

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISC. CAUSE NO. 35 OF 2020

(ARISING FROM WAKISO CRIMINAL CASE NO. 115 OF 2015)

1.HAMUZA S. WAKIIBI

2.IDD N. MAGUMBA -----APPLICANTS

(Minors suing through Muhamad Magumba next friend)

V

THE COMMISSIONER FOR LAND REGISTRATION----- RESPONDENT

Before: Hon. Lady Justice Olive Kazaarwe Mukwaya

RULING

This application is brought under section 177 of the Registration of Titles Act Cap 230 and section 98 of the Civil Procedure Act SI 71, seeking for orders that;

1. The 1st respondent recalls and cancels from the certificate of title for land comprised in Kyadondo Block 228 Plot 1980 at Mbalwa the name Chris Kakembo and reinstates the names of the Applicants and Maria Goretti Nassozi as proprietors of the said land.
2. The 1st respondent cancels all entries on the said certificate of title in favour of all parties privy to the fraud.

3. The costs of this application be provided for.

The application is supported by the affidavit sworn by the applicants' next friend, their bi Muhamad Magumba

Background

The applicants were together with their late mother, Maria Goretti Nassozi registered as joint proprietors of land comprised in Kyadondo Block 228 Plot 1980 at Mbalwa on the 28th June 2007. A copy of the certificate of title was attached and marked, 'A'. Following this Court's request, the Applicants' birth certificates were availed and a copy of the death certificate of the late Maria Goretti Nassozi were presented by the Applicants indicating that she died on the 27th September 2013.

According to the Applicants' next friend, Mr. Muhammad Magumba, on 30th October 2013, Chris Kakembo under Instrument No. WAK-0007323 fraudulently had himself registered on the land and obtained a certificate of title. He relied on a forged sale agreement to do so. Mr. Muhammad Magumba reported the matter to the police. Chris Kakembo was arrested and charged before the Chief Magistrate's court of Wakiso vide criminal case No.115 of 2015. After trial, he was found guilty of fraudulently procuring the said certificate of title, forging a sale agreement and uttering a false document to wit a transfer form thereby obtaining registration by fraud. Judgment was attached and marked, 'C'.

This application is for consequential orders that the said entry on the title be cancelled and the Applicants together with Maria Goretti Nassozi be entered as registered proprietors.

The Respondent was duly served by did not file and affidavit in reply. This matter was therefore heard ex parte.

Mr. Okiot Raphael, Counsel for the Applicants made written submissions which I have considered.

Issue

Whether this is a proper case for the grant of consequential orders?

RESOLUTION

It was the duty of the Applicants to demonstrate that this was a proper case for the grant of consequential orders under section 177 of the Registration of Titles Act Cap 230. While the failure or refusal or/and neglect of the Respondent to file an affidavit in reply after being duly served on the 17th day of July 2020 may be rightly construed as an admission of the facts as presented by the Applicants; the onus was on the Applicants to support those facts with evidence to warrant grant of the application.

Section 177 of the Registration of Titles Act Cap 230 provides as follows;

“Upon recovery of any land, estate or interest by any proceeding from the person registered as proprietor thereof, the High Court may in any case in which the proceedings is not herein expressly barred, direct the registrar to cancel any certificate of title or instrument, or any entry or memorial in the register book relating to that land, estate or interest, and to substitute such certificate or entry as the circumstances of the case require; and the registrar shall give effect to that order.”

Counsel for the Applicant relied on the case of **Park Royal Ltd vs Uganda Land Commission & 3 others Misc. Cause No. 46/2014**, where it was held that invoking the legal provision for cancellation should be incidental to the recovery of land by an applicant pursuant to proceedings that are not otherwise expressly precluded by the Registration of Titles Act.

A perusal of the certificate of title, marked 'A', indicates that the Applicants and their deceased mother are still registered on the certificate of title. The Magistrate Grade 1 Court, in its judgment, marked 'C', delivered on the 2nd October 2019, found that Chris Kakembo's registration on the property was the result of fraudulent transactions. Further, a search report was attached dated 30th September 2014. It indicates a mortgage registered on the suit title to Cairo International Bank Ltd by Chris Kakembo on the 23rd December 2013.

While there is some evidence, from the court judgment and the search report, that Chris Kakembo was registered on the suit title, Annexure, 'A', only speaks to the state of affairs on the title as of 28th June 2007 where the Applicants and their mother are jointly registered as proprietors. Court has not been availed with a certificate of title with Chris Kakembo registered as proprietor. It was imperative that this evidence be availed. Failure to avail proof of that registration left the application unsubstantiated on whether there was land to recover at all.

It would also be prudent for the Applicants to maintain their action against Chris Kakembo and add to it Cairo International Bank Ltd in the event that the mortgage is still subsisting. Counsel for Applicants must as possible envisage the persons on whom the consequential orders may affect and allow them exercise their right to be heard.

In conclusion, the application as it stands is dismissed with no order as to costs.

Olive Kazaarwe Mukwaya

JUDGE

31st August 2020

Delivered by email to: Mr. Okiot Raphael- M/S Busingye & Co. Advocates for the Applicants.