

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA AT KAMPALA

LAND DIVISION

MISCELLANEOUS CAUSE NO. 44 OF 2020

TWINOMUGISHA MARTIN:.....APPLICANT

VERSUS

COMMISSIONER LAND REGISTRATION:.....RESPONDENT

RULING

BEFORE: HON. JUSTICE HENRY I. KAWESA

This application was brought under Section 166 of the Registration of Titles Act Cap 230, Section 98 Civil Procedure Act Cap 71, Section 33 of the Judicature Act Cap 13, Articles 26 and 28 of the Constitution of the Republic of Uganda and O.51 r.1 & 2 of the C.P.R. S.I 71-1.

The application seeks orders that

1. The Applicant is the owner of land and developments **comprised in LRV KCCA 179, Folio 9, Plot 10 Block (*works close*) Luzira approximately 0.1159 hectares** having purchased it from a one Charles Opio Owalu of P.O Box 10, Entebbe as the registered proprietor.
2. The decree in H.C.C.S. No.2492 of 2016 registered on the certificate of title above on 24th of May, 2018, under Instrument No. KCCA 00050312 and entered as an order of

attachment and sale or order to maintain the *status quo* be removed and cancelled from the title register.

3. An order issues against the Respondent in favour of the Applicant for transfer and registration of the certificate for land **comprised in LRV KCCA 179, Folio 6 Plot 10, Nakawa Division Block (works close) land at Luzira** into the name of Martin Twinomugisha of P.O. Box 35379, Kampala as owner thereof.

4. Costs of the application be provided for.

The grounds of the application are supported by the affidavit deponed to by the Applicant and opposed by the Respondent's affidavit in reply deponed to by Wamala Ali. The Applicant filed an affidavit in rejoinder as well, and written submissions which Court shall consider accordingly.

The Applicant avers that he lawfully purchased **land comprised in LRV KCCA 179, Folio 9, Plot 10 Block (works close) Luzira (hereinafter the suit land)**, from the registered proprietor, a one Opio Charles Owalu on the 14th of July, 2016. *A copy of a land sale agreement was attached in proof thereof.* That after purchase, the registered owner gave him physical possession of that suit land and has since proceeded to develop the house thereon. He avers further to that, that the seller also handed over to him transfer forms, a photocopy of his national identity card, passport photographs plus the duplicate certificate.

All these were attached as *annexure C1, C2, and C3*. That when he started the process to transfer the title and lodged the transfer forms after paying the stamp duty and transfer fees, he was informed that there was a caveat lodged by a one Odungu Geoffrey Eyit on claims that the registered proprietor had given him the certificate of title as security for a loan with an agreement that if he did not pay, he would become owner thereof. That he became owner thereof upon default by the registered proprietor. That he learnt that the said Odungu Geoffrey Eyit filed H.C.C.S No.2492 of 2016 against Opio Charles Owalu and the Registrar of Titles, but that Court determined the said suit in favour of Opio Charles Owalu, in that it dismissed Odungu Geoffrey Eyit's claims of ownership and ordered the former to repay the loan with interest. *A copy of the said judgment was attached as annexure D.*

It is his evidence that after the judgment, he tried again to lodge his transfer form in Land Registry and by that time, the caveat by Odungu Geoffrey Eyit had been released and instead a Court decree was now registered on the title, thereby failing his registration. *A copy of the Court decree and fresh search certificate were attached as E and F.*

Further that when the said Court decree was registered on the certificate of title on the 24th of May 2018, the Respondent entered it as an "*order of attachment and sale or order to maintain the status quo*", yet there was no order of attachment at all. Paragraph 5 of the said decree gave the registered proprietor "*90 days from the date of judgment within which to pay the judgment debt*". Thereafter execution will proceed in the normal manner provided by law in case of default."

It is his assertion that judgment was delivered on the 27th of March, 2018 and decree sealed on 20th of April, 2018; and that clearly by 24th of May 2018, it was still within 90 days and no execution and attachment could be permitted or allowed by Court. Further that the Respondent was wrong to register the Court decree in the terms it did, when it had not been ordered to do so. That this

inconvenienced and prejudiced him as his transfer cannot be completed unless the said instrument is cancelled; and yet the said Odungu Geoffrey Eyit never appealed against the Court decree, save for Opio Charles Owalu who appealed on grounds that the interest awarded by Court and that the money lending contracts were illegal.

In reply, the Respondent admitted all the Applicant's averments, but added that it is fit and proper that the said Odungu Geoffrey Eyit who lodged the decree arising from Civil Suit No.2492 of 2016 be made party to the instant application.

In rejoinder, the Applicant avers that the involvement of Odungu Geoffrey Eyit in this application is inconsequential since Court decided in H.C.C.S. No.2492 of 2010 that the suit land is not his and that it belonged to Opio Charles Owalu.

Further, that the Respondent has failed to show any thing that he is not the equitable owner of the suit land or that he did not get transfer instruments from the registered owner. It was his evidence that it is just and fair that Court orders that the decree was wrongfully and irregularly registered on the certificate of title by the Respondent as an attachment order and that the same be removed and certificate of title transferred into his name as owner thereof.

According to **Section 61(1) of the Registration of Titles Act Cap 230**, a registered proprietor of land holds title subject to such encumbrances as are notified on the folium of the Register Book constituted by the certificate of title. In this case, the registered proprietor is Charles Opio Owalu and the incumbrance was registered by Odungu Geoffrey Eyit. This means that Charles Opio Owalu's title is subject to Odungu Geoffrey Eyit's incumbrance. The only way the Applicant can obtain title, free from any incumbrance, is by causing the said decree to be removed. That said, I

believe this cannot be done without hearing Odungu Geoffrey Eyit, since such would be condemning him unheard.

As such, I agree with the Respondent that it is fit and proper that Court orders Odungu Geoffrey Eyit, and certainly Charles Opio Owalu, whose title would be affected in the process, be made party to this suit.

Consequently, Court invokes **O.1 r10(2) of the Civil Procedure Rules SI 71-1** and orders the Applicant to take steps to bring before Court all parties who are to be affected by the orders sought for from Court. No one should ever be condemned unheard.

In the result this application fails and is dismissed with no orders as to costs.

I so order.

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Henry H. Kawesa

JUDGE

02/03/2021

02/03/2021:

Atukwasa Arnold from Pearl Advocates.

Atukwasa: I am sent to receive the Ruling.

Court: Ruling delivered.

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Kakooza Elias

AG. DEPUTY REGISTRAR

02/03/2021