavit an illegality on the court record which ought to be struck off and I hereby do so.

Issue 2: Whether the Application is unchallenged and should be granted as prayed.

Where a Respondent fails to file a valid affidavit in reply, the Applicant's evidence remains uncontroverted and is deemed admitted, provided it is credible and not intrinsically unreliable. Unchallenged affidavit evidence, if credible, stands as true. (See Supreme Court holding in H. G Gandesha and Kampala Estates Ltd and G. J Lutaaya (SCCA No. 14 of 1989)

Similarly, in Serefaco Consultants Ltd v. Euro Consult BV (CA Civil Application No. 16 of 2007), the Court of Appeal ruled that uncontroverted affidavit evidence, in the absence of discrepancies, is accepted as correct. The justices in that case particularly stated that:

> "...it is settled law that if the applicant supports his application by affidavit or otherwise and the respondent does not reply by affidavit or otherwise and the supporting evidence is credible in itself, the facts stand unchallenged"

Having struck out the Respondent's affidavit in reply, the Applicant's affidavit in support of the Notice of Motion remains uncontroverted. The Applicant's averments detail the sale of four acres of land to the Respondent, the transfer of the Certificates of Title for mutation, and the Respondent's subsequent refusal to return the residual Certificates of Title for Mawokota Block 162, Plots 711 and 720. The Applicant further avers that this refusal is without his consent or a valid court order, causing him psychological torture, emotional distress, and economic loss.

I have reviewed the Applicant's affidavit and find no discrepancies or intrinsic unreliability as the averments made therein are supported by Annextures which are consistent with the legal claims made and in the absence of a valid affidavit in reply by the Respondent, the Applicant's evidence is deemed admitted, rendering the application unopposed.

This issue therefore is resolved in the affirmative and I will proceed to evaluate the substantive issues on the merits of the suit.

Issue 3: Whether the Respondent's actions amount to a violation of the Applicant's human rights and freedoms enshrined under the Constitution and other international statutes.

Article 26(1) of the 1995 Constitution guarantees every person the right to own property. either individually or in association with others. Article 26(2) prohibits the compulsory deprivation of property without lawful authority or compensation except where the following conditions are satisfied—

- (a) the taking of possession or acquisition is necessary for public use or in the interest of defence, public safety, public order, public morality or public health; and

- (b) the compulsory taking of possession or acquisition of property is made under a law which makes provision for
- prompt payment of fair and adequate compensation, prior to the taking of \$(i)\$ possession or acquisition of the property; and
- a right of access to a court of law by any person who has an interest or \$(ii)\$ right over the property.

Article 17 of the Universal Declaration of Human Rights (UDHR) similarly guarantees everyone the right to own property, both alone and in association with others, and provides that no one shall be arbitrarily deprived of their property.

Article 20(1) of the Constitution establishes that fundamental rights and freedoms are inherent and not granted by the State, while Article 20(2) mandates that these rights be respected, upheld, and promoted by all persons and organs of government. Article 50(1) entitles any person whose fundamental rights have been infringed to seek redress, including compensation, from a competent court.

Section 3(1) of the Human Rights (Enforcement) Act, Cap. 12, reinforces Article 50 by providing a mechanism for individuals to seek redress for violations of constitutional rights. It states that:

Section 3. Enforcement of human rights and freedoms

- (1) In accordance with article 50 of the Constitution, a person or organisation who claims that a fundamental or other right or freedom guaranteed under the Constitution has been infringed or threatened may, without prejudice to any other action with respect to the same matter that is lawfully available, apply for redress to a competent court in accordance with this Act

Section 9(1) empowers the court to issue appropriate orders, including compensation, where a fundamental right has been violated.

In *Namale Desire & Muvigo Mutasa Charles v. Horeb Services Uganda Limited & Ezra Mugisha* (Miscellaneous Cause No. 0021 of 2023), Justice Boniface Wamala stated that;

"In law, for a suit to disclose a cause of action, it must show that the plaintiff enjoyed a right, the right was violated and it is the defendant who violated the right. (See: *Auto Garage v Motokov* No.3 [1971] EA 514.) However, like it was held by my learned sister in *The Women's Probono Initiative (WPI) & Anor v Transcend Agencies International Ltd & Anor*, HC Miscellaneous Cause No. 190 of 2020 (Nambayo J.), in

an application for human rights enforcement, the elements of a cause of action as traditionally known are not to be considered in the same way. Provided the action fits within the ambit of Article 50 of the **Constitution and the provisions of the Human Rights (Enforcement) Act**, such would suffice to disclose a cause of action... It does not require the person or organisation filing the action to have personally suffered any injury from the violation complained of. I find this the true position of the law on the matter"

In the instant case, the Applicant's uncontroverted affidavit establishes the following:

On 13th September 2021 and 7th February 2022, the Applicant entered into a Land Sale Agreement and Addendum with the Respondent for the sale of four acres of land in Mawokota Block 162, Plots 711 and 720, for UGX 168,000,000 and an additional UGX 8,000,000, respectively.

The Respondent fully paid the agreed sums, and the Applicant handed over the original Certificates of Title to enable the Respondent to mutate the four acres into his name.

The Respondent mutated the four acres and began selling portions of it but refused to return the residual Certificates of Title for the remaining land, valued at UGX 400,000,000, retaining them without the Applicant's consent or a valid court order.

The Applicant has made multiple unsuccessful demands for the return of the residual Certificates of Title, which has prevented him from fulfilling agreements with bibanja holders that he had already negotiated with to process their own Certificates of Title.

The Respondent's actions have caused the Applicant psychological torture, emotional distress, humiliation, and economic loss.

I find that the Applicant has satisfied the elements of a human rights violation as outlined in the Namale Desire case (supra):

The Applicant's affidavit (paragraphs 6–11) details how the Respondent's refusal to return the residual Certificates of Title violates his right to own property under Article 26 of the

Constitution and Article 17 of the UDHR. The withholding of the titles without consent or legal authority constitutes an arbitrary deprivation of property.

The Respondent's continued refusal to return the residual Certificates of Title for Mawokota Block 162, Plots 711 and 720, and continuously retaining them without the Applicant's consent or a valid court order, is illegal, unlawful, and violates the Applicant's right to property under Article 26 of the 1995 Constitution and Article 17 of the Universal Declaration of Human Rights (UDHR). I therefore find that the Applicant's human rights and freedoms have been violated and therefore also resolve this issue in the affirmative.

Issue 4: Whether the Applicant is entitled to the remedies sought.**(a) Declaration that the Respondent's actions are illegal and unlawful**

Section 9(1) of the Human Rights (Enforcement) Act, Cap. 12, empowers the court to issue appropriate orders where a fundamental right has been violated. Having found that the Respondent's refusal to return the residual Certificates of Title violates the Applicant's right to property, I am satisfied that a declaration is warranted.

I thus declare that the Respondent's continued refusal to return the Applicant's residual Certificates of Title for land comprised in Mawokota Block 162, Plots 711 and 720 at Mpambile, valued at approximately UGX 400,000,000, without the Applicant's consent or a valid court order, is illegal, unlawful, and violates the Applicant's right to own property under Article 26 of the 1995 Constitution.

(b) Order Compelling the Respondent to return the Certificates of Title

Section 9(2)(c)(i) of the Human Rights (Enforcement) Act, Cap. 12, empowers the court to order measures aimed at ceasing a continuing violation of human rights and freedoms. Thus, the Respondent's continued unlawful withholding of the Applicant's residual Certificates of Title constitutes a continuing violation, and an order for their return is necessary to restore the Applicant's proprietary rights.

I therefore order the Respondent to immediately surrender and return the residual Certificates of Title for land comprised in Mawokota Block 162, Plots 711 and 720 at Mpambile to the Applicant.

(c) Compensation and Damages of UGX 20,000,000

Section 9(1) of the Human Rights (Enforcement) Act, Cap. 12, provides;

- i. "Where the competent court determines that a fundamental right or freedom has been violated, unlawfully denied or should be enforced, the competent court shall issue orders it considers appropriate, including an order for compensation."

General damages are awarded at the court's discretion. (see *James Fredrick Nsubuga v. Attorney General* (HCCS 13 of 1993))

The Applicant avers in paragraph 11 of his affidavit that the Respondent's actions have caused psychological torture, emotional distress, humiliation, and economic loss, including breaches of agreements with bibanja holders. Although these consequences reasonably flow from the Respondent's unlawful conduct, Counsel in his submissions in praying for Uganda Shillings Twenty Million (UGX 20,000,000) failed to fully guide this Court as to how he arrived at this figure. I therefore, using the Court's discretion, find that an award Uganda Shillings Ten Million (UGX 10,000,000) is fair compensation and damages.

I hereby award the same to the Applicant.

(d) Interest at 24% Per Annum

Section 26(2) of the Civil Procedure Act, Cap. 282, grants the court discretion to award interest on monetary decrees at a rate deemed reasonable, from the date of the suit to the date of the decree, and further interest from the date of the decree until payment.

The Applicant, in his submissions, seeks interest at 24% per annum on the compensation of amount from the date of judgment until payment in full. The claim of interest at the rate of 24% is unsubstantiated and the case cited by Counsel in support of this prayer is one that relates to retention of money by Defendant, not refusal to handover titles as the present one, I therefore award interest of 6% per annum as per Section 26 (3) of the Civil Procedure Act

(e) Costs of the Suit

Section 27(1) of the Civil Procedure Act, Cap. 282, provides that costs are at the discretion of the court, with the general rule that costs follow the event unless the court orders otherwise for good reason. Costs should be awarded to the successful party unless exceptional circumstances justify a departure from this rule.

The Applicant has succeeded in this application, and the Respondent's failure to file a valid affidavit in reply or comply with court directives has prolonged the proceedings. No exceptional circumstances exist to deny costs. The Applicant is entitled to the costs of the suit to cover the expenses incurred in pursuing this matter.

I therefore award the costs of this suit to the Applicant.

For the reasons stated above, the application succeeds with the following declaration and orders against the Respondent:

- 1. A declaration that the Respondent's continued refusal to return the residual Certificates of Title for land comprised in Mawokota Block 162, Plots 711 and 720 at Mpambile, valued at approximately UGX 400,000,000, without the Applicant's consent or a valid court order, is illegal, unlawful, and violates the Applicant's right to own property.
- 2. The Respondent shall immediately surrender and return the residual Certificates of Title for land comprised in Mawokota Block 162, Plots 711 and 720 at Mpambile to the Applicant within 14 days from the date of this ruling.
- 3. The Respondent shall pay the Applicant Uganda shillings Ten Million (UGX 10,000,000) as compensation and damages.
- 4. The Applicant is awarded interest at 6% per annum on the compensation amount of Uganda shillings Ten Million (UGX 10,000,000) from the date of this judgment until payment in full.
- 5. The Respondent shall pay the costs of this application to the Applicant.

Dated and delivered this. 22 day of

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HON. LADY JUSTICE DEEPA VERMA

ACTING JUDGE

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