

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

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

VERSUS

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

BEFORE: HONOURABLE JUSTICE OYUKO ANTHONY OJOK

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 issue directing the commissioner land registration to vest
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 supported by the
affidavit deponed by the Applicant. it is averred by the Applicant that on the 2nd day
of August 2017, he purchased the suit land from Naluwagga Noelina wherein he made
20 the first payment on 2nd August 2017 and the last payment of the full purchase price
on the 6th July 2020.

That after the purchase, Naluwagga Noelina handed over to the Applicant a duplicate
Certificate of title and transfer forms which process as 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. According to the Section; “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 cited the case of **Aida Najjemba V Esther Mpagi Court of Appeal Civil Appeal No. 74 of 2005** wherein they 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.

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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 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 Applicant's application.

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Turning now to the conditions above, having carefully looked at the whole application, I am of no doubt it satisfies all the above conditions. The Applicant has attached a sales agreement to prove that he paid the full purchase price of the suit land and there is also evidence that the relatives of the deceased have no problem with the Applicant obtaining the order having consented to the same. Furthermore, evidence of a search report has been attached to prove that the suit land has never been transferred and is still in the names of the deceased and has no incumbrance.

In the circumstances entirely agree with the Applicant's Counsel that this application ought to be granted as prayed. I therefore order as follows:

1. That the Respondent vests land comprised at Nansese Mawokota, Block 41 plot 143 into the Applicant.
2. That the Applicant meets all the fees necessary for vesting the suit land into her names.
3. The Applicant meets costs of this Application.

I so order.


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Oyuko Anthony Ojok

JUDGE

17/03/2022