

UGANDA / JUDGMENT

Ssozi v Muyimbwa alias Nsumba and Another (Misc Cause 377 of 2023)

[2024] UGHCLD 14 (12 January 2024)

[2024] UGHCLD 14

COURT

HC: Land Division (Uganda)

BEFORE

Nkonge, J

CASE / FILE NUMBER

Misc Cause 377 of 2023

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THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

(LAND DIVISION)

MISCELLANEOUS CAUSE NO.377 OF 2023

SSOZI LAWRENCE: \$S\$

VERSUS

1. JOE MUYIMBWA FRANK alias Frank Nsumba

2. COMMISSIONER LAND REGISTRATION: 10

Before: Lady Justice Alexandra Nkonge Rugadya.**Ruling.**

- This application brought by notice of motion under the provisions of **Section 33** 15 of the Judicature Act, Cap.13, sections 140 (1), 142, 145, & 188 of the Registration of Titles Act cap.230 and Order 52 rules 1, 2, & 3 of the **Civil Procedure Rules SI 71-1** seeks orders that the respondent shows cause why the caveats lodged on the applicant's land comprised in Kibuga Block 3 plots 377 & 378 at Makerere should not be vacated.
- \$20\$

It also seeks orders that the 2nd respondent/Registrar of Titles at the Kampala Zonal office vacates the caveats, and that costs of the application, and general damages be paid by the 1st respondent.

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Grounds of the application.

The grounds of the application are contained in the affidavit in support deposed by Mr. Ssozi Lawrence, the applicant herein who stated inter alia that he is the registered proprietor of land comprised in Kibuga Block 3 plots 377 & 378 at

Makerere (hereinafter referred to as the 'suit land'), having bought the same, and taken vacant possession thereof from a one Kiyimba Ali Wasswa sometime in 2022.

That he got registered as the proprietor thereof on 21st March 2022, under Instrument No. KCCA - 00089923 & KCCA - 00089927.

Reply by the 1st respondent: \$10\$

The 1st respondent on his part filed an affidavit in reply opposing the application. He stated that he disputes the ownership of the suit land in its entirety because he has never sold, gifted, sold, or in any way alienated his interest in the suit land nor did he ever instruct anyone to do so on his behalf from the time he got the registered on the titles.

That when he bought the suit land, he got the certificates of title thereof from a one Musa Ndawula and got registered as the owner Kibuga Block 3 plots 377 land at Makerere under Instrument No. KLA116095 on 29th November, 1985 while he got registered as the owner of Kibuga Block 3 plots 378 land at

Makerere under instrument No. KLA123101 on 8th January 1987. 20

The 2nd respondent also filed a response, albeit out of time.

Representation.

\$25\$

The applicant was represented by \$M/s\$ Verus Advocates while the 1st respondent was represented by *M/s Emiru Advocates & Solicitors*. Written submissions were filed as directed by this court.

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Consideration of decision:

Court's attention was drawn to the proceedings pending at the 2nd respondent's office, which process as duly pointed out by the 1st respondent would accord all parties a hearing.

Section 91 of the Land Act, Cap. 227 gives power to the Commissioner, Land S Registration to give notice of not less than 21 days. Thereafter, by virtue of section 91 (2a), the office must accord any interested party a hearing; and communicate to them the decision on any corrective action taken under the circumstances as spelt out under **sub-section 2(a) to (f)** thereof on the register

or certificate of title. 10

\$25\$

The commissioner's corrective actions are however limited to illegalities which may have been committed in the process of transfer and registration, but not to fraud which would require proof under the rigours of a full trial, before a title is impeached.

- Although the office of the Commissioner may have quasi-judicial powers, it does 15 not however have the capacity to hear a matter involving fraud and make findings without calling evidence, including cross examination of the witnesses alleging fraud. (Ref. SCCA No. 15 of 2017: Hilda Wilson Namusoke & 3 others vs Owalla's Home Investment Trust EA Ltd).
- Consequently, where there is any possibility of cancellation of title, this court 20 must be engaged in a full trial and not merely rely on affidavit evidence, so as to fairly determine the parties' rights or interests on the disputed land.

Section 177 of the RTA therefore comes into play. It vests powers in this court to direct the office of Commissioner, Land Registration to effect any order of cancellation of a title.

As guided by the Court of Appeal in such circumstances, an aggrieved party where fraud is alluded to which may result in cancelling a title must therefore

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straight away file a suit for adjudication on the issues involved. (Hilda Wilson Namusoke & 3 others vs Owalla's Home Investment Trust EA Ltd (supra)).

For the above reasons, this application which is seeking to vacate a caveat would be premature as the decision would have to await the determination of the rightful owner of the suit land, which can only be made in a formal trial.

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I accordingly dismiss it with costs to the 1st respondent.

Alexandra Nkonge Rugadya

Judge

12th January, 2024 \$10\$

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