

- a) A vesting order be issued in favor of the applicant in respect of land at Kasuku comprised in Busiro block 41 plot 389.
- b) An order doth issue directing the respondent to cause the entrance of the applicant as the proprietor on the certificate of title vide Busiro block 41 plot 389 land at Kasuku.
- c) Costs of the application be provided for.

Background;

- 2. The applicant purchased land comprised in busiro block 41 plot 389 from Mr. Sebbi Moses, the purchase price was paid fully by the applicant. Mr. Sebi Moses had given Mr Ddungu Sulaiti powers of attorney to have the said land sold, the vendor through his lawful attorney handed over to the applicant the duplicate certificate of title, blank consent forms, National identity card and passport photographs to enable the transfer into the names of the applicant.
- 3. The applicant signed the transfer forms without affixing his name and handed over the transfer forms, National identity card, passport photos to his lawyers, Bbale & partners advocates. The

applicant's lawyers mistakenly filled the transfer forms with the names of Isma Hakimu Iga and Angiro J. Bosco which names were later crossed out and the applicant's name was reflected on the transfer forms, the said transfer forms were submitted to the respondent for purposes of effecting transfer however they were rejected by the respondent. The applicant has tried to get in touch with the registered proprietor or his lawful attorney to have new transfer forms signed but all has been in vain, hence the application.

Applicant's evidence

4. The application is supported by an affidavit deposed by Mr. Musoke Stephen here in referred to as the applicant which briefly states as follows;

- i) That on the 12th of August 2022, the applicant purchased 0.06070 hectares of land comprised in Busiro Block 41 Plot 389 land at Kasuku from Mr. Sebo Moses.
- ii) That the applicant paid the full purchase price of Ugshs. 140,000,000.



- iii) That the said Sebi Moses had given powers of attorney to Ddungu Sulaiti for purposes of selling the suit land.
- iv) That the applicant is in possession of the suit.
- v) That the vendor through his lawful attorney Mr.Ddungu Suliatu handed over the duplicate certificate of title, consent to transfer, signed transfer forms without the names of the purchaser to enable the transfer of the suit land
- vi) That the applicant signed the said transfer forms without fixing his name as was advised by his lawyers and handed over all the documents to effect transfer to his lawyers, Bbale & partners advocates and legal consultants.
- vii) That when the applicant's lawyers were filing the transfer forms, they instead wrote the names of Isma Hakimu Iga and Agiro J Bosco instead of the applicant's name.
- viii) However, the said names were crossed out from the transfer forms and replaced with the names of the applicant.



- ix) When the said transfer forms were submitted to the office of the respondent, they were rejected by the respondent.
- x) That the applicant has tried to trace for Mr. Sebi Moses or his lawful attorney to have the fresh transfer forms signed by the applicant, however the same has failed in vain.
- xi) That the certificate of title is still registered in the names of Mr. Sebi Moses without any third party claims.

Representation;

5. The Applicant was represented by **Mr. Andrew Mugwanya** of M/s Rock Advocates whereas the Respondent was represented by **Mrs. Nakaziba Zuhura**. The respondent never filed any affidavit in reply despite being served with the application, Only the Applicant filed his affidavit which I have considered in the determination of this application, No party filed submissions.

Issues for determination;

- i) **Whether the application is properly before this court?**

- ii) **Whether there are sufficient grounds to warrant the grant of the vesting order to the applicant?**

Resolution and determination of the issues;

Issue 1; **Whether the application is properly before this court?**

6. It is incumbent on this court to determine the appropriateness of actions brought before it to avoid proceeding in futility. It is trite law that before an applicant invokes the inherent jurisdiction of court, he or she must have applied first for a vesting order to the Commissioner Land Registration who for some reason must have declined to exercise his or her powers under Section 167 of the Registration of titles Act Cap 230. **(See; Rashid Ndawula Vs Tropical bank & anor, Misc.cause No.332 of 2023)**
7. I will reiterate the provisions of Section 167 of the Registration of Titles Act Cap.230 under which the application is brought which provides as follows; ***“If it is proved to the satisfaction of the registrar that land under this Act has been sold by the proprietor and the whole of the purchase money paid, and that the purchaser has or those claiming under the purchaser have entered and taken possession under the***

purchase, and that entry and possession have been acquiesced in by the vendor or his or her representatives, but that a transfer has never been executed by the vendor and cannot be obtained by reason that the vendor is dead or residing out of the jurisdiction or cannot be found, the registrar may make a vesting order in the premises and may include in the order a direction for the payment of such an additional fee in respect of assurance of title as he or she may think fit, and the registrar upon the payment of that additional fee, if any, shall effect the registration directed to be made by Section 166 in the case of the vesting orders mentioned there, and the effecting or the omission to effect that registration shall be attended by the same results as declared by section 166 in respect of the vesting orders mentioned there.”

8. I concur with the decision of my learned brother Hon. Justice Henry Kawesa in ***Mutyaba Vs Kayimbye & Anor Misc.Cause No 40 of 2018*** where he observed that Section 167 of the Registration of Titles Act makes it a procedural prerequisite that applications



of this nature must be made to the commissioner land Registration before coming to court

9. In the instant case, I have perused the affidavit in support of the application deposed by the applicant and it suggests nowhere that indeed an application was made to the Commissioner Land Registration before proceeding to this Court, the applicant rather desires to oust the powers of the commissioner land registration and vest the same powers to court.

10. I go by my position in the case **Rashid Ndawula Vs Tropical Bank and Anor, Misc. Cause No.0332 of 2023** where I observed that it is in applications or actions of this nature that court is enjoined to exercise prudence and good judgment. It would not have been the intention of the framers of the constitution to divest the Commissioner Land Registration of his or her powers

11. Giving room to parties to bring actions before utilizing the available avenues under the law would be encouraging noncompliance with the provisions of section 167 of the registration of titles act cap.230 and thereby render the office of the Commissioner for land registration redundant as regards the granting of vesting orders.

12. I find no need to proceed and determine the merits of this application. Having noted that the applicant ought to have first applied to the Commissioner Land Registration before coming to Court.

13. Accordingly, I dismiss the application with no orders as to costs of the application.

I SO ORDER,



NALUZZE AISHA BATALA

JUDGE

29th/11/2023