

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)
MISCELLANEOUS CAUSE NO. 86 OF 2023
(ARISING FROM NABWERU CIVIL SUIT NO. 09 of 2018)

SENDIKWANAWA YOSIA.....APPLICANT

VERSUS

1. KIYIMBA KAMYA SAMUEL
2. COMMISSIONER LAND REGISTRATION RESPONDENTS

BEFORE HON. LADY JUSTICE FLAVIA NASSUNAMATOVU

RULING

Introduction:

1. The applicant filed this application seeking for orders that the 2nd respondent be directed to transfer land comprised in Kyadondo Block 52 Plot 421 at Sei and Sebujoba from the 1st respondent to the applicant as execution of decree that was issued in Nabweru Civil Suit No. 09 of 2018.
2. It was brought by notice of motion which was supported by an affidavit sworn by the applicant. Grounds of the application were laid in the notice of motion and affidavit in support. Briefly the grounds were that;
 - a) The applicant filed Nabweru Civil Suit No. 9 of 2018 against the 1st Respondent seeking interalia for an order for specific


24/4/2024

performance arising from breach of contract for the sale of land comprised in Kyadondo Block 52 Plot 421 at Sei and Sebugoba.

- b) On 23/12/2021, a decree was passed in favor of the applicant and an order for specific performance was made directing the 1st respondent to mutate plot 421 and execute a transfer form and title for 1.5 acres of land to the applicant to enable registration or in the alternative, the 1st Respondent to pay compensation per the current market value of the land.
- c) Pursuant to said the decree, the 1st respondent gave the applicant the certificate of title and mutation form in respect of the 1.5 acres, but after mutation, the he refused to give him duly executed transfer form to complete the transaction.
- d) The applicant thus filed hence this application seeking for the afore mentioned order.

3. The respondents were duly served with this application but neither filed any reply nor appeared at the scheduled hearing date. The matter therefore proceeded ex parte.

4. The applicant was represented by M/s Wetaka, Bukenya & Kizito Advocates.

5. Issue.

Whether this court should issue an order directing the 2nd respondent to register the applicant as proprietor of 1.5 acres


24/4/2024

of part of land comprised in Kyaddondo Block 52 Plot 421 at Sei & Sebujoba.

6. Law Applicable:

- The Constitution of the Republic of Uganda 1995
- The Registration of Titles Act Cap 230
- The Judicature Act Cap 13
- The Civil Procedure Act Cap 71
- The Contracts Act 2010
- Civil Procedure Rules
- Common law and Case law.

7. SUBMISSIONS

Counsel for the applicant filed written submissions which I carefully studied. They are on the court record and need not reproduce them here. Briefly he submitted that under S. 177 of the Registration of Titles Act this court has powers to direct the Registrar of Titles to effect changes on a Certificate of Title upon recovery of land. He cited the case of *Lwanga v. Registrar of Titles* (1980) HCB 24 where the court emphasized that a person who has obtained judgment for recovery of land can be registered as a proprietor under section 177 of the Registration of Titles Act.


24/4/2024

8. DECISION OF COURT.

After carefully studying the pleadings on record, the submission of counsel for the applicant plus the relevant law, I noted as follows:

- a) It is true that under S.177 of the Registration of Titles Act, this court has powers to direct the Registrar of titles to effect changes in the Register in favor of a party who has successfully recovered land pursuant to court proceedings.
- b) In Nabweru Civil Suit No. 9 of 2018 the court passed judgment in favor of the applicant in the following terms
 - An order of specific performance or in the alternative compensation per the current market value of the land.
 - General damages of 8 million
 - Costs
 - Interest at 19% per annum on above from date of judgment till payment in full.
- c) Since the applicant was seeking to enforce the order of specific performance, I was prompted to carefully study the contract in issue for which the court ordered for specific performance which was attached to the plaint. A careful study of the said contract provides;

“AGREEMENT FOR PURCHASE OF TWO AND A HALF ACRES OF LAND COMPRISED IN BLOCK NO. 50 PLOT 395.

I Kamya Samuel Kiyimba have sold the above-described land to Sendikwanawa Yoswa at thirteen


24/4/2024

million. He has paid me all of the money in cash and does not owe me anything.....”

- d) I note that the agreement referred to is in respect a totally different piece of land from what the applicant seeks a remedy in the instant application. In the instant application the applicant seeks to effect changes in Land comprised in Kyaddondo Block 52 Plot 421 whereas the agreement refers to Block 50 Plot 395.
- e) 2ndly the agreement did not give specific obligations that the seller was expected to perform. In my view for court to order specific performance as remedy for breach of contract, the contract should expressly provide for specific terms and obligations that the party is expected to perform under the contract. Therefore, the remedy of specific performance by the trial court in this case was not only irregular but also misplaced.
- f) 3rdly the judgment availed to court by the applicant referred to the suit land as Block 80 Plot 394 which is equally different from the one referred to in the sale agreement and in the instant application. Needless to say, that the said judgment and decree were neither original documents nor certified copies and therefore their authenticity could not be ascertained.
- g) I further note that the applicant did not avail to court the search report for the land comprised in Block Block 52 plot 421 for

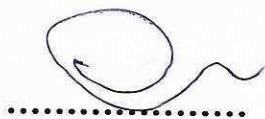

24/4/2024

which he sought to effect changes. Instead, he availed search reports for Block 52 Plots 1753 and 1754 and did not bother to explain the relationship between these two plots and the one mentioned in the application.

- h) With all the above anomalies, this court is hesitant to issue any orders directing the Registrar of titles to effect changes in the register as prayed by the applicant.
- i) In my view the applicant is still at liberty to seek execution of the said decree by way of enforcing the other orders that were issued by court but specific performance is not possible in the circumstances.

This application therefore hereby fails and the same is dismissed. The applicant shall meet his costs for the said application.

Dated this 24th day of April 2024

A handwritten signature in dark ink, consisting of a large, stylized loop followed by a wavy line, positioned above a dotted line.

JUDGE.