



(iii). The 1<sup>st</sup> Respondents duly executed transfer forms for the transfer of the suit land to the Applicant.

(iv). However, the 1<sup>st</sup> Respondents failed or refused to execute the requisite mutation forms to enable the curving of the suit land out of their land.

(v). The 1<sup>st</sup> Respondents have also failed or refused to hand over the duplicate certificate of title to their land from which the suit land is to be curved.

These grounds are further stated in the affidavit the Applicant swore in support of the application; namely, that he has not been able to effect the transfer of the suit land because he has failed to locate the 1<sup>st</sup> Respondents who do not pick his calls; hence, the transfer forms they signed in his favour cannot afford him the transfer. Furthermore, the 1<sup>st</sup> Respondents have embarked on the sub divisions of the original land into a number of plots of land; with the risk that the Applicant may be deprived of the suit land. Steven Saava Kikonyogo, one of the joint 1<sup>st</sup> Respondents, confirmed in an affidavit in reply, that as the joint administrators of the estate of the late Nalinya Kasalina Nkinzi they sold the suit land to the Applicant. He has only contended that the application for vesting order is premature.

The issues framed, for Court's determination, are as follows: –

1. Whether the application merits the grant of a vesting order.
2. What remedies are available to the parties.

The suit came up for hearing several times, but the Respondents never appeared in Court. Eventually, Court allowed the Applicant to proceed with the suit ex-parte; and in this regard, Counsel for the Applicant filed written submissions as was directed by Court. From the evidence on record, there is no dispute that the Applicant has fully paid consideration for the suit land. His inability to have the

suit land transferred to him is on account of the failure by the 1<sup>st</sup> Respondents to execute the requisite mutation form, and hand over the duplicate certificate to the Applicant for the curving out of the suit land from the land out of which it is meant to be excised. I do not see how the application can be said to be premature in the circumstance. It would only have been premature if the applicant had not yet done any of the acts required of him.

The law pertaining to grant of vesting order is well settled. Section 167 of the Registration of Titles Act provides as follows: –

*"If it is proved to the satisfaction of the registrar that land underf this Act has been sold by the proprietor and the whole of the purchase money has been 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. ..."*

The import of this section of the RTA has succinctly been summarized in a number of cases including ***An Application by the Trustees of Lugave Clan [1960] E.A. 322 per Bennet J., H.C. Misc. Cause No. 209 of 2004 - In the matter of an Application for a Vesting Order by Stanbic Bank Uganda per Musota Ag. J., and Mbale HC Misc. Cause No. 20 of 2009 – Uganda Revenue Authority vs Uganda Land Commission***, that a vesting order may be made under the following circumstances: –

- (i) Where there is evidence of sale of registered land.
- (ii) There is proof that the whole of the purchase price has been paid.

- (iii) The purchaser has taken possession of the land sold, with the acquiescence of the vendor of such land.
- (iv) Transfer to the purchaser cannot be effected owing to either: –
  - (a) The death of the vendor;
  - (b) The vendor residing outside Court's jurisdiction; or
  - (c) The vendor cannot be found.

The facts evidence adduced before Court is that the 1<sup>st</sup> Respondents are obstinately avoiding their responsibility to complete the transaction by which they sold the suit land to the Applicant. They have avoided the Applicant after the sale to him of the suit land, and have instead embarked on sub divisions of the land out of which the suit land is meant to be curved. When they were served with hearing notices for the trial of this suit, they did not bother to appear. I am therefore fully satisfied that they are unavailable notwithstanding that one of them swore an affidavit in reply, in which he in fact corroborated the facts regarding the purchase of the suit land by the Applicant, and his taking of possession thereof. This application is certainly not premature in the light of the fact that the 1<sup>st</sup> Defendants are sub dividing the land, part of which the Applicant has purchased.

In the premise, I find that this is a proper case for the grant of an order vesting the suit land in the Applicant. Any other person's interest in the suit land subsequent to the purchase and taking of possession cannot override the interest of the Applicant. For which reason, I allow this application with costs against the 1<sup>st</sup> Respondents, and make the following orders: –

- (i). The Applicant shall survey and curve out the 20 decimals, being the suit land, from the main title.

(ii). The Registrar of Titles shall forthwith vest the ascertained 20 decimals of land (the suit land) in the Applicant.

(iii). The Applicant is awarded the costs of the application.

(iv). The award in (iii) herein, shall attract interest at Court rate from the date of this ruling till payment in full.

A handwritten signature in dark ink, appearing to read 'Alfonse Chigamoy Owiny - Dollo', written in a cursive style.

Alfonse Chigamoy Owiny – Dollo  
**JUDGE**

**08 – 12 – 2014**