

THE REPUBLIC OF UGANDA
IN THE HIGH COURT OF UGANDA AT KAMPALA
(LAND DIVISION)

MISCELLANEOUS CAUSE NO 096 OF 2020

5 **KAMBUGU CHARLES**..... **APPLICANT**

VERSUS

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

10 **Before: Lady Justice Alexandra Nkonge Rugadya**

RULING:

Introduction:

15 Mr. Kambugu, the applicant filed this application under **section 167 of the Registration of Titles Act (RTA)(Cap 230); Section 98 Civil Procedure Act(CPA) (Cap 71); and Order 52 r.1& 2 Civil Procedure Rules (CPR) (S.I. 71 – 1)**, seeking for orders that:

1. Land comprised in **Kyadondo Block 167 plot 104 at Kiwale** be vested in the applicant.
2. The Commissioner, Land Registration be ordered to create the duplicate certificate of title for land
20 comprised in **Kyadondo Block 167, plot 104 at Kiwale**.
3. The applicant meets the cost of the application.

Grounds of the application:

25 The grounds of the application are briefly are that the applicant was gifted the suit land by his father who passed on in 2000 without giving the land title and transfer form to the applicant. Thast the applicant built a permanent home where he lives with his family; and that he has been in possession of the land for over twenty (20) years now and desirous of protecting it by acquiring a land title and proprietorship thereof.

He also avers that the family, including the heir and clan members are all aware about the *gift intervivos*, and that rest of the beneficiaries had no interest at all in the suit land.

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Furthermore that the applicant reported the loss of the land title to Police vide: SD: 09/27/03/2013 and recently made a search in the land registry and the said property is still in the names of his late father Mulisio Kyeyune.

5 That it is in the interest of justice that the property comprised in **Kyadondo Block 167 Plot 104** at Kiwale is vested in the names of the applicant and a land title thereof created.

Representation:

The applicant is represented by **M/s Baingana G.P and Associated Advocates**. Upon court's directives, a public notice relating to this application was run in both the *Daily Monitor* and *Bukedde Newspapers* dated 28th October, 2020 and 2nd November, 2020, respectively, **(both attached as Annextures "F" and "G")**.

10 No one however turned up to challenge the application. The applicant still had to satisfy this court that the application merits the prayers sought in this application. An order was therefore made for this court to conduct a *locus* visit, to establish what was on the ground.

Considerations of the issue:

15 I have careful read the pleadings and submissions by the applicant and his counsel, respectively. I need not reproduce them since the details are all on record. The major issue in this application is whether this is a proper case for issuing a vesting order.

In his written submissions counsel for the applicant referred court to **section 167 of the Registration of Titles Act, Cap 230** which stipulates as follows:

20 ***If it is proved to the satisfaction of the commissioner 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 commissioner 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 commissioner 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.***

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Counsel for the applicant also cited the case of **Aida Najiemba versus Ester Mpagi, Court of Appeal, Civil Appeal No. 74 of 2005** wherein the court gave some guidance as to the conditions which ought to

be satisfied under the above section, before the Registrar/commissioner, Land Registration 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.

10 **Considerations for above conditions:**

Condition 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.

Under **section 59 of the RTA**, a certificate of title is conclusive evidence of ownership of land. **Annexure D** is a certificate of title registered in the names of the late father to the applicant, Kyeyune Muliso of Nakwero, under instrument No.KLA72843.

A search report, **Annexure E**, dated on 13th November, 2020 confirms that the suit land is registered in the names of Kyeyune Muliso, Nakwero, on 29th March, 1974. Also on record is an area schedule **Annexure C**, of the suit land, dated 27th January, 2022, showing that out of the original **plot 83, Block 167, plots 103, 104, and 105** had been created.

20 **Plot 83**, was formerly owned by one Nansikombi who from the certificate of title, **Annexure D**, got registered on that land on 10th November, 1970.

The current **plot 104** was formerly owned by Kulisitina Perepetwa Erizabesi Namisango before it was transferred to Muliso Kyeyune of Nakwero, Kasangati, having been registered into his names on 29th March, 1974. This information tallies with what appears on **Annexure C**, the area schedule.

25 From the contents of **paragraph 2** of the affidavit in support, the applicant received the suit land as a *gift vivos* from his late father Kyeyune Muliso in 1998. The above was confirmed by the clan members in their letter of 11th November 2007.

30 The heir to the deceased, Stephen Ssemanda who attended the locus visit conducted by this court corroborated the above evidence in his affidavit in **paragraph 4**, thus confirming that indeed the suit land was gifted to the applicant.

From the above, therefore court finds that the applicant is the equitable owner of the suit land having acquired it as a gift from his late father.



Condition 2: That the purchaser or those claiming under him or her have taken possession of the purchased land.

5 In *paragraph 3 and 4* of affidavit, the applicant states that upon receiving the *gift intervivos*, he took over possession and built thereon a permanent home and that he has lived thereon with his family for a period of twenty years.

From the evidence on record, the applicant's father became registered owner in 1974 and the applicant's claim that he has been in possession of the suit land for twenty years had not been contested. He and his father as his predecessor in title have enjoyed quiet possession of that land for a period of 48 years.

This condition is also therefore satisfied.

10 **Condition 3: That the purchaser has entered the land and the entry has been acquiesced to by the vendor or his or her representative.**

The heir to the deceased one Stephen Ssemenda confirms in his own affidavit *paragraph 4 and 5* that the land was gifted to the applicant and that at the time of his death, his late father had not handed over to the applicant the land title and transfer form.

15 Since the applicant obtained in 1998 and his father died in 2000 (as per *paragraph 3* of the application) the implication is that the applicant had lived on the land while his father was still alive and therefore acquiesced to his son's occupation of that land.

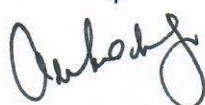
Condition 4: That the transfer of the property has not been executed because the vendor is dead or is residing out of jurisdiction or cannot be found.

20 The applicant depones in *paragraph 5* that his father had not handed over to him the land title and transfer form, which averment as noted earlier is also corroborated by that of the heir Stephen Ssemenda.

It is clear from the unchallenged evidence of the applicant therefore that the registered owner of the suit land, **Block 167, plot 104** never executed the transfer of land into the names of the applicant.

Following the *locus* visit conducted

25 by this court on 18th January, 2022 it was noted that the applicant and his family were in occupation/possession of **plot 104** which has a permanent old structure. Located next to it was a new and bigger structure though on a different plot, which also belonged to the applicant. The LC Chairman of the area confirmed that he knew the applicant and his family who have long been on this land without any interruption.

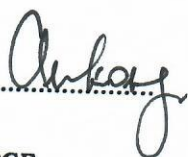


The heir was also present at the *locus*. He confirmed to court that he had no issues or objection to this application for a vesting order.

In light of the above, I am therefore satisfied that the conditions spelt out in **section 167 of the RTA** and as per ***Aida Najjemba versus Ester Mpagi***, were suitably met to merit the grant of this application.

5 Accordingly the following orders are made:


1. *Land comprised in Kyadondo, Block 167, plot 104 at Kiwale is vested in the names of Kambugu Charles.*
2. *The Commissioner, Land Registration is directed to create the duplicate certificate of title for land comprised in Kyadondo Block 167, Plot 104 at Kiwale into the applicant's names.*
- 10 3. *The applicant is to meet the costs of the transfer; and of this application.*

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JUDGE

4th February, 2022

Delivered by email


4/2/2022