

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**LAND DIVISION**  
**MISC. APPLICATION NO. 792 OF 2022**  
**(ARISING FROM CIVIL SUIT NO. 208 OF 2022)**

**ENG. LUBEGA TWAHA YIGA ::: APPLICANT**

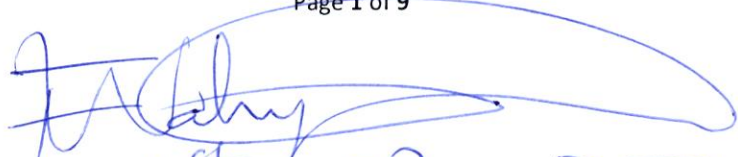
**VERSES**

- 1. RITA WALIGO**
- 2. WALIGO ANDREW BAKIKA**
- 3. WALIGO ALAN DAVID WUNYI**
- 4. SENKATUKA BARBRA WALIGO (Suing as Administrators of the Estate of the Late Abraham Pellew Nkalubo Waligo) ::: RESPONDENTS**

**BEFORE: HON LADY JUSTICE NABAKOOZA FLAVIA . K**

**RULING**

- 1. The Applicant moved court by way of a notice of motion under **Section 5 and 98 of the Civil Procedure Act, Section 38 and 41 of the Evidence Act and Order 52 Rules 1, 2 and 3 of the Civil Procedure Rules**, seeking orders that; -
  - a) Civil Suit No. 159 of 2022 is both an abuse of court process and barred by law due to the existence of the judgment in the Criminal Case No. 1389 of 2016 in the Chief Magistrates Court and accordingly the suit is dismissed.
  - b) Civil suit No. 159 of 2022 is time barred and is dismissed.
  - c) Costs of this application be awarded to the Applicant.
- 2. The grounds of the application are contained in the notice of motion and supported by an affidavit deposed to by Alex Kafero. The grounds are that the 1<sup>st</sup> and 4<sup>th</sup> Respondents initiated and testified in Criminal Case No. 1389 of 2016 against the Applicant in the Chief Magistrates court at Makindye on counts of forgery of a judicial document, uttering of a false document and fraudulent procurement of a certificate of title for land comprised in Block 272 Plot 35 contrary to Section 190(1) of the Registration of titles Act. That the Applicant was found not to be liable but the same aspects of forgery of a judicial document and fraudulent procurement of a certificate

  
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of title have been placed before this court for adjudication. That a competent court has already pronounced itself on the said issues and the judgment has never been appealed. That the instant suit is a disguised appeal with the effect of altering or confirming the decision of the Chief Magistrates Court.

3. The Respondents opposed the application through an Affidavit deposed to by the 4<sup>th</sup> Respondent, with written authority from the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. She averred that they are Administrators of the late Abraham Pellew Nkalubo Waligo whose estate comprises the suit land and are in possession of the original duplicate certificate of Title to that effect. That the Applicant has never been in possession of the suit land but the Respondents. That the Respondents learnt of the fraudulent acts and illegalities committed by the Applicant and his co-fraudsters in early October 2014 on information from the occupants of the suit land and upon inspecting the Register at Wakiso Mailo office. That the Applicant was aware of his predecessors' fraud and the Respondents' interest in the suit land but transacted on the same to defeat the latter's interest thereon.
4. Further, that only parties to a criminal case can appeal against it but Criminal Case No. 1389 of 2016 was instituted by the Director of Public Prosecution and the Respondents were not parties to it. That they have never instituted any suit against the Applicant or any of the parties to the head suit in respect of the suit land. That the burden and standard of proof and remedies sought in criminal cases is different from civil cases and the remedies sought in the head suit, could not be obtained in the said criminal case. Finally, that Section 38 of the Evidence Act cap 6 or any other law does not bar the head suit or this application.
5. In rejoinder, the Applicant averred that he has been in possession of the suit land since 2014; and that he never participated in any fraud while acquiring the suit land or been aware of any fraud. That the Respondents need not be parties to the criminal matter for this suit to be barred by law, and the burden of proof in both criminal and civil matters is on the party alleging presence of the alleged facts. That had the Applicant been convicted by the lower court, the Respondents would have gotten the remedies sought in this suit under Count 5 of fraudulent procurement of title contrary to Section 190 of the Registration of Titles Act. Subsequently, that the title and name of the Applicant would have been cancelled by the

  
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