

THE REPUBLIC OF UGANDA
IN THE COURT OF APPEAL OF UGANDA (COA) AT KAMPALA
CIVIL APPEAL NUMBER 0209 OF 2013

5 **HAJJI NUMANI MUBIAKULAMUSA.....APPELLANT**

VERSUS

FRIENDS ESTATE LIMITED.....RESPONDENT

CORAM:

HON. MR. JUSTICE REMMY KASULE, JA

10 **HON. LADY JUSTICE SOLOMY BALUNGI BOSSA, JA**

HON. MR. JUSTICE KENNETH KAKURU, JA

JUDGMENT OF THE COURT

15 The appeal arises from the Ruling and order of the Hon. Justice Geoffrey Kiryabwire J (as he then was) dated 21/11/2011 in High Court Commercial Division, Miscellaneous Application No. 435 of 2011. This application was itself arising from High Court Civil Suit No. 27 of 2003.

20 The High Court application from which this appeal arises was brought by way of Notice of motion under **Order 22 Rules 55, 56, 57** and **Order 52 Rule 1** of the Civil Procedure Rules (CPR).

It sought the following orders.

1) That immovable property comprised in leasehold Register Volume 149 Folio 8 Plot 1 Rubaga Road Kampala be released from attachment.

2) The costs of this application be provide for.

The grounds of the application as set out in the Notice of motion were that;-

1. The immovable property comprised in leasehold Register Volume 149 Folio 8 Plot 1 Rubaga Road, Kampala is not liable for attachment as it is in the hands of the applicant as the registered proprietor thereof.

2. The Judgment debtors Nasser Kiyingi and John Baptist Kizza are not in occupation and use of the property.

The notice of motion dated 15th August 2011 was supported by the affidavit of the appellant who attached a certificate of title indicating that he had been registered as proprietor on 27.10.2010.

The motion was challenging the order of the High Court dated 18th July 2011, which directed Nasser Kiyingi and John Baptist Kizza to put Friends Estate Limited, the respondent, in vacant possession of the above described suit premises.

The learned Judge rejected the application and dismissed it with costs. He also made a number of other orders and declarations against the appellants, hence this appeal.

At the hearing of this appeal learned counsel **Cosma Kateeba** and **Andrew Wamina** appeared for the appellant. The respondent was represented by learned counsel **Ms. Diana Kisubi**.

Learned counsel for the appellant argued the grounds of appeal as set out in the memorandum of appeal. The grounds of appeal are set out as follows:-

- 10 ***1. The Learned Judge erred in law and violated constitutional principles and principles of natural justice when he cancelled the Appellant's certificate of Title and issued an eviction order against the Appellant in the absence of any formal proceedings against the Appellant in a competent forum.***
- 15
- 2. The Learned Judge erred in law and exercised a jurisdiction he does not have when he purported to review and issue a new decree in HC (OS) No. 27 of 2003 at the execution stage of the proceedings.***
- 20
- 3. The Learned Judge erred in Law and fact in dismissing Miscellaneous Application No. 435 of 2011 with costs after making a finding that the warrant to give vacant possession had been issued against the wrong persons who were not in possession of the suit property.***
- 25
- 4. The Learned Judge erred when he ignored the fact that the order in Miscellaneous Application No. 552 of 2004 that the Respondents were ostensibly***
- 30

executing did not grant any order of vacant possession against anyone.

5 *5. The learned trial Judge erred in law and fact when he purported to convert Miscellaneous Application No. 435 of 2011 into a suit for rectification and/or cancellation of title to Land and developments comprised in Leasehold Register Volume 149 Folio 8 Plot No.1 Rubaga Road, Kampala.*

10 *6. The Learned Judge erred in law and in fact when he held that the Appellant was not a bonafide purchaser for valuable consideration without notice when there was insufficient material to justify such a finding and the procedure adopted did not lend itself to a proper investigation of fraud.*

15 *7. The learned Judge erred in Law, exhibited bias and occasioned a miscarriage of Justice when he purported to consider and determine the competence of the Appellant's defence of bonafide purchaser for valuable consideration without notice before the Appellant had presented the said defence.*

20 *8. The. Learned Judge exhibited bias and animosity to the Appellant during the hearing and determination of Miscellaneous Application No. 435 of 2011 thereby occasioning a miscarriage of justice.*

25 *The appellant seeks the following orders from this court.*

a) The Appeal be allowed and the ruling and orders of the Learned Judge decision be set aside.

b) Miscellaneous Application No. 435 of 2011 be allowed.

c) A consequential order issue directing that the Respondent and its Lawyers be sanctioned for abuse of the process of Court.

5 **d) High Court Miscellaneous Application No. 435 of 2011 be remitted to the High Court for hearing on the quantum of damages due and payable by the Respondent and its lawyers to the Applicant for a flagrant and inexcusable abuse of the process of court.**

10 **e) Costs of the Appeal and those in the High Court be paid by the Respondent to the Appellant.**

15 It was submitted by Mr. Kateeba learned counsel for the appellant that the learned trial Judge erred when he delved into the issues of fraud and went ahead to hold that the appellant was not a *bonafide* purchaser for value, when the application required resolution of only the issue of whether the property was subject to execution.

20 He submitted that the Judge was not required in the application to determine the issue of ownership of the suit property. He submitted that the issue of ownership should not have been determined at that stage in the proceedings of that nature.

25 That the learned Judge having determined that the application before him was incompetent, erred when he went ahead to make specific findings as to ownership of the property.

Learned counsel further contended that the learned trial Judge erred when he went on to make findings of fact that there was fraud and illegalities committed in the process of registration of the

appellant as proprietor of the suit property, as that matter was not before him in that application.

He submitted that the reply to the notice of motion raised no counter claim by the respondent alleging fraud and seeking cancellation of title on that account.

He submitted further that such matters could not have been raised by way of notice of motion supported only by affidavit evidence. In his opinion matters such as fraud require strict formal pleadings and proof by way of oral evidence.

He submitted that issues of fraud can only be determined in a regular suit, arising from regular pleadings after framing of issues.

He also submitted that the learned Judge exhibited bias when he made up his mind that the appellant was not a *bonafide* purchaser for value before hearing all the parties on that issue, which issue was not before him in that application.

Mr. Kateeba further submitted that the order the respondent sought to enforce, granting it vacant possession of the suit property had not been specifically made by the Judge and as such it was null and void.

He submitted that the order for vacant possession issued by the Registrar was not consequent upon an order given by the Judge.

In reply Ms. Kisubi learned counsel for the respondent supported the decision and reasoning of the learned trial Judge. She submitted that

the learned trial Judge was right when he made the order and declaration he made in respect of ownership of the property. She submitted further, that this was because the illegalities and the fraud had been brought to his attention during the course of the hearing of the application. That on the authority of ***Makula International vs Emmanuel Cardinal Nsubuga [1982 HCB 11]*** an illegality once brought to the attention of the court cannot be ignored as it overrides everything else including pleadings. She also referred to the holding of this court in the cases of ***Belex Tours and Travel Ltd vs Crane Bank and another Civil Appeal No. 71 of 2009 and NSSF and Sentongo vs Alcon International; Supreme Court Civil Appeal No. 15 of 2009*** which were to the effect that an illegality can be raised at anytime during a trial and that a Court of law cannot sanction that which is illegal.

Learned counsel for the respondent submitted that there was an illegality that was raised in the affidavit in reply by the respondent which pointed to the fact that there was a violation of the court order, an abuse of court process and fraud which the trial Judge could not ignore.

She submitted further that it was the finding of the learned trial Judge that he had made an order reinstating the respondent on to the land title in respect of the suit property.

That, that the order arose from Miscellaneous Application No. 552 of 2004. That there was another order made by Hon Justice Okumu-

Wengi J, restraining any further dealings on the register of titles and both orders had been entered on the register.

She submitted that both orders were cancelled from the register using a consent order procured by fraud, in HCCS No 0771 of 2004.

5 Learned counsel went on to submit at length what she considered constitutes fraud in this case and generally supported the findings of the learned trial Judge.

We have heard the submissions of counsel for both parties and we have read the record and the authorities cited to us.

10 As a first appellate court we have a duty to re-appraise the evidence and come to our own conclusions on issues of both law and fact. See **Henry Kifamunte vs Uganda (Supreme Court Criminal Appeal No. 10 of 1997) and Fr. Narcensio Begumisa & others vs Eric Tibebaaga (Supreme Court Civil Appeal No. 17 of 2002**
15 (unreported).

In this particular case, the respondent had obtained from court an order for vacant possession in respect of the suit property. The pertinent part of that order reads as follows;-

20 **“WHEREAS The under mentioned property In the occupancy of the Respondents Nasser Kiyingi and John Baptist Kizza has been decreed to Friends Estate Ltd, the Applicant in this suit, you are hereby directed to put the said FRIENDS ESTATE LTD in the possession of the same, and you are hereby**
25 **authorized to remove any person bound by the decree**

who may refuse to vacate the same and remove your fees from the defendant for the execution of this warrant.

5 **This serves to direct the responsible Police Officers to ensure that this warrant is executed In a proper manner.”**

The learned trial Judge in his Ruling from which this appeal arises
10 sets out the facts leading to the issuance of the warrant of vacant possession set out above as follows;-

15 **“... there is warrant of vacant possession in respect of the suit property to which the applicant objects to as registered property (Sic) having acquired the said property for valuable consideration without notice of any defect title.**

20 **The Applicant in a further affidavit in support dated 12th August, 2011 states at paragraph 3 that he has been in effective occupation, possession and use of the said property since 31st October, 2011. Going by this affidavit this means that the Applicant has only recently occupied the said suit property (though the duplicate certificate title shows the property was transferred to him on the 27th October 2010). The Applicant further deponed that he had acquired the**
25 **suit property from M/S Mask Investments Ltd through its director one Francis Mashate. He states that he does not know the persons named in the warrant for vacant possession namely; one Nasser Kiyingi and**
30 **John Baptist Kizza who he says are not in possession of the suit property. The Applicant further deponed**

that he has made several developments on the property and that there is an outstanding loan on the property with M/S DFCU Bank.

5 **In reply to the affidavits in support, one Anil Hasam Shamji a Canadian Citizen but born in Uganda states that he is the attorney and proxy of M/S Friends EstatesLtd the first Respondent. Mr. Shamji in his affidavit of 13th September, 2011states that the first**
10 **Respondent company repossessed the suit property through the Ministry of Finance on the 14th July 1992.**

15 **However, in 2003 Mr. Shamji states that fraudsters through one Nasser Kiyingi instituted High Court Civil Suit (OS) No. 27 of 2003 and used court process to transfer the suit property into the names of one James Kalungi. Furthermore, Mr. Shamji from paragraph 12 to 18 of his affidavit states that the**
20 **first Respondent filed Miscellaneous Application No. 552 of 2004 before myself as Judge to set aside fraudulent transaction which I did on the 19th January 2005 by setting aside all transfers that had occurred on that suit property.”**

25 **Mr. Shamji in paragraph twelve of his affidavit states that in 2004 one G. K. Kalule and James Kalungi filed another suit No. 771 of 2004 in the Civil Division of the High Court. Immediately thereafter the said**
30 **parties signed a consent judgment where Kalule gave vacant possession of the suit property to Kalungi. This consent judgment was again challenged by the first Respondent in Miscellaneous Application No. 1005 of 2004 before The Hon. Justice Okumu Wengi**

5 ***as an attempt to circumvent my orders in HCCS (OS) 27 of 2003. On the 9th May, 2005 The Hon. Justice Okumu Wengi set aside the subsequent consent judgment and added the first Respondent to the suit. Mr. Shamji deponed that again in 2008 through Miscellaneous Application No. 154 of 200f, (arising from HCCS No. 771 of 2004) on the 18th June, 2008 by another consent order reinstated the consent judgment that had been set aside by the Hon. Justice Okumu Wengi without the knowledge of the first Respondent. Two days later G. K. Kalule and J. B. Kalungi entered into a consent judgment whereby Kalungi was said to have sold the suit property to G. K. Kalule. It is Shamji's testimony in paragraph 12 (i) of his affidavits that these consent orders and judgments were meant to circumvent The Hon. Justice Okumu Wengi and my orders; without the involvement of the first Respondent. Subsequent to this, a series of transactions took place involving the suit property and hence this present application.***

25 The learned trial Judge then went on to make a finding that whereas the applicant sought to have the suit property released from attachment, there was no warrant of attachment issued by court, the only warrant issued being that for vacant possession, he concluded that the application was incompetent.

30 He again went on to find that from the evidence before him the warrant for vacant possession had been addressed and issued against wrong persons who were at the time not in possession of the suit property.

Learned Judge having found as above went on to state as follows at page 8 of his Judgment

5 **“That notwithstanding the reply to this motion by the respondent has raised important issues that cannot be brushed aside in such summary manner and these are illegality and fraud.**

10 **In the now often referred to case of Makula International v Cardinal Emmanuel Nsubuga [1982] HCB 11 (CA)**

15 ***It was held once an illegality has been brought to the attention of the Court it cannot be ignored. The Court of appeal in that case held that a Court of Law cannot sanction what is illegal and illegality once brought to the attention of the Court, overrides all questions of pleadings, including any admissions made thereon. To my mind, fraud is the worst form of illegality and Court must therefore address itself to this.”***

20

The learned trial Judge then went on to make a number of observations. He traced the events that led to the issuance of the warrant of vacant possession. He sets out on number of facts and makes a number of findings as follows at pages 8-9 of his Ruling.

25

30 ***“I must observe that the events surrounding the suit property are perplexing and most disturbing. As the Judge in HCCS (OS) 27 of 2003 and MA 552 of 2004 where I made clear findings and orders, I am baffled how this dispute could escalate to what we have now. There was an admission of fraud by one Nasser Kiyingi (alias Nasser Kiyingi) in that case which could***

not be let to stand. It is now clear that the persons affected by my orders in M.A. 552 of 2004 especially one J.B. Kalungi decided to file a counter suit HCCS 771 of 2004 instead of going on appeal to the Court of Appeal. I made a clear finding that the transfer vide instrument No. 343562 registered on the 1st June 2004 into the names of James Kalungi was tainted with fraud and illegality and I set it aside. Even the Bailiff Mr. John Baptist Kizza who handled the alleged sale denied making a sale to Mr. Kalungi. How could this finding be reversed without the order or a superior Court on appeal? This I actually made clear in yet another application M.A. of 655 of 2005. How Mr. Kalungi, Mr. Kalule and their legal advisers thought any binding legal effect would come of this parallel suit defeats my understanding. This I find was an attempt at circumvention of my order and that is why Hon. Justice Okumu Wengi in M.A of 1005 of 2004 set aside the clearly worthless consent judgment in the head suit in his words to

" ... give effect to the ruling of Judge Kiryabwire (myself) of the 19/1/2005..."

Even in this case HCCS No. 771 of 2004 again Mr. J. Kalungi and Mr. G. Kasule in M.A. 154 of 2008 without appealing the decision of Hon, Justice Okumu Wengi again compromised his orders using a series of consent order and judgments. This was clearly irregular and illegal.

Perhaps the most alarming situation is the cancellation of my orders and those arising out of M.A. 1005 Of 2004 and M.A. 24 of 2005 being matters before the Hon. Justice Okumu Wengi registered on the white paper of the suit property on the pretext that they were "entered in error" yet the original Court orders are on the Land office file and stand

uncontested to this day. Clearly the removal of two orders of the High Court (mine inclusive) in this manner was both illegal and fraudulent and I accordingly so find.

5

The learned trial Judge went on to find that the appellant was not a *bonafide* purchaser for value without notice. At page 9 of his Ruling he states as follows:-

10 ***“It is the case for the Applicant that he is a bona fide purchaser for value without notice of these frauds and therefore his title is protected. Given that the Applicant himself became the registered proprietor through a series of three transactions on the white page on the 27th October, 2010 all done within five***
15 ***minutes is very suspicious and would displace any presumption of bona fides in this case.”***

The learned Judge concluded by making the following findings and orders at pages 10-11 of his Ruling:-

“In light of the above I hereby make the additional findings and orders.

20 ***In terms of section 176 of the RTA the first respondent was deprived of the suit property by fraud involving multiple players who cannot be regarded as bona fide purchasers for value without notice. Consequently the applicant as***
25 ***registered proprietor is not protected by that section from ejection.***

In terms of section 177 of the RTA, I order the reinstatement of the first respondent as the

registered proprietor of the suit property and the cancellation of all entries made after 20th October 2005. Court cannot condone a blatant abuse of its process.

5

I further order in terms of section 98 of the CPA and sections 33 of the Judicature Act that vacant possession be granted against all those in occupation of the suit property, the applicant inclusive.

10

To avoid further abuse of orders of this Court through circumvention I order and direct that this ruling be immediately brought to the attention of the Chief Registrar Courts of Judicature , the Inspector of Courts, the Chief Registrar of Titles and the Inspector General of Police.

15

I so order.

I grant the first respondent the costs of this application.

20

The applicant claims in his affidavit in support of the notice of motion as set out in paragraphs 1 to 5 as follows:-

1. That I am an adult male Ugandan of sound mind and the registered proprietor of Leasehold Register Volume 149 Folio 8 Plot No. 1 Rubaga Road, Kampala. A Photostat copy of the title deed is annexed hereto and marked "A ".

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2. That I am in occupation and use of the property known as Leasehold Register Volume 149 Folio 8 Plot No. 1 Rubaga Road, Kampala and at the moment I am

***undertaking
extensive renovation work on the property.***

5 ***3. That on the 3rd day of August, 2011 while at the
property above described, I was shocked to be
confronted by Court Bailiffs who threatened to occupy
the premises at the site in execution of the order of
vacant possession. Copies of order of vacant possession
and the letter requesting for police assistance are
10 attached hereto and marked "B" and "C" respectively.***

***4. That the Court Bailiffs are threatening to evict all
persons from the property.***

15 ***5. That if the execution proceeds and the property is
occupied, I will be illegally dispossessed of my own
property.***

20 The applicant later filed a supplementary affidavit expounding on the
above.

The respondent in its affidavit in reply deponed to by Anil Hasam
Shamji challenged the applicants' assertions and firmly put the
25 respondent's case as follows in paragraph 11 of the affidavit in
reply.

30 ***11 i) The title deed, annexure "A" to the Applicant's
affidavit of 4th August, 2011, which the Applicant
bases on to assert ownership is a forged and sham
title, which does not reflect, that on 20th October,
2005 FRIENDS ESTATES LIMITED was re-instated
on the title by Court Order in High Court Misc.
Application No.552 of 2004 Vide Instrument
No.359830.***

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5 ***ii) The Applicant's title does not reflect that on 18th January, 2005, a Court Order was registered on the title stopping any change or transfer of ownership pending the disposal of Misc. Application No. 1005 of 2004 (H.C. Misc. Application No. 24 of 2005) registered as Instrument N 0.350458.***

10 ***iii) The Applicant's title, which is a special title, tells a lie on its face as contradistinguished with the genuine certified true copy of title issued to the 1st Respondent, following its re-instatement on the title, a copy of which is annexed hereto marked "AS7".***

15 ***iv) The Applicant is parading a parallel title deliberately created in furtherance of fraud, in contravention of Justice Kiryabwire's Order of 19th January, 2005 declaring that the transfer vide Instrument No.343562 registered on the 1st of June 2004 into the names of James Kalungi is tainted with fraud and illegality and is set aside and that it affects all further transfers made to the property.***

20 ***v) The parallel title shown deliberately omits entries which reflect to the interests of FRIENDS ESTATES LTD.***

25 ***vi) Any prudent search and due diligence at the Lands Register should have revealed red flags about the massive frauds as lawyers for FRIENDS ESTATES LIMITED have written numerous letters to the Registrar, of Lands and other authorities, the Court Orders mentioned above were registered on the land register caveat documents were lodged on the land office files, albeit rejected on flimsy grounds. (Copies are annexed collectively marked "AS8").***

vii) The transfer in annexure "E" to the Applicants affidavit of 12th August, 2011 does not support payment of valuable consideration.

In paragraph 12 of his affidavit in reply Mr. Anil Hasam Shamji goes on to set out in detail the alleged series of alleged fraudulent and illegal transactions committed by a number of persons before and after the appellant had obtained a parallel title to the suit property.

Whereas the appellant obtained a parallel title to the suit property in October 2010, the alleged fraudulent dealings as set out by the respondent appear to have commenced sometime in 2004.

The affidavit in reply was deponed to on 13th September 2011 and was filed at the High Court, Commercial Division, on the same day. The hearing of the application from which this appeal arises commenced on 14th September 2011. The same was adjourned to 19th October 2011, after the learned trial Judge had made the following order.

"I order pursuant to Order 22 rules 55 and 56 that: (i) the Registrar of Titles deliver to court the white page on LRV 149 Folio 8 known as Plot 1 Rubaga Road for court to further investigate the ownership of the property at the next hearing of this investigation. (ii) That DFCU Bank also to deliver the Special Certificate of Title for the same property for the same purpose at the next hearing of this investigation. (iii) That this matter is adjourned to 19th October 2011 at 09.00 a.m. for further investigations. Other orders of this court remain the same until then."

On the 19th of October 2011, the application proceeded and was concluded and the Ruling was delivered on 21st November 2011.

With all due respect to the learned trial Judge we find that he erred in law when he proceeded to investigate the matter as he did under
5 **Order 22 Rules 55 and 56** of the Civil Procedure Rules.

This is because in his own ruling he found that the said law was inapplicable in the circumstances of the case and that the application having been brought under that law was incompetent.

Order 22 Rules 55 and 56 stipulate as follows:-

10 ***“55. Investigation of claims to, and objections to
attachment of, attached property.***

(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that the property is not liable to the attachment, the court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he or she was a party to the suit; except that no such investigation shall be made where the court considers that the claim or objection was designedly delayed.

(2) Where the property to which the claim or objection

applies has been advertised for sale, the court ordering the sale may postpone it pending the investigation of the claim or objection

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56. Evidence to be adduced by claimant.

The claimant or objector shall adduce evidence to show that at the date of the attachment he or she had some interest in the property attached.

10 We agree with the learned trial Judge's finding that the above law was inapplicable in the circumstances, as the property in issue was not subject to attachment. There was no warrant of attachment in respect of the suit property. The court had only issued a warrant for vacant possession.

15 Be that as it may, we also find that even if the application had been competent, the appellant was not granted sufficient opportunity to answer the extremely serious allegations set out in the affidavit in reply which was filed in court a day before the hearing. This in our view denied him an opportunity to a fair hearing.

20 The learned Judge appears to have based his decision on the affidavit in reply and upon his own investigations and knowledge of the facts that gave rise to the application and did not accord sufficient opportunity to the appellant to answer the allegations made against him.

Before proceeding to make findings on the allegations of fraud and illegalities the learned trial Judge at page 8 of his Judgment made the following statement;-

5 **“Those notwithstanding the reply to the motion by the respondent raised important issues that cannot be brushed aside in such a summary manner and these are illegality and fraud”**

10 This in our view violated the rules of natural justice because the learned Judge with all due respect based his decision only on the issues raised in affidavit in reply by the respondent to which the appellant was not availed an opportunity to rebut or reply to by way of rejoinder or otherwise.

15 In the case of ***Board of Education v Rice [1911] A.C. 179*** at Page. **182**, the House of Lords said of administrative bodies (Per Lord Loreburn)

“.....they must act in good faith and fairly listen to both sides for that is the duty lying upon everyone who decides anything.”

20 We find and hold that the same is true in respect of Courts of law, as a right to a fair hearing is a non derogable right enshrined in **Articles 28 and 44(c)** of the Constitution.

It does not matter in law that a fair hearing would have made no

difference to the Petitioner's case. The House of Lords (Lord Wright) had this to say about this in the case of **Medical Council v. Spackman [1943] A.C. 627.**

5 **"If principles of natural justice are involved It is indeed in Immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision at all."**

10 See also the case of **Yowasi Makaru vs Electoral Commission High Court Election Petition 1 of 1998**, Judgment of S.B Bossa, J (as she then was.) and **Matovu and Others versus Seviiri [1979] HCB 174 (CA).**

15

We agree with Mr. Kateeba counsel for the appellant that the issues raised in the affidavit in reply could not have been properly resolved in an application of this nature. That they were serious issues of law and of fact that required proper pleadings upon which evidence
20 would have been adduced.

We also agree with the Judgment of the Supreme Court in **Ladak Abdulla Muhamedi Hussein vs Isingoma Kakiiza and others Supreme Court Civil Appeal No. 8 of 1995** which is to effect that for a court to hold that a party is or is not a *bonafide* purchaser for
25 value without notice it must possess enough material to do so and that court requires evidence to be adduced by both parties in order to firmly determine that issue. In that case the Supreme Court

found that the findings of the lower court had been made prematurely and should have awaited the hearing of the suit. We find that in this case the Judge did not possess enough material before him to make the findings that he did in respect of allegations
5 of fraud and illegalities.

Accordingly grounds 1,3,4,5 and 6 succeed.

We have found no evidence whatsoever to support the appellant's contention in grounds 7 and 8 that the learned trial Judge exhibited bias.

10 It now seems that every advocate whose views or submissions are not acceptable to the court has to allege bias. Any allegation of bias against a judicial officer is a serious matter that requires to be proved. In this case no evidence of bias was shown by the appellant's counsel at all. We have not found anything that remotely indicates
15 that the Judge was biased. It is most unfortunate that such an allegation was made by a senior member of the bar.

Both grounds therefore must fail.

This appeal therefore succeeds in part.

We accordingly make the following order:-

20 **The Ruling and orders of the learned trial Judge in Miscellaneous Application No. 435 of 2011 are hereby set aside and substituted with an order dismissing that application.**

We clarify however that no finding has been made by this court as to the lawful ownership of the suit property and or whether the appellant is a *bonafide* purchaser for value without notice.

5 The parties are at liberty to have these issues as to the lawful ownership of the suit property resolved by way of an ordinary suit filed in a competent court.

10 As to costs, since the appeal has dealt in the main on the way the trial Judge himself handled the conduct of the application in the High Court and also since further ligation is likely to be held as regards determination of the true owner of the suit property, we have found it fair and just to order that each party bears its own costs both of this appeal and also of the application in the court below.

15 **Dated at Kampala this ...05th ...day of ...September...2014.**

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HON. MR. JUSTICE REMMY KASULE
JUSTICE OF APPEAL

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HON. LADY JUSTICE SOLOMY BALUNGI BOSSA
JUSTICE OF APPEAL

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HON. MR. JUSTICE KENNETH KAKURU
JUSTICE OF APPEAL