

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT AT KAMPALA**

**LAND DIVISION**

**MISCELLANEOUS APPLICATION NO. 2597 OF 2023**

**ARISING OUT OF CIVIL SUIT NO. 1236 OF 1999**

**AYESIGYE GEOFREY ===== APPLICANT**

**Versus**

**FRED PICHO KERALI ===== RESPONDENT**

**RULING**

**BEFORE HON. LADY JUSTICE FLAVIA NASSUNA MATOVU**

1. This application was brought under the provisions of S.33 of the Judicature Act, S.82 and 98 of the Civil Procedure Act plus 0.46 rr 1,2,& 8 of the Civil Procedure Rules. It was seeking orders that the exparte judgement and decree in HCCS. No. 1236 of 1999 be reviewed and or varied to exclude the applicant's property/interest from the execution process in light of his interest on the land comprised in Kyaddondo Block 243 plot 569 at Mutungo and that costs of the application be provided for. It was brought by notice of motion which was supported by an affidavit sworn by the applicant. The grounds of the application were laid in the notice of motion and affidavit in support. Briefly the grounds were that;
  - a) In 1996, the applicant acquired a kibanja interest from the late Mbalangu Leo who was residing on the suit land comprised in

Kyadondo Block 243 Plot 569 land situate at Mutungo and had lived on the same since the 1940's.

- b) He developed the said kibanja by constructing his permanent residence thereon and had lived there since 1997.
- c) In 1999, Getrude Picho and Dr. Albert Picho Owiny instituted Civil Suit No. 1236 of 1999 against Hellen Busingye and Mbalangu Leo.
- d) That at the time of filing this suit, the applicant was already in possession and occupation of his kibanja on the suit land, but he was never added as a party to the suit.
- e) That the said suit proceeded exparte it was decided in favor of the plaintiffs/respondents.
- f) That the applicant had no notice of the said suit which pertained to ownership and in which the respondents sought eviction of the defendants from Kyaddondo Block 243 plot 569.
- g) The applicant was not a party to Civil Suit No. 1236 of 1999 and his interest in the suit land was never challenged.
- h) The respondent applied for execution of decree in HCCS. No. 1236 of 1999 by eviction of all occupants on the said land.
- i) The exparte judgment and decree and execution of the same, directly affects the applicant and is tantamount to condemning him unheard and will result in his eviction.
- j) The applicant's property and interest in the suit land is different and independent of the interest that was possessed by the defendants in Civil Suit No. 1236 of 1999.

k) The execution of the judgment in Civil Suit No. 1236 of 1999 will be by eviction of the occupants of Kyadondo Block 243 Plot 569 land situate at Mutungo; inclusive of the applicant who was not a party to the suit.

2. The respondent filed an affidavit in reply by which he called upon court to dismiss this application with costs. Briefly he stated that;

- a. He is the registered proprietor of the suit land comprised in Kyaddondo Block 243 Plot 569 land situate at Mutungo.
- b. The applicant has never acquired a kibanja interest in the suit land as it was never a kibanja.
- c. At the time of filing HCCS. No. 1236 of 1999, the land was only occupied by Hellen Busingye and the late Mbalangu Leo.
- d. That in his written statement of defense, the late Mbalangu stated that he with his niece, Hellen Busingye, were the ones in occupation of the suit land and no mention was made of the applicant.
- e. The applicant has no kibanja interest in the suit land because he claims to have derived his interest from Mbalangu Leo whose interest was adjudged by court to have been defective by virtue of his illegal entry onto the suit land as per the judgment in HCCS NO. 1236 of 1999.
- f. The applicant was always aware of HCCS. No. 1236 of 1999 and had been paying legal fees alongside Hellen Busingye to support applications to set aside the ex parte judgment.

- g. The receipts presented by Hellen Busingye in her affidavit in support of HCMA No. 280 of 2022 show that the applicant and Hellen Busingye jointly paid legal fees to M/s Bwango Araali & Co. Advocates & Legal Consultants.
  - h. The application by Hellen Busingye to set aside the exparte judgment and decree in Civil Suit No 1236 of 1999 was dismissed by this court.
  - i. Since the applicant was aware of the ongoing case, he ought to have applied to be added as a party to the civil suit.
  - j. That the applicant attempted to stop execution of the judgment and decree in HCCS No. 1236 of 1999 which application was dismissed by this Honorable Court on Appeal.
  - k. That the application is frivolous and vexatious.
3. The applicant filed an affidavit in rejoinder, by which he maintained his earlier averments and also stated that;
- a. The application was not in any way intended to derail the judgment in HCCS. No. 1236 of 1999 but to protect his kibanja interest in the suit land.
  - b. That there had never been any legal or due process in regard to his property on the suit land.
  - c. That KCC had no mandate to determine proprietary rights and that the applicant was not aware of any withdrawal of permission to construct by KCC when he constructed his property in 1997.

- d. That at the time of filing HCCS. No. 1236 of 1999, he was already in occupation of his residence on the suit property.
- e. The property of the late Mbalangu Leo and Hellen Busingye on the suit property is separate and distinct from that of the applicant.
- f. That there is ample evidence of receipts of payment of envujjo and busulu by the late Mbalangu to the previous registered proprietor of the land.
- g. That the applicant had never paid any legal fees to a lawyer known as Bwango in relation to the ongoing matter before court.

#### **4. LEGAL REPRESENTATION**

The applicant was represented by M/s Balyejjusa & Co. Advocates while the respondent was represented by M/s Verma & Partners.

#### **5. ISSUES**

**Whether the judgment in HCCS. No. 1236 of 1999 should be reviewed and or varied.**

#### **6. LAW APPLICABLE**

- The Constitution of the Republic of Uganda 1995.
- The Judicature Act Cap 13
- The Civil Procedure Act Cap 71
- The Civil Procedure Rules
- Common law and case law.

## 7. SUBMISSIONS.

Both counsel filed written submissions which I carefully studied and need not reproduce because they are already on record.

- a) Briefly counsel for the applicant submitted that the question for consideration before court should be whether the applicant is an aggrieved party as per section 82 of the Civil Procedure Act. He submitted that the applicant was an aggrieved party as held in the case of **Ladak Mohammed Abdallah v. Griffith Isingoma; SCCA No. 8 of 1995** that the term “any aggrieved party” in the Civil Procedure Act includes third parties who may not have been party to the suit.
- b) He submitted that the applicant had proprietary interest in the suit property and therefore, the judgment in Civil Suit No. 1236 of 1999 ought to be set aside or varied to protect his interest in the suit land.
- c) Counsel for the respondent on the other hand submitted that the applicant was guilty of laches and dilatory conduct and that the application was frivolous and vexatious. He cited the case of **Combined Services Ltd v. A.G; HCMA No. 200 of 2009** in which it was held that one must bring an application for review without unreasonable delay and in that case the applicant who had filed an application after 8 months was found to be guilty of laches. That in the instant case since the application was filed after 6 years and 7 months, this court should find that the applicant was guilty of dilatory conduct. He also submitted that

the receipts indicating that the applicant was paying legal fees alongside one of the defendants to Civil Suit No. 1236 of 1999 are evidence that the applicant was aware of the court proceedings and had only filed this application to delay the respondent from realizing the fruits of the judgment. He also submitted that the applicant had not highlighted any grounds for review of the previous judgment and that there is no mistake apparent on the record.

d) In rejoinder, Counsel for the applicant submitted that the applicant had attached receipts of payment of Busulu by the late Leo Mbalangu which indicated that he had an equitable interest in the land from which the applicant's interest is derived. He also submitted that the applicant was not guilty of dilatory conduct as he only got to learn of the matter in 2022 when the notice of eviction was issued against him. That the Respondent had not adduced any proof that the applicant was not on the suit land when Civil Suit No. 1236 of 1999 was instituted.

## **8. DECISION OF COURT.**

### **Whether the judgment in HCCS. No. 1236 of 1999 should be reviewed and or varied.**

a) It is true as submitted by counsel for the applicant that under S. 82 of the Civil Procedure Act, any person who is aggrieved by a decision of court can lodge an application for review. However, S.82 should be read together with 0.46 r. 1 of the Civil Procedure Rules which provides that the aggrieved person must

also show that he /she has since discovered new and important matter of evidence which was not within his or her knowledge or could not be produced by him or her when the decree was passed; or that there is an error apparent on the face of the record; or that he has sufficient reason to do so.

b) In the instant case, the applicant applied for review of the judgment of court on the ground that he has kibanja interest on the suit land which he acquired from late Mbalangu. That he was not party to HCCS. No. 1236 of 1999 and therefore was bound to be evicted unheard.

c) I however note that in HCCS. No. 1236 of 1999, the court found that Mbalangu was neither a bonafide nor lawful occupant of the suit land. In **Bishopgate Motor Finance Ltd v. Transport Brakes (1949) 1 ALLER 37** it was held that a person cannot give a better title than that which he possesses. Suffice to note that this principle was upheld by the Court of Appeal in the case of **Patrick Mukasa v. Douglas Andrew Kanyike, CACA No. 307 of 2018** and I have no reason to deviate from it. Similarly, in the instant case, the court has already found that Mbalangu had no interest in the suit land and therefore could not have passed on any lawful interest to the applicant.

d) I also note that the defendants in HCCS. No.1236 of 1999 filed written statement of defense to the suit but opted not to participate in the proceedings. The court indeed considered the defense that was filed and found it unsatisfactory. The Busuulu tickets attached by the applicant mention Ernest Kaggwa as the Landlord. The applicant

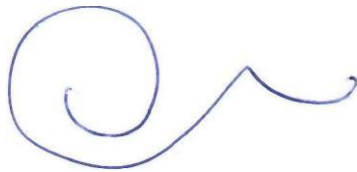


did not avail any evidence to show the connection between Ernest Kaggwa and the current registered proprietor. The applicant himself did not avail receipts to show that he too had been paying Busuulu for the kibanja. Worse still apart from saying he acquired kibanja interest in the land, the applicant did not mention who his landlord was and whether he ever bothered to introduce himself to the landlord after the alleged purchase. In my view anybody who claims to have kibanja interest on land should endeavor to know his or her landlord and formalize his or her relationship with the landlord.

e) I have therefore not found any new evidence, error on face of record or sufficient reason to review the judgment in HCCS. No. 1236 of 1999.

The application is therefore hereby dismissed with costs to the respondent.

Dated at Kampala this 21<sup>st</sup> day of June 2024.



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**JUDGE**