

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA**  
**HOLDEN AT MBALE**

**HCT-04-CV-MC-0020-2009**

**UGANDA REVENUE AUTHORITY.....APPLICANT**

**VERSUS**

**UGANDA LAND COMMISSION.....RESPONDENT**

**BEFORE: THE HON. MR. JUSTICE MUSOTA STEPHEN**

**RULING**

The applicant, Uganda Revenue Authority hereafter referred to as ,URA brought this application through its Legal Services and Board Affairs department by way of a Notice of Motion under S.166 Registration of Titles Act (RTA) S.19 (1) of the Uganda Revenue Authority Act and O.52 rr.1 & 3 of the Civil Procedure Rules (CPR) for orders that:

- (1) The applicant be granted vesting orders in respect of the following properties vested in the applicant by virtue of the URA Act Cap.196:
  - (i) FRV 210, Folio 19, Plot 28 Airport road Entebbe.
  - (ii) FRV 208, Folio 19 Malaba Bridge-Bukedi.
  - (iii) FRV 212, Folio 12 Merama Customs Post.

- (iv) LRV 759 Folio 23, Plot 7-11 Maluku Drive, 1 and 1A Hayes Sadler Road and 6, 8, 10, 12, 14 School Drive, Mbale
  - (v) FRV 213 Folio 20, Plot 2A Nadiope Road East, Jinja.
  - (vi) FRV 2228 Folio 1, Goli Customs Post.
  - (vii) FRV 208 Folio 15 Plot 1, 2A, 10 Block E Butiaba.
  - (viii) LRV 299 Folio 5 Plots 52 and 54 Seventh Street Industrial Area Kampala.
  - (ix) LRV 766 Folio 7, Plot 41, 43, 45, 47 Kamugugunu Road Mbarara.
  - (x) FRV 222 Folio 7 Plot 9 Njara Road Fortportal.
- (2) Provision be made for costs of this application.

This application is supported by the affidavits of Doris Akol and Benard Olok which were relied on at the hearing of this application.

The respondent is the Uganda Land Commission (ULC).

The general grounds in the notice of motion are that:

- a) The applicant is the lawful owner of the properties vested in her by the URA Act.
- b) The respondent never transferred the properties vested in the applicant by law despite several requests by the applicant to the respondent to do so and despite serving it statutory notice of an intention to sue.
- c) The respondent has been illegally selling and/or allocating property belonging to the applicant to the detriment of the applicant.

- d) The applicant has been in possession of the properties by law.
- e) The said properties continue to raise audit queries from the auditor General and the Public Accounts Committee of Parliament of Uganda.
- f) The properties are key strategic revenue centres for tax collection.
- g) It is in the interest of justice that this application is granted to protect the applicant's interest in the properties.

The affidavits in support further reveal that the properties listed were being used as residences, offices and customs posts for the departments of Customs, Excise, Inland Revenue and Sales tax of the Ministry of Finance of the government of Uganda prior to the creation of the applicant. Certificates of title are annexed as A1 to A8. That the applicant acquired the property from the Ministry of Finance as successors in title by virtue of S.19 of the URA Act from the defunct East African Community/East African Common Services Authority who are the registered proprietors.

Further that some of the properties are registered in the names of the respondent to hold in trust for the applicant pending the vesting of such properties in the applicant. That the applicant has been in effective occupation and possession of the suit properties since her creation in 1991 and has lodged caveats on some of the properties as in annexure A<sub>4</sub> and B<sub>3</sub>. That the respondent illegally sold and allocated properties as shown in annexures G, H & I.

According to the affidavit of service by one Ojiambo Paul a Clerk with URA, he served the respondent with the Notice of Motion for hearing of this application on

10<sup>th</sup> March 2010. The Secretary to the respondent, K.S.B. Mubbala acknowledged service by sealing the notice with the official stamp of the respondent. The respondent or its representative did not appear in court on the hearing date. Earlier on 31<sup>st</sup> July 2009, the respondent acknowledged receipt of the statutory notice of intention to sue.

I allowed the applicant to proceed *ex parte* but I remained surprised that despite being an important government institution and the claim being land, the Uganda Land Commission decided to behave the way it did by neglecting or refusing to assist court reach its decision.

After perusing the application and the attendant supporting documents, and relating the same to the submission by Mr. Ali Sekatawa learned counsel for the applicant, I figured out the brief facts of this application as follows:

At one time there existed the East African Common Services Authority incorporated under the East African Common Services Organization Ordinance. This authority owned several properties including *inter alia* the properties listed in this application.

The properties were used by the departments of customs, income tax and inland revenue. It appears that these properties were taken over by the defunct East African Community for the same purpose. When the East African Community

ceased to exist, the properties were vested in the Ministry of Finance of the Uganda Government before the creation of the applicant and as is the norm, the properties were registered in the names of the respondent to hold in trust for the applicant's predecessors and later the applicants who have been in effective possession and occupation of the suit properties since 1991. The applicant has been trying to have the properties transferred into its names but the respondent has been ignoring or refusing the request hence this application.

This is an application for a vesting order of the listed properties into the applicant under S.166 RTA. Usually a vesting order can be made in the following circumstances:-

- (i) Where there has been a sale of registered land;
- (ii) When the whole purchase price has been paid;
- (iii) Possession has been taken by the purchaser with acquiescence of the vendor, and;
- (iv) The transfer has not been executed and cannot be obtained because:
  - (a) The vendor is dead (or non-existent in case of a corporate body);
  - (b) The vendor is residing outside jurisdiction; or
  - (c) The vendor cannot be found.

This was the decision in the case of ***AN APPLICATION BY THE TRUSTEES OF LUGAVE CLAN [1960] EA 322*** PER BENNET J. (then).

***The decision IN THE MATTER OF AN APPLICATION FOR A VESTING ORDER BY STANBIC BANK UGANDA LIMITED HC MISC. CAUSE***

**209/2004 AT KAMPALA** (PER MUSOTA Ag. J then) Unreported was based on the above parameters. Although the latter case referred to a corporate personality which is analogous to human beings. The facts in the latter case were that Stanbic Bank Uganda Limited became a successor in title of the assets owned by Uganda Commercial Bank (UCB) which were vested in Uganda Commercial Bank Limited (UCBL) and no transfers had earlier been made into the names of Stanbic Bank Uganda Limited the applicant. The beneficiaries then, UCBL, continued to hold the properties in trust for the applicant.

After the merger of the applicant and subsequent liquidation of UCBL, the applicant (Stanbic Bank Uganda Limited) assumed the said trust on its own behalf as a beneficiary of the assets owned by UCBL in respect of the assets and the uncompleted conveyances. A vesting order of the claimed properties was made.

The instant application, however, appears to be slightly different from the above because the applicant herein (URA) appears to claim under statute. S.19 of the URA Act enacts that;

*“19 (1) All property except any such property as the Minister may determine, which immediately before the commencement of this Act was vested in Government for the use of the departments of customs, income tax and inland revenue for the purpose of giving effect to the laws set out in the first schedule to this Act, shall on the date of commencement of this Act, and without further assurance,*

*vest in the authority subject to all interests, liabilities, charges, obligations and trusts affecting that property.”*

The properties which were vested in government for the use of the departments of customs, income tax and inland revenue departments were therefore vested into the URA by statute.

Although under S.49 of the Land Act the Uganda Land Commission is enjoined to:

*“49 (a) hold and manage any land in Uganda which is vested in or acquired by the Government in accordance with the Constitution,”*

the land which it has been holding in trust for the government and were used by the customs, income tax and inland revenue departments ought to have been surrendered to the applicant upon commencement of the URA Act. There was no justification for Uganda Land Commission to wait for litigation to do so. If there was justification, Uganda Land Commission has not brought it forward.

S.19 (1) of the URA Act made an exception to the functions of the commission in respect of government land comprised in the properties the applicant is claiming. Both parties here to are legal personalities by statute. For one to hold the other's property must be by legal arrangement.

In my considered view therefore, in addition to the conditions outlined in Ss 166 and 167 RTA, a vesting order can be made by the High Court if authorized by statute like in the instant case. As soon as the statute came into force, the Uganda Land Commission's continued holding of the suit properties in trust for URA.

I am therefore satisfied that the applicant has proved a balance of probabilities that it is entitled to the remedy sought in respect of the following properties:

- (i) FRV 210, Folio 19, Plot 28 Airport Road Entebbe.
- (ii) FRV 208, Folio 19 Malaba Bridge-Bukedi.
- (iii) FRV 212, Folio 12 Merama Customs Post.
- (iv) FRV 213 Folio 20, Plot 2A Nadiope Road East, Jinja.
- (v) FRV 228 Folio 1, Goli Customs Post (wrongly referred to as FRV 2228 in the application).
- (vi) FRV 208 Folio 15 Plot 1, 2A, 10 Block E Butiaba.
- (vii) LRV 299 Folio 5 Plots 52 and 54 Seventh Street Industrial Area Kampala.
- (viii) LRV 766 Folio 7, Plot 41, 43, 45 and 47 Kamugugunu Road Mbarara.
- (ix) FRV 222 Folio 7 Plot 9 Njara Road Fortportal.
- (x) LRV 759 Folio 23, plot 1 and 1A Hayes Sadler Road and plots 6, 8, 12 and 14 School Drive Mbale.

I therefore grant a vesting order to Uganda Revenue Authority in respect of the above ten properties.



I am unable to grant a vesting order in respect of LRV 759 Folio 23 Plot 7-11 Maluku Drive because this court pronounced itself on this property in ***Civil suit 0042 of 2001 YASIMINI NABIRYE KAHIRA V. UGANDA REVENUE AUTHORITY & CHIEF REGISTRAR OF TITLES*** where it was held *inter alia* that plots 7-11 Maluku Drive is the property of the 1<sup>st</sup> Defendant (URA) and the Certificate of title issued to the plaintiff was ordered to be revoked/cancelled for being wrongly and illegally issued. No vesting order is necessary in the circumstances.

In the final result, this application is allowed with costs.

**Musota Stephen**

**JUDGE**

**14.7.2010**

14.7.2010

Banard Olok for Applicant.

Respondent absent.

Wanale Interpreter.

**Olok:** Matter is for ruling and I am ready to receive the ruling.

**Court:** Ruling delivered.

**Musota Stephen**

**JUDGE**

**14.7.2010**