

NAKUBULWA LWANGA :::::::::::::::::::::::::::::::::::::: APPLICANT

1. CHARLES MUWANGA

2. THE COMMISSIONER LAND

REGISTRATION.....RESPONDENTS

RULING

1. A vesting order be granted in favour of the Applicant in respect of land at Nampage comprised in Busiro Block 131, Plot 18 (hereinafter the suit land),
2. The Applicant be registered on the certificate of title as an administrator to the estate of the father, Kabwama Kulanima.
3. The costs of this matter be borne by the 1st Respondent.

1

- a) That the Applicant is the biological daughter of the late Kabwama Kulanima and is the Administrator of the deceased's estate vide HCT-00- FD-AC-405/17 granted on the 19th May 2017.
- b) That in 1980, the deceased bought 6 acres of the land from the Registered Proprietor Charles Muwanga, but died before he could transfer the land into his names as no transfer forms were signed in his favour.
- c) That the Applicant has the Duplicate Certificate of Title which is still in the names of Charles Muwanga.
- d) That the Applicant is in physical possession of the land, and is using it peacefully.
- e) That the said land is not a subject of any dispute mortgages or encumbrances or at all.
- f) That the whereabouts of the said Charles Muwanga are not known up to now.
- g) That the same Application was made to the Registrar Land Registration on the 30th July, 2018, but the said Registrar declined to issue the vesting order and therefore advised the Applicant to get a vesting order from Courts of law.
- h) That it is just, fair and equitable that the land comprised in the above particulars be vested into the names of the Applicant as the administrator of the state of the late Kabwama Kulanima.

Handwritten: 5/11/21

The Application is supported by affidavit sworn by the Applicant. she averred therein that she is the biological daughter and administrator to the estate of the late Kabwama Kulanima vide **HCT-00-FD-AC-405/17** granted on the 19th May 2017. Copy of letters of Administration was attached and marked annexure "A".

That in 1980, the deceased bought 6 acres of the land from the Registered Proprietor Charles Muwanga, but died before he could transfer the land into his names as no

transfer forms were signed. she also averred that she has the Duplicate Certificate of Title which is still in the names of Charles Muwanga, but his whereabouts are not known at all and is in the physical possession of the land, which has no mortgages or encumbrances or at all. Copy of the sale agreement was attached and marked as annexure "B"

She deponed further that the said land is not a subject of any dispute or at all. That she made the same Application to the Registrar Land Registration on the 30th July, 2018, but the said Registrar declined to issue the vesting order and therefore advised me to get a vesting order from Courts of law. (Copy of the Application for vesting order was attached hereto and marked annexure "C").

She also deponed that it's just, fair and equitable that the land comprised in the above particulars be vested into my names as the administrator of the state of the late Kabwama Kulanima. That I swear to this affidavit in support of an Application to be granted a vesting order. That whatever is stated herein above is true and correct to the best of my knowledge and belief.

Representation

The Applicant was represented by M/s Ruyondo & Co. Advocates

Email: edisonruyondo@gmail.com

The Respondents were not represented and the matter proceeded exparte.

Resolution

Section 167 of the Registration of Titles Act Cap 230 provides that;

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 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 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 think fit, and the registrar upon the payment of that additional fee, if any, shall effect the registration directed to be made by section 166 in the case of the vesting orders mentioned there, and the effecting or the omission to effect that registration shall be attended by the same results as declared by section 166 in respect of the vesting orders mentioned there.

I shall firstly determine whether this Application is properly before Court before dwelling on the merits of the Application. It is trite law that before an Applicant invokes the inherent jurisdiction of Court under **Section 98 Civil Procedure Act, Cap 71** in Applications of this nature; he or she must have applied first for a vesting order to the Commissioner for Land Registration/Registrar, who for some reason must have declined to exercise his or her powers under **Section 167 of the Registration of titles Act Cap 230**.

*CHS sent
5/11/21*
Section 167 Registration of Titles Act makes it a procedural prerequisite that Applications of this nature must be made to the Commissioner for Land Registration before coming to Court. Most of the cases I have reviewed are to the same effect. See: **Edward Babigumira vs. Commissioner for Land Registration, HCT Misc. Cause No. 76 of 2012; Ronald Oine versus Commissioner Land Registration Miscellaneous Cause No. 90 of 2013.**

Counsel submitted that in *Namyenya Milly Versus Commissioner of Land Registration Misc.Cause No 104 of 2015* Justice Wilson Musalu Musene stated on page 3 that, *it ought to be a condition that the Application must be made to the Registrar/commissioner Land Registration in the first instance who for some reason declines to exercise the powers conferred upon him or her under section 167 of the Registration of Tittles Act (RTA) before the Applicant can move Court.*

Counsel added that in the instant case the procedure has been well followed and the Registrar was the first point of reference and he referred the matter to court. That under section 98 of the Civil Procedure Act the Court has inherent powers to grant the said Order in question for ends of Justice to meet. It is undisputed that the Applicant did apply to the Registrar before bringing her Application to Court as required by Section 98 Civil Procedure Act, Cap 71 as per paragraph 8 of her affidavit in support of the Application in which she makes reference to the Annexure "c" which is a copy of the Application for Vesting Orders made to the Registrar of Title *Wakiso* thus rendering the Application proper before this Court.

CP 8/21
5/11/21 Counsel for the Applicant also cited the case of *Maria Gorretti Musimenta Versus Commissioner for Land Registration Miscellaneous Cause No 062 of 2019* wherein the court gave some guidance as to the conditions which ought to be satisfied under the above Section before the Registrar can exercise his or her powers. These are;

1. That the land must be registered under the Registration of Titles Act and the purchaser must have paid the whole of the purchase price to the vendor.

2. That the purchaser or those claiming under him or her have taken possession of the purchased land.
3. That the purchaser has entered the land and the entry has been acquiesced in by the vendor or his or her representative.
4. That the transfer of the property has not been executed because the vendor is dead or is residing out of jurisdiction or cannot be found.

Regarding the first condition the land must be under the operation of the RTA, the court in *Edward Babigumira vs. Commissioner for Land Registration, HC. Misc. Cause No. 76 of 2012*, per Lady Justice Bossa (as she then was) considered section 59 RTA and held to the effect that a certificate of title is conclusive proof that the land was brought under the RTA.

In the instant case, the Applicant stated that she has the Duplicate certificate of title for the suit land but she did not submit or adduce any copy of the certificate of title for the suit land comprised in Busiro Block 131, Plot 18 at Nampage. This omission is critical given that the Sale Agreement attached is a photocopy and does not describe the full particulars of the suit land apart from mentioning Plot 18. The Applicant further stated that the suit land is not subject to any disputes/encumbrances which could further be proven by the certificate of title. This condition is therefore not met.

With regard to the second condition of possession, the Applicant stated that she is in physical possession of the suit land. The Applicant however did not adduce any further documentary evidence to support this claim of occupation or possession which as an owner, occupant or landlord would be easy to do. I am therefore not satisfied this condition has been met.

Having carefully reviewed the whole Application, and the applicable conditions, I am not satisfied that it fulfils all the conditions for grant of a vesting order set out under section 167 of the Registration of Titles Act.

The application thereby fails and is dismissed. I make no order as to costs.

It is so ordered.



CORNELIA KAKOOZA SABIITI

JUDGE

Date: 5th November 2021