

THE REPUBLIC OF UGANDA

IN THE HIGH COURT AT MASINDI

MISCELLANEOUS CAUSE NUMBER 26 OF 2019

BIRUNGI FAUSIAAPPLICANT

VERSUS

COMMISSIONER LAND REGISTRATION RESPONDENT

RULING BY GADENYA PAUL WOLIMBWA - JUDGE

Introduction

This application was brought under section 98 of the Civil Procedure Act, section 175 of the Registration of Titles Act and Order 52 rule 1 and 2 of the Civil Procedure Rules.

The Application was filed by Fausia Birungi against the Commissioner Land Registration. The Commissioner Land Registration, though served did not file a response or appear in court. The application therefore proceeded exparte.

The application seeks orders that:

1. An order does issue directing the Respondent to transfer land comprised in LRV 2180 Folio 20 Plot 49/53, located on Persee Street to Birungi Fausia
2. Costs of the application be provided for.

The grounds of the Application are that:

1. The applicant bought the subject land from Tibamanya Johnson for valuable consideration;
2. That Tibamanya Johnson acquired the said property by way of a bank sale from the Cooperative Bank Limited.
3. Tibamanya Johnson bought the property from the Cooperative Bank Limited after the original owner Kyomya John Byemaro failed to pay the loan advanced to him to redeem the property he had mortgaged as a security.
4. That Tibamanya died while Kyomya John Byemaro is not traceable to execute the transfer forms into Birungi's names while the Cooperative Bank Limited was liquidated and wound up.
5. That it is necessary and inevitable to transfer the title into my name by order of court.

The grounds of the Application are supported by the affidavit of Fausia Birungi, who in summary reiterated the above grounds except that she gave additional facts about how Tibamanya bought the suit land from the Cooperative Bank Limited and how he, eventually sold her the suit land. She also presented a sales agreement made between herself and Tibamanya Johnson dated 2nd

July 2014, where the latter sold to the former land comprised in LRV 2180 Folio 20 Plot 49(53) for UGX 180million.

Furthermore she attached a memorandum of understanding dated 23rd September 2014 between herself and Mr. Isagara Babyesiza Cornelius and Kyaligonza Sylvia, where the former paid the latter UGX25 million, as the full and final payment for land comprised in LRV 2180 Folio 20 Plot 49 (53) Persee Street Masindi . Birungi also attached two other memoranda of understanding relating to the same land. I note that because of passage of time and death of Tibamanya, his relatives may have been involved in some of the transactions that led to transfer of the suit land to Birungi. Last but not least, Birungi attached an agreement dated 24th May 2002 where he handed over possession of the suit land to Tibamanya.

Representation

Mr. Kasangaki, represented the Applicant.

Analysis of the evidence

I am satisfied that:

1. Byemaro mortgaged the suit property to the Cooperative Bank Limited;
2. Byemaro defaulted on the mortgage and the Cooperative Bank Limited in liquidation sold the suit property to Tibamanya;
3. The suit property was not transferred into Tibamanya's name despite having paid the full purchase price;
4. Tibamanya took possession of the suit property after completing paying the purchase price;
5. Tibamanya sold the suit property to Birungi Fausia, who took possession of the property thereof;
6. Tibamanya, however, passed on before transferring the suit property to Fausia Birungi;
7. Birungi, has enjoyed quite possession of the suit land without any interruption from either Byemaro or the estate of Tibamanya;
8. The suit property is registered under the Registration of Titles Act; and that,
9. Byemaro, the original owner of the suit property, cannot be traced to effect the transfer of the suit property into Fausia Birungi's names.

Has the applicant made out a case for a vesting order under 167 of the Registration of Titles Act?

Section 167 of the Registration of Titles Act provides that:

“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 or those claiming under the purchaser have entered and taken possession under the purchaser or have entered and taken possession under the purchase, and that entry and possession have been acquiesced in by the vendor or his or her representative, but that a

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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 payment of such additional fee in respect of assurance of Title as he or she may think fit, and the Registrar upon 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 omission to effect that registration shall be attended by the same results as directed by section 166 in respect of the vesting orders mentioned”.

Section 167 of the Registration of Titles Act was considered by Ag. Justice B J Odoki, as he then was in **Re Ivan Mutaka 1980 HCB 27**. Justice Odoki held that:

“Before a vesting order, the following circumstances must be proved:

1. That there has been a sale of land the title of which is registered under the act;
2. That the whole purchase price has been paid;
3. That the purchaser has taken possession of the land;
4. That the entry into possession by the purchaser has been acquiesced in by the vendor or his or her representative;
5. That a transfer has not been executed and cannot be obtained because he or she is dead, or
6. The vendor is residing out of jurisdiction, or the vendor cannot be found”

Similarly, in **Yoswa Kityo vs. Eriya Kaddu (1982) HCB 58**, Karokora J, as he then was, held that a vesting order can only be made where the purchaser takes possession of the land and his entry has been acquiesced by the vendor.

Applying the law cited above to the instant case, I am satisfied that the Birungi, has made out a case for which I should grant her a vesting order to have the suit land transferred in her names. In particular, she has established that she purchased the suit land from Tibamanya, who passed away before transferring the property into her names; she took over possession of the suit land after completing the purchase price; she has been in quite possession of the property; the property is registered under the registration of Titles Act; Byemaro, who is registered as the proprietor of the land, cannot be traced and in any case, even if he were to be traced, he mortgaged this property and defaulted, a fact which made the Cooperative Bank Limited in liquidation to sell the suit property to Tibamanya; the Cooperative Bank Limited was liquidated and there is no adverse claim against her.

Decision

In view of the fact that the Applicant has satisfied the requirements for grant of a vesting order 167 of the Registration of Titles Act, it is only just and proper that I exercise my powers under section 98 Civil Procedure Act and section 33 of the Judicature Act to grant a vesting order to the Applicant. Accordingly, I direct the Commissioner Land Registration to transfer the land

comprised in LRV 2180 Folio 20 Plot 49/53 Persee Street, currently in the names of John Kyomya Byemaro into the names of Birungi Fausia.

I will make no orders as to costs since the matter was uncontested and is the benefit for the applicant.

It is so ordered.



Gadenya Paul Wolimbwa

JUDGE

13th/02/2020

Mr. Kasangaki for the applicant in absent

Applicant absent

Kamuhanda - Court Clerk

Court:

Ruling read in the court



Gadenya Paul Wolimbwa

JUDGE

13th/02/2020

Gadenya Paul Wolimbwa
Judge