

**MISC. CAUSE NO. 041 - 2019 - KITINDA DAPHINE & ANOR VS COMM LAND REGISTRATION
(RULING)**

THE REPUBLIC OF UGANDA

IN THE HIGH COURT OF UGANDA HOLDEN AT KAMPALA

(LAND DIVISION)

**IN THE MATTER OF SECTIONS 166,167,177 AND 188 OF THE REGISTRATION OF
TITLES ACT CAP 230**

AND

IN THE MATTER OF KYADONDO BLOCK 207 PLOT 631 AT KANYANYA

MISC. CAUSE NO. 41 OF 2019

- 1. KITINDA DAPHINE**
- 2. SENUNGI JOSEPH.....APPLICANTS**

VERSES

THE COMMISSIONER LAND REGISTRATION.....RESPONDENT

BEFORE: HON. MR. JUSTICE HENRY I. KAWESA

RULING

This application was brought by Notice of motion under the provisions of section 98 of the Civil Procedure Act, Order 52 r.1, & 3 of the Civil Procedure Rules and Sections 166, 167 and 188 of the Registration of Titles Act for orders that;

- a) A vesting order issues for the transfer of land comprised in Kyadondo Block 207 plot 631 at Kanyanya to the Applicants.

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- b) An order for issuance of a special certificate of title for the Applicants.
- c) Costs of the application be provided for.

The facts from which the application emanates are contained in the grounds of the motion and affidavit in support of Kitinda Daphine the 1st Applicant herein which are briefly that;-

- i. The Applicants are the administrators of the estate of the late Senyungule Kitinda John Vide High Court Admin. Cause No.911 of 2015.
- ii. That the late Senyungule Kitinda John purchased land comprised in Kyadondo Block 207 plot 631 at Kanyanya from Mawemuko Christine.
- iii. That the Applicants are in possession of the land after the death of their father who died on 22nd June 1998 before effecting the transfer into his names.
- iv. That the Applicants have failed to trace Mawemuko Christine from whom the late Senyungule bought from land and the owner of the certificate of title.

The Applicants attached the following pieces of evidence to support their application;- a copy of the letters of administration as *Annexure 'AA'*, a death certificate as *annexure 'BB'*, a statement of search as *Annexure 'DD'*, a sale agreement as *annexure 'CC'*, then a copy of the letter from the LC.

In reply, the Respondent through an affidavit of Gulooba Haruna a Senior Registrar of titles deposes that,

- a. The suit land is currently registered in the names of Christine Mawemuko having obtained registration on the 17th March 1975 under instrument No. KLA 77572 and that there is no any incumbrance on the register book affecting the land.

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- b. That in the event the order is granted, the Applicants be compelled to pay the required fees including stamp duty as granting the order doesn't exempt the Applicant from paying the same.
- c. That it is only fit and proper that this Court compels the Applicant to pay the required stamp duty as the Respondent is ready to comply with any orders of this honorable Court.

When the application came up for hearing on 11th July. 2019 the Respondent was ordered to file an affidavit in reply which was adhered to, further orders were made as to the rejoinder and submissions by both parties. The Applicants did not rejoin, they however filed written submissions which will be considered in this ruling.

From record on Court, the following issues are for determination by this Court, to wit:-

1. Whether a vesting order can be granted to the administrators of the estate of the late Senyungule Kitinda John.
2. Whether the Respondent can be compelled to issue a special certificate of title to the Applicants for the land comprised in Kyadondo Block 207 plot 631 land at Kanyanya.

Resolution of the issues.

Whether a vesting order can be granted to the administrators of the estate of the late Senyungule Kitinda John.

An administrator has been defined under Section 2 (a) of the Succession Act cap 162 laws of Uganda to mean "*persons appointed by a Court to administer the estate of a deceased person when there is no executor*". Under section 180 of the same act, it provides that;

'The administrator of a deceased's person is his or her representative for all purposes and all the property of the deceased vests in him or her as such.

Therefore, under section 167 of the registration of titles act of which this application is brought provides that;

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“if it is proved to the satisfaction of the registrar that the land under the Registration of Titles Act had been sold by the registered proprietor and the whole of the purchase money been paid, and the purchaser is or those claiming under the purchase and that entry and possession have been acquiesced by the vendor or his or her representative, but that the transfer has not 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...”.

To the above effect, four conditions have to be fulfilled before a registrar can vest land in the Applicant’s name and these conditions were spelt out in the case of *Aida Najjemba versus Ester Mpagi CA No.74 of 2005* where it was found out that the registrar grants a vesting order where;-

- i. The land is registered under the provisions of the Registration of Titles Act and has been sold by the registered proprietor and the whole of the purchase price paid.
- ii. The purchase has or those claiming under the purchaser have entered and taken possession under the purchase.
- iii. The entry and possession have been acquiesced in by the vendor or his representatives.
- iv. A transfer has never been executed and cannot be obtained by reason that the vendor is dead or residing out of the jurisdiction or cannot be found.

The above was also interpreted by **Odoki Ag. J** in the case of *Re Ivan Mutaka (1980) HCB 27*.

Under section 166 of the Registration of Titles Act, it enables the making of the vesting order by the High Court and it states that;

“whenever any person interested in land under the operation of this Act or any estate or interest therein appears to the High Court to be trustee of such land, estate or interest within the intent and meaning of any law for the time being relating to trust and trustee and any vesting order is made in the premises by the High Court, the registrar, on being served with the order or an office copy of the order shall enter in the register book, the

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date of the order, the time of its production and the name of the person in whom the order purports to vest the land...and that person shall be deemed the proprietor of the land”.

In *Aida Najjemba versus Ester Mpagi*; (*supra*), Byamugisha J. A noted that;

‘Even though an application for a vesting order must be made to the registrar of titles, the high Court has unlimited jurisdiction in all matters.

Counsel for the Applicants ably submitted that the conditions for the grant of a vesting order existed in the case and that vesting order should therefore be granted.

In line with the first condition, that the land must be registered under the provisions of the Registration of Titles Act, Section 59 of the Registration of Titles Act provides that;

.....every certificate of title issued under this Act shall be received in all Courts as evidence of particulars set forth in the certificate, and shall be conclusive evidence that that the person named in the certificate as the proprietor of or having any estate or interest in or power to appoint or dispose of the land described in the certificate.

From our facts, it was the Respondent’s evidence by affidavit that the land in question is registered in the names of Christine Mawemuko having obtained registration on the 17th March 1975 under instrument No.KLA 77572. The certificates of title attached affidavit in reply for the Respondent which is a title for Block 207 plot 631 is still registered in the names of Christine Mawemuko as at 17th March 1975. Annexure ‘DD’ which is a search certificate attached to the Applicant’s affidavit in support corroborates the above evidence. Section 59 of the Registration of Titles Act therefore enjoins this Court to recognize this certificate as conclusive evidence of the person named in it as the proprietor and upon his demise, persons with letters of administration to his estate had power to dispose of the land in accordance with the above section. The land was therefore registered under the of the Registration of Titles Act.

It is also not in dispute that the purchaser, the late Senyungule Kitinda John paid fully for the land and from the sale agreement attached dated 20th February 1983, it is clear that the purchaser

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paid for land comprised in Kyadondo Block 207 plots 631 which is the suit land. It was the 1st Applicant's evidence that when she tried to inquire from the LC1 Chairman about the whereabouts Mukalazi John, Nabisubi Christine, Kyobe William and Sekyenne who witnessed on the sale agreement, that he was informed that they have all since died.

Further still, entry was acquiesced and according to the affidavit in support of the application, it has been established that after the purchase of the land, the purchaser took possession thereof and the Applicants (*Administrators*) are still in possession of the land. There is no evidence whatsoever to show that the vendor or his representatives objected to the said possession by the purchaser or his representatives. The 1st Applicant averred that by the time of her father's death, he was in occupation of the aforementioned land and they have continued in occupation after his demise.

This can be corroborated by the area LC1 chairperson's evidence Ms Rose Matovu when she averred in paragraph 4 of her affidavit in support that the land and developments comprised in Kyadondo Block 207 Plot 631 at Kanyanya have been in occupation and owned by the family of the late Senyungule Kitinda John. Therefore, the condition of entry and possession has been fulfilled.

The last condition is that the transfer of the property has not been executed because the vendor is dead or is residing out of jurisdiction or that he cannot be found. The LC chairperson Rose Matovu on his part also gave evidence that ever since the time she became the LC1 of that area in 1998, the vendor was not staying on that village and that she does not know her whereabouts. The 1st Applicant also led evidence that they tried to get the whereabouts of Mawemuko Christine but completely failed as all people around never knew her current whereabouts. This therefore makes this application a proper case for issuance of a vesting order.

However, the Respondent on its part prayed that in case Court issues the above orders, the Applicants be compelled to pay stamp duty. I find that payment of stamp duty is a matter of law.

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It is my finding that the Applicants have satisfied all the conditions for the grant of the order, it follows that the Respondent issues a special certificate of title to the Applicants upon the Applicant's payment of stamp duty.

I so order.

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Henry I. Kawesa

JUDGE

23/08/2019

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23/08/2019:

Sebbagala for the Applicants.

Applicants present.

Respondents present.

Court:

Ruling delivered in the presence of the parties above.

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Henry I. Kawesa

JUDGE

23/08/2019