

**THE REPUBLIC OF UGANDA**

**IN THE HIGH COURT OF UGANDA AT KAMPALA  
LAND DIVISION  
MISCELLANEOUS CAUSE NO. 75 OF 2015**

**1. ROBERT MUKANZA  
2. PETUA MUKANZA..... APPLICANTS**

**VERSUS**

**COMMISSIONER LAND REGISTRATION..... RESPONDENT**

**RULING  
BEFORE HON. LADY JUSTICE EVA K. LUSWATA**

This application was brought by notice of motion under the provisions of Section 167 of the Registration of Titles Act Cap 230 (RTA), Section 98 CPA and Order 52 rules 1 and 3 of the Civil Procedure Rules SI 71-1. The applicant sought for the following orders that:

- a) A vesting order be issued directing the commissioner for Land Registration to transfer the suit property comprised in Kyadondo Block 244 Plot 5984 land at Kisugu into the names of the applicants.
- b) Costs of the application be provided for.

The applicants presented the application as the administrators of the estate of the late Hon. Justice Ignatius Mukanza, (hereinafter referred to as the deceased) who it is claimed fully purchased the suit property and took possession of it but was unable to complete the transfer process before of his demise. That the applicants themselves could not conclude the process because the registered proprietor cannot be traced. The application was supported by the affidavit of Robert Mukanza, the first applicant. The respondent did not respond to the application and did not appear when served at the hearing of 17/2/16. I allowed ex-parte proceedings against her on the same date.

The main issue therefore is whether the applicants are in the circumstances entitled to a vesting order with respect to the suit land. As directed, counsel for the applicants filed written submissions whose contents are appreciated in this ruling.

The law in regard to a vesting order as provided under **Section 167 of the Registration of Titles Act** states as follows:

*“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 entered and taken possession under the purchase, and that entry and possession have been acquiesced to 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 and may include in the order a direction for the payment of such an additional fee in respect of assurance of title as he or she may .....”emphasis mine”*

The above Section was interpreted in the case of **Re Ivan Mutaka [1980] HCB 27** by **Odoki Ag. J** (as he then was) where he held that;

*“...Before the court makes a vesting order, the following circumstances must be proved:-*

- a) That there has been a sale of land the title of which is registered under the Act;*
- b) That the whole of the purchase price has been paid;*
- c) That the purchaser (or those claiming under him or her) has taken possession of the land;*
- d) That the entry into possession by the purchaser has been acquiesced in by the vendor or his or her representatives;*
- e) That a transfer has not been executed and cannot be obtained because,*
  - i) The vendor is dead, or*
  - ii) The vendor is residing out of jurisdiction, or*
  - iii) The vendor cannot be found.”*

A plain reading of section 167 RTA indicates that the powers therein are a preserve of the Registrar of Titles. The short title to that section is indicative enough. However, it has been shown that the applicant’s request for a vesting order from the Commissioner of Land Registration made on 30/6/15 was not honoured, with the advice that they instead seek an order

from this court. That advice would accordingly justify the filing of this application. Even so, I do find merit in the decision by my brother Judge Bashaija A in **Ronald Aine Vs Commissioner for Land Registration in HC Misc. Cause No. 90/2013** that the High Court has jurisdiction to entertain this type of application under Section 98 CPA, Section 167 RTA only demonstrating the conditions required to grant a vesting order. I will accordingly entertain the application.

In his affidavit in support of the application, Robert Mukanza states that the deceased purchased the suit land from one Lukwago George and paid the full purchase price and did receive the duplicate certificate of title and took possession. That the applicants as the deceased's successors in title, remain in possession and have to date placed a paying tenant into the premises on the suit land.

It is shown in Annexure B to the application, that the suit land is registered in the names of Lukwago George vide Instrument No. KLA 205326 OF 1/7/99. I was able to view the duplicate certificate which is in the applicants' possession. I have also seen and perused an agreement of sale dated 26/6/2000 attached as Annexure "C". It indicates that Lukwago George sold the suit land to the deceased for a sum of Shs.45, 000,000; Shs.10,000,000 of which was paid in cash, and the balance by a banker's draft in favour of the vendor to be handed over to him at execution of the agreement. The land was stated to be free of any encumbrance, and the purchaser was to assume possession immediately upon execution of the agreement.

Going by the above evidence, I am satisfied that the suit land was purchased by the deceased, the applicant's predecessor, from Lukwago George, its registered owner at a sum of Shs.45 million that was paid in full. The transfer instrument attached as Annexure "D" would have no legal consequence for although it quotes Block 244 and Plot 5984 as the land in issue, it omits to show the actual buyer and seller of the land, and indicates no purchase price. However, there is uncontested evidence that the deceased took immediate possession of the suit land and that the applicants as his successors in title have continued with such possession. I am prepared to agree that the deceased's possession was agreed to by the registered owner since it is the latter's legal representatives who have the duplicate certificate of title and so far, there is no documented contest to their possession. If I were to be in doubt of those facts, the applicants did present a tenancy agreement in respect of the suit land between them as landlords, and one Grace Keji Ali

as tenant for the period 2/1/14 to 1/1/15. Only an owner or, one in possession may legally let out a premises.

According to Mukanza, the applicants have been unable to obtain a fresh transfer from the vendor who cannot be found, this after due diligence to find him. I note that not much was said to explain what steps had been taken to locate this vendor. However, considering that the agreement of sale was made as far back as June 2000, and that the applicants were not party to it, the chances of tracing the vendor could only be reasonably achieved from searching the register. I have noted that his postal address is given.

Be that as it may, the order sought is one that requires my discretion. In my view, the applicants have demonstrated that a purchase of registered land that was otherwise completed, cannot be followed up with registration because the vendor cannot be reasonably traced.

In my view, and I hold that the conditions for obtaining a vesting order have been fulfilled.

I would accordingly allow the application in the terms it is sought. The applicants only being the legal representatives of the purchaser's estate which may have other legal beneficiaries, such transfer must reflect that ownership is limited to that extent.

I would in addition order that the applicants meet the costs of the application.

I so order.

**EVA K. LUSWATA**  
**JUDGE**  
**14/07/2016**