

**THE REPUBLIC OF UGANDA**  
**IN THE HIGH COURT OF UGANDA AT MPIGI**  
**MISC. CASE NO. 21 OF 2021**

**NAMUGUZI DEO MUSOKE ::::::::::::::::::::::::::::::::::: APPLICANT**

5 **VERSUS**

**COMMISSIONER LAND REGISTRATION ::::::::::::::::::::::::::::::::::: RESPONDENT**

**BEFORE: HIS LORDSHIP HON. JUSTICE OYUKO ANTHONY OJOK, JUDGE**

**RULING**

10 This is an application brought by notice of motion under **Section 167** of the Registration of Titles Act, Cap 230, **Section 98** of the Civil Procedure Act Cap 71 and **Order 52 Rules 1** and **2** of the Civil Procedure Rules SI 71-1 seeking for orders that;

1. A vesting order be issued directing the commissioner land registration to vest  
15 land comprised in Private Mailo Mawokota Mpigi Block 41 Plot 143 land at Nansese measuring 0.0990 hectares into the applicant.
2. Costs for the application be met by the applicant.

The grounds of this application, which I shall not reproduce, are laid out in the affidavit in support of the application deponed by the Applicant.

20 It is averred by the Applicant that on the 2<sup>nd</sup> day of August 2017, he purchased the suit land from Naluwagga Noelina wherein he made the first payment on the 2<sup>nd</sup> August 2017 and the last payment of the full purchase price on the 6<sup>th</sup> July 2020.

That after the purchase, Naluwagga Noelina handed over to the Applicant a duplicate Certificate of title and transfer forms which process was effected at the

Mpigi Land Zonal offices and all the required fees were paid but the process was delayed by the national lockdown due to the covid 19 pandemic.

That the vendor passed away on 27/01/2021 before she had been identified by the Registrar lands. That the Applicant has been in the possession of the said land for over 5 years which possession has never been challenged or contested by any person.

### **Representation:**

The Applicant was represented by Counsel Nalunkuuma Esther of M/S Xander Advocates and the Respondent was unrepresented.

### **Submissions:**

Counsel for the Applicant filed written submissions as directed by this court which I shall take into account in determining this application.

### **Resolution of Court;**

Counsel properly directed me to **Section 167** of the Registration of Titles Act Cap 230 as the applicable law in applications of this nature which 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 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 result as declared by Section 166 in respect of the vesting orders mentioned there.”*

Counsel for the applicant also quoted the case of **Aida Najjemba V Esther Mpagi**  
5 **Court of Appeal Civil Appeal No. 74 of 2005** wherein 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.
- 10 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  
15 dead or is residing out of jurisdiction or cannot be found.

It is trite law that before an Applicant invokes the inherent jurisdiction of court under **Section 98** of the Civil Procedure Act, Cap 71 in applications of this nature; he/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  
20 her powers under **Section 167** of Registration of Titles Act Cap 230. (See **Aida Najjemba Versus Esther Mpagi (supra)**).

It was not disputed that the Respondent declined to vest the suit land in the names of the Applicant, upon application. This is proved by the rejection letter attached by the Applicant wherein the Respondent gave reasons as to why he rejected the  
25 Applicant's application.

Turning now to the conditions above, having carefully looked at the whole application, It is my finding that the Applicant does not satisfy all the above conditions. Counsel for the Applicant stated that the Applicant failed to take the

Late Naluwagga Noeline to the registrar for identification as requested on the 14<sup>th</sup> of July 2020 due to Covid 19.

I find that this is not reason enough because around that time the lockdown had been eased and offices were operating partially. The Applicant had a chance to take the late Naluwagga Noeline for identification then which he did not do. The addendum in the sale agreement shows that the last purchase price was paid on the 6<sup>th</sup> of July 2020 which was just a few days before the identification process at the Registrar's office.

Furthermore, the Applicant had over 5 months to take the Applicant for identification before her death but he chose to be negligent and failed on the same. Therefore, I am not satisfied by the Applicant's reason that he failed to take the late Naluwagga Noeline for identification at the Registrar's office before her death due to Covid 19. Be as it may, even if I agree that it is true that the vendor is deceased as indicated in the short death certificate attached, there is no further proof that was adduced in court.

The Applicant attached a consent letter from the family/ beneficiaries of the Late Naluwagga Noelina, however I cannot rely on the same because the Applicant failed to prove their identity and existence. The Applicant did not attach any evidence to prove that the above people are actual beneficiaries of the deceased and I cannot rely on the consent letter as it is baseless.

In the circumstances, this Application is dismissed.

I so Order.

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**OYUKO ANTHONY OJOK**

**JUDGE**

**10/03/2022**