

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT KAMPALA**  
**(LAND DIVISION)**  
**CIVIL SUIT NO. 064 OF 2014**

**GEORGE W. KANYEIHAMBA** ..... **PLAINTIFF**

**VERSUS**

**COMMISIONER LAND REGISTRATION** ..... **DEFENDANT**

**RULING**

**BEFORE HONOURABLE LADY JUSTICE EVA K. LUSWATA**

The applicant presented this application by motion under S.139 of the Constitution, S.98 CPA and Order 52 rules 1 and 3, seeking for a vesting order against the respondent for a transfer into his name in respect of land comprised in Busiro Block 392 Plot 50 at Bweya (hereinafter called the suit land) and costs of the application.

The grounds of the application were stated both in the motion and the applicant's affidavit in which he briefly related that in 1999, he purchased the suit land from the late Katongole Suleiman the only son of the late K. Nakabiri the registered proprietor and paid the purchase price in full. That he then took possession of the suit land after compensating all the squatters on it and has been in possession since 1990. A period spanning more than 12 years. That the deceased died before effecting a transfer into his names. In further support of the application was an affidavit by Jimmy Kimela, the LC1 chairperson of the area in which the suit land is situate. He stated that he was present when the applicant bought the suit land and witnessed him compensating the squatters he found there. He confirmed that the applicant had been in possession of the suit land since 1990, been recognized by his committee as the owner and that there were no adverse claims against his ownership.

The respondent contested the application in her affidavit in reply filed on 2/10/14. Basically, she contended that the application was presented under the wrong law and that the applicant had not fulfilled the requirements for a vesting order to be issued to him.

There was no affidavit in rejoinder to the application but instead, one Edirisa Lugemwa Ssalongo filed a statutory declaration on 23/10/14. He claimed that he owned land at one time owned by one Sulaiman Katongole and looked after by one Yowana Kaweesa of Nganjo who used it to grow crops. That he was present at a meeting at which the applicant allowed Kaweesa to harvest his food until 1990 when he left. That the applicant has been in possession since then, until when he also sold off the land to yet other persons.

Upon request, both counsel were allowed to file written submissions but both did not do so. At the hearing of 8/12/14, counsel for the respondent applied for dismissal of the application owing to the fact of the applicant's absence and failure to file written submissions. I declined to grant the order for dismissal and instead, opted to proceed with the application under 0.17 Rule 4 CPR and my decision will be based on the proceedings filed by both parties.

I agree with counsel for the respondent that before a vesting order can be issued, by the Commissioner for Land Registration, an applicant must fulfill the conditions laid down in Section 167 RTA, as follows:-

1. That the land in question has been sold by the registered proprietor.
2. That the full purchase price has been paid.
3. That the purchaser or those claiming under him/her have entered and taken possession.
4. Such entry and possession has been acquiesced by the vendor or their representative.
5. A transfer was never executed by the vendor and cannot be obtained by reason that the vendor is dead or residing outside jurisdiction or cannot be found.

By his statement and that of Kimela and Lugemwa Ssalongo, the applicants provided credible evidence that he is in possession of the suit land. Therefore, this evidence which was never contested by the respondent is credible evidence on a balance of probabilities that he is in possession of the suit land.

However, the respondent contented that there is no proof that the purchase price was paid in full and I do agree. There is neither proof that there was ever a sale of the suit land to the applicant

nor that he paid the purchase price in full. In any event, if there was any sale, it was never completed between the applicant and the registered proprietor. Save that the late Suleiman Katongole is stated to be the son of Nakabiri K. the alleged registered owner, the applicant did not establish any legal nexus between Katongole and the estate of the registered proprietor. He also did not establish whether Katongole is now deceased or whether he even had the power to sell the suit property in the first place.

Steaming from the above, I find that the applicant has failed to satisfy this court that on the facts as related, he is entitled to a vesting order with respect to the suit land.

The application thereby fails and is dismissed with costs to the respondent.

I so order.

**EVA K. LUSWATA**  
**JUDGE**  
**12<sup>th</sup> February 2015**