

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT LUWERO
MISC. CAUSE HCT -17-LD-MC-0004-2022
SENTONGO BOWAZI.....APPLICANT
VERSUS
THE COMMISSIONER LAND REGISTRATION RESPONDENT
BEFORE LADY JUSTICE HENRIETTA WOLAYO
RULING

Introduction

1. Sentongo the applicant, brought this application by way of Notice of Motion under Section 167 of the Registration of Titles Act Cap 230, Section 98 of the Civil Procedure Act, Cap 71 and Order 52 Rule1 of the Civil Procedure Rules SI 71-1. He sought the following Orders; that: -
 - (a) A vesting order be issued directing the Commissioner for Land Registration to transfer to the applicant, the suit property comprised in **Bulemezi Block 167** Plot 39 Land at **Bukeka**.
 - (b) Costs of this application be provided for.
2. Sentongo brought this application in his capacity as **the administrator of the estate of the late Mugwanya Erukana via Family Division Administration Cause HCT-00-FD-AC-1009 of 2022**. (letters of administration were annexed and marked “A”)

Grounds of the application

3. The grounds of this application are contained in an affidavit sworn by Sentongo. Briefly, he deposed that the land comprised in Bulemezi Block 167 Plot 39 land at Bukeka, measuring 13 acres is currently registered in the name of Erasto Muwanga (now deceased). On or about 14.6.1927, Muwanga sold his interest to Erukana Mugwanya, also deceased, who paid the purchase price but the transfer forms have never been executed. Mugwanya took possession, made developments thereon and made use of the land with his family for the last 95 years uninterrupted. Counsel for the applicant filed written submissions that I have carefully considered.

Resolution of the application

4. When the matter came up for hearing on 15.11.2022, I directed Sentongo to provide more evidence in support of a vesting order. On 29.11.2022, he filed a supplementary affidavit of Mr. Abduswamad Nsubuga one of the neighbours to the said land. Subsequently, the applicant filed supplementary affidavits of the chairperson of Bukeka, Mr. Katweere Christopher who has held that position for 20 years. On 25.9.23, the affidavit of the photographer who took the photographs was filed.
5. I have carefully read the pleadings in the matter together with the relevant documents attached thereon. I have also given due consideration to submissions made by Counsel for the applicant. In the submissions, Counsel for the applicant proposed three issues which I

will not reproduce here. Rather, I find that the major issue in this application is:

Whether this is a proper case for issuing a vesting order.

6. In the case of **Aida Najjemba v Ester Mpagi (Civil Appeal No.74 of 2005) [2009] UGCA 1 (21 January 2009)**, Byamugisha, JA laid down 4 conditions to be satisfied in order for the registrar to exercise his or powers under section 167 of the Registration of Titles Act. These are:
 - a) The land must be registered under the provisions of the Registration of Titles Act and the purchaser must have paid the whole of the price to the vendor.
 - b) The purchaser or those claiming under him or her have taken possession of the purchased land.
 - c) That the entry into possession by the purchaser has been acquiesced by the vendor or his or her representative.
 - d) The transfer of the property has not been executed because the vendor is dead or is residing out of jurisdiction or he/she cannot be found.
7. I will deal with the first and second conditions together.
 - a) *The land must be registered under the provisions of the Registration of Titles Act and the purchaser must have paid the whole of the price to the vendor, and*
 - b) *The purchaser or those claiming under him or her have taken possession of the purchased land.*

8. A search report attached to Sentongo's affidavit in support marked Annexure "D" and dated 6.10.2022 shows that Erasito Muwanga is the registered proprietor of land comprised in Bulemezi Block 167 plot 39 land at Bukeka measuring 6.50 hectares. Muwanga was entered on the blue page under instrument number BUK 46806 on 30.5.1940. This implies that the land is registered under the provisions of the Registration of Titles Act.
9. Mr. Sentongo averred that Erasto Muwanga (now deceased) sold his interest to Erukana Mugwanya (also now deceased) on or about 14.6.1927 at a consideration of UGX 1000/= (One thousand Uganda Shillings). A sales agreement marked "B" and dated 14.6.1927 shows that Erasito Muwanga sold 10 acres situated at Nseke Hill at Bukeka to Erukana Mugwanya at a consideration of UGX 1000/=. On that day, Mugwanya paid UGX 850/= and the balance of UGX 150/= was to be paid on 30.3.1928.
10. Annexure B attached to Sentongo's affidavit is neither clear nor translated so I cannot determine whether the last instalment of the purchase price was paid or not but I will determine whether Mugwanya took possession of the purchased land.
11. According to Sentongo, his grandfather, the late Mugwanya came into actual physical possession of the suit land through a sale agreement dated 14.6.1927 between himself as the purchaser and Erasito Muwanga as vendor. Sentongo showed that thereafter, Mugwanya

made developments thereon and continued to remain in possession with his family uninterrupted for the last 95 years. The period of 95 years exceeds the twelve years as required by the law.

12. Mr. Katweere, a resident chairman of Bukeka for over 20 years collaborated Sentongo's evidence when he deposed that Sentongo and the late Mugwanya lived on the said land uninterrupted for over 80 years. He further deposed that his entry and possession into the property has been acquiesced in by Erasto or his representatives or successors. According to him, the land is developed with permanent structures and gardens that have been there for a long time. He further deposed that Erukana Mugwanya died and was buried on the said land and he even attended the burial.

13. According to Mr. Nsubuga, a neighbor, the late Erukana Mugwanya and Sentongo have been on the said land for over 80 years. He collaborated the chairman's testimony when he deposed that Erukana died and was buried on the said land and he too attended the burial.

14. Kayongo Yasin, a local business man in Wobulenzi dealing in photography deposed that he was approached by Sentongo to take photographs of land and structures situate in Bukeka. According to him, he took the photographs on 20.4.2023 using the ordinary camera equipment. The photographs of these permanent structures as earlier alluded to by Mr. Katweere have been attached. These include built houses and graves. The photos also show that the land is utilized for banana plantation and rearing of cattle.

15. The evidence of all these witnesses shows that Mugwanya's occupation and use of the suit land with his family was open, exclusive and continuous undisturbed by anybody. Mugwanya and his family's possession is evidenced by permanent residential houses, burial ground, crop farming and livestock keeping.

c) That the entry into possession by the purchaser has been acquiesced by the vendor or his or her representative.

16. Sentongo deposed under paragraph 5 of his affidavit in support that his entry and possession into the property has been acquiesced to by the vendor or his representatives or successors. Mr. Katweere further deposed that the family of the late Erasto Muwanga and their whereabouts are unknown.

17. The fact that Mugwanya's family lived on the said land uninterrupted for the last 95 years and the whereabouts of the family of the late Erasto Muwanga is unknown implies that the entry and possession into the property by Mugwanya's family was acquiesced to by Muwanga or his representatives or successors.

d) The transfer of the property has not been executed because the vendor is dead or is residing out of jurisdiction or he/she cannot be found.

18. There is unchallenged evidence of Sentongo under paragraph 7 of his affidavit in support that the transfer forms have never been


executed by Muwanga and cannot be obtained by reason that he is deceased.

19. For the foregoing reasons, the applicant has demonstrated that a vesting order should issue as prayed and it is accordingly issued.

Orders

- a. Land comprised in Bulemezi Block 167 plot 39 land at Bukeka measuring 6.50 hectares is vested in Sentongo Bowazi administrator of the estate of Mugwanya Erukani.
- b. The Commissioner, Land Registration is directed to create the duplicate certificate of title for land comprised in Bulemezi Block 167 plot 39 land at Bukeka measuring 6.50 hectares for Sentongo Bowazi administrator of the estate of Mugwanya Erukani.
- c. No order as to costs.

DATED AT LUWERO THIS 23RD DAY OF OCTOBER 2023

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LADY JUSTICE HENRIETTA WOLAYO

Legal representation

Kongai and Co. Advocates for the applicant

