

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

MISCELLANEOUS CAUSE NO. 02 OF 2012

KAAHWA FRANCIS ::::: **APPLICANT**

VERSUS

**COMMISSIONER LAND REGISTRATION/
 CHIEF REGISTRAR OF TITLES** ::::: **RESPONDENT**

RULING BY HON. MR. JUSTICE JOSEPH MURANGIRA

The applicant through his lawyers Nyanzi, Kiboneka & Mbabazi Advocates brought this application against the respondent under Section 182 of the Registration of Titles Act, Cap. 230, Order 52 rules 1 and 2 of the Civil Procedure Rules, S.I. 71-1. The application is supported by an affidavit that was sworn by the applicant on 22nd/12/2011. The respondent never filed an affidavit in reply to this application.

This application is seeking for the following orders; that:-

- (a) An order to the Commissioner Land Registration /Chief Registrar of Titles to appear before Court to show cause, if any why she/he will not issue the applicant a certificate of title.
- (b) An order that the Commissioner Land Registration /Chief Registrar of Titles enter a Certificate of title for land comprised in plot 11, Bulisa Block 3 land at Mubaku Ngwedo - Bulisa District in favour of the applicant, free from any memorials.
- (c) Cost of the application be provided for.

Further, this application is based on the following grounds that:-

- (i) The applicant has at all material times been the owner of the land comprised in plot 11, Buliisa Block 3 land at Mubaku Ngwedo- Buliisa District having obtained the same from Bulisa District Land Board vide BDLB Min 110/10/2009 of 1/10/2009 Application No.103.

- (ii) The applicant did all that was required, complied with all the procedural requirements for the issuance of the Certificate of title, and to have the land brought under the operation of the Registration of Titles Act cap.230.
- (iii) The issuance of a Certificate of title is an act that can only be performed by the Registrar of titles, under the law.
- (iv) That the Commissioner Land Registration /Chief Registrar of Titles has refused and/or neglected to issue the Certificate of title to the applicant without giving any justifiable reason and /or decision for doing the same.
- (v) It is in the interest of justice that this Honourable Court be pleased to order the Commissioner Land Registration /Chief Registrar of Titles to issue the applicant a certificate of title and/or summon the Chief Registrar of titles to appear in Court and substantiate his/her grounds for not doing so.

From the affidavit of service on record, the respondent was served with this application on 5th /04/2012. The respondent failed or neglected or/and refused to file an affidavit in reply in Court. The presumption of that failure to file an affidavit in reply by the respondent is that the respondent is not opposing this application. As if that was not enough, I directed both parties to file written submissions. The applicant through his Counsel complied with the Court directions on the matter. The respondent never complied. This application thus had to proceed exparte.

Though this application proceeded exparte, it is a cardinal principle of law that whoever asserts in any pleading must prove such assertions. That is, the applicant still has a burden to prove his case against the respondent on the balance of probabilities.

I have evaluated the affidavit evidence on record in support of the application, and annexure "B" (which is an application for conversion from customary tenure to freehold tenure). Form 4 to the Land Regulations, S.I.100 of 2004) to the affidavit that was sworn by the application, on the last page, part II (for official use only) the Area Land Committee made a recommendation. However, the decision or the recommendation of the District Land Board is not indicated. The space is blank. There is no minute number to indicate that his application for the suit land was ever approved by the District Land Board. The chairperson and the Secretary of the District Land Board never affixed on the said document their respective signatures. There is also no official seal and date as required by Regulations 10, 11 and 12 of

the Land Regulations, S.I. 100 of 2004. There is a contradictory letter (annexture “J” to the affidavit in support of this application, signed by Businge Godfrey, Ag. Secretary District Land Board, stating in number 3 –thereof:

“The above hold was approved by Buliisa District Land Board under minute number BLS/DLB Min 110/10/2009 of 1/10/2009 app.No.103”.

This letter was written to the respondent on 27th April, 2011. The decision of the District land Board is not attached to this application.

Unfortunately, too, the said minute of the said board is not attached on the application to show proof that such minute exists. There remains a doubt as to why annexture “B” attached on the affidavit in support of this application, part II thereof was never completed by the officials of Buliisa District Land Board. Wherefore, without proof that the applicant’s application for the suit land was ever approved by the Bulisa District Land Board, there is no way how I can fault the respondent. I also make a finding that the other annextures/documents which form part of the affidavit evidence of the applicant are not helpful in as far as the determining of whether the applicant’s application was ever approved or not by Buliisa District Land Board. This Court is careful in order not to be misled to allocate the suit land to wrong parties. The matter needs full investigation by the respondent.

In the result and for the reasons given hereinabove in this ruling, this application lacks merit. It is accordingly dismissed without costs.

Dated at Kampala this 14th day of August, 2012.

sgd
Murangira Joseph
Judge